SENATE—*Tuesday, January 6, 1987*

The sixth day of January being the day prescribed by House Joint Resolution 755 for the meeting of the 1st session of the 100th Congress, the Senate assembled in its Chamber at the Capitol, at 12 noon.

PRAYER

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

Let us pray.

For promotion cometh neither from the East, nor from the West, nor from the South; but God is the judge; He putteth down one and setteth up another—Psalms 75:6–7.

Eternal God, Supreme Lord of history and Ruler of the nations, make Your presence felt at this significant hour in the Senate of the United States.

In the light of Your truth from the psalmist, in the spirit of the finest intentions of our founders, and in the context of this consummately critical hour in domestic and world affairs, may this swearing-in ceremony represent the ultimate in statesmanship and political commitment. As the Senators make their sober pledge, may the reality of divine appointment and the trust of the people be pervasive.

We commend to Your gracious care the President and the First Lady. Give to them Your peace and to him rapid and total recovery.

In the name of Him who is truth and justice incarnate. Amen.

CREDENTIALS

The VICE PRESIDENT. The Chair lays before the Senate the credentials of 34 Senators elected to 6-year terms beginning on January 3, 1987, and the credentials of one Senator elected for an unexpired term. All certificates, the Chair is advised, are in the form suggested by the Senate or contain all the essential requirements of the form suggested by the Senate.

If there be no objection, the reading of the 35 certificates will be waived, and they will be printed in full in the RECORD.

The documents ordered to be printed in the RECORD are as follows:

STATE OF NORTH CAROLINA

CERTIFICATE OF ELECTION FOR UNEXPIRED TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Terry Sanford was duly chosen by the qualified electors of the State of North Carolina a Senator for the unexpired term ending at noon on the 3rd day of January, 1987, to fill the vacancy in the representation from said State in the Senate of the United States caused by the death of Senator John East.

Witness: His excellency our governor, and our seal hereto affixed at Raleigh this 21st day of November, in the year of our Lord, 1986.

JAMES G. MARTIN,
Governor.

STATE OF WASHINGTON

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, nineteen hundred and eighty-six, Brock Adams was duly chosen by the qualified electors of the State of Washington a Senator from said state to represent said state in the Senate of the United States for a term of six years, beginning on the third day of January, nineteen hundred and eighty-seven.

In witness whereof, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 4th of December, A.D., nineteen hundred and eighty-six.

BOOTH GARDNER,
Governor of Washington.

STATE OF MISSOURI

CERTIFICATE OF ELECTION FOR UNITED STATES SENATOR, SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Christopher (Kit) Bond was duly chosen by the qualified electors of the State of Missouri a Senator to represent Missouri in the United States Senate for a term of six years, beginning on the 3rd day of January, 1987.

In testimony whereof, I hereunto set my hand and cause to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, this 5th day of December, 1986.

JOHN ASHCROFT,
Governor.

STATE OF LOUISIANA

ELECTION PROCLAMATION

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, John Breaux was duly chosen by the qualified electors of the State of Louisiana a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency our governor Edwin W. Edwards, and our seal hereto affixed at the City of Baton Rouge this 17th day of November, 1986.

EDWIN W. EDWARDS,
Governor of Louisiana.

STATE OF ARKANSAS

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, 1986, the Honorable Dale Bumpers was duly chosen by the qualified electors of the State of Arkansas as a Senator from said State to represent said State in the Senate of the United States for a term of six years, beginning on the 3rd day of January, 1987, the vote being:

Honorable Dale Bumpers, 433,122; Asa Hutchinson, 262,313; Ralph Forbes, 52.

In witness whereof, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed at the Capitol in Little Rock on this 20th day of December in the year of our Lord nineteen hundred eighty-six.

BILL CLINTON,
Governor.

STATE OF NORTH DAKOTA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Kent Conrad was duly chosen by the qualified electors of the State of North Dakota a Senator from said State to represent said State in the Senate of the United States for a term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency our governor George A. Sinner, and our seal hereto affixed at Bismarck this 19th day of November in the year of our Lord 1986.

GEORGE A. SINNER,
Governor.

STATE OF CALIFORNIA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Alan Cranston was duly chosen by the qualified electors of the State of California a Senator from said State to represent said State in the Senate of the United States for a term of six years, beginning on the 3rd day of January, 1987.

In witness whereof I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 15th day of December 1986.

GEORGE DEUKMEJIAN,
Governor of California.

STATE OF NEW YORK

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, 1986, Alfonse M. D'Amato was duly chosen by the qualified electors of the State of New York a Senator from said State to represent said State in the Senate of the United States for a term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency our governor Mario M. Cuomo, and our seal hereto affixed at Albany this sixteenth day of December, in the year nineteen hundred eighty-six.

MARIO M. CUOMO,
Governor.

STATE OF SOUTH DAKOTA

CERTIFICATE OF ELECTION

This is to certify, That on the 4th day of November, nineteen hundred and eighty-six, at a general election, Thomas A. Daschle was duly chosen by the qualified voters of

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

the State of South Dakota to the office of United States Senate for the term of six years, beginning the 3rd day of January, nineteen hundred and eighty-seven.

In witness whereof, We have hereunto set our hands and caused the Seal of the State to be affixed at Pierre, the Capital, this 24th day of November, nineteen hundred and eighty-six.

WILLIAM J. JANKLOW,
Governor.

STATE OF ILLINOIS

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, nineteen hundred and eighty-six, Alan J. Dixon was duly chosen by the qualified electors of the State of Illinois, a Senator from said State, to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, nineteen hundred and eighty-seven.

Witness: His Excellency our Governor James R. Thompson, and our seal hereto affixed at the city of Springfield this twenty-fourth day of November, in the year of our Lord nineteen hundred and eighty-six.

JAMES R. THOMPSON,
Governor.

STATE OF CONNECTICUT

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, nineteen hundred and eighty-six, Christopher J. Dodd was duly chosen by the qualified electors of the State of Connecticut Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, nineteen hundred and eighty-seven.

Witness: His Excellency our Governor, William A. O'Neill and our seal hereto affixed at Hartford, this twenty-sixth day of November, in the year of our Lord nineteen hundred and eighty-six.

WILLIAM A. O'NEILL,
Governor.

STATE OF KANSAS

CERTIFICATE OF ELECTION

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, nineteen hundred eighty-six, Bob Dole was duly chosen by the qualified electors of the State of Kansas a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, nineteen hundred eighty-seven.

Witness: The Honorable John Carlin, our Governor, and our seal hereto affixed at Topeka, this twenty-first day of November, in the year of our Lord, nineteen hundred eighty-six.

JOHN CARLIN,
Governor.

COMMONWEALTH OF KENTUCKY

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To all to Whom These Presents Shall Come, Greeting:

Know Ye, That Wendell H. Ford, having been duly certified, that on the 4th day of November, 1986, was duly chosen by the qualified electors of the State of Kentucky a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1987.

I hereby invest the above named with full power and authority to execute and discharge the duties of the said office according to law. And to have and to hold the same, with all the rights and emoluments thereunto legally appertaining, for and during the term prescribed by law.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Commonwealth to be hereunto affixed. Done at Frankfort, the 24th day of November in the year of our Lord one thousand nine hundred and eighty-six and in the one hundred and 95th year of the Commonwealth.

MARTHA LAYNE COLLINS,
Governor.

STATE OF GEORGIA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Wyche Fowler, Jr., was duly chosen by the qualified electors of the State of Georgia a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency, Governor Joe Frank Harris, and our seal hereto affixed at the Capitol, in the City of Atlanta, this 16th day of December, in the year of our Lord 1986.

JOE FRANK HARRIS,
Governor.

STATE OF UTAH

CERTIFICATE OF ELECTION FOR A SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Senator E.J. Jake Garn was duly chosen by the electors of the State of Utah a Senator from Utah to represent Utah in the Senate of the United States for the term of six years, beginning on the third day of January, 1987.

Witness: His excellency, our governor Norman H. Bangerter, and our seal hereto affixed at Salt Lake City, Utah, this 22nd day of December, in the year of our Lord 1986.

NORMAN H. BANGERTER,
Governor.

STATE OF OHIO

CERTIFICATE OF ELECTION

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, John Glenn was duly chosen by the qualified electors of the State of Ohio a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, 1987.

Witness: His Excellency, our Governor Richard F. Celeste, and our Seal hereto affixed at Columbus, Ohio, this 15th day of December, in the year of Our Lord nineteen hundred eighty-six.

RICHARD F. CELESTE,
Governor.

STATE OF FLORIDA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, A.D., 1986, Bob Graham was duly chosen by the qualified electors of the State of Florida a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3d day of January, 1987.

Witness: His excellency our governor, Bob Graham, and our seal hereto affixed at Tallahassee, this 17th day of November, in the year of our Lord 1986.

BOB GRAHAM,
Governor.

STATE OF IOWA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, 1986, Charles E. Grassley was duly chosen by the qualified electors of the State of Iowa a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, 1987.

Witness: His excellency our governor Terry E. Branstad, and our seal hereto affixed at Des Moines, Iowa, this eighth day of December in the year of our Lord 1986.

TERRY E. BRANSTAD,
Governor.

STATE OF SOUTH CAROLINA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Ernest F. Hollings was duly chosen by the qualified electors of the State of South Carolina a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3d day of January, 1987.

Witness: His excellency our Governor Richard W. Riley, and our seal hereto affixed at Columbia, South Carolina, this 14th day of November, in the year of our Lord 1986.

RICHARD W. RILEY,
Governor.

STATE OF HAWAII

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, 1986, Daniel K. Inouye was duly chosen by the qualified electors of the State of Hawaii a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency our governor George R. Ariyoshi, and our seal hereto affixed at Honolulu, Hawaii this 25th day of November, in the year of our Lord 1986.

GEORGE R. ARIYOSHI,
Governor.

STATE OF WISCONSIN

To the President of the Senate of the United States:

I, Anthony S. Earl, Governor of the State of Wisconsin, do hereby certify that on the Fourth day of November, 1986, Robert W. Kasten, Jr., was duly chosen by the electors of the State of Wisconsin a Senator to represent said State in the Senate of the United States for the term of six years, beginning on the Third day of January, 1987.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol, in the City of Madison, this 9th

day of December, in the year of our Lord, One Thousand, Nine Hundred and Eighty-Six.

ANTHONY S. EARL,
Governor.

STATE OF VERMONT

CERTIFICATE OF ELECTION

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, 1986, Patrick J. Leahy was duly chosen by the qualified electors of the State of Vermont a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, 1987.

Witness: Her Excellency our Governor Madeleine M. Kunin, and our seal hereto affixed at Montpelier this eighteenth day of December, in the year of our Lord 1986.

MADELEINE M. KUNIN,
Governor.

STATE OF ARIZONA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, John McCain was duly chosen by the qualified electors of the State of Arizona as Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency the Governor of Arizona, and the great seal of Arizona hereto affixed at Phoenix, the Capital, this 24th day of November, in the year of our lord, 1986.

BRUCE BABBITT,
Governor.

STATE OF MARYLAND

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Barbara A. Mikulski was duly chosen by the qualified electors of the State of Maryland a Senator from said State to represent said State in the Senate of the United States for a term of six years, beginning on the 3rd day of January, 1987.

Witness: His Excellency our Governor, Harry Hughes, and our seal hereto affixed at the City of Annapolis, this 8th day of December, in the Year of Our Lord, One Thousand, Nine Hundred and Eighty-six.

HARRY HUGHES,
Governor.

STATE OF ALASKA

CERTIFICATE OF ELECTION

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Frank H. Murkowski was duly chosen by the qualified voters of the State of Alaska a Senator from said State to represent said State in the Senate of the United States for a term of six years, beginning on the 3rd day of January, 1987.

Witness: I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital, this 8th day of December, 1986.

STEVE COWPER,
Governor.

STATE OF OKLAHOMA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November 1986 Don Nickles was duly chosen by the qualified electors of the State of Oklahoma a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency our Governor George Nigh and our seal hereto affixed at Oklahoma City, Oklahoma this 12th day of November in the year of our Lord 1986.

GEORGE NIGH,
Governor.

STATE OF OREGON

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Bob Packwood was duly chosen by the qualified electors of the State of Oregon a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning at noon on the 3rd day of January, 1987.

Witness: His excellency our Governor, Victor Atiyeh, and the Seal of the State of Oregon hereto affixed at Salem, Oregon this 1st day of December, in the year of our Lord 1986.

VICTOR ATIYEH,
Governor.

STATE OF INDIANA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

This is to certify that on the 4th Day of November, 1986, Dan Quayle was duly chosen by the qualified electors of the State of Indiana a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of Janaury, 1987.

Witness: I, Robert D. Orr, hereto set my hand and cause to be affixed the Great Seal of State at the City of Indianapolis this 24th day of December, in the year of our Lord 1986.

ROBERT D. ORR,
Governor.

STATE OF NEVADA

To the President of the Senate of the United States:

This is to certify that at a general election held in the State of Nevada on Tuesday, the fourth day of November, nineteen hundred and eighty-six, Harry M. Reid was duly elected by the qualified electors of the State of Nevada a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, nineteen hundred and eighty-seven, having received the highest number of votes cast for said office at said election, as appears by the certificate of the duly constituted and qualified Board of Canvassers now on file in the office of the Secretary of State at Carson City, Nevada.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State Nevada to be affixed at the State Capitol at Carson City, this first day of December, in the year of our Lord one thousand nine hundred and eighty-six.

RICHARD H. BRYAN,
Governor.

STATE OF NEW HAMPSHIRE

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, nineteen hundred and eighty-six, Warren B. Rudman was duly chosen by the qualified electors of the State of New Hampshire a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the third day of January, nineteen hundred and eighty-seven.

Witness: His Excellency, our Governor John H. Sununu and our Seal hereto affixed at Concord this twenty-sixth day of November, in the year of our Lord nineteen hundred and eighty-six.

JOHN H. SUNUNU,
Governor.

STATE OF NORTH CAROLINA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Terry Sanford was duly chosen by the qualified electors of the State of North Carolina a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency our governor, James G. Martin, and our seal hereto affixed at Raleigh this 26th day of November, in the year of our Lord 1986.

JAMES G. MARTIN,
Governor.

STATE OF ALABAMA

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Richard Shelby was duly chosen by the qualified electors of the State of Alabama as a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1987.

Witness: His excellency our governor George C. Wallace, and our seal hereto affixed at Montgomery, Alabama this 18th day of November, in the year of our Lord 1986.

GEORGE C. WALLACE
Governor.

COMMONWEALTH OF PENNSYLVANIA

To the President of the Senate of the United States, Greetings:

This is to certify that on the fourth day of November, 1986, Arlen Specter was duly chosen by the qualified electors of the Commonwealth of Pennsylvania a Senator from Pennsylvania to represent Pennsylvania in the Senate of the United States for the term of six years, beginning on the third day of January, 1987.

Witness: His excellency our Governor Dick Thornburgh, and our seal thereto affixed at Harrisburg this ninth day of December, in the year of our Lord 1986.

DICK THORNBURGH,
Governor.

STATE OF IDAHO

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the 4th day of November, 1986, Steve Symms was duly chosen by the qualified electors of the State of Idaho a Senator from said State to represent said State in the Senate of the United

States for the term of six years, beginning on the 3d day of January, 1987.

Witness: His excellency our governor John V. Evans, and our seal hereto affixed at Boise this 19th day of November, in the year of our Lord 1986.

JOHN V. EVANS,
Governor.

STATE OF COLORADO

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM

To the President of the Senate of the United States:

This is to certify that on the fourth day of November, 1986, Timothy E. Wirth was duly chosen by the qualified electors of the State of Colorado a Senator from said State to represent said State in the Senate of the United States for a term of six years, beginning on the third of January, 1987.

Witness: His excellency our Governor Richard D. Lamm, and our seal hereto affixed at this tenth day of December, in the year of our Lord, 1986.

RICHARD D. LAMM,
Governor.

ADMINISTRATION OF OATH OF OFFICE

The VICE PRESIDENT. If the 34 Senators-elect will now present themselves at the desk in groups of four as their names are called, in alphabetical order, the Chair will administer their oaths of office.

The clerk will now read the names of the first group.

The legislative clerk called the names of Mr. ADAMS, Mr. BOND, Mr. BREAUX, and Mr. BUMPERS.

The VICE PRESIDENT. The Senators will please come forward.

These Senators, escorted by Mr. EVANS, Mr. DANFORTH, Mr. JOHNSTON, and Mr. PRYOR, respectively, advanced to the desk of the Vice President; the oath prescribed by law was administered to them by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The clerk will read the names of the next four Senators.

The legislative clerk read the names of Mr. CONRAD, Mr. CRANSTON, Mr. D'AMATO, and Mr. DASCHLE.

The VICE PRESIDENT. The Senators will please come forward.

These Senators, escorted by Mr. BURDICK, Mr. WILSON, Mr. MOYNIHAN, and Mr. PRESSLER, respectively, advanced to the desk of the Vice President; the oath prescribed by law was administered by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The clerk will read the names of the next four Senators.

The legislative clerk called the names of Mr. DIXON, Mr. DODD, Mr. DOLE, and Mr. FORD.

The VICE PRESIDENT. The Senators will please come forward.

These Senators, escorted by Mr. SIMON, Mr. WEICKER, Mrs. KASSEBAUM, and Mr. MCCONNELL, respectively, advanced to the desk of the Vice President; the oath prescribed by law was administered to them by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The Clerk will read the names of the next four Senators.

The legislative clerk called the names of Mr. FOWLER, Mr. GARN, Mr. GLENN, and Mr. GRAHAM.

The VICE PRESIDENT. The Senators will please come forward.

These Senators, escorted by Mr. NUNN, Mr. HATCH, Mr. METZENBAUM, and Mr. CHILES, respectively, advanced to the desk of the Vice President; the oath prescribed by law was administered to them by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The clerk will read the names of the next group.

The legislative clerk called the names of Mr. GRASSLEY, Mr. HOLLINGS, Mr. INOUYE, and Mr. KASTEN.

The VICE PRESIDENT. The Senators will please come forward.

These Senators, escorted by Mr. HARKIN, Mr. THURMOND, Mr. MATSUNAGA, and Mr. PROXMIRE, respectively, advanced to the desk of the Vice President; the oath prescribed by law was administered to them by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The clerk will read the names of the next group, please.

The legislative clerk called the names of Mr. LEAHY, Mr. MCCAIN, Ms. MIKULSKI, and Mr. MURKOWSKI.

The VICE PRESIDENT. The Senators will come forward.

These Senators, escorted by Mr. STAFFORD, Mr. DECONCINI, Mr. SARBANES, and Mr. STEVENS, respectively, advanced to the desk of the Vice President; the oath prescribed by law was administered to them by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The clerk will read the names of the next group.

The legislative clerk called the names of Mr. NICKLES, Mr. PACKWOOD, Mr. QUAYLE, and Mr. REID.

The VICE PRESIDENT. Senators please come forward.

These Senators, escorted by Mr. BOREN, Mr. SIMPSON, Mr. LUGAR, and Mr. HECHT, respectively, advanced to the desk of the Vice President; the oath prescribed by law was administered to them by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The clerk will please read the names of the next group.

The legislative clerk called the names of Mr. RUDMAN, Mr. SANFORD, Mr. SHELBY, and Mr. SPECTER.

The VICE PRESIDENT. Will the Senators please come forward?

These Senators, escorted by Mr. HUMPHREY, Mr. HELMS, Mr. HEFLIN, and Mr. HEINZ, respectively, advanced to the desk of the Vice President: the oath prescribed by law was administered to them by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The clerk will read the names of the final group.

The legislative clerk called the names of Mr. SYMMS and Mr. WIRTH.

These Senators, escorted by Mr. COCHRAN and Mr. ARMSTRONG, respectively, advanced to the desk of the Vice President; the oath prescribed by law was administered to them by the Vice President; and they severally subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The VICE PRESIDENT. The Senate will please be in order. Senators are asked to take their seats.

CALL OF THE ROLL

The VICE PRESIDENT. The majority leader is recognized.

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

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 1]

Biden	Cohen	McClure
Boschwitz	Hatfield	

The VICE PRESIDENT. A quorum is present.

LIST OF SENATORS BY STATES

Alabama. Howell Heflin and Richard C. Shelby.

Alaska. Ted Stevens and Frank H. Murkowski.

Arizona. Dennis DeConcini and John McCain.

Arkansas. Dale Bumpers and David Pryor.

California. Alan Cranston and Pete Wilson.

Colorado. William L. Armstrong and Timothy E. Wirth.

Connecticut. Lowell P. Weicker, Jr. and Christopher J. Dodd.

Delaware. William V. Roth, Jr. and Joseph R. Biden, Jr.

Florida. Lawton Chiles and Bob Graham.

Georgia. Sam Nunn and Wyche Fowler, Jr.

Hawaii. Daniel K. Inouye and Spark M. Matsunaga.

Idaho. James A. McClure and Steven D. Symms.

Illinois. Alan J. Dixon and Paul Simon.

Indiana. Richard G. Lugar and Dan Quayle.

Iowa. Charles E. Grassley and Tom Harkin.

Kansas. Robert Dole and Nancy Landon Kassebaum.

Kentucky. Wendell H. Ford and Mitch McConnell.

Louisiana. J. Bennett Johnston and John B. Breaux.

Maine. William S. Cohen and George J. Mitchell.

Maryland. Paul S. Sarbanes and Barbara A. Mikulski.

Massachusetts. Edward M. Kennedy and John F. Kerry.

Michigan. Donald W. Riegle, Jr. and Carl Levin.

Minnesota. David Durenberger and Rudy Boschwitz.

Mississippi. John C. Stennis and Thad Cochran.

Missouri. John C. Danforth and Christopher S. Bond.

Montana. John Melcher and Max Baucus.

Nebraska. Edward Zorinsky and J. James Exon.

Nevada. Chic Hecht and Harry Reid.

New Hampshire. Gordon J. Humphrey and Warren Rudman.

New Jersey. Bill Bradley and Frank R. Lautenberg.

New Mexico. Pete V. Domenici and Jeff Bingaman.

New York. Daniel Patrick Moynihan and Alfonse M. D'Amato.

North Carolina. Jesse Helms and Terry Sanford.

North Dakota. Quentin N. Burdick and Kent Conrad.

Ohio. John Glenn and Howard M. Metzenbaum.

Oklahoma. David L. Boren and Don Nickles.

Oregon. Mark O. Hatfield and Bob Packwood.

Pennsylvania. John Heinz and Arlen Specter.

Rhode Island. Claiborne Pell and John H. Chafee.

South Carolina. Strom Thurmond and Ernest F. Hollings.

South Dakota. Larry Pressler and Thomas A. Daschle.

Tennessee. Jim Sasser and Albert Gore, Jr.

Texas. Lloyd Bentsen and Phil Gramm.

Utah. Jake Garn and Orrin G. Hatch.

Vermont. Robert T. Stafford and Patrick J. Leahy.

Virginia. John W. Warner and Paul S. Trible, Jr.

Washington. Daniel J. Evans and Brock Adams.

West Virginia. Robert C. Byrd and John D. Rockefeller IV.

Wisconsin. William Proxmire and Bob Kasten.

Wyoming. Malcolm Wallop and Alan K. Simpson.

The VICE PRESIDENT. The majority leader is recognized.

Mr. BYRD addressed the Chair.

The VICE PRESIDENT. Will the Senate please be in order? The majority leader has been recognized.

Mr. BYRD. Mr. President, may we have order in the Senate?

The VICE PRESIDENT. Senators are asked to take their seats. The Senate will be in order.

The majority leader.

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

NOTIFICATION TO THE PRESIDENT

Mr. BYRD. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The VICE PRESIDENT. The clerk will report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 1) informing the President of the United States that a quorum of each House is assembled.

The VICE PRESIDENT. Without objection, the resolution is considered and agreed to.

The resolution (S. Res. 1) reads as follows:

S. RES. 1

Resolved, That a committee consisting of two Senators be appointed to join such committee as may be appointed by the House of Representatives to wait upon the President of the United States and inform him that a quorum of each House is assembled and that the Congress is ready to receive any communication he may be pleased to make.

The VICE PRESIDENT. Pursuant to Senate Resolution 1, the Chair appoints the Senator from West Virginia, Mr. ROBERT C. BYRD, and the Senator from Kansas, Mr. ROBERT DOLE, as members of the committee of the Senate to join the committee of the House of Representatives to wait upon the President of the United States and inform him that a quorum of each House is assembled and that the Congress is ready to receive any communication he may be pleased to make.

NOTIFICATION TO THE HOUSE

Mr. BYRD. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The VICE PRESIDENT. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 2) informing the House of Representatives that a quorum of the Senate is assembled.

The VICE PRESIDENT. Without objection, the resolution is considered and agreed to.

The resolution (S. Res. 2) reads as follows:

S. RES. 2

Resolved, That the Secretary inform the House of Representatives that a quorum of the Senate is assembled and that the Senate is ready to proceed to business.

ELECTION OF THE PRESIDENT PRO TEMPORE OF THE SENATE

Mr. BYRD. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The VICE PRESIDENT. The clerk will state the resolution by title.

Mr. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from South Carolina, Mr. THURMOND, may be added as a cosponsor. I do this at his request.

The VICE PRESIDENT. Without objection, it is so ordered.

The clerk will now state the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 3) to elect John C. Stennis, a Senator from the State of Mississippi, to be President pro tempore of the Senate of the United States.

Mr. THURMOND addressed the Chair.

The VICE PRESIDENT. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I am very pleased to join as a sponsor of this resolution. The Democrats have a majority in the Senate. They are entitled to the President pro tempore. Senator STENNIS is a worthy man to fill this position. He is a man of character, a man of ability, a man of dedication, and a man of compassion. I am very proud to have worked with him ever since I have been in the Senate. I feel the Senate is fortunate to have a man like him to be the President pro tempore. I move to second the nomination, as well as being a cosponsor, and move the nomination be closed and he be elected by acclamation.

The VICE PRESIDENT. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to as follows:

S. RES. 3

Resolved, That John C. Stennis, a Senator from the State of Mississippi, be, and he is hereby, elected President of the Senate pro tempore, to hold office during the pleasure of the Senate, in accordance with rule I, paragraph 1, of the Standing Rules of the Senate.

ADMINISTRATION OF OATH TO SENATOR JOHN C. STENNIS AS PRESIDENT PRO TEMPORE OF THE SENATE FOR THE 100TH CONGRESS

The VICE PRESIDENT. The Senator from Mississippi will approach the rostrum. I appoint the Senator from West Virginia, Mr. BYRD; the Senator from Kansas, Mr. DOLE; the Senator from Mississippi, Mr. THAD COCHRAN; and the Senator from South Carolina, Mr. STROM THURMOND, as a committee to escort the President pro tempore of the Senate to the rostrum for the purpose of taking the oath.

The President pro tempore, escorted by Senator BYRD, Senator DOLE, Senator COCHRAN, and Senator THURMOND, advanced to the desk of the Vice President; the oath was administered to him by the Vice President; and he subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

The PRESIDENT pro tempore (Mr. STENNIS). Mr. Vice President, and Members of the Senate, the floor is now open for offering resolutions that may be presented by any Member.

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. I recognize the Senator from West Virginia.

NOTIFICATION TO THE PRESIDENT

Mr. BYRD. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the resolution.

The legislative clerk read as follows:

S. RES. 4

Resolved, That the President of the United States be notified of the election of John C. Stennis, a Senator from the State of Mississippi, as President pro tempore.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution will be considered and agreed to. [Laughter.]

CONGRATULATIONS TO THE PRESIDENT PRO TEMPORE

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. BYRD. I send a resolution to the desk, and I ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the resolution.

The assistant legislative clerk read as follows:

S. RES. 5

Resolved, That the Majority Leader and the Minority Leader of the Senate, on behalf of the Senate, congratulate John C. Stennis, a Senator from the State of Mississippi, upon his election as President pro tempore of the United States Senate.

The PRESIDENT pro tempore. We will strictly follow the rule here. [Laughter.]

Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

[Applause, Senators rising.]

The PRESIDENT pro tempore. The Chair recognizes the Senator from West Virginia.

NOTIFICATION TO THE HOUSE OF REPRESENTATIVES OF ELECTION OF A PRESIDENT PRO TEMPORE OF THE SENATE

Mr. BYRD. Mr. President, I send a resolution to the desk and I ask unanimous consent that it be immediately considered.

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

The resolution will be reported. The clerk will report the resolution.

The legislative clerk read as follows:

S. RES. 6

Resolved, That the House of Representatives be notified of the election of John C. Stennis, a Senator from the State of Mississippi, as President pro tempore.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The Senator from West Virginia is recognized.

ELECTION OF WALTER J. STEWART AS SECRETARY OF THE SENATE

Mr. BYRD. Mr. President, I send to the desk a resolution and I ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the resolution.

The assistant legislative clerk read as follows:

S. RES. 7

Resolved, That Walter J. Stewart be, and he is hereby, elected Secretary of the Senate, beginning January 6, 1987.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

ADMINISTRATION OF OATH TO THE SECRETARY OF THE SENATE

The PRESIDENT pro tempore. The Secretary of the Senate will now present himself for the taking of the oath of office.

The Honorable Walter J. Stewart, escorted by the Honorable ROBERT C. BYRD, advanced to the desk of the Vice President; the oath prescribed by law was administered to him by the President pro tempore.

[Applause, Senators rising.]

NOTIFICATION TO THE PRESIDENT

Mr. BYRD. I send to the desk a resolution and I ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the resolution.

The legislative clerk read as follows:

S. RES. 8

Resolved, That the President of the United States be notified of the election of the Honorable Walter J. Stewart as Secretary of the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

NOTIFICATION TO THE HOUSE OF REPRESENTATIVES OF ELECTION OF SECRETARY OF THE SENATE

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent for the immediate consideration of the resolution which I now sent to the desk.

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

The clerk will report the resolution.

The assistant legislative clerk read as follows:

S. RES. 9

Resolved, That the House of Representatives be notified of the election of the Honorable Walter J. Stewart as Secretary of the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to as follows:

S. RES. 9

Resolved, That the House of Representatives be notified of the election of the Honorable Walter J. Stewart as Secretary of the Senate.

ELECTION OF HENRY KUUALOHA GIUGNI AS THE SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

Mr. BYRD. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

I offer this resolution on behalf of Mr. INOUYE and myself.

The PRESIDENT pro tempore. The clerk will report the resolution.

The legislative clerk read as follows:

S. RES. 10

Resolved, That Henry Kuualoha Giugni, of the State of Hawaii, be, and he is hereby, elected Sergeant at Arms and Doorkeeper of the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

ELECTION OF DAVID J. PRATT AS SECRETARY FOR THE MAJORITY OF THE SENATE

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the resolution.

The assistant legislative clerk read as follows:

S. RES. 11

Resolved, That David J. Pratt be, and he is hereby, elected Secretary for the Majority of the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

ELECTION OF HOWARD GREENE AS SECRETARY FOR THE MINORITY OF THE SENATE

Mr. DOLE addressed the Chair.

The PRESIDENT pro tempore. The Senator from Kansas.

Mr. DOLE. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the resolution.

The legislative clerk read as follows:

S. RES. 12

Resolved, That Howard Greene be, and he is hereby, elected Secretary for the Minority of the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

HOUR OF DAILY MEETING

Mr. BYRD. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the resolution.

The assistant legislative clerk read as follows:

S. RES. 13

Resolved, That the hour of daily meeting of the Senate be 12 o'clock meridian unless otherwise ordered.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

AMENDMENT TO PARAGRAPH 2 AND 3 OF RULE XXV

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I send to the desk a resolution amending rule XXV and I ask for its immediate consideration.

The PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 14) to amend paragraph 2 and 3 of Rule XXV of the Standing Rules of the Senate.

The PRESIDENT pro tempore. Is there any discussion?

Mr. METZENBAUM. Mr. President, would the leader be good enough to tell us what that is?

Mr. BYRD. Yes. This makes it possible for the distinguished Senator from Ohio to be on the Intelligence Committee in due time.

Mr. METZENBAUM. That is a wonderful resolution. [Laughter.]

Mr. HELMS addressed the Chair.

The PRESIDENT pro tempore. The Senator from North Carolina is recognized.

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

May we have the resolution read?

The PRESIDENT pro tempore. Yes.

The clerk will read the resolution.

The legislative clerk read as follows:

S. RES. 14

Resolved, That Rule XXV, paragraph 2, of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Agriculture, Nutrition, and Forestry" and insert in lieu thereof "18";

Strike the figure after "Armed Services" and insert in lieu thereof "20";

Strike the figure after "Banking, Housing, and Urban Affairs" and insert in lieu thereof "18";

Strike the figure after "Commerce, Science, and Transportation" and insert in lieu thereof "20";

Strike the figure after "Energy and Natural Resources" and insert in lieu thereof "19";

Strike the figure after "Environment and Public Works" and insert in lieu thereof "16";

Strike the figure after "Foreign Relations" and insert in lieu thereof "20";

Strike the figure after "Governmental Affairs" and insert in lieu thereof "14";

Strike the figure after "Judiciary" and insert in lieu thereof "14";

SEC. 2. Paragraph 3(a) of rule XXV of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Budget" and insert in lieu thereof "24";

Strike the figure after "Rules and Administration" and insert in lieu thereof "16";

Strike the figure after "Veterans Affairs" and insert in lieu thereof "11";

Strike the figure after "Small Business" and insert in lieu thereof "18".

SEC. 3. Paragraph 3(c) of Rule XXV of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Indian Affairs" and insert in lieu therof "8".

The PRESIDENT pro tempore. Are there any other requests?

The Chair hears none.

Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

Mr. BYRD. Mr. President, I answered the distinguished Senator from Ohio facetiously. I intended to correctly answer his question but the distinguished Senator from North Carolina, quite appropriately, asked that the resolution be read. So that is in full explanation of the resolution.

AMENDMENT TO RULE XXV

Mr. BYRD. Mr. President, I send a resolution to the desk dealing with rule XXV, and I ask unanimous consent to proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 15) to amend paragraph 4 of rule XXV of the Standing Rules of the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution (S. Res. 15) was considered and agreed to as follows:

S. RES. 15

Resolved, That paragraph 4 of Rule XXV is amended by striking all after subparagraph (g) and inserting in lieu thereof the following:

"(h)(1) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services and the Committee on Energy and Natural Resources may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(2) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Rules and Administration may, during the Hundredth Congress, also serve as a member of the Committee on Veterans' Affairs and the Committee on Intelligence so long as his service as a member of each of such committees is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 3(a) and 3(b).

"(h)3(A) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations may, during the Hundredth Congress, also serve as a

member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(3)(B) A Senator who during the Hundredth Congress may serve as a member on those committees listed in subparagraph (a), as well as a member on the Special Committee on Aging, may, during the Hundredth Congress, also serve as a member of the Committee on the Budget so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3.

"(h)(4) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations and the Committee on Agriculture, Nutrition, and Forestry may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(5)(A) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services and the Committee on the Judiciary may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(5)(B) A Senator who during the Hundredth Congress serves on the Committee on Armed Services, the Committee on the Judiciary, and the Committee on Labor and Human Resources, and who serves as chairman of a committee listed in paragraph 2, may serve as chairman of two subcommittees of all committees listed in paragraph 2 of which he is a member.

"(h)(6)(A) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition, and Forestry and the Committee on Appropriations may, during the Hundredth Congress, also serve as a member of the Committee on the Judiciary so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(6)(B) A Senator who during the Hundredth Congress serves on the Committee on Agriculture, Nutrition, and Forestry, the Committee on Appropriations, and the Committee on the Judiciary, and who serves as chairman of a committee listed in paragraph 2, may serve as chairman of two subcommittees of all committees listed in paragraph 2 of which he is a member.

"(h)(7) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Energy and Natural Resources and the Committee on the Judiciary may, during the Hundredth Congress, also serves as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(8) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Environment and Public Works and the Committee on Finance may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(9) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition and Forestry and the Committee on Finance may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(10) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Banking, Housing and Urban Affairs and the Committee on Commerce, Science, and Transportation may, during the Hundredth Congress, also serve as a member of the Committee on Finance so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(11)(A) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations and the Committee on Banking, Housing, and Urban Affairs may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(11)(B) A Senator who during the Hundredth Congress may serve as a member on those committees listed in subparagraph (a), as well as a member of the Committee on the Budget, may, during the Hundredth Congress, also serve as a member of the Committee on Small Business so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraphs 3(a) and 3(b).

"(h)(12) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on the Judiciary and the Committee on Labor and Human Resources may, during the Hundredth Congress, also serve as a member of the Committee on Foreign Relations so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(13) A Senator whose term begins on January 3, 1987 may serve as a member of the Committee on Commerce, Science and Transportation and the Committee on Foreign Relations and may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(14) A Senator whose term begins on January 3, 1987 may serve as a member of the Committee on Appropriations and the Committee on Environment and Public Works and may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2."

Mr. DOLE addressed the Chair.

The PRESIDENT pro tempore. The Senator from Kansas.

AMENDMENT TO PARAGRAPH 4 OF RULE XXV OF THE STANDING RULES OF THE SENATE

Mr. DOLE. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the resolution as presented by the distinguished Senator from Kansas.

The legislative clerk read as follows:

A resolution (S. Res. 16) to amend paragraph 4 of rule XXV of the Standing Rules of the Senate.

The resolution (S. Res. 16) was agreed to, as follows:

S. RES. 16

Resolved, That paragraph 4 of Rule XXV is amended by adding at the end of paragraph (h) the following:

"(h)(15) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on the Judiciary, the Committee on Labor and Human Resources, the Committee on Armed Services, and the Committee on Veterans' Affairs may, during the Hundredth Congress, serve as a member of the Committee on the Judiciary, the Committee on Labor and Human Resources, the Committee on Armed Services, and the Committee on Veterans' Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(16) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Commerce, Science and Transportation, the Committee on Governmental Affairs, and the Committee on Rules and Administration may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Commerce, Science and Transportation, the Committee on Governmental Affairs, and the Committee on Rules and Administration so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(17) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Finance, the Committee on Governmental Affairs, and the Select Committee on Intelligence may, during the Hundredth Congress, also serve

as a member of the Joint Economic Committee so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(18) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Energy and Natural Resources, the Committee on Labor and Human Resources, and the Committee on Small Business may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Energy and Natural Resources, the Committee on Labor and Human Resources, and the Committee on Small Business so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(19) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Environment and Public Works, the Committee on Energy and Natural Resources, and the Committee on the Budget may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on the Budget, the Committee on Energy and Natural Resources, and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(20) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Environment and Public Works and the Committee on Finance may, during the Hundredth Congress, also serve as a member of the Committee on Banking, Housing and Urban Affairs and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(21) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Banking, Housing and Urban Affairs, the Committee on Finance, and the Special Committee on Aging may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subidivision, as a member of more than three committees listed in paragraph 2.

"(h)(22) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Environment and Public Works, the Committee on Finance, the Committee on Governmental Affairs, the Select Committee on Intelligence may, during the Hundredth Congress, serve as a member of the Committee on Environment and Public Works, the Committee on Finance, the Committee on Governmental Affairs, and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(23) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition and Forestry, the Committee on Appropriations, and the Committee on Government Affairs may, during the Hundredth Congress, serve as a member of the Committee on Agriculture, Nutrition and Forestry, the Committee on Appropriations, and the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(24) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition and Forestry, the Committee on Foreign Relations, the Committee on the Budget and the Committee on Veterans Affairs may, during the Hundredth Congress, serve as a member of the Select Committee on Small Business so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(25) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Environment and Public Works, the Committee on the Judiciary, and the Committee on Veterans Affairs may, during the Hundredth Congress, serve as a member of the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(26) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services and the Committee on Energy and Natural Resources may, during the Hundredth Congress, serve as a member of the Committee on Armed Services, the Committee on Environment and Public Works, the Committee on Rules and Administration, and the Select Committee on Intelligence so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(27) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services, the Committee on Governmental Affairs, and the Select Committee on Intelligence may, during the Hundredth Congress, also serve as a member of the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(28) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Commerce, Science and Transportation, the Committee on Foreign Relations, the Committee on Small Business, and the Special Committee on Aging may, during the Hundredth Congress, serve as a member of the Committee on Commerce, Science and Transportation, the Committee on Foreign Relations, the Committee on Environment and Public Works, the Committee on Small Business, and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2, or as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(29) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services and the Committee on Environment and Public Works may, during the Hundredth Congress, serve as a member of the Committee on Armed Services, the Committee on Labor and Human Resources, and the Committee on the Judiciary so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(30) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Budget, the Committee on Environment and Public Works, the Commitee on Finance and the Joint Economic Committee may, during the Hundredth Congress, serve as a member of the Committee on Armed Services, the Committee on Environment and Public Works, the Committee on the Budget, and the Joint Economic Committee so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(31) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Finance, the Committee on the Judiciary, the Committee on Labor and Human Resources, the Special Committee on Aging and the Committee on the Budget may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on the Judiciary, the Committee on the Budget, and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(32) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Commerce, Science and Transportation, the Committee on the Budget, and the Committee on Small Business may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Commerce, Science and Transportation, the Committee on the Budget, and the Committee on Small Business so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(33) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Banking, Housing and Urban Affairs, the Committee on Small Business, and the Joint Economic Committee may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Banking, Housing and Urban Affairs, the Committee on Small Business, and the Joint Economic Committee so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more

than two committees listed in paragraph 3(a) and 3(b).

"(h)(34) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Energy and Natural Resources, the Committee on Foreign Relations, the Committee on Veterans' Affairs, and the Select Committee on Intelligence may, during the Hundredth Congress, serve as a member of the Committee on Energy and Natural Resources, the Committee on Foreign Relations, the Committee on Veterans' Affairs, and the Select Committee on Intelligence so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(35) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Governmental Affairs, and the Committee on Small Business may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Governmental Affairs, the Committee on Small Business, and the Committee on the Budget so long as his service as a member of each of such committees is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 3(a) and 3(b).

"(h)(36) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition, and Forestry, the Committee on Armed Services, the Special Committee on Aging and the Joint Economic Committee may, during the Hundredth Congress, serve as a member of the Committee on Agriculture, Nutrition, and Forestry, the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Special Committee on Aging, and the Joint Economic Committee so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2, and as a member of more than two committees listed in paragraph 3(a) and 3(b)."

MAJORITY PARTY APPOINTMENTS TO SENATE COMMITTEES FOR THE 100TH CONGRESS

Mr. BYRD. Mr. President, I sent to the desk a resolution making the majority party appointments to committees and ask unanimous consent for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 17) making majority party appointments to Senate committees for the 100th Congress.

The resolution (S. Res. 17) was agreed to, as follows:

S. RES. 17

Resolved, That the following shall constitute the majority party's membership on the standing committees for the 100th Congress, or until their successors are chosen:

Committee on Agriculture, Nutrition, and Forestry: Mr. Leahy (Chairman), Mr. Zorinsky, Mr. Melcher, Mr. Pryor, Mr. Boren, Mr. Heflin, Mr. Harkin, Mr. Conrad, Mr. Fowler, and Mr. Daschle.

Committee on Appropriations: Mr. Stennis (Chairman), Mr. Byrd, Mr. Proxmire, Mr. Inouye, Mr. Hollings, Mr. Chiles, Mr. Johnston, Mr. Burdick, Mr. Leahy, Mr. Sasser, Mr. DeConcini, Mr. Bumpers, Mr. Lautenberg, Mr. Harkin, Ms. Mikulski, and Mr. Reid.

Committee on Armed Services: Mr. Nunn (Chairman), Mr. Stennis, Mr. Exon, Mr. Levin, Mr. Kennedy, Mr. Bingaman, Mr. Dixon, Mr. Glenn, Mr. Gore, Mr. Wirth, and Mr. Shelby.

Committee on Banking, Housing, and Urban Affairs: Mr. Proxmire (Chairman), Mr. Cranston, Mr. Riegle, Mr. Sarbanes, Mr. Dodd, Mr. Dixon, Mr. Sasser, Mr. Sanford, Mr. Shelby, and Mr. Graham.

Committee on Commerce, Science, and Transportation: Mr. Hollings (Chairman), Mr. Inouye, Mr. Ford, Mr. Riegle, Mr. Exon, Mr. Gore, Mr. Rockefeller, Mr. Bentsen, Mr. Kerry, Mr. Breaux, and Mr. Adams.

Committee on Energy and Natural Resources: Mr. Johnston (Chairman), Mr. Bumpers, Mr. Ford, Mr. Metzenbaum, Mr. Melcher, Mr. Bradley, Mr. Bingaman, Mr. Wirth, Mr. Fowler, and Mr. Conrad.

Committee on Environment and Public Works: Mr. Burdick (Chairman), Mr. Moynihan, Mr. Mitchell, Mr. Baucus, Mr. Lautenberg, Mr. Breaux, Ms. Mikulski, Mr. Reid, and Mr. Graham.

Committee on Finance: Mr. Bentsen (Chairman), Mr. Matsunaga, Mr. Moynihan, Mr. Baucus, Mr. Boren, Mr. Bradley, Mr. Mitchell, Mr. Pryor, Mr. Riegle, Mr. Rockefeller, and Mr. Daschle.

Committee on Foreign Relations: Mr. Pell (Chairman), Mr. Biden, Mr. Sarbanes, Mr. Zorinsky, Mr. Cranston, Mr. Dodd, Mr. Kerry, Mr. Simon, Mr. Sanford, Mr. Adams, and Mr. Moynihan.

Committee on Governmental Affairs: Mr. Glenn (Chairman), Mr. Chiles, Mr. Nunn, Mr. Levin, Mr. Sasser, Mr. Pryor, Mr. Mitchell, and Mr. Bingaman.

Committee on the Judiciary: Mr. Biden (Chairman), Mr. Kennedy, Mr. Byrd, Mr. Metzenbaum, Mr. DeConcini, Mr. Leahy, Mr. Heflin, and Mr. Simon.

Committee on Labor and Human Resources: Mr. Kennedy (Chairman), Mr. Pell, Mr. Metzenbaum, Mr. Matsunaga, Mr. Dodd, Mr. Simon, Mr. Harkin, Mr. Adams, and Ms. Mikulski.

APPOINTMENT OF MINORITY MEMBERS TO SENATE COMMITTEES AND RANKING MEMBERS

Mr. DOLE. Mr. President, I send a resolution to the desk and ask for its immediate consideration. Let me indicate what this resolution does.

The PRESIDENT pro tempore. May we have quiet in the Chamber?

The Senator from Kansas.

Mr. DOLE. Mr. President, this is a listing of the minority members of each committee with the ranking members, with the exception of the Committees on Agriculture and Foreign Relations. There will be no ranking members selected on those committees until sometime next week.

The PRESIDENT pro tempore. Is there further discussion?

Mr. LUGAR addressed the Chair.

The PRESIDENT pro tempore. The Senator from Indiana.

Mr. LUGAR. Mr. President, may I inquire of the basis for excluding ranking members on Foreign Relations and Agriculture? I make this request because the members of the Foreign Relations Committee met this morning and seven votes were cast for me to be the ranking member of the committee. There were no votes for other members. In my judgment, clearly I am the ranking member of the committee, subject to appeal to the conference. I would appreciate the inclusion of my name as ranking member of the Foreign Relations Committee.

Mr. DOLE. Mr. President, I would like to make a point that this matter has not yet been determined by the conference. There has been a request for a conference vote by the distinguished Senator from North Carolina which involves not only the Foreign Relations Committee but, as most Senators know, it involves the ranking member on the Agriculture Committee. So until the conference has acted, I would not be able to honor that request.

Mr. LUGAR. Mr. President, may I propound a further inquiry? I presume that the ranking members of other committees are based upon the action of the Republican members of their committees. They must have met at some point and determined that those members should be the ranking members under the rules of our conference. I would simply add that in the Foreign Relations Committee the Republicans have met and seven out of nine have indicated I ought to be ranking member. In my judgment, I ought to be listed as ranking member subject to the ratification of the members of our conference.

Mr. DOLE. Mr. President, if the Senator will yield, I think rather than taking care of the problem, I would ask that the resolution be amended to show the members of the various committees and that no ranking members be designated for any committee. Then we will resolve that entire question in conference.

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

Mr. DOLE. I yield.

Mr. LEAHY. Mr. President, the last thing in the world the Senator from Vermont wants to do is to interfere with whatever the Members of the Republican Party would do within their own conference. But because I do have an interest in how we are going to set up the Agriculture Committee, approximately when does the distinguished Senator from Kansas think that that may be resolved?

Mr. DOLE. Soon.

[Laughter.]

Mr. LEAHY. Soon. Then we can get on to taking care of the farm questions soon. I thank the Senator.

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. Will the distinguished Republican leader yield?

Mr. DOLE. I yield.

Mr. BYRD. Mr. President, will the distinguished Republican leader consider allowing the resolution to be considered which allows the ranking members to be appointed? Mr. CHILES wants to begin hearings tomorrow on the budget. In the final analysis, that is the one thing that keeps this Senate busy. It takes so much of the time of the committee. Would that be agreeable to the distinguished leader?

Mr. DOLE. I am advised that this resolution covers only the A committees. The Budget Committee is not in this resolution.

Mr. BYRD. Very well.

The PRESIDENT pro tempore. The clerk will report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 18) making minority appointments to the Senate committees for the 100th Congress.

The resolution (S. Res. 18) was agreed to as follows:

S. RES. 18

Resolved, That the following shall constitute the minority party's membership on the standing committees for the 100th Congress, or until their successors are chosen:

Committee on Agriculture, Nutrition, and Forestry: Mr. Helms, Mr. Dole, Mr. Lugar, Mr. Cochran, Mr. Boschwitz, Mr. McConnell, Mr. Bond, and Mr. Wilson.

Committee on Appropriations: Mr. Hatfield, Mr. Stevens, Mr. Weicker, Mr. McClure, Mr. Garn, Mr. Cochran, Mr. Kasten, Mr. D'Amato, Mr. Rudman, Mr. Specter, Mr. Domenici, Mr. Grassley, and Mr. Nickles.

Committee on Armed Services: Mr. Warner, Mr. Thurmond, Mr. Humphrey, Mr. Cohen, Mr. Quayle, Mr. Wilson, Mr. Gramm, Mr. Symms, and Mr. McCain.

Committee on Banking, Housing, and Urban Affairs: Mr. Garn, Mr. Heinz, Mr. Armstrong, Mr. D'Amato, Mr. Hecht, Mr. Gramm, Mr. Bond, and Mr. Chafee.

Committee on Commerce, Science, and Transportation: Mr. Danforth, Mr. Packwood, Mrs. Kassebaum, Mr. Pressler, Mr. Stevens, Mr. Kasten, Mr. Trible, Mr. Wilson, and Mr. McCain.

Committee on Energy and Natural Resources: Mr. McClure, Mr. Hatfield, Mr. Weicker, Mr. Domenici, Mr. Wallop, Mr. Murkowski, Mr. Nickles, Mr. Hecht, and Mr. Evans.

Committee on Environment and Public Works: Mr. Stafford, Mr. Chafee, Mr. Simpson, Mr. Symms, Mr. Durenberger, Mr. Warner, and Mr. Pressler.

Committee on Finance: Mr. Packwood, Mr. Dole, Mr. Roth, Mr. Danforth, Mr. Chafee, Mr. Heinz, Mr. Wallop, Mr. Durenberger, and Mr. Armstrong.

Committee on Foreign Relations: Mr. Lugar, Mr. Helms, Mrs. Kassebaum, Mr. Boschwitz, Mr. Pressler, Mr. Murkowski, Mr. Trible, Mr. Evans, and McConnell.

Committee on Governmental Affairs: Mr. Roth, Mr. Stevens, Mr. Cohen, Mr. Rudman, Mr. Heinz, and Mr. Durenberger.

Committee on the Judiciary: Mr. Thurmond, Mr. Hatch, Mr. Simpson, Mr. Grassley, Mr. Specter, and Mr. Humphrey.

Committee on Labor and Human Resources: Mr. Hatch, Mr. Stafford, Mr. Quayle, Mr. Thurmond, Mr. Weicker, Mr. Cochran, and Mr. Humphrey.

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from West Virginia.

MAJORITY PARTY APPOINTMENTS TO SENATE COMMITTEES UNDER PARAGRAPHS 3 (A), (B), AND (C) OF RULE XXV

Mr. BYRD. Mr. President, I send to the desk a resolution making majority party appointments to Senate committees under paragraphs 3 (a), (b), and (c) of rule XXV and ask unanimous consent for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 19) making majority party appointments to Senate committees under paragraphs 3 (a), (b), and (c) of Rule XXV.

Mr. CHAFEE. Mr. President, could we hear what that is all about? Are those the so-called B committees?

Mr. DOLE. Yes.

Mr. BYRD. Yes, Mr. President, I answer the Senator's question in the affirmative.

The resolution (S. Res. 19) was agreed to, as follows:

S. RES. 19

Resolved, That the following shall constitute the majority party's membership on the committees named in paragraph 3(a), (b), and (c) of Rule XXV for the 100th Congress, or until their successors are appointed:

Committee on the Budget: Mr. Chiles (Chairman), Mr. Hollings, Mr. Johnston, Mr. Sasser, Mr. Riegle, Mr. Exon, Mr. Lautenberg, Mr. Simon, Mr. Sanford, Mr. Wirth, Mr. Fowler, Mr. Conrad, and Mr. Dodd.

Committee on Rules and Administration: Mr. Ford (Chairman), Mr. Pell, Mr. Byrd, Mr. Inouye, Mr. DeConcini, Mr. Gore, Mr. Moynihan, Mr. Dodd, and Mr. Adams.

Committee on Small Business: Mr. Bumpers (Chairman), Mr. Nunn, Mr. Sasser, Mr. Baucus, Mr. Levin, Mr. Dixon, Mr. Boren, Mr. Harkin, Mr. Kerry, and Ms. Mikulski.

Committee on Veterans' Affairs: Mr. Cranston (Chairman), Mr. Matsunaga, Mr. DeConcini, Mr. Mitchell, Mr. Rockefeller, and Mr. Graham.

Select Committee on Ethics: Mr. Heflin (Chairman), Mr. Pryor, and Mr. Sanford.

Select Committee on Indian Affairs: Mr. Inouye (Chairman), Mr. Melcher, Mr. DeConcini, Mr. Burdick, and Mr. Daschle.

Special Committee on Aging: Mr. Melcher (Chairman), Mr. Glenn, Mr. Chiles, Mr. Pryor, Mr. Bradley, Mr. Burdick, Mr. Johnston, Mr. Breaux, Mr. Shelby, and Mr. Reid.

Mr. DOLE addressed the Chair.

The PRESIDENT pro tempore. The Senator from Kansas.

MINORITY PARTY APPOINTMENTS TO SENATE COMMITTEES FOR THE 100TH CONGRESS AND DESIGNATING RANKING MEMBERS OF THOSE COMMITTEES

Mr. DOLE. Mr. President, I send a resolution to the desk and ask for its immediate consideration. These are the B committee appointments.

The PRESIDENT pro tempore. The clerk will report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 20) making minority party appointments to Senate committees for the 100th Congress and designating ranking members of those committees.

The resolution (S. Res. 20) was agreed to, as follows:

S. RES. 20

Resolved, That the following shall constitute the minority party's membership on those Senate committees listed below for the 100th Congress, or until their successors are appointed:

Budget: Mr. Domenici (ranking member), Mr. Armstrong, Mrs. Kassebaum, Mr. Boschwitz, Mr. Symms, Mr. Grassley, Mr. Kasten, Mr. Quayle, Mr. Danforth, Mr. Nickles, and Mr. Rudman.

Rules and Administration: Mr. Stevens (ranking member), Mr. Hatfield, Mr. McClure, Mr. Helms, Mr. Warner, Mr. Dole, and Mr. Garn.

Small Business: Mr. Weicker (ranking member), Mr. Boschwitz, Mr. Rudman, Mr. D'Amato, Mr. Kasten, Mr. Pressler, Mr. Wallop, and Mr. Bond.

Veterans Affairs: Mr. Murkowski (ranking member), Mr. Simpson, Mr. Thurmond, Mr. Stafford, and Mr. Specter.

Select Committee on Ethics: Mr. Rudman (ranking member), Mr. Helms, and Mrs. Kassebaum.

Special Committee on Aging: Mr. Heinz (ranking member), Mr. Cohen, Mr. Pressler, Mr. Grassley, Mr. Wilson, Mr. Domenici, Mr. Chafee, Mr. Durenberger, and Mr. Simpson.

Select Committee on Indian Affairs: Mr. Evans (ranking member), Mr. Murkowski, and Mr. McCain.

EXPRESSING THE SENATE'S GRATITUDE FOR THE PRESIDENT'S EXCELLENT HEALTH AND BEST WISHES FOR HIS SPEEDY RECOVERY

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes.

The PRESIDENT pro tempore. Without objection, the Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I am going to send a resolution to the desk on behalf of Mr. DOLE and myself. I ask unanimous consent that the reso-

lution be read in full and that Senators who may wish to insert into the RECORD today statements in support of the resolution may have until the close of business today or until 6 o'clock today, whichever is the later time, to do so.

Mr. WILSON. Mr. President, will the majority leader yield for a question? I did not quite hear the distinguished leader.

Will the desk be open until 6 o'clock also for the introduction of bills?

Mr. BYRD. Mr. President, my request only had to do with the resolution at the desk. I also ask unanimous consent that Senators may have the right to have their names added as cosponsors until 6 o'clock tonight.

May I say to the Senator, there will be a time later today when Senators may make statements for the RECORD.

The PRESIDENT pro tempore. The clerk will report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 21) expressing the Senate's gratitude for the President's excellent health and best wishes for his speedy recovery.

S. RES. 21

Whereas President Ronald Reagan underwent an operation to correct a painful prostate condition at the National Naval Medical Center in Bethesda, Maryland yesterday as well as the removal of four small intestinal growths found during a routine colonoscopic examination;

Whereas all medical reports available at this moment indicate that the President is in excellent health and unfailing good humor; and

Whereas the President has alleviated our concerns and relieved the anxieties of our whole nation by his openness and candor with respect to the medical procedures to be performed and the results following the completion of the medical procedures; Now, therefore, be it

Resolved, That the United States Senate expresses its heartfelt thanks for the continued excellent health of our President and our best wishes for his continued excellent health in the years to come.

SENATE RESOLUTION: SPEEDY RECOVERY FOR THE PRESIDENT

Mr. DOLE. Mr. President, today, President Reagan is reported in "excellent spirits" following his successful surgery at Bethesda Naval Hospital on Monday. Now, I understand it was a so-called "routine operation," but we all know that any trip to the operating room has its share of risks. Therefore, we were pleased to hear the good news from the President's doctors—that the operation "went smoothly" and that there was "nothing out of the ordinary."

So while the President is recovering—and while more tests are in order during his stay at the Navy Hospital—I am pleased to join Senator BYRD in wishing the President a speedy recovery.

The PRESIDENT pro tempore. The resolution is well spelled out and well said. The question is on agreeing to the resolution.

The resolution (S. Res. 21) was agreed to.

COMMENDING COMMUNITY OF CHASE, MD, FOR ITS ASSISTANCE IN AMTRAK TRAIN ACCIDENT

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for not more than 1 minute on a resolution which I am about to submit on behalf of myself and Mr. DOLE.

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

Mr. BYRD. Mr. President, this past Sunday there occurred a tragic Amtrak train accident in Chase, MD, resulting in the deaths of 15 passengers and injuries to at least 170 others. On that day, the people of Chase, MD, reacted immediately in providing aid and comfort to the survivors and rescue workers. It is because of their exemplary actions that I send the following resolutions to the desk and ask for its immediate consideration.

Mr. SARBANES. Mr. President, on Sunday, January 4, a terrible tragedy occurred when Amtrak train No. 94 crashed in Baltimore County, killing 15 passengers and seriously injuring more than 170 others. I am sure my colleagues share my shock and sadness at this catastrophe. The accident—Maryland's worst rail disaster—has caused much grief and suffering, and I extend to the families and friends of those killed my deepest sympathy.

The accident demonstrated anew that catastrophic events often call forth the finest in human qualities. I refer to the courageous and compassionate response of many individuals and organizations to this tragic event. I would especially like to commend the residents of the Harewood Park community, who were among the first to arrive on the scene of the accident to rescue victims. The people of Harewood Park not only helped passengers escape from the train, but also brought them into their homes to keep warm, to await medical help and to use telephones. Their actions in bringing aid and comfort to the train wreck victims were absolutely selfless and an example for all of us. On a day of disaster, the swift and heroic response of the residents of the Harewood Park community provided hope to the survivors of the disaster and brought each of us some solace.

In addition, emergency rescue squads from throughout Baltimore and Harford Counties responded quickly and ably to this sudden crisis in their community. Baltimore County used its disaster assistance plan and had 44 fire and rescue squads and ambulances on the scene. Fire department rescue personnel and paramedics were joined by special teams of surgeons, nurses, and support personnel from the Shock-Trauma Unit at the University of Maryland Hospital.

Within a short time after the accident, the Red Cross in Baltimore opened its offices on North Charles Street to receive blood donations. Over 1,000 Marylanders answered the emergency calls to donate blood on Sunday afternoon—a magnificent spontaneous response.

We in Maryland are proud and grateful to have people with such fine qualities in our society and we salute today all those who assisted in the rescue operation and opened their homes to the injured.

I ask unanimous consent to have printed in the RECORD editorials and articles relating to this tragedy.

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

[From the Baltimore (MD) Sun, Jan. 6, 1987]

DISASTER ON MARYLAND RAILS

The sympathy of Marylanders goes out to the victims and families of victims in the train disaster near Chase. Normally, the 100-mph gliding of the passenger train out over the Bird River, as though on the water itself, is one of the scenic pleasures of railroading. Seconds before that illusion would greet riders on the Colonial from Washington for Boston, Sunday, terror and horror struck.

Accidents are statistically fated to occur, to be sure, but in modern railway operations they are less acceptable than in other modes of transport. The National Transportation Safety Board investigation must focus on several aspects of a national disaster that undercut confidence in train travel where it is essential, and disrupted transportation on the Eastern Seaboard for days.

One aspect is the performance of the double signal system, automated and human, which failed to stop the Conrail locomotives from lumbering into the path of the Amtrak passenger train. Another is the performance of the engineers of both trains. A third is the adequacy of the control system, among the most modern in America. And lastly is the mingling of high-speed and slow freight trains on the same tracks. Amtrak's safety record over 15 years has been extremely good. Something, or things, went wrong on Sunday. It would be reckless to guess prematurely at what.

A different field of scrutiny must be the emergency rescue effort. The first reaction is reassurance and pride in how well it worked. The Baltimore County Fire Department, which was in charge, and the state emergency medical system organized the care of victims with great efficiency. The police forces and hospitals coped extremely well. A caveat is that most of the 176 or more patients going to hospital emergency rooms were not severely injured. This was not the largest-scale medical emergency the Baltimore region might face, only the largest recently.

The tremendous outpouring of help by residents of the little community along the tracks is evidence of the goodness of the human spirit. Indeed, the location, with good people and good road access on both sides, was a blessing. A few hundred yards north, and some cars would have hurtled

into the water, with those remaining on the causeway all but inaccessible to rescue.

The tremendous turnout of blood donors in Washington and Baltimore was another show of people refusing to remain uninvolved. If any improvement to the procedures can be suggested this early, it would be that the Red Cross might profitably have moved mobile blood donation units to hospitals where donors had to be turned away.

Lives of many people have been disrupted, of some shattered, and of at least 15 ended. This was the result of a mistake or mistakes that are not tolerable—not even once. But when disaster did strike without warning in eastern Baltimore county, the community and the state emergency medical system were up to it.

[From the Baltimore (MD) Evening Sun, Jan. 5, 1987]

600 BLOOD DONORS JAM RED CROSS HQ

(By Joan Jacobson)

Five hours after the train wreck, the line of blood donors led outside the Red Cross headquarters on North Charles Street and around the corner into the cold night.

Red Cross officials estimated 600 people volunteered to give blood there after they heard about the catastrophic accident yesterday.

Volunteer blood donors began arriving at 4:30 p.m. Within half an hour more than 100 people filled the main room of the blood center and lined down the hall.

Dr. Deborah Douglas, medical director for blood service, said she received a call about the wreck and immediately mobilized Red Cross staff to the regional center, which is usually closed on Sunday afternoons.

Many donors were already waiting at the door when staff members arrived, she said.

By early evening the entire Red Cross staff—including 25 to 30 nurses and 25 volunteers—were at work interviewing donors and taking blood, said Trish Beggarly, a staff nurse who drove in from her home in Bel Air.

Nurses wore street clothes, not having had time to change into their white uniforms. They rushed through the mob of waiting donors, equipping beds with supplies.

Douglas, who has directed the blood service for more than two years, said she had never before seen so many people willing to give blood to meet an emergency.

"It was almost like a party atmosphere," she said. Blood donors refused to leave, even when they were advised to go home because they would have to wait several hours. Many people waited three to four hours before giving blood, said Douglas.

One nurse collected a rubber band from each patient she drew blood from. "She had a bracelet of rubber bands three inches thick," Douglas said.

Many donors dropped what they were doing and went straight to the center.

City police officer Andrea Simmons came from her shift at Northeastern District, still in her police uniform.

She had heard about the wreck while at work, she said. When she arrived home, "I walked in the house and the TV was on and they said the Red Cross needed type O blood." She turned around and drove to the Red Cross.

Debra and Brian Birner of Dundalk drove to the Red Cross with their two small children after seeing ambulances and fire engines drive out of Middle River, where they were eating dinner. When they later realized the ambulances had driven to the wreck, they drove into Baltimore because Debra has type O blood, which was needed.

Douglas said the treatment of injured people will probably deplete Red Cross inventory of blood. Therefore, she said, increased blood donations will be needed for several days.

"Trauma victims can continue to need blood" after the initial accident, she said.

At Franklin Square Hospital in eastern Baltimore County, a hospital spokesman said 1,000 phone calls were taken from people interested in giving blood.

About 100 to 150 actually gave blood by early evening.

The Greater Baltimore Medical Center will accept blood donors by appointment this week. Donors are asked to call 828-GBMC and ask for the blood blank.

[From the Washington Post, Jan. 6, 1987]

LOCAL RESIDENTS OPENED HOMES, HEARTS: SOME CLIMBED INTO WRECKAGE; OTHERS PLAYED PIANO AND MADE SANDWICHES

(By Eugene L. Meyer and Lisa Leff)

WEST TWIN RIVERS, MD., Jan. 5.—Amtrak train riders, traveling at speeds up to 100 miles an hour, get only a fleeting glimpse of this tiny waterfront community near the Gunpowder River on their way north and south.

To the residents, the trains whizzing by day and night form a constant backdrop. Only a metal fence separates the blue-collar community from the tracks.

But in the wake of the train disaster here Sunday, neighbors scaled that barrier to help rescue injured riders. Then, the people of this tiny working-class enclave generously opened their homes and their modest red cinder block community center to scores of dazed and distraught survivors.

Cousins Michael Cooper and Robert Booker climbed the fence and dashed into a burning Amtrak car to help people out. Cooper, 17, rescued a baby who survived. But Booker, 19, watched helplessly as a train traveler died in his arms.

"First, I saw a pair of legs sticking out. I managed to pull some seats out from around him," Booker said. He said he gave the screaming man his shirt to put over his mouth. As he held him, Booker said, the man died.

"I carried a little baby out. It went limp in my arms," said Cooper. "I thought it was dead, but they told me it was okay."

Eleven-year-old Laura Higgins invited passenger Jane Whitney of Philadelphia to use the family phone. "I thought, 'What would I do if I'd been in a train accident?'" the youngster said. "I thought I'd need to use the phone to call my mother." Later, she played a piano to entertain nine survivors who filled her family's small blue cottage two blocks from the wreck site.

"The trains are an integral part of the community," said her mother, Louise Higgins, 39. "The kids play 'What color is the caboose?' and count the number of freight trains." The Higginses even have a pet hermit crab they call "Amtrak."

This Baltimore County subdivision of 85 homes sits at the northern tip of a peninsula where the Bird and Gunpowder rivers meet. It was founded in the 1920s as a working-class summer resort community. During World War II, cottages were winterized for families who came here from Pennsylvania and Virginia to work in the war production plants. When water and sewer service arrived 15 years ago, ramblers and split-levels sprang up.

For years, only one telephone line linked the community to the outside, and even now only one road leads out. Years ago, there was a grocery, later turned into a tavern. Today, there is just one store, in the neighboring community of Harewood Park, and the local elementary school is inconveniently located across the train tracks. There is no grade crossing.

"It's one way in and one way out," said Larry Higgins, Louise's husband and a Coast Guard welder. "It's a small, cut-off community that's quiet. Everybody knows everybody. It's like a family."

Residents are avid boaters, swimmers and crabbers. Last summer, the community chipped in to build a boat launching ramp. Neighbors have back yard beer and crab fests and picnics and parties at the community center.

And seemingly always, there have been the trains.

"I can remember the steam engines," said Frank Melka, 62, who retired from Martin Marietta, the aircraft plant six miles south of town where many residents work. "Your house shook with those steam engines going by." He reminisced near the crash scene today with longtime neighbors Helen Eurice and Carroll Clarke.

Eurice, 66, who moved here from Baltimore when she married in the 1930s, recalled windowsills "full of black cinders all the time from the steam engines."

Said Melka, "We used to visit the man who worked the track [switch] from a tower. There was no accident when he was here." Clarke, 66, said, "The switch was manually operated then. It's computer operated now."

Outside the railroad fence, Barbara and James Borror welcomed 30 survivors into their home. They gave them clothes and let them use their phone to make calls to Australia and to Trinidad and Tobago. They cooked hot dogs and hamburgers to feed the survivors and rescue workers.

"Word got around from neighbor to neighbor," said Eurice, who went to work at the community building. "People just accumulated there. They gathered whatever they had in their refrigerators and just showed up."

The PRESIDENT pro tempore. The clerk will report the resolution.

The assistant legislative clerk read as follows:

S. RES. 22

A resolution (S. Res. 22) commending the community of Chase, Maryland for its assistance to the rescue workers and the survivors of the Amtrak train accident of January 4, 1987.

Whereas a tragic Amtrak train accident occurred in Chase, Maryland, on Sunday, January 4, 1987;

Whereas the impact at nearly 100 miles per hour of the passenger train and a Conrail freight train resulted in the deaths of 15 passengers and injuries to at least 170 others;

Whereas the people of Chase, Maryland, without hesitation mobilized to provide aid and comfort to the injured;

Whereas residents scaled the fence separating them from the railroad tracks and assisted passengers in their escape from the burning wreckage;

Whereas other residents opened their homes to the survivors, providing clothes and allowing phone calls to concerned rela-

tives in such far away places as Australia, Trinidad and Tobago;

Whereas the local community building was immediately transformed into a center providing food and shelter to the passengers and rescue workers; Now, therefore, be it

Resolved: That the United States Senate hereby commends the community of Chase, Maryland, for its spontaneous outpouring of assistance to the rescue workers and the passengers of the ill-fated Amtrak train.

The PRESIDENT pro tempore. If there is no further discussion, the question is on agreeing to the resolution.

The resolution with its preamble, was agreed to.

Mr. BYRD. Mr. President, I have been asked by Senators SARBANES and MIKULSKI to have their names added to the resolution, and I make that request.

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent now that the two leaders may proceed for up to 10 minutes each, with statements only.

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

The Chair now recognizes the two leaders, to proceed for 10 minutes each.

The Senate will be in order.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I hope this time is not coming out of my 10 minutes or that of the distinguished minority leader.

The PRESIDENT pro tempore. The Chair cannot charge the 10 minutes until order is restored, at least to the extent that the speaker can be heard. We are waiting on the Senators who are making the noise, and when we proceed, we will charge the time to the speaker.

The Senator from West Virginia has 10 minutes.

Mr. BYRD. I thank the Presiding Officer.

Mr. President, for the information of all Senators, once the two leaders have made their statements, it will be my intention then to attempt to proceed to get Senate action on the bill that cleans up the Nation's waters and to get action on the resolution that creates a select committee to investigate the Iran-Contra matter. So Senators will be on notice.

Also, there will be at least one rollcall vote, if we can get to it, on the adoption of the select committee resolution.

THE NATION'S BUSINESS

Mr. BYRD. Mr. President, we begin today the process of doing the Nation's business. This is the 100th Congress of the United States, a historic Congress. It is a Congress that by its meeting here today vindicates and affirms the faith of our Founding Fathers that their great experiment in democracy would endure.

We begin the business of the Nation in an uncertain and unsettled time. The Iran misadventure has hurt the Presidency, made a shambles of American foreign policy, and called into question just how our foreign policy is formulated and implemented. More important, the American people are once again asking the question, what is going on in Washington? The current crisis is a crisis of trust. It is a testimony to the profound truth that if you do not trust the American people, then the American people will not trust you.

So our first duty in this new Congress is the restoration of public trust in the formulation of American foreign policy. It is clear that all parties—the President, the Congress, and the American people—want to know how the United States came to be in the position of selling arms to the terrorist nation of Iran and funneling those profits to the Contras in Nicaragua.

It is for that purpose that I am introducing with the Republican leader, Mr. DOLE, legislation to create a bipartisan Senate select committee to investigate all that has happened. The charge of the Senate select committee is to discover the facts, to ascertain if any laws have been broken, and to present its findings in such a way that there will be no lingering doubts in the minds of the American people. That is the charge.

I have every faith that the chairman of the committee, my distinguished colleague, Senator INOUYE, and his distinguished vice-chairman, Mr. RUDMAN, will conduct this investigation in a statesmanlike and bipartisan fashion—at such time as the resolution creating the committee is adopted—keeping in mind that one of the primary goals of this investigation is the restoration of the people's trust in the functioning of their Government; and trust in Government by the people is essential as we begin the 100th Congress.

Clearly, something happened on election day last November. The American people voted for change. And, change they will have. The time of business as usual is over. I believe we Democrats were placed back in the leadership of this Chamber for a very specific reason: To begin the task of fitting political actions and rhetoric to the reality of the world in which we live. The voters are telling us that they want to see a more moderate approach to domestic and foreign policy. They have demonstrated their faith in the importance of checks and balances.

And it is well to remember, as we begin this new Congress, that the tension between the executive branch and the legislative branch of our Government is a legitimate tension; a healthy and creative tension inherent in our democratic process. The Congress is a coequal branch of the Government. Coequal. We are not above the Presidency. We are not below the Presidency. We are the people's voice in a representative democracy.

It is my fervent hope that the White House will see the constitutional process of checks and balances as a healthy, positive process in restoring trust in our Government and in defining America's future. The Congress has the ability to help the President restore credibility to America's foreign policy, if only he will reach out to us. So we extend our hand.

It is my belief, that if the President reaches out to the Congress in strengthening America's arms control negotiating position; if he involves the Congress much more than has been shown up to now, he will then send a message to the Soviet Union that this current crisis will not divide America. We are united behind the President at the negotiating table and support his efforts for a fair and verifiable agreement.

All Americans want a strong America, a secure America, an America that can go to the negotiating table from a position of strength and unity. It is my intention to introduce legislation today, important legislation, to reauthorize the Senate arms control observer group. And, it is my intention, once the Committee on Foreign Relations has completed its work, to bring up for ratification two treaties governing nuclear testing. We must show our commitment to the arms control process. The Congress stands ready to work with the President.

Mr. President, our Nation's strength depends not only on military might, but also, to a large extent, on our ability to manage the Nation's economic affairs. They have not been managed well. Everyone is to blame: The President for sending the Congress budgets that are based on the economic principle of borrow, credit, and debt; the Congress for not resisting the temptation to put off till next year what it should have done last year.

So we are once again, as every Congress has been in the last 5 years, faced with the dilemma of how we deal with the Federal deficit. We have a limited set of options. It is clear that America no longer has any free spins on the wheel of fortune.

Yesterday, the President's Budget Office sent the Congress a budget that for the first time exceeds $1 trillion—a budget with a budget deficit that will be even greater than the official $107.8 billion. It has taken this administration just 5 years to add over $1 trillion to the national debt. If 5 months from now we are united on

how we address the deficit, and we have the President on board, we will have made substantial progress. The process of moving the Federal deficit downward is, as we all know, a political process.

As Democrats, we are committed to keeping the budget deficit on a downward glide path. But like the *Voyager*, the experimental plane that flew around the world nonstop, we need two pilots—the Congress and the White House—working together in very cramped quarters. How we keep the deficit gliding down will depend to a large extent on the President's willingness to take the deficit problem out of the shadows of political rhetoric. The American people want the problem solved. They are tired of finger pointing. They want solutions.

I say this with special reference to the young people of America. Year in and year out we have been mortgaging their future by our unwillingness to pay our way. These young people are, as a recent Joint Economic Committee report indicated, heavily in debt from college loans as they begin their productive lives. On top of those debts, which they have assumed to become educated citizens, we are saddling them with an ever increasing national debt. This is wrong and well we know it.

When the day of reckoning comes, and surely it will come if we do not act now, surely these young people will have something to say to us about what we have done to their future. And, what will we say in reply? So I urge the President to work closely with the Congress to address this national problem.

A third great concern of the Congress in the months ahead must be America's continuing trade deficit. Currently, the United States has the dubious distinction of being the world's greatest debtor nation. America's trade imbalance is one of the principal causes.

Just 6 years ago, in 1981, the United States enjoyed a $13 billion surplus in its overall trade in goods and services. At that point, we were still strengthening our position as the world's largest creditor. Last year, we ran a deficit in goods and services exceeding $120 billion, which we financed by borrowing heavily from abroad.

Six years ago, we were the world's greatest exporting nation by far. We no longer lead in the race for world export markets. Both Germany and Japan now export more than the United States under current exchange rates.

In the month of November alone, the United States had a $19.2 billion trade deficit. We compiled a larger trade deficit in a single month than any other country in history has ever run in a year's time.

In addition, continued high interest rates have attracted billions of dollars in foreign investments. Last year alone, the United States borrowed $140 billion from foreign lenders and investors. It is this money and our willingness to go further into debt that has accounted for America's continued economic growth. Missing from current efforts to improve America's economic position is the understanding that we must compete in an interdependent global economy.

My distinguished colleague Senator BRADLEY of New Jersey has rightly stated that "competitiveness" is a "mush" word, a word that means everything and anything depending on who uses it. Clearly he is right for the moment. But the trade deficit numbers are not mush.

They are hard evidence that we are exporting our Nation's jobs and eroding our manufacturing base; we are not exporting the Nation's products.

We must restore balance to our trade account and stop borrowing so heavily from abroad. The trade deficit is only a critical symptom of our economic distress in the international arena. The real problem goes deeper.

As the U.S. economy has become intertwined with the economies of the rest of the world over the last two decades, we have not prepared America to excel in the new world marketplace. So as we proceed during this Congress, we must review not only our trade laws, but also our education and training policies, our science and technology policies and other economic policies from a different vantage point. We must look at creative new ways to make our products more appealing abroad and to open new markets for our exports. We must look at new ways to stop the erosion of our manufacturing and of our basic industries. Only then can we be sure of our national security.

This Congress, the 100th Congress of the United States, will send the President a trade bill.

We will send several pieces of legislation perhaps dealing with comprehensive subjects. Perhaps we ought to think in terms of broadening the debate. We will also be sending other legislation designed to treat the causes, not the symptoms, of our disastrous trade deficit and to promote American products abroad.

Mr. President, there are a great many other issues that confront this Congress. One of the most pressing is the need to reform how we finance our elections.

My distinguished colleague, Mr. BOREN, has worked diligently to keep this important subject before the Senate. Campaign finance reform must be high on our agenda.

Campaign finance reform will be one of my personal priorities. We cannot turn our democracy over to an aristocracy of money. Yet, year by year, we are insidiously chopping away at the very foundation of our democracy; namely, the ability of any citizen to enter the political arena regardless of his or her own economic status or ability to raise money.

Without campaign finance reform we will continue to subject our democratic process to control by the special interests and, more often, to the appearance of improper influence. So it is my hope and my intention that the Senate will move quickly to take up this important piece of business in the early months of the new Congress. As we convene the 100th Congress and celebrate the bicentennial of our Constitution, I believe that this and other steps aimed at restoring confidence in government are especially fitting.

Mr. President, there are a great many issues that will come before this Congress in the months ahead. I have touched on several of these in my opening remarks—our relationship with the President, the need to move forward on arms control, the deficit, the creation of a coherent trade policy, and the great necessity to reform how we finance our elections.

Other issues are also of great importance—repassage of the Clean Water Act, help for the American farmer, the development of a national policy regarding catastrophic illnesses, reauthorization of Federal education programs—and the need for this Congress to look searchingly at the whole question of what tools are used by America in furthering our broad foreign policy objectives.

America must meet the world on the terms that are offered. Terrorism, totalitarianism of the right and the left, and the abuse of human rights requires America to be prepared to use its military power. But must the military card be the only card that America is prepared to play? Or are there other ways—diplomatic and economic—that America with her allies, especially those in Latin America, can achieve our objectives. In months ahead this Congress will surely explore these questions.

Mr. President, this Congress, the 100th Congress of the United States, meets at a time of profound change in our country. We have been elected to guide America in a time when a simpler past gives way to a different and more complex future.

We are crossing the bridge from one America to another. By 1992, 6 years from now, Americans born since 1940 will dominate voting in Presidential elections. The America that we have been elected to lead is fundamentally new. How we define and prepare America under these new conditions will be the measure of our success.

Our task in the immediate, as we begin this historic Congress, is to get

on with the business of the Nation with energy and initiative. Our task in the larger order: To lift up our sights and begin the process of defining America's future.

May I say in closing, Mr. President, that I consider it fortunate for me indeed to have as the distinguished leader on the other side of the aisle the illustrious son of the State of Kansas, Mr. DOLE. He has served as a majority leader in this body. He has served well, and I am confident that I will have his cooperation as we attempt together to push the program of the Senate forward and to schedule from day to day the measures that are ready for consideration. I know in the very beginning what his tasks will be, having been in that same position myself not too long ago. He will represent his party. He will represent his conscience. He will represent the Nation.

We cannot always agree. There will be times when we will disagree, but disagreeing with my colleague on the other side of the aisle or any of my colleagues is a matter that is never personal and always as I go out of the Chamber, I know that Senator DOLE will go out of the same Chamber feeling the same way. We leave the problems and the disagreements here and hopefully they will not be here on the next morning or the next day when we return for our business. Never can these matters of this kind be considered personal.

He is a great legislator. He is very wise. Indeed, I will need his cooperation.

We cannot move this legislation forward by ourselves. We need the cooperation on that side of the aisle.

I appeal to the distinguished minority leader for that cooperation. I hope that as minority leader I gave the distinguished majority leader at that time the cooperation that he needed in order to keep the business of the Senate moving forward. I pledge to him that it will be my intention to move the legislation expeditiously and to utilize the time of the Senate as best can be used and to complete the work of the Senate each day if possible, keeping in mind that the business of the people comes first and, second, that there is such a thing as quality of life. I want to be conscious of every Senator here, of the quality of life of every Senator on both sides of the aisle, the families of Senators, the loved ones of Senators, the health of Senators. I want to be mindful of all these things.

I want to move the business of the Senate forward, and I hope that we can avoid night sessions. I hope we will never have another one, but of course we will. But I hope that we can make those night sessions come as seldom as is possible and I hope that in the final anaylsis we can do our jobs well and complete the work of this first session of the 100th Congress and adjourn sine die at a reasonable time during the latter part of the year, hopefully no later than the first of October.

So having said that, I yield the floor to my very distinguished colleague.

The PRESIDENT pro tempore. The Senator from Kansas is recognized for 10 minutes.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer and I want to extend my congratulations to this outstanding Senator from the great State of Mississippi. It is an honor to serve in this body with Senator STENNIS for all of us, and I know the new Members will find that to be true in a very short time.

Mr. President, it is a new year and a new Congress, and yes, a new and different Senate. As we open the historic 100th Congress, let me welcome all of my new colleagues, Republicans and Democrats, to this great institution.

I want especially to congratulate the distinguished majority leader, Senator BYRD, who is once again the leader of this body. He has been a tireless and effective leader for his party. Our titles may have changed, as he just indicated, but we still have an obligation to cooperate and try to work together. I would say as far as improving the quality of life of this body, I stand prepared to do all I can to make that happen.

I recall the last year we had a meeting—maybe we can have another one this year, depending on the distinguished majority leader—where we had 70 Senators come to the meeting and talk about the quality of life, and I recall in that meeting the statement by the distinguished Presiding Officer, the distinguished Senator from Mississippi, Senator STENNIS, that the leaders were powerless, that the Members in effect dictated what the leaders could and could not do; and he was absolutely correct.

I know one of the greatest frustrations I had, not so great that I wanted to lose it, one of the greatest frustrations I had as a majority leader was trying to accommodate every Senator and still get the work done because we were told, "We cannot vote on Monday," "I have to leave early on Friday," "I don't want to be here on Tuesday," "I would like to leave here Wednesday, but I will be here all day Thursday." That is 1 day. And then you have that 100 times or maybe 98 times. The leaders are generally here. So it does give us an opportunity. I cannot think of a better thing to happen in the 100th Congress than do precisely what the majority leader indicates he wants to do, to stop the all-night sessions. They may be necessary from time to time. I always thought they were necessary on the tax bill so that the staff finally went to sleep, the amendments would stop, and would complete the bill.

But it is a very difficult process, and I want to congratulate the Democrats. They have won the election. They are in the majority, and I congratulate them.

I believe that over the last 6 years, first with the leadership of the distinguished Senator from Tennessee, Senator Howard Baker, and hopefully the past 2 of those 6 years of my leadership and the leadership of other Republicans, we have been able to demonstrate to the American people our willingness to make hard choices. We did not achieve everything we wanted. Sometimes we had our disagreements with the other side; sometimes not.

More often we were able to work it out because again, as the distinguished majority leader has said, 55 to 45 is a majority, but you still need the cooperation of some of the 45.

And we are going to try to provide it—we are going to try to demonstrate it on this first day if we can, to get up a select committee resolution, work it out, pass it, and there will be a rollcall vote; to try to work out some accommodation, if we can, on the clean water bill, to protect the rights of those who have a different view, including the administration and the distinguished majority leader and others on both sides who want to pass the identical legislation we passed last year. So I just suggest that we have an opportunity.

And, again, I know that our distinguished President pro tempore will continue in the fine tradition we have had under his long-time friend and my long-time friend, the distinguished senior Senator from South Carolina, Senator THURMOND, who so ably occupied that office and carried out the responsibilities very well.

I must admit it is going to take a few days to adjust. I found myself this morning wanting to jump up and get order and do all those things leaders do. So, I hope that the distinguished Senator from West Virginia will be patient. We will not adjourn the Senate or anything like that—it might not be a bad idea from time to time, but we will not do that.

As I said to the Senator from West Virginia when I became the leader, there would be no surprises—and I hope I kept my word—I would not come to the Floor in his absence or doing something that would somehow frustrate the efforts of the minority or majority. And that is the kind of working relationship that we will continue to have.

So we will adapt to our new status on this side. We have had our first conference this morning. We had a number of statements by a number of my colleagues, Republicans, and we hope this is only a temporary position

we find ourselves in, but that will be determined at a later time.

But now as the majority leader has indicated, we have other responsibilities, and I think we can carry them out. Notwithstanding the executive branch, we have our own responsibilities; notwithstanding our great respect for the President of the United States, we have our responsibilities. We are the people's representatives. We are elected by the people, many of us reelected in 1986. And I would guess that we have enough business to do to occupy nearly every day of this coming year.

I believe we will be judged by the state of the economy; by our relationships with our allies and adversaries; by the quality of life our citizens enjoy; and by the advance of democracy and freedom around the globe. We will be judged as leaders by whether we were willing to make the hard choices. And sometimes the choices are very difficult. Many times we cannot satisfy everyone who may have a particular point of view. But it would seem to me that if we make the hard choices now, we may have a brighter future for Americans down the road.

Certainly the challenges facing this 100th Congress are going to test our mettle day after day after day. Whether it is the budget, whether it is the trade deficit, whether it is the health care, whether it is saving the family farm, arms control, or aid to freedom fighters, the issues are as difficult as they are critical.

With all these policy decisions facing us, the Senate, and the country for that matter, cannot afford to be consumed by the Iranian arms sales affair. And that is the purpose of the select committee, to give the leadership, the distinguished majority leader, Senator BYRD, and myself, the time to carry out our responsibilities to take care of other legislation, and, I believe, the leadership of the distinguished Senator from Hawaii, Senator INOUYE, who I have known since we were back in the hospital together, back in Percy Jones Hospital, in Battle Creek, MI, 40 years ago. So we have known each other a long time. He is a man of outstanding integrity and character and will be totally fair; no doubt about it. And on the Republican side, the distinguished Senator from New Hampshire, Senator RUDMAN, again is an able lawyer and cooperates well with Members on both sides. I believe they have a balance on that select committee at the time that will serve the Nation and serve this body quite well.

But we do want to get on with the work quickly. I hope we can resolve any difference we might have today on the committee resolution.

As the Republican leader in the Senate, as a supporter of the President, and as a citizen, there is no one more committed than I to getting all the facts out. And I would say again today we could start by releasing the report of the Intelligence Committee to let the public know. We should not be afraid to let the public know what has been declassified. It is information that ought to be in the public domain. And again I would urge somehow we might accomplish that in the next few days.

In the long run, while we are in the process of digging up the facts, we should not lose our focus and we should not lose sight of our other responsibilities. We have got all kinds of problems. We always have all kinds of problems. And I hope that we can meet our responsibilities.

I would just say, finally, it is going to take cooperation. As I have indicated earlier, I intend to cooperate with the distinguished majority leader, and he is a distinguished majority leader. I have watched Senator BYRD over the years. I have tried to learn from Senator BYRD over the years. When it comes to the rules, I gave up. There is no one who can match Senator BYRD's knowledge of the rules. And I am not certain how it is going to work. Now that I am the minority leader, he can probably do most anything and I will never know the difference. But we will try to be alert and see what happens.

But I would just say that we ought to make a pledge today—and I am prepared to make that pledge today—while the slate is blank; I mean, there is nothing blocking us today—to write a record of achievement that we in the country can take pride in, not a partisan record, but a record.

There are problems that people demand we address and some we can address. And I think if we do that, it will be a record that we were worthy of the confidence and worthy of being U.S. Senators. And I am certainly pleased to participate in that effort and I do at this time, as I will every day that I am here to cooperate where I can with the majority leader.

We are going to have differences. There are going to be some Senators who may not agree; they may be on this side, they may be on the other side. But where we can, I am not one who likes to sit around and waste time. There are other things you can do with that time. In fact, I have just thought of a few.

REPUBLICAN LEADER OCCUPIES FRONT-ROW DESK

Mr. DOLE. Mr. President, as we meet in the 100th Congress, in anticipation of the Senate's bicentennial, we are more than ever mindful of the long history of this great institution. Most Senators are aware that they are Members of a continuous body that began in 1789; that they sit in this Chamber at desks once used by Henry Clay, Daniel Webster, and John C. Calhoun; that they occupy offices in the Senate Office Building once used by Robert Taft, Harry Truman, and Everett Dirksen; and that they serve on committees which were created in the early 19th century. For my part in the Senate bicentennial, I plan to deliver a series of regular "bicentennial minutes," short statements on significant people, unusual customs, and memorable events that took place in the Senate's life on that particular day.

For instance, I am standing at a desk that traditionally is assigned to the Republican floor leader. It would be a mistake to think that Republican leaders have always sat here, but this tradition is now 50 years old. On January 5, 1937, Charles McNary of Oregon became the first Republican leader to sit at this desk. Previously, it was occupied by a senior Republican, Arthur Capper of Kansas, while Republican Leader McNary sat several seats down on the front row. By contrast, Democratic leaders had been seated front and center on their side of the aisle since 1924. Out of a sense of symmetry, and in recognition of the growing role of the floor leader, the Republican leader moved to the aisle desk at the beginning of the 75th Congress. Senator Capper took the desk at his side. Here, over the next 50 years, have sat each of the Republican floor leaders: Wallace White, Kenneth Wherry, Robert Taft, William Knowland, Everett Dirksen, Hugh Scott, Howard Baker, and myself. I am proud to stand in that company, and to continue that tradition.

The PRESIDENT pro tempore. Would the Senator from West Virginia and others indulge me for just a minute? I was going to ask the Senator from Kentucky to serve now for a time as acting President pro tempore.

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

The PRESIDING OFFICER (Mr. FORD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, I object for just a moment. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue.

The legislative clerk resumed the call of the roll.

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

CLEAN WATER LEGISLATION

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

Mr. BYRD. Mr. President, I apologize to the distinguished Senator from Nebraska [Mr. EXON] for objecting to the calling off of the quorum, the reason being Mr. DOLE and I are about ready to proveed with two very important pieces of business, and I would prefer that Senators wait until we get these items out of the way. There will be possibly a rollcall on at least one of them, hopefully, during the day. There will be a time later in the afternoon during which Senators may speak and introduce legislation.

Mr. President, I am about to ask unanimous consent to proceed with a consideration of what will be Senate bill No. 1, a bill to clean up the Nation's water. For the record only, the distinguished Republican leader and I have discussed this. But for the record so that the distinguished Republican leader will be protected as well as anyone else, may I say that under rule XIV, if there is an objection to the consideration of this bill today it would be my plan to adjourn today to go over until tomorrow, then adjourn tomorrow to go over to Thursday, and then adjourn Thursday to go over to Friday. In this way the bill can be forced onto the calendar through the mechanism of rule XIV.

I do not want to bring the Senate in tomorrow for that purpose. The distinguished Republican leader does not want to bring the Senate in tomorrow for that purpose. I believe, in discussing the matter with the distinguished Senator, that we will be able to work out a way whereby we will not have to come in tomorrow for the purpose of advancing the Senate bill dealing with the clean water to the General Calendar. Therefore, I yield to the distinguished Senator from Kansas, [Mr. DOLE] for his reaction.

I, at the moment, will ask unanimous consent. This is a bill which I am about to introduce which carries the same language as was included in the conference report that passed the Senate during the closing days of the 99th Congress to clean up the Nation's water, and the exact same language is included in this bill. I ask unanimous consent that the Senate proceed with the consideration of the bill which I am about to introduce.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

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

What I would suggest, if it is agreeable, rather than come in and then come in again just to serve that purpose, I will have a substitute. It is, I think, a good clean water bill. It costs less money: Instead of 10 years and $18 billion, it has a 10-year total of about $12-plus billion. In the first couple of years the spending is pretty much the same. It will be $400 million the first year, $500 million the second year, but all the environmental provisions and the regulatory provisions are pretty much identical. I am talking about the cost of projects.

If the distinguished majority leader would agree, I would not object to a unanimous-consent request to put his bill on the calendar if in fact I could make the same request to put the bill that the administration has suggested on the calendar. We would just save that much time.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader. I think he has made an excellent suggestion. It will save the time of the Senate. If the Senate is able to complete action on the resolution creating a select committee on the Iran matter, then as I see it, the Senate would probably not be in tomorrow.

So I ask unanimous consent, Mr. President, that the bill which I send to the desk on behalf of Mr. BURDICK, Mr. STAFFORD, Mr. MITCHELL, and Mr. CHAFEE, be placed on the calendar.

This is with the understanding that Mr. DOLE will have a unanimous-consent request which he will make immediately following my request if it is granted.

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

The Senator from Kansas.

Mr. BURDICK. Will the Senator yield?

Mr. DOLE. Mr. President, I would make the same unanimous-consent request for the bill which I now send to the desk dealing with the Clean Water Act be placed on the calendar.

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

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Again, I want to thank the distinguished Republican leader for his cooperation in resolving this matter which I think is a very amicable way and evenhanded and judicious way.

S. 1—THE WATER QUALITY ACT OF 1987

Mr. BYRD. Mr. President, I am pleased to introduce on behalf of Senators BURDICK, STAFFORD, MITCHELL, and CHAFEE, the Water Quality Act of 1987. This bill is identical to S. 1128, the Water Quality Act of 1986, which was approved unanimously by both the House and the Senate at the end of the 99th Congress and subsequently pocket vetoed by the President.

It is my intention that the Senate act expeditiously on this bill so that it may be returned to its rightful place—the President's desk.

I am not seeking confrontation. This is important and much needed legislation if we are to maintain this Nation's commitment to cleaning up our lakes and waterways. Swift action by the Congress is essential to the effort, because the President's veto has created unnecessary delay and uncertainty in the administration of the Clean Water Program.

For example, this bill provides needed adjustments to statutory compliance deadlines and other requirements under current law. These adjustments are critical to industrial sources that are now technically in violation of key compliance dates because of regulatory delays encountered by the Environmental Protection Agency in issuing certain regulations.

Further delay will also have a devastating impact on municipal wastewater treatment plant construction and State and local plans to comply with mid-1988 secondary treatment requirements—$1.2 billion, or one-half of the funds needed for the 1987 construction season, cannot be released without a new authorization and appropriation.

In my State of West Virginia, this could have the effect of denying local governments up to $151 million in construction grants necessary to begin the work needed to meet the July 1, 1988, compliance deadline. Enforcement action could be taken against those cities failing to meet the requirement, which, in turn, could result in fines and additional costs that local governments cannot afford.

Without authorization from the Congress as provided in this legislation, several new water quality initiatives must be postponed. These include new programs to control toxic pollutants, manage nonpoint sources of pollution, and to establish new water quality plans for the Nation's estuaries.

This legislation also contains a provision that will allow for the remining of abandoned coal mine sites with preexisting discharges. This is designed to encourage coal operators to remine these sites and improve the water quality of the area. This is of great importance to West Virginia where there are many abandoned mine lands and current Federal programs to reclaim these areas are inadequate to ensure a safe and adequate water supply.

Mr. President, this bill was approved with the support of all the Republicans and all the Democrats in the 99th Congress. This is bipartisan legislation. It is not budget-busting. It authorizes $18 billion in aid for wastewater treatment plant construction through fiscal year 1994, with annual amounts limited to $2.4 billion. Given the EPA's own estimate that $109 billion is needed by the year 2000 in order for all communities to be in full compliance with existing law, this is a small price to pay. Most importantly, this legislation includes capitalization for State water pollution control revolving funds. These revolving

funds are designed to move States toward financial self-sufficiency for wastewater treatment construction.

As I said at the beginning, this legislation should not be viewed as confrontational. It is a crucial step in achieving one of our national priorities—clean water. And it is in keeping with the budget passed last year by Congress. I hope the President can see his way to join with the bipartisan majority in Congress and support this legislation.

I ask unanimous consent that I may yield to the distinguished Senator, Mr. BURDICK, who is the chief cosponsor of this measure, for a statement which I believe he is going to make, without my losing my right to the floor.

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

Mr. BURDICK. Mr. President, I am pleased today to join over 70 of my colleagues in introducing Senate bill 1—the Water Quality Act of 1987.

The legislation will reauthorize one of the Nation's foremost environmental statutes—the Clean Water Act. It is identical to legislation approved by Congress last year but vetoed by the President after the end of the session.

Before proceeding, I would like to take a moment to express my appreciation to Senators CHAFEE, STAFFORD, BENTSEN, and MITCHELL for their tireless and excellent work on this legislation over the past 2 years.

Senator CHAFEE deserves special recognition as the architect of this vital legislation. The high quality of the legislation is largely due to his efforts.

Senator CHAFEE, along with other interested members of the Environment and Public Works Committee, developed this legislation in hearings early in 1985, brought it to the Senate floor in June of that year, and conducted a successful conference with the House in the summer of 1986.

The efforts of these Senators were so successful, that the final conference report was approved unanimously by both the House and Senate.

Unfortunately, President Reagan chose to veto the legislation.

I believe that the President missed a valuable opportunity when he vetoed the Clean Water Act reauthorization several months ago. He missed an opportunity to revise and improve many of our current water quality programs. He missed an opportunity to endorse new programs to address emerging pollution problems. And, he missed an opportunity to demonstrate to the American people that he shares their commitment to a safe environment and clean water.

In introducing this legislation today, we plan to give the President a second chance—another opportunity.

Much of the recent discussion of the bill has focused on a few of the major provisions of the bill. The President has criticized the level of funding for assistance to communities for construction of sewage treatment facilities. New programs to deal with toxic pollutants and pollutants from nonpoint sources have been discussed at length drawing positive comments.

It is important to remember, however, that this legislation includes some 70 provisions. Let me take a moment to briefly review some of these provisions.

The bill provides for management conferences to resolve water problems in estuaries. Some $12 million a year is authorized for the program.

The bill provides a program for the protection of the Chesapeake Bay. Grants to States to address pollution problems are included. Three million dollars per year is authorized for the EPA program office and $10 million is authorized for State grants.

Another provision would assure the continuation of the EPA Grant Lakes Program Office and direct the Office to assess water quality problems in the lakes and coordinate agency activities. An annual authorization of $11 million is provided.

The bill would revise and expand the current requirement for State reporting of lake quality and adds a new section providing for special lakes demonstration projects. An authorization of $30 million is provided for lakes programs with additional funding for demonstration projects.

The bill tightens provisions for waivers from secondary treatment for discharges of municipal sewage to marine waters.

The bill provides Indian tribes with a set aside of one-half of 1 percent of the construction grant fund for construction of sewage treatment works. Tribes are also granted new authority to act as States for the implementation of some programs under the Clean Water Act.

A new authority for administrative civil penalties is added to the law and changes are made to strengthen the civil and criminal penalties provisions of the act.

Finally, the bill provides a specific process for development of regulations governing permitting of municipal stormwater discharges.

Mr. President, I could go on to describe provisions addressing issues such as coal remining, sewage sludge, or the unique problems of communities ranging from San Diego to Boston.

The point to remember is that this legislation is far more than an authorization of sewage treatment grant money. It reaches into virtually every element of our water quality program and it addresses a wide range of water quality problems. Many of these pollution problems will go unchecked if we fail to enact this legislation.

Some of the most capable Members of the Congress have worked long and hard to develop this legislation. The final product has the support of the full spectrum of industry and environmental groups. And, I think it is clear that the American people want us to stand by our commitment to ensure that our rivers, lakes, and streams are of the highest quality.

I urge my colleagues to support this bill and I urge the President to take a second look and join us in supporting clean water and a safe environment.

Thank you, Mr. President.

Mr. MITCHELL. Mr. President, I join Senators BYRD, BURDICK, CHAFEE, STAFFORD, and others in introduction of the Water Quality Act of 1987.

This legislation will extend and strengthen one of our most fundamental environmental protection laws—the Clean Water Act.

Introduction of such a major reauthorization bill is usually a time to speak of the problems the bill will address, the difficult issues to be resolved, and the importance of hearing the views of interested groups as final legislation takes shape.

But the Water Quality Act of 1987 is unusual legislation. During the last Congress, under the leadership of Senators STAFFORD, BENTSEN, and CHAFEE, the Senate held full hearings on clean water issues and passed comprehensive amendments to the act.

The House also passed amendments to reauthorize the act and, in October of last year, both Houses passed, without a dissenting vote, the report of the House/Senate conference committee on the bill.

As we all know, President Reagan vetoed the bill.

I deeply regret the President's action. It was a major setback to our efforts to protect the environment and clean up our rivers, lakes and marine waters. And, it undermined our national commitment to clean water, a commitment which has been unwavering since the Clean Water Act was first passed in 1972.

The legislation we are introducing today is intended to undo the damage done by the President's veto. The bill is identical to the legislation approved by Congress late last year. Its enactment will get our clean water programs back on track and moving forward again.

So, in introducing this legislation today, we do not face the usual questions of defining problems or resolving issues. Rather, we must convince the President that his veto of the clean water legislation was misguided. And, if the President will not join us in support of this vital legislation, we must convince the Members of the House and Senate to override his veto of the bill.

Why should the President change his position and support this bill? And why should my colleagues vote to override a veto? I believe that there

are three key reasons: This is good legislation; it is fiscally responsible legislation, and it is backed by the overwhelming support of the American people for clean water.

The Water Quality Act we are introducing today is good, solid, no frills legislation addressing some of our most pressing water pollution problems. Of the many provisions of the bill, several stand out.

The bill provides a new approach to control of toxic pollutants in water. Under the current law EPA is required to establish uniform, minimum controls for toxic pollutants. There is no assurance, however, that these controls will result in a safe level for a particular water body. Although the current law provides general authority for toxics control, this legislation initiates a specific process designed to identify and control these toxic substances.

The legislation requires States to identify waters that do not meet water quality standards due to the discharge of toxic pollutants; to adopt numerical criteria for the pollutants in such waters; and to establish effluent limitations for individual discharges to such water bodies.

This provision is an important addition to our ability to protect water quality and public health from increasing amounts of toxic chemicals.

Another key amendment of the bill provides for State programs to identify and control nonpoint source pollution, such as runoff from city streets and agricultural lands. These nonpoint sources of pollution are thought to cause over half of the remaining water pollution problems.

States will identify waters affected by nonpoint sources of pollution and develop programs to implement best management practices for controlling this pollution. State programs will include a schedule for implementation and will be coordinated with related Federal projects.

Finally, the bill provides State and local governments with a clear statement of future Federal involvement in treatment plant financing and allows them to finalize plans to meet the compliance deadlines established in the law. It provides for a transition from the current grant program to a program providing Federal support for State revolving loan funds. Establishment of loan funds will complete the process of transfer to State control of the municipal treatment construction program.

The second reason to support the bill is that the total funding authorizations are a reasonable and responsible compromise between the costs of the many, badly needed water quality projects and the need to control the Federal deficit.

President Reagan has cited his concern for the total authorization of $18 billion for assisting communities in funding of construction of sewage treatment facilities. The President proposed a funding level of $6 billion, and now seems to think that $12 billion might be acceptable. I believe we need to stick with the $18 billion figure for several reasons.

This amount is small compared to the total cost of needed projects, estimated by the EPA to be about $100 billion.

This authorization is spread over 9 years. The annual authorization for the first 6 years is $2.4 billion.

The annual authorization of $2.4 billion is a sharp drop from previous funding levels of between $4 and $5 billion.

Local communities will pick up a greater share of the costs of these projects. Previous amendments provided for the reduction in the Federal share from 75 percent to 55 percent of project cost. The proposed shift from grants to loans will continue this shift toward State and local funding of project costs.

Of the $18 billion, $8.4 billion will be used to capitalize State revolving loan funds. These State funds will be paid back by communities and will be a long-term investment in water quality facilities.

Finally, this total authorization is consistent with the commitment, made by the administration as part of the 1981 amendments to the Clean Water Act, to support funding at the $2.4 billion level through fiscal year 1991. In return for this long-term funding commitment, Congress agreed to lower annual appropriations, lower the Federal share of project costs, and limit the types of projects eligible for funding.

The third, and perhaps most important, reason the President should support this legislation is it has the overwhelming support of the American people. Both Houses of Congress passed the bill unanimously. Industry and environmental groups support the bill. And polls show that the public favors continued effort to improve water quality by large margins. Final enactment of this legislation is an important step toward carrying out this mandate.

In the budget outline he sent to the Congress recently, the President proposes to increase spending for foreign aid by $2.3 billion to a new record of $19.1 billion. If we can afford that, we can afford to keep America's water clean.

In conclusion, Mr. President, I hope that President Reagan will take another look at this bill. I think he will find that it is solid legislation, that its funding levels are reasonable and responsible, and that it has overwhelming public support.

If, however, the President vetoes the bill, I will do everything I can to convince my colleagues to override it.

Mr. SARBANES. Mr. President, as an original cosponsor, I want to thank my colleagues, Senators BURDICK, STAFFORD, MITCHELL, and CHAFEE for reintroducing today the Water Quality Act, which President Reagan vetoed last year. Following the veto, I indicated that passage of this important legislation early in the session would be one of my highest legislative priorities, and I applaud the members of the Senate Environment and Public Works Committee for their leadership. The clean-up of the Chesapeake Bay is the highest environmental priority in Maryland, and this bill is absolutely essential to that effort.

The Clean Water Act, first passed in 1972, has been an important element of the national effort to clean up our Nation's waterways. In many cases, we are now beginning to see the benefits from the investment made in clean water. Here in the Nation's Capital the water quality of the Potomac River is improving each year thanks to the partnership of the Federal Government, the States, and the District of Columbia. Yet much remains to be done. Many rivers and lakes in this country are still unsafe for drinking, fishing, and recreation.

The bill introduced today contains $52 million over a 4-year period for the Chesapeake Bay clean up effort. As you know, under the able leadership of our former colleague, Senator Charles McC. Mathias, Jr., the Federal Government recognized the critical importance of the Chesapeake Bay, this country's largest and most important tidal estuary. Enactment of this bill would further the goal of cleaning up the bay. It provides $3 million to support the work of the Office of Chesapeake Bay Programs in the Environmental Protection Agency as well as $10 million a year in grants.

In addition, the reauthorization of the Municipal Sewage Treatment Construction Program is a vital part of the multistate effort to improve the water quality of the Chesapeake. Under this bill, funds for treatment plants would still be available on a formula basis and would be recycled as States repaid loans under a revolving fund loan program.

Mr. President, passage of this legislation is an urgent priority, and I urge my colleagues in the Senate to give it the same overwhelming support this year that they did last year.

Mr. FOWLER. Mr. President, as the historic 100th Congress convenes, I am very proud to be a cosponsor of legislation which will reauthorize the Clean Water Act.

I was extremely disappointed last year by President Reagan's veto of the Clean Water Act, which was passed

unanimously by both the House and Senate. The Clean Water Act which Congress sent to the President last session was a reasonable and effective measure, one that was a sound balance of our commitment to cleaning up our precious water resources and safeguarding the cities and industries that must help in reaching this critical goal. I believe Mr. Reagan's veto was ill advised and a mistake which we in Congress have a duty to rectify.

In the past decade, we have made great progress in cleaning up our Nation's waterways, and we must continue the steps taken rather than allow the type of pollution before strict controls were enacted. The measures called for in the Clean Water Act are crucial to cities throughout the Nation which are under a federally mandated deadline of July 1, 1988, to upgrade their facilities to secondary treatment standards. The President's veto already has created severe financial problems, not only for cities in Georgia but across the country, requiring slowdowns of many projects and the impending cancellation of others.

Mr. Reagan faulted the measure for what he calls "excessive budgetary levels." However, the President ignored one of the most important provisions of the measure—the mechanism for an orderly phaseout of the Construction Grants Program over the next 4 years in a way that ensures we do not simply walk away from those who have been promised help and who still need it to make sure our water resources are preserved. Municipal and State officials across America are willing to shoulder their part of this responsibility; we at the Federal level cannot abdicate our commitment.

I am heartened by the breadth of support demonstrated last session for reauthorization of the Clean Water Act, and I urge all of my colleagues to once again vote for this measure, which will result in a safer, clearer environment for us and the generations to come.

Mr. LAUTENBERG. Mr. President, I rise in strong support of S. 1, the Clean Water Act Amendments of 1987. This same legislation was unanimously adopted by both the House and Senate at the close of the last Congress. We knew then and we know now that this bill is a significant step forward in protecting this Nation's waterways, and deserves our support.

With its construction grants components, its nonpoint Source Pollution Program, its tightening of toxic discharge controls, and Storm Water Permitting Program, this legislation will do much to address major environmental challenges.

Unfortunately, President Reagan pocket vetoed this legislation. The administration asserted that the bill's authorization for construction grants was excessive. But this claim does not take account of the high costs of sewage treatment construction. It has been estimated that $109 billion is needed to finance such construction throughout the Nation, including $4.5 billion in my State of New Jersey.

Compared to these large needs, the bill before us is no budget buster. It is a rational downpayment on a major national problem. This legislation spreads $18 billion over 9 years for its Construction Grants Program. This sum is gradually allocated. And almost half of it—$8.4 billion—is targeted for State revolving loan funds. Such State loan funds will help create a self-sustaining source of money for States to finance local construction.

A strong Construction Grants Program is essential for economic development across this Nation. If we do not have the sewage treatment facilities to handle the wastes resulting from economic development, we cannot move aggressively forward with such development.

Mr. President, the costs of not enacting this legislation—the harm to our environment, the burdens on our States and localities, and the damage to economic development—far exceed those of this measure.

It is clear that this is a nation committed to the principles embodied in this measure. In the early 1970's, the people of this country made a fundamental decision that they wanted a concerted effort to clean up the Nation's waters—waters that are used for fishing, swimming, recreation, and drinking water.

This decision was made because of our growing awareness of and concern about water pollution. News accounts told us about Lake Erie being "dead," the polluted Cuyahoga River in Ohio so filled with oil and debris that it caught fire, millions of gallons of raw wastewaters being dumped into the country's major rivers, such as the Hudson River, and many fish kills and oil spills.

The Congress responded by passing the Federal Water Pollution Control Act Amendments of 1972. This act established a goal—to restore and maintain the integrity of the Nation's waters—which captured the essence of the Nation's desire for clean water.

Mr. President, during the 13 years this act has been implemented, impressive strides have been made in cleaning up our Nation's waters. But much remains to be done. The Clean Water Act Amendments of 1987 include a number of provisions which address problems which are preventing us from achieving the goal of the Clean Water Act.

Also of great importance is future funding for the construction grants program. Since passage of the Clean Water Act in 1972, Federal, State, and local sources have invested more than $56 billion in municipal wastewater treatment facilities, resulting in the construction or improvement of approximately 3,500 treatment facilities. Properly running sewage treatment facilities are an essential component for cleaning up the Nation's waters. For example, sewage treatment plants in 1983 were removing 65 percent more of the two principle conventional pollutants—suspended solids and biological oxygen demand—than they were a decade earlier.

Yet it is clear that the existing construction grants program is inadequate to meet remaining national needs. According to EPA, eligible construction needs through the year 2000 total $53 billion. Ineligible needs, those needs not eligible for Federal funding under the Clean Water Act, are more than $50 billion. According to estimates, New Jersey alone has $4.5 billion in eligible funding needs. New Jersey only receives approximately $100 million per year in existing Federal construction grant funding. Therefore it is imperative that we implement a new method of financing sewage facilities. A creative framework, which had its origins in New Jersey, is the concept of revolving loans.

The Clean Water Act Amendments of 1987 adopted this concept and will move us closer to the goal of providing an adequate source of stable funding for sewage treatment facilities. S. 1 would authorize $18 billion over 9 years for Federal sewer construction grants and loans. Under the bill, the Federal Government will gradually reduce categorical grants for sewage treatment facilities as it phases in a program of grants for States to capitalize State revolving loan funds.

These funds will provide the capital for municipal wastewater treatment facilities in the future. States can make low or no interest loans available to communities for construction of treatment facilities. As loans are repaid to the State revolving loan funds, the State will be able to loan money to additional communities.

In addition, Mr. President, this bill will help spur the construction of needed sewerage facilities. In the case of municipalities which proceed to begin construction with their own funds, refinancing is permitted from a State revolving loan fund. Presently, most municipalities wait until it is their turn to receive Federal construction grant funding before they begin constructing needed facilities. This refinancing feature of the revolving loan program would eliminate the disincentive for municipalities to move ahead quickly with construction that now exists with the grants program.

Municipalities are facing a 1988 deadline for installing sewage treatment facilities which provide secondary treatment. EPA has threatened to restrict development in municipalities

which are not in compliance with the 1988 deadline. New Jersey imposed sewer bans in many municipalities and has warned others that they face such bans if the discharge from their sewage plants will not comply with requirements of the Clean Water Act. The reimbursement provisions in the conference report to S. 1128 should stimulate cities to meet the 1988 deadline.

Under the bill, States will have to enact legislation to give a legal entity of the State the powers prescribed in the act. During consideration of this legislation during the last Congress, the Environmental Pollution Subcommittee agreed that this legal entity can be an existing or new State entity or agency. When the States enact legislation to implement State revolving loan funds, they will have the flexibility to determine how the fund will operate subject to the requirements of this provision of the Clean Water Act.

For example, States would be able to establish loan terms based on the financial needs of municipalities with easier loan terms available to poorer municipalities. States can decide to initiate their loan funds prior to fiscal year 1989, the year they are required to do so. When States enact revolving loan legislation, they can determine whether to begin using their construction grant funds to capitalize their revolving loan funds prior to fiscal year 1989 and if so, under what terms.

Mr. President, I believe that the revolving loan concept contained in the bill will provide a stable source of funding for the construction of sewerage facilities while providing States with the flexibility to minimize the financial burden of these facilities on local municipalities.

The Clean Water Act amendments only slightly revised the allocation formula for construction grants. I would have preferred the Senate approach during the last Congress, which would have provided New Jersey with $15 million more in grant funds. But New Jersey stands to receive approximately the same amount it has been receiving—up to about $100 million this year—in such funds under S. 1. And the State will receive about $650 million over the life of the bill.

S. 1 also includes the Raw Sewage Abatement Act of 1985. This legislation, which I sponsored, limits the discharge of raw sewage by New York City. At the time I introduced this legislation, New York City was the only major municipality in the country which still discharged raw sewage and wastewater into surrounding waters, without preliminary treatment of its wastes. It did so because of the absence of sewage treatment facilities in two major drainage areas in New York City. Two court-ordered deadlines to cease this practice were disregarded by the city.

The provision that I sponsored imposed a cap on raw sewage discharges from the drainage areas in New York City which were without treatment plants, if the city failed to meet the deadlines for achieving advanced preliminary treatment contained in its current consent decree. If these deadlines were met, the cap would be unnecessary because all raw sewage discharges will cease. If the city failed to meet these deadlines, a cap was to be imposed in the drainage area in violation of the decree. It was to stay in effect until the city brought the affected plant on-line and it operated successfully for 6 months.

The imposition of a cap on raw sewage discharges upon a violation of the consent decree in effect said to the city of New York, "You cannot continue to grow without restraint if you cannot treat your wastes."

Upon violation of the cap, the city would be subject to the enforcement provisions in section 309 of the Clean Water Act. These penalties would be in addition to those provided for violation of the consent decree. They include tough civil and criminal penalties, and would enable EPA to seek a temporary or permanent injunction against the city, to bring civil actions against the city, and to initiate criminal prosecution in cases of negligence or falsification of records.

With the changes adopted in the conference report to section 309 of the Clean Water Act, a violation of the cap imposed by this amendment could result in substantial penalties of up to $50,000 a day. A violation stemming from a criminal conviction could lead to imprisonment.

Finally, Mr. President, the legislation states that it is the sense of the Congress that EPA should not extend the deadlines in the city's existing consent decree any further.

I am pleased to note that following my amendment, New York City finally began to comply with court-ordered schedules for construction of its North River and Red Hook sewage facilities. North River is currently on schedule to attain secondary treatment by 1991. Red Hook is on schedule to attain primary treatment by 1989. While Red Hook is on schedule, the fact that it is not operational means that discharge of raw sewage into the East River still continues. This legislation will ensure that New York's facilities stay on present compliance schedules, with no more extensions, and move us toward eliminating the dumping of raw sewage in the waterways of New York and New Jersey.

New Jersey has had its share of water quality problems. But treatment plants in northern New Jersey are all achieving primary treatment, and most of the major plants serving northern New Jersey are achieving secondary treatment, or are under construction to do so.

The New Jersey Department of Environmental Protection has imposed numerous sewer hookup bans in a number of New Jersey municipalities to improve compliance with the Clean Water Act. Several communities may finance the upgrading of their sewage treatment plants to secondary treatment without any Federal or State aid. In some cases, the Department of Environmental Protection in New Jersey required private sector parties to contribute to local efforts to upgrade sewage treatment facilities as the price of securing a sewer hookup permit and proceeding with planned development.

Mr. President, New Jersey and New York do not need to grow at each others' expense. Regional growth is good for both States. By the same token, Mr. President, this growth should be accompanied by appropriate environmental protection. It must not come at the expense of the environment. It must not come at the expense of New Jersey's tourist and commercial and recreational fishing industries.

Mr. President, these provisions in S. 1 will provide strong incentives for New York City to keep complying with its consent decree and bring its sewage treatment plants on line as quickly as possible.

S. 1 contains a number of other provisions which will strengthen this Nation's effort to clean up its water. These include:

Establishing a new program for cleaning up toxic "hot spots"—waters that will not meet water quality goals even after industrial dischargers have installed the best available cleanup technologies required under existing law;

Requiring States to develop plans for combating nonpoint source pollution, such as polluted runoff from city streets and farmland. Conferees agreed on a $400 million authorization to help States implement the plans;

Restricting the use of fundamentally different factor waivers from national discharge standards;

Prohibiting, except in certain narrowly defined circumstances, so-called backsliding, or weakening of cleanup standards when industrial and municipal discharge permits are renewed or reissued;

Establishing a national estuary program to solve pollution problems in interstate estuaries such as Delaware Bay and the Hudson-Raritan estuary;

Requiring EPA to establish toxic contaminant criteria for sewage sludge use and disposal and to establish a public health and environmental protection basis for these criteria;

Authorizing a total of $85 million for lake water quality activities, including

demonstration projects at New Jersey's Deal Lake, Belcher Creek, and Greenwood Lake, as well as $15 million for acid mitigation projects;

Retaining the existing law's requirement that discharge permits be renewed every 5 years. The House bill would have extended the permit term to 10 years for certain discharges.

Mr. President, I believe that enactment of the Clean Water Act Amendments of 1987 represents a positive step in the Nation's effort to clean up its water resources, and I urge that we pass this legislation today.

Mr. DURENBERGER. Mr. President, we are today introducing the Water Quality Act of 1987. This is a bill to continue and expand the Nation's Clean Water Act which has since 1972 provided environmental protection for the quality of our lakes, streams, rivers, and estuaries.

This reauthorization of the Clean Water Act has been developed over many years and reflects a blending and compromise of all views including those heard in both Houses, those expressed by members of both parties, views of the Congress and the administration, views of industry and the environmental community. The Senator from Rhode Island, JOHN CHAFEE, has worked diligently for enactment of this legislation in the 98th, 99th, and, now, the 100th Congress. We owe him a great debt. He, as chairman of the Environmental Pollution Subcommittee in the last Congress, worked along with our distinguished chairman of the Environment and Public Works Committee at that time, Senator ROBERT STAFFORD of Vermont, to develop this bill in committee, here on the floor of the Senate and in the conference committee with Members of the House.

It was their effort which brought the conference report on the Water Quality Act of 1986 to the Senate last year where it was approved by a unanimous vote. It was also adopted unanimously by the House of Representatives. Mr. President, around here that is an almost unprecedented level of support for a major piece of legislation like this. The bill we introduce today is that same bill, and whatever parliamentary indignity this bill may suffer over the next few days, we must keep in mind that it was the unceasing effort of these two Members of the Senate which brought us to unanimous support of this fine bill at the end of the last Congress.

The bill adopted by the 99th Congress failed enactment due to a Presidential pocket veto. That was in my view a most unfortunate decision on the part of the President and his advisors. In my view, this legislation already includes much to accommodate the views, both budgetary and of a substantive nature, that were put forth by the administration and its representatives during the legislative process. Indeed, we understand that the administration will be presenting its own bill to reauthorize the Clean Water Act here in the 100th Congress and that the President's bill will be precisely the same as that we have passed, except that the construction grants program will be funded at a level of $12 billion rather than $18 billion over an 8-year period.

So our difference with the President comes down to a matter of budget priorities. I say to the President that the construction grants program has already made its contribution to deficit reduction. In 1981, when this administration came to office, grants to State and local governments to build sewage treatment projects were approximately $5 billion per year. The administration insisted on a greatly reduced program, one that was restructured to eliminate many of the then eligible activities. And after a year of tough debate, a compromise was reached between the Congress and the administration to reduce and restructure the Construction Grants Program. For its part, Congress understood that compromise to include a 10-year commitment to fund the Construction Grants Program at $2.4 billion annually. And that is precisely the level of funding this bill provides.

This bill fulfills the promises made in 1981 when the Construction Grants Program was last reauthorized. One need not rely on my testimony as to the agreement reached between the Congress and the administration back in 1981. The record is replete with references to that commitment. For instance in a committee hearing on the 1985 budget proposal, Mr. William Ruckelshaus, then Administrator of the Environmental Protection Agency, described that agreement in these terms:

> There is an understanding that there is an agreement with the Administration and with the Congress that for 10 years this level of funding, at least, is a commitment. If you will note the difference between what we submitted to the President in terms of our budget and what we are now requesting is somewhat less. We went down to $2.37 billion, and it went back up to $2.4 billion as a result of that commitment. That was something that the Administration puts back into our budget over our submission.

Mr. President, there you have Bill Ruckelshaus proposing a modest cut in the Construction Grants Program and somebody at OMB telling him to take it back up to $2.4 billion because the administration had committed to that level for 10 years. That's a pretty good indication that a clear and solid pledge for funding had been made as part of the 1981 reauthorization. Mr. Ruckelshaus is no longer at EPA, of course. And there have also been changes at OMB. But changes in advisors shouldn't be cause for abandoning commitments.

So it was unfortunate that this bill failed enactment last year. And I urge the President of the United States, in light of the history of this program, to reconsider his decision to withhold his signature from this bill. It is a good bill. It has broad support. It continues a necessary and successful program of the Federal Government. It is a tribute to the two members of our party, Senator CHAFEE and Senator STAFFORD, who had such a large role in bringing it to unanimous approval in both Houses of the last Congress.

Mr. BRADLEY. Mr. President, today, I join my colleagues in reintroducing in the Senate an historic and critical piece of environmental legislation for the Nation and New Jersey, the Clean Water Act. For too long, we have allowed inadequate sewage treatment facilities and other pollutants to threaten our coastlines and our water supplies. This Clean Water Act confirms the continued Federal commitment to local communities everywhere.

New Jersey is known for its miles of beautiful shoreline and lovely beaches. Yet too frequently, our shore communities have had to close their beaches during the summer months because of pollution. Millions of visitors flock to those beaches every year. Beach pollution which has occurred, in part, because of inadequate sewage facilities and, in part from improper disposal of garbage, has endangered public health and tarnished the State's most precious assets. This clean water bill takes an enormous step toward fixing this problem of ocean pollution. This bill specifically prohibits any waiver of requirements for secondary treatment of wastewater in the New York Bight area. The bill closes, once and for all, the site 12 miles from the New Jersey shore where sewage sludge is dumped. The bill prevents the use of the new 106-mile dumpsite by regions and cities outside of the New Jersey-New York area. Most importantly, the clean water bill provides funds to improve antiquated and inadequate local treatment facilities, which overflow during storms or are too small to handle the peak usage during summertime.

This bill represents a tremendous effort—4 years of hard work. Its many provisions will form the basis of a revitalized effort to ensure clean water for our citizens. Since 1981, the Federal appropriations for sewage treatment facilities have been halved while the Federal cost share has dropped from 75 to 55 percent of costs. This bill creates a new $18 billion program which combines grants with an innovative revolving loan program. Other provisions assist in the control of nonpoint pollution—for example water runoff from urban areas—and the cleanup of our lakes and streams.

Mr. President, New Jerseyans greatly value clean water and safe beaches. We recognize the threats to our water supply. We know that tough Federal cleanup standards and environmental regulations are essential but are not sufficient. We know it is a long and costly fight and hard-pressed communities need help in this fight. This bill shows that the Federal Government is not only demanding clean water but it is also willing to help provide the resources to achieve this result. Last fall, President Reagan vetoed this legislation. This action was ill-advised and a mistake. Congress was not then in session, and could not act to override the President's veto. Now we can, and we will.

Mr. MOYNIHAN. Mr. President, I rise on this first day of the 100th Congress as a cosponsor of S. 1, the Clean Water Act Amendments of 1987. It is fitting that this be the first order of business in the new Congress, because at the end of the 99th Congress, Members of the Senate and House voted unanimously to approve the conference report which S. 1 embodies.

When the President allowed the legislation to expire by reason of the so-called pocket veto on November 6, 1986, he placed in jeopardy 14 years of good, hard work. Congress is acting today to finish the task it began with passage of the original Clean Water Act of 1972—to clean up the Nation's waters. The sum of $18 billion authorized by the bill over 8 years will enable the Senate to ameliorate the worst cases of water pollution which threaten our drinking water particularly and our water resources generally. After 4 years, the Construction Grants Program which funds sewers and treatment plants on a 55-percent Federal, 45-percent State basis, will be converted into a revolving loan program, which will be self-sustaining. Therefore, this is not another huge Federal subsidy with no end in sight; rather, it is a targeted effort which ultimately will be self-perpetuating. As such, it leverages Federal funds, providing seed money for the States' own revolving loan pools.

CLEAN WATER IN NEW YORK

If this legislation passes, which we have every confidence it will, New York will receive $268 million annually in Federal grants through 1990, or nearly $1.1 billion of the $18 billion authorized across the Nation. This is the highest annual amount received by any State. California is the next highest recipient at $173 million annually; New Jersey receives $99 million, and Connecticut $30 million.

Without this legislation, a number of New York treatment facilities will be unable to meet the July 1, 1988, deadline mandated under the act for secondary treatment. The office of the attorney general of New York has already begun to notify municipalities which may not be able to meet their compliance schedules.

I need not remind New Yorkers of our dependence on clean water. The striped bass in the Hudson are too contaminated to be eaten safely. Long Island's aquifer which is the drinking water for 3 million people is being depleted and polluted. And under New York City's streets old leaky water mains reluctantly dispurse water to city residents.

Passage of the Clean Water Act Amendments of 1987 must be the cornerstone of our Federal water policy. The 99th Congress passed the Safe Drinking Water Act, which strengthened EPA's capacity to protect and to improve our country's drinking water supplies. The Safe Drinking Water Act contains the Sole Source Aquifer Protection Act, which I first introduced in 1982, designed to protect irreplaceable aquifers such as the one on Long Island. Together with national ground water legislation, which I am also introducing in the 100th Congress, these statutes will provide a comprehensive approach to maintaining and improving our water. We cannot afford to wait until these waters are polluted. It is much more expensive to clean up water—particular ground water—after contamination than to prevent it in the first place.

Mr. President, allow me to review the goals of the Clean Water Act.

GOALS OF 1972 CLEAN WATER ACT

The Federal Water Pollution Control Act was enacted in 1972 with an exuberantly optimistic set of goals. By 1983, the act envisioned clean rivers throughout the Nation; by 1985, it sought to eliminate altogether the discharge of pollutants into our waters.

Two major strategies were embodied in the act to achieve these goals. First, a large Federal grant program was established to help local areas construct sewage treatment plants. According to the Congressional Budget Office, $52 billion—in 1984 dollars—total has been spent by the Federal Government on this Construction Grant Program since 1972.

Second, the act required that all municipal and industrial wastewater be treated before being discharged into waterways, to remove pollutants ranging from organic materials, bacteria, and viruses to toxic chemicals and heavy metals.

Under the act's national pollutant discharge elimination system the Environmental Protection Agency established limits on the maximum allowable discharge of specific pollutants from treatment plants and industrial facilities. These limits were based on available detection and control technologies, and took into account the compliance costs to the regulated community. They are written into permits issued to all such discharging facilities.

Significant progress has been made toward cleaning up the Nation's waters. According to EPA's 1984 national water quality inventory, many of the most severe pollution problems of the 1960's and 1970's have been abated. Moreover, despite substantial growth in the Nation's population, industry, and development, overall water quality remained roughly stable between 1972 and 1982—a major accomplishment. A 1984 study by the Association of State and Interstate Water Pollution Control Administrators found that of 350,000 miles of streams and rivers monitored during this period, water quality improved in 13 percent, stayed the same in 84 percent, and declined in only 3 percent. We have been doing something—several things—right.

The Clean Water Act Amendments of 1986 strengthen and add to our currrent statutes. I will review briefly the most important provisions in these amendments.

CONSTRUCTION GRANTS FOR SEWAGE TREATMENT PLANTS

S. 1 authorizes $18 billion in Federal support over 8 years for the construction grants program, on a 55-percent Federal, 45-percent State basis. This program enables construction and upgrading of sewage treatment plants. The goal is to have all sewage treatment plants achieve secondary treatment by 1988—a process which removes 85 percent of solid and organic matter. In 1989, the revolving fund plan begins, the goal of which is to convert the States' Construction Grants Program into a self-financing program. Such an approach has worked extremely well in Texas and other States. The Governor will have the discretion to apportion grant funds and loan funds in order to meet the particular needs of his or her State. With wise planning, the States should make this transition without any disruption in their current schedules of priority work.

I am pleased that the current allocation formula for construction grants has been left virtually in place. This formula, which is based on the current EPA needs survey, correctly reflects the immediate needs in our urban areas in the Great Lakes and Chesapeake Bay regions. Our older cities place the greatest population pressures on the water systems, which also tend to be the oldest systems. New York receives $268 million annually under this allocation.

NONPOINT SOURCE POLLUTION

This bill provides $400 million to initiate the first national program to control nonpoint source pollution, primarily runoff from agriculture and urban areas. Scientists at EPA have determined that nonpoint source pollution—pollution not from a single pipe or outfall—is a significant contributor

to degredation of water quality. This includes runoff contaminated by fertilizers and other chemicals, as well as runoff from city streets which often contains high levels of salts and oils.

As part of this effort, conferees worked diligently with cities and counties as well as with environmental groups to devise a stormwater permit system that would improve water quality without being too costly or too cumbersone for EPA to administer. A recent court decision had ordered EPA to issue permits for virtually all storm sewers, which would have required EPA to issue 50,000 more permits on top of the 65,000 point source permits EPA already issues. This would have diverted EPA personnel efforts from control of toxic contaminants in water to a paper shuffling exercise that would not be result in environmental improvements in most cases. The conference agreed on a provision which would require permits from industrial discharges to storm sewers, and from cities over 250,000 in population where those discharges are significant contributors to pollution.

CLEAN LAKES PROGRAM

S. 1 provides $85 million for a Clean Lakes Program which States can use to clean up silted lakes, and to lime acidified lakes.

ESTUARIES PROGRAM

The bill provides $48 million for an Estuary Research Program, which identifies several estuaries of national importance, including New York and New Jersey Harbor. Under this provision EPA can offer up to $10 million per year on a 50-percent matching basis to States to study and implement cleanup in the New York-New Jersey Harbor area.

BAN ON DUMPING OF SLUDGE IN THE NEW YORK BIGHT

The bill bans, as of December 1987, any additional users from dumping sewage sludge in the New York Bight 12 miles off Sandy Hook, NJ. The bill also restricts the use of the site 106 miles off the coast to those currently using the 12-mile site.

FUNDS FOR BOSTON TREATMENT PLANTS

S. 1 includes $100 million to fund sewage treatment plants in Boston Harbor, assisting Boston in complying with its court ordered directive to stop dumping sludge in the ocean.

GREAT LAKES OFFICE

The conferees agreed to establish a Great Lakes International Coordination Office within EPA to focus on control of toxic pollutants and achievement of goals in the Great Lakes Water Quality Agreement of 1978. The bill also establishes a Great Lakes Research Office with the National Oceanic and Atmospheric Administration to carry out a comprehensive Great Lakes research program, with special attention to sediment control projects.

The Great Lakes office program includes a $11 million annual authorization from 1987 to 1991 for a data base for monitoring and cleanup of the water quality of the lakes, and for priority cleanups of contaminated sediments in five target areas in the Nation, one of which is the Buffalo River in New York.

TOXIC HOTSPOTS

The Clean Water Act Amendments of 1987 establish a new Toxic Hotspot Program which requires EPA and the States to work together to identify toxic hotspots which require special attention and additional controls. EPA has already tentatively identified 34 of these areas which may require more stringent controls than the "best available technology" standard currently mandated by the act. Albany, Rochester, and Syracuse were areas in New York listed by EPA for this priority attention. In addition, the International Joint Commission has identified 42 areas of concern for toxic pollutants in the Great Lakes. These include the Buffalo River, Eighteen Mile Creek, Rochester Embayment, Oswego River, Niagara River and St. Lawrence River in New York. EPA will review the IJC's recommendations in augmenting its toxic hotspot program.

All in all, this is a most worthy bill. I join my chairman, Senator BURDICK, colleagues on the Environment and Public Works Committee, and other cosponsors in urging its immediate consideration and passage. I ask unanimous consent that an appendix listing priority water projects in New York State be printed in the RECORD at this point. I ask, too, that a report summarizing in detail the Great Lakes office and toxic pollutants provisions, prepared by the Northeast-Midwest Institute be printed as an appendix at this point in the RECORD.

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

APPENDIX A

ESTIMATE OF FEDERAL CONTRIBUTION TO PRIORITY WATER TREATMENT FACILITIES IN NEW YORK STATE

	Estimated total cost	Estimated Federal share
Project (FY 1987):		
Ft. Covington (St. Lawrence County)	$2,726,000	$1,499,300
Village of Oxford (Chenango County)	4,610,600	2,535,830
Village of Gowanda (Cattaraugus County)	9,700,000	5,335,000
Village of Croghan (Lewis County)	2,700,000	1,485,000
Schuylerville (Washington County)	1,268,500	697,675
Cuba (Allegany County)	2,900,000	1,595,000
Cedar Creek Sewage Plant (Nassau County)	48,000,000	36,000,000
Mamaroneck Sewer District (Westchester County)	8,625,000	4,743,750
Dewey Eastman Tunnel (Monroe County)	24,300,000	13,365,000
City of Gloversville (Fulton County)	6,170,000	3,393,500
Batavia (Genesee County)	28,776,000	15,826,000
Buffalo (Erie County)	5,589,565	3,074,261
South Glens Falls (Saratoga County)	3,500,000	1,925,000
Chautauqua (Chautauqua County)	440,477	310,457
Binghamton (Broome County)	11,831,300	6,507,215
Cheektowaga (Erie County)	872,765	654,564
Cheektowaga (Erie County)	263,050	144,678
Great Neck (Nassau County)	16,277,681	8,952,724
Do	2,990,776	1,644,927
Westchester County (New Rochelle)	650,000	487,000
Greece (Monroe County)	1,043,500	573,925
Rochester (Monroe County)	13,500,000	10,125,000
LeRoy (Genesee County)	437,333	328,000
Owls Head (Brooklyn)	14,816,963	11,112,722
Do	48,588,494	36,441,370
Do	53,119,363	39,839,523
Oakwood Beach (Staten Island)	49,000,000	26,950,000
Do	5,000,000	3,750,000
Project (after 1987):		
Oakwood Beach (Staten Island)	100,000,000	NA
Owls Head (Brooklyn)	87,000,000	NA
Coney Island (Brooklyn)	280,000,000	NA
Bay Park (Nassau County)	53,000,000	NA
Mamaroneck (Westchester County)	116,000,000	NA
Rochester (Monroe County)	27,000,000	NA
Oriskamy Falls (Oneida County)	4,300,000	NA
Stillwater (Saratoga County)	1,300,000	NA
Bolivar (Allegany County)	2,200,000	NA

APPENDIX B

Attached is a detailed summary of the toxic hotspot provisions of the Clean Water Act Amendments, S. 1128 in the 99th Congress, S. 1 in the 100th Congress. Included is a list compiled by EPA in 1982, which EPA will augment under the new Act. EPA may add to its toxic hotspot list based on recommendations by the U.S.-Canadian International Joint Commission, which has identified 42 areas in the Great Lakes in the U.S. and Canada which are badly contaminated.

Source: Northeast Midwest Institute, Eric Schaeffer (202) 544-5200.

II. TOXIC HOTSPOTS (S. 1128)

Background

There are two primary approaches to controlling water pollution under the Clean Water Act. The first is to measure the quality of water into which pollutants are being released, to determine which industries are responsible for the pollution, and to require those parties to reduce their discharges by the amount needed to make the water at least "fishable and swimmable." The second is simply to require all industries to reduce their discharges to a predetermined level, based on the best pollution control that is economically achievable. The latter, "best available technology" (BAT) standard has been the exclusive method of regulations thus far, due to the technical difficulty of water-quality based permitting.

However, it has become clear that in certain areas, the water may remain unacceptably contaminated with toxic pollutants even after all the industries have applied BAT. In 1982, the EPA tentatively identified 34 of these areas; the 19 in the Northeast and Midwest are identified below.

Hartford, CT, Gary, IN, Des Moines, IA, Pittsfield, MA, Springfield, MA, Midland/Saginaw, MI, Minneapolis/St. Paul, MN, Passaic, NJ, Albany, NY, Rochester, NY, Syracuse, NY, Canton, OH, Dayton, OH, Lima, OH, Youngstown, OH, Allentown, PA. Philadelphia, PA, Pittsburgh, PA, Scranton, PA.

EPA stressed that the identification was preliminary, stating that "The list was compiled not from water samples but rather through paper and pencil calculations on toxic pollutants that may be present, based upon the industries that discharges to these waterways and the amount of toxic pollutants they discharge."

The United States-Canada International Joint Commission has identified 42 areas of the Great Lakes shoreline in the United States and Canada that are badly contami-

nated by toxic pollutants. It is possible that some of these areas on the U.S. side may eventually be listed for regulation under the toxic hotspot provision established by the conference report. Attachment 2 provides a list of the locations of the 42 "areas of concern" identified by the IJC, and their sources of contamination.

Conference report

The conference report requires EPA to develop guidelines for use by states in identifying those areas 1) where water quality would remain below the acceptable standard 2) due primarily to toxic pollution from industrial dischargers 3) after those industries had applied to their plants the best available technology for controlling pollution. The states then would have two years to identify the areas within their jurisdictions that fell under the federal guidelines. EPA would be required to identify any toxic hotspots within a state that failed to meet the deadline.

States then would have another two years to develop individual control strategies to further limit pollution from point sources, and an additional three years to bring water quality to the required standard by putting those strategies into effect. EPA would be required to develop and implement control strategies for those states that failed to meet the deadline. The conference report would allow the agency to waive the more stringent point source requirements for no more than five years for industries that could show that 1) the current control technology was the maximum economically feasible for that industry and 2) that it was sufficient to make "reasonable further progress" toward meeting water quality standards.

Part of the problem with water quality based permitting is that EPA has lagged behind in developing criteria that can be used to develop effective water quality standards. The conference report would require EPA to develop those criteria within three years of enactment, and would require states to incorporate them into the water quality standards upon which individual control strategies would be based.

III. GREAT LAKES (S. 1128)

Background

The National Academy of Sciences (NAS) reported last year that the population of the Great Lakes basin was exposed to appreciably more toxic substances than that of the U.S. as a whole, due in part to the consumption of contaminated fish from the area. The report criticized EPA's neglect of the U.S.-Canada Water Quality Agreement, a comprehensive treaty establishing ambitious goals for the elimination of toxic discharges to the Lakes. The NAS critique reflected concerns raised by the General Accounting Office in the latter's 1982 report highlighting the disorganization and underfunding characterizing U.S. Great Lakes programs.

Conference report

The conference report includes a title establishing for the first time a comprehensive U.S. program for the cleanup of the Great Lakes. The amendment provides explicit congressional recognition of the Water Quality Agreement, and designates EPA's Great Lakes National Program Office (GLNPO) as the lead agency responsible for U.S. compliance with the agreement. GLNPO would have to establish a toxics monitoring and surveillance network for the lakes, and to develop and coordinate a multi-agency program for cleanup.

ATTACHMENT 2

[Sources of pollution for Great Lakes areas of concern]

Area of Concern	In-place pollutants	Industrial point sources	Municipal point sources	Urban nonpoint	Rural nonpoint	Combined sewer overflows	Waste disposal sites	Unknown
Peninsula Harbour, Ontario	X		X					
Jackfish Bay, Ontario	X		X					
Nipigon Bay, Ontario	X		X					
Thunder Bay, Ontario	X		X					
St. Louis River, MN	X							X
Torch Lake, MI	X		X					X
Deer Lake-Carp River, MI	X							
Manistique River, MI	X		X	X				
Menominee River, WI/MI	X							
Fox River/S. Green Bay, WI	X		X	X				
Sheboygan Harbor, WI	X							
Milwaukee Estuary	X		X	X	X	X	X	
Waukegan Harbor, IL	X							
Grand Calumet River/Indiana Harbor Canal, IN	X		X	X	X	X	X	
Kalamazoo River, MI	X							
Muskegon Lake, MI								
White Lake, WI			X					
Saginaw River/Saginaw Bay, MI	X		X	X				
Collingwood Harbour, Ontario	X			X				X
Penetang Bay to Sturgeon Bay, Ontario				X	X	X		
Spanish River, Ontario	X		X					
Clinton River, MI	X		X	X	X	X	X	
Rouge River, MI	X		X	X	X	X	X	
Raisin River, MI	X		X	X	X	X	X	
Maumee River, OH	X		X	X	X	X	X	
Black River, OH	X		X	X	X	X	X	
Cuyahoga River, OH	X		X	X	X	X	X	
Ashtabula River & Harbor	X		X		X			
Wheatley Harbour, Ontario	X		X	X				X
Buffalo River, NY	X		X	X	X	X	X	
Eighteen Mile Creek, NY	X		X		X	X		
Rochester Embayment, NY	X		X	X	X	X		
Oswego River, NY	X		X	X	X	X	X	
Bay of Quinte, Ontario			X	X	X			
Port Hope, Ontario	X						X	
Toronto Waterfront, Ontario	X		X	X	X	X		
Hamilton Harbour, Ontario	X		X	X	X	X		
St. Mary's River, Ontario/MI	X		X	X	X	X		
St. Clair River, Ontario/MI	X		X	X		X		
Detroit River, Ontario/MI	X		X	X	X	X		X
Niagara River, Ontario/NY	X		X	X	X	X	X	
St. Lawrence River, Ontario/NY	X		X		X	X	X	

Source: Great Lakes Water Quality Board, 1985 Report to Great Lakes Water Quality, Report to the International Joint Commission (Kingston, Ontario, International Joint Commission 1985), p. 4.

The amendment earmarks $14.5 million for creation within the National Oceanic and Atmospheric Administration of a comprehensive environmental data base for the lakes, so that research gathered painstakingly through dozens of individual projects would be banked for future use. The amendment also earmarks $22 million for a special program to begin the task of cleaning up sediments contaminated by toxic pollutants at the Great Lakes areas of concern identified by the International Joint Commission.

These contaminated sediments are a prime source of the toxics infesting Great Lakes fish, and may be stirred up and released into the water by shipping or dredging activities. Five sites are mentioned specifically for demonstration cleanup to ensure that the program gets off the drawing board and to give Congress a basis for evaluating the agency's progress. The five sites are: Sheboygan Harbor, WI; Saginaw River, MI; Grand Calumet Harbor, IN; Ashtabula River, OH; Buffalo River, NY.

Mr. D'AMATO. Mr. President, I rise today to cosponsor the Clean Water Act Reauthorization being introduced by my colleagues on the Environment Committee. This bill is identical to the Clean Water Act Reauthorization I enthusiastically supported last year. Un-

fortunately, despite the fact that many of my colleagues and I contacted President Reagan repeatedly, asking him to sign this bill, this legislation was vetoed in November of last year.

It is vital that this legislation be passed quickly. It contains an authorization of $18 billion over 9 years for the EPA construction grants program. It contains an estuaries program important to Long Island Sound, as well as programs to protect the Great Lakes. It also provides new requirements for management of nonpoint sources of pollution, such as runoff from cities and agricultural areas.

Mr. President, this legislation is the result of extensive efforts during the last Congress, and it enjoys support from a wide range of industrial and environmental groups. It passed unanimously in both Houses last year. There is no reason why we should delay swift enactment of this bill. Therefore, I urge my colleagues in the Senate to join in cosponsoring this legislation.

Mr. WEICKER. Mr. President, today I have joined with a large number of my fellow Senators to reintroduce a bill amending and reauthorizing the Clean Water Act. This is the Nation's only comprehensive water control and management law and symbolizes this country's efforts to clean and safeguard our environment for future generations; 1986 saw near unanimous support for this bill, as introduced today, in Congress. Passage of the bill occurred at the end of the 99th Congress and we watched as the President pocket vetoed the bill which represented years of exhaustive work in both Houses of Congress.

I have no doubt, Mr. President, that this bill will be widely supported again and will indeed become law, possibly in the very near future. I strongly support the Clean Water Act and am very disappointed that the administration would not work with Congress, nor recognize the overwhelming support of this act in protecting our Nation's waterways.

Important among the provisions of this bill is the establishment of a National Estuary Program which will create a national effort in the protection and management of our estuarine and near shore marine areas. Intensive studies such as in the Chesapeake Bay and Long Island Sound should lead to answers and practices which will significantly reduce the inputs of pollution into these estuaries and restore these vast natural resources to a more usable and pristine state. The Construction Grants Program is also of vital importance to municipalities in developing wastewater treatment works. The creation of State revolving loan funds shifts future responsibility for construction costs to States and localities. My State of Connecticut has already created a State fund and is fully committed to continued construction and upgrading of water treatment works. This bill also contains important provisions to manage nonpoint source pollution and to strengthen enforcement and permit standards.

Mr. President, the early reintroduction and the very large support for this bill should be a clear signal to the administration that a failure to accept this reauthorization ignores the will of Congress and the concerns of our citizens throughout the Nation. It is my hope that this bill receives quick consideration and passage. Too many years have gone by for us not to reaffirm our commitment to this country's most important environmental act.

Mr. PELL. Mr. President, I am pleased to join in introducing the Clean Water Act in the 100th Congress. I hope that we will be able to expedite its consideration and passage and, once this is done, that the President will sign it into law without delay.

I commend the members of the Senate Environment and Public Works Committee, including the members of the Environmental Pollution Subcommittee, who labored long and hard to fashion this measure in the 99th Congress.

My colleague, the distinguished junior Senator from Rhode Island [Mr. CHAFEE] is one of those who devoted considerable skill and knowledge to fashioning this measure, which makes several changes to enhance our ability to combat water pollution.

This Clean Water Act authorizes $18 billion over 9 years for grants to help communities build wastewater treatment facilities. Unless we reauthorize this measure, construction delays and shutdowns will start to occur as funding runs out.

This measure also includes a new section designed to reduce pollution from so-called nonpoint sources, such as runoff from agricultural land and the pollutants washed by the rain from our city streets into our streams and rivers.

It also includes the creation of a program for cleaning up toxic hot spots—where quality goals will not be met even after polluters have installed the best available cleanup technologies required under existing law.

The bill, by and large, is an improvement and represents a concerted effort to address our Nation's water pollution problems. I must emphasize, however, that those pollution problems have not been resolved and are not going to just fade away without a continuing national effort to address them.

We set the national standard of "fishable, swimable water" and we made the commitment to put Federal taxpayers dollar to work on a long-range, costly, national effort to meet those standards. Communities that believes us then are finding themselves stuck with paying for the improvements now.

We should not lower our standards and we should not stick State and local communities with the total bill. We must not lower our sights to lesser goals by reducing the national standard. Likewise, we should not try to shift the enormous burden of wastewater treatment construction costs to the State and local governments.

When we first passed the Clean Water Act, along with other landmark environment laws, we made it clear that the Federal Government has a definite role in setting national environmental standards and an equally important role in helping to meet those standards. We must not abandon either of those vital roles.

Mr. HEINZ. Mr. President, water quality is among the most pressing problems that communities across the Nation must face. For State and local governments, this is not an easy time. The loss of revenue sharing, reductions in aid to State and local governments generally, and rising costs put our cities and towns into a tight squeeze. Sewage contruction is among the costliest undertakings, and yet it is critically needed if our drinking water is to be protected.

The slowdown in funding under the Clean Water Act, caused first by congressional delay in approving a reauthorization, and then a pocket veto, is endangering the very health of thousands. In Pennsylvania alone, the Environmental Protection Agency estimated our wastewater treatment needs in 1985 at over $2.1 billion. Even under the Clean Water Act, Pennsylvania receives only $96 million per year in Federal assistance. So it is going to be a while before Pennsylvania, or most States for that matter, find themselves fully meeting the need for protection from wastewater.

Nevertheless, the bill which my colleagues and I are introducing today is a fair and effective compromise which provides effective and timely Federal assistance, while assisting local communities to take on increasing responsibility for the protection of our water resources. I am very pleased to be among the 60 or so cosponsors of this measure, which passed both Houses of Congress unanimously.

Specifically, the legislation before us authorizes $18 billion through fiscal 1994 to aid in the construction of sewage treatment. This figure includes $8.4 billion for State revolving loan funds. These funds would help local communities to receive low-interest loans for future sewage construction.

A very important aspect of the bill for my State, and especially for the Susquehanna River and the Chesa-

peake Bay, is a new program to enhance control of nonpoint source pollution, such as pesticide and agricultural runoff. Nonpoint runoff is responsible for up to 50 percent of our water pollutants.

Equally important is the bill's increased controls on toxic discharges. In addition, estuaries, such as the Delaware River, and lakes, including Lake Erie, will receive increased protection.

Once more, Mr. President, I urge all my colleagues to support this measure, and help to see it enacted in the immediate future. We cannot tolerate a slowdown in construction and enforcement, and yet that is precisely what happens each day that we delay this bill.

Mr. DANFORTH. Mr. President, I am pleased to join as a cosponsor of the Water Quality Act of 1987. I think it appropriate that this bill is to be designated S. 1, since few measures considered by the 100th Congress would have as enduring an impact on our Nation.

S. 1 is identical to legislation vetoed by the President last fall. I do not take that action or the possibility of a second veto lightly. However, I am convinced that these amendments to the Clean Water Act are a responsible and necessary continuation of the Federal Government's commitment to pure, wholesome water throughout our land. Congress must never turn its back on that commitment.

Most immediately, the Water Quality Act would reauthorize the Wastewater Treatment Grants Program at a level of $9.6 billion through 1990. Drawing on Federal funds and their own matching contributions, the States would thereafter be required to establish revolving loan accounts for new construction. Revolving funds will give each State the flexibility to tailor the Construction Grants Program to its needs, and the certainty required for advance planning. Federal funding—amounting to $8.4 billion over fiscal years 1989 through 1994—will ber earmarked for the Revolving Loan Program. In concert with construction grants, these funds should ensure an orderly phaseout of direct Federal payments and allow the States to move forward with long-term strategies for improving water quality.

I am sure that every Member of the Senate has heard from constituents on the need to reauthorize the Wastewater Treatment Grants Program. Washington's inaction has wreaked havoc on construction schedules and planning in Missouri, making compliance with Federal requirements that much more difficult. Prompt passage of the Water Quality Act would bring $67.3 million to Missouri in each of the bill's first 3 years, and resume progress toward clean lakes, rivers, and streams throughout the Nation.

Without detailing the provisions of this legislation, I would mention that the bill addresses one threat to water quality that is particularly prevalent in rural America. Nonpoint pollution, including runoff from city streets, farm land, and mine sites, may account for as much as half of all pollution in our waters. By its very nature, though, nonpoint pollution is more difficult to control and regulate then emissions from pipes and similar "point sources."

Going beyond the Clean Water Act's current focus on municipal sewage and industrial wastes, S. 1 would authorize a new, $400 million program to combat nonpoint pollution. Especially in rural areas, success will depend upon flexibility and popular support. Instead of imposing standards and deadlines at the Federal level, therefore, the bill would initiate new State-Federal partnership. Each State would be required to submit a plan for managing nonpoint pollution to the Environmental Protection Agency, and Federal grants would be available to States whose programs are approved. I believe that nonpoint pollution and the related issue of ground water contamination should and will be addressed by the 100th Congress; the provisions of S. 1 are an excellent place to start.

Passed in 1972, the original Clean Water Act envisioned clean rivers throughout the Nation by 1983, and the elimination of polluting discharges by 1985. Now, almost 15 years later, it is clear that these goals were overly optimistic. Still, the Clean Water Act and other Federal statutes can be credited with a real improvement in the quality of our natural environment and daily life. Many of the most serious water pollution problems of 1972 have been abated, while the decline in overall water quality has been stopped and even reversed.

Mr. President, we should not stray from a course that will lead us to fishable, swimmable waters in every part of the United States. Passage of legislation to reauthorize and improve the programs of the Clean Water Act is an essential step toward that end. I look forward to prompt and favorable action on the Water Quality Act.

Mr. KERRY. Mr. President, I am pleased to rise today as a cosponsor of S. 1, the reauthorization of the Clean Water Act. As my colleagues well know, S. 1 is identical to the conference report that passed the House and Senate unanimously at the end of the 99th Congress and was subsequently vetoed by the President.

The President's veto was a shortsighted and misguided step backward. It has set back the cause of protecting the environment for future generations. The President has clearly abdicated his duty to lead. I am confident, however, that the Congress will today begin the process of showing the administration and the American people that when it comes to protecting the environment, we can speak harmoniously and with conviction.

S. 1 is the result of a great deal of committed work by members of the authorizing committees in both Houses of Congress who fashioned a bill that groups with many divergent interests have enthusiastically endorsed.

In addition to providing construction grant funding to States and localities that have in many cases exhausted their moneys, this legislation will strengthen restrictions on the pollution that is allowed to be discharged into the Nation's waters. Among the new provisions is one that for the first time provides funding and restrictions on so-called nonpoint source pollution which is the result of runoff from farm lands and from city streets.

S. 1 also recognizes that the needs of State and local governments in constructing treatment works has changed. Due to the success of the grants program which has provided more than $50 billion since 1972, the end of the time when the Federal Government provides the bulk of the capital construction costs is in view. S. 1 authorizes the grants program to continue for the next several years before replacing it with seed money for States to create revolving loan funds.

Massachusetts communities have participated in and benefited from the Construction Grants Program and the result has been greatly improved water quality in the commonwealth. But in addition to providing funding for the grants program and amending the discharge restrictions, S. 1 also recognizes some of the special cases that exist in the country that warrant the participation of the Federal Government.

In one case in particular, S. 1 authorizes the appropriation of $100 million to assist in the cleanup of Boston Harbor. While it is a small amount when compared to the $2 billion that it is estimated it will cost to complete the job, it serves as an affirmation of the importance of the cleanup and it will provide some early help to the Massachusetts Water Resources Authority which is the local agency charged with mounting this monumental task. The conferees have responded to the efforts of the Massachusetts delegation who have worked diligently and effectively to demonstrate the unique and severe problems that face Boston Harbor's future. We are indebted to both the Senate and House conferees for their consideration in this matter.

We must be ever vigilant in our efforts to monitor the effectiveness of environmental legislation and this reauthorization reflects the research that we have accumulated in the years

since the Clean Water Act was first enacted in 1972. Certainly our unanimous vote in the last Congress indicates that a consensus exists around the need to modify and supplement environmental legislation. I am proud that today we are taking an important step toward advancing our environmental goals. I look forward to Senate floor consideration of S. 1 in the very near future.

The PRESIDING OFFICER. By a previous motion the distinguished Senator from West Virginia regains the floor.

Mr. BYRD. Mr. President, am I still recognized?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I do not intend to hold the floor too much longer. But I do want to hold the floor a bit longer for reasons which will become evident.

I ask unanimous consent that I may yield to the distinguished Senator from Rhode Island [Mr. CHAFEE], who wishes to speak on the same matter. He is one of the chief cosponsors of the bill. I ask unanimous consent that I may yield to him for 5 minutes without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, first I want to thank the distinguished majority leader for yielding me 5 minutes.

Second, I want to thank the chairman of our full committee for the fine comments he has made about the work I have done on this particular piece of legislation, the clean water bill, in which I am joining him today as cosponsor, the bill we passed in the conference. It came out of the conference which we had with the House last year where I was privileged to be chairman of the Senate conferees.

That bill, as has been mentioned, passed last October in the Senate by a vote of 96 to 0, and was passed in the House by a vote of 408 to 0.

I was very disappointed when the President chose to pocket-veto the bill. At that time I promised we would be back pushing hard to get the identical bill enacted as soon as Congress reconvened. That is why we are here today—to let the American people know we care about clean water and that we are going to do our best to see that this bill becomes law as soon as possible.

This bill has been 5 years in the making. Failure to move quickly on this legislation will seriously delay the cleanup of our rivers and streams and jeopardize hundreds of projects around the country, including several projects in my State of Rhode Island.

It has been charged that this legislation is "budget-busting." That is simply not the case. Although the $18 billion authorized in the bill exceeds the administration's request, it is within current funding levels and conforms to the budget resolution. Although the $18 billion authorized by this bill may sound like a lot of money, and exceeds the administration request, it is a small sum compared to the estimated $100 billion needed to build all the public facilities required to clean up our waters. The bill is within current funding levels and conforms to the budget resolution.

I might say that there is an estimate that the need is for $100 billion and we are coming in with a bill of $18 billion, $2.4 billion a year, which, I would point out, is less than the 1980 amount which was voted.

In 1981 we arrived at an agreement with the administration to go for 10 years at $2.4 billion each year. When you think that this legislation at times has been as high as $5 billion, or close to that figure, the $2.4 billion is a reduction.

The funding level for construction grants lives up to the commitment made by Congress and the administration to support an annual appropriation of $2.4 billion over the 10-year period of 1981 through 1991. The bill even goes one step further. It phases out the construction grants program and turns over financial responsibility for the construction of wastewater facilities to the States by 1994. It will be over. It will be done with.

This legislation, as has been pointed out, also has a major overhaul under what we call the programmatic division. That is, the changes in the standards for clean water which are very important to improving the water quality of our Nation.

The Water Quality Act of 1987 assures compliance with a strong water quality standards program and provides for greater control of toxic, conventional and nonconventional pollutants. It establishes a new program to control pollution from nonpoint sources. It continues funding of wastewater treatment works at the $2.4 billion level through fiscal year 1991, while establishing a revolving loan fund to ease the transition to full State and local sufficiency.

I would like to take a few minutes to explain in greater detail a few of the key provisions of the bill.

The legislation tightens up several regulatory programs. One such program relates to nonconventional pollutants. Under current law modifications can be sought from strong discharge requirements for so-called nonconventional pollutants, many of which can be highly toxic. In an effort to severely limit the circumstances in which these weaker modifications can be given, the bill allows them for only five specific pollutants. If other pollutants are to be listed for a modification, EPA must go through a special procedure.

The legislation contains provisions which severely limit the opportunities for which discharges can obtain modifications for fundamentally different factors.

The bill also contains provisions continuing the Chesapeake Bay Program; it establishes a Great Lakes Water Quality Program and sets up a new National Estuary Program which provides that management conferences develop control strategies to clean up estuaries. This is especially important to the Narragansett Bay in Rhode Island which suffers from degradation of water quality. Funds are also set-aside for correction of combined sewer overflows which cause serious pollution in the Narragansett and other estuaries around the Nation.

A new Nonpoint Source Pollution Control Program is included in this legislation. The program would authorize $400 million over 4 years for States to develop comprehensive programs to abate such pollution sources as runoff from urban areas and farmlands which are often contaminated with toxic and other pollutants.

The bill beefs up the enforcement provisions of the act by increasing penalties for civil and criminal violations and adds a new authority for the Administrator to assess administrative penalties on violators. The EPA has new authority to assess penalties against unpermitted discharges. We expect the Agency to use this authority aggressively against illegal polluters even if a memorandum of agreement is not concluded with the Secretary of the Army. The corps enforcement record against illegal dumpers is not the strongest, and now EPA would have the authority to move against these polluters.

Compliance dates for industries for which effluent guidelines have not been promulgated have been extended to March 1989, or 3 years from date of promulgation, whichever is sooner. The bill strongly encourages EPA to finalize these guidelines so industries can comply with discharge requirements as soon as possible. Until such guidelines are promulgated, the Agency is expected to proceed under its current policy with respect to noncompliance of dischargers who will not meet the deadline.

A provision establishing a progressive Stormwater Control Program is included in the bill. Although the law now requires EPA to establish discharge requirements for the stormwater point sources, the Agency has been unable to develop a final permit program for these sources. This legislation sets up a program whereby EPA must issue permits for stormwater point source discharges in municipalities with populations over 250,000

within 4 years of enactment. Within 5 years of enactment, permits for stormwater point source discharges are required in cities with populations between 100,000 and 250,000. These discharge requirements are to contain control technology or other techniques to control these discharges. Requirements for stormwater discharges associated with industrial activities are unaffected by this provision. This provision provides the guidance EPA needs to rapidly implement this control program.

The bill contains a provision with respect to antibacksliding on best practicable judgment and water quality-based permits. The thrust of this provision is to generally prohibit affected permittees from weakening their discharge requirements as a result of subsequently promulgated guidelines. Only in very narrow circumstances can backsliding be permitted, and in no event can it be permitted even if, after a discharger leaves a stream, there is an improvement in water quality unless the test antidegradation policy test is met. That test states that water quality may be lowered only if widespread adverse social and economic consequences can be demonstrated through a full intergovernmental review process.

The bill extends the current $2.4 billion annual authorization for title II construction grants for 3 years. In fiscal years 1989 and 1990, the annual authorization for title II would be reduced to $1.2 billion. No further authorizations would be made for title II after fiscal year 1990.

Beginning in fiscal year 1989 and continuing in fiscal year 1990, $1.2 billion a year would be authorized specifically for capitalizing revolving loan funds under a new title VI of the law. Thereafter, the loan fund authorization would gradually be reduced by providing $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993, and $600 million in fiscal year 1994. After 1994, all authorizations for direct Federal contributions would end.

As I mentioned earlier, this approach lives up to the commitment made by Congress and the administration to support an annual appropriation of $2.4 billion over the 10-year period of 1981 through 1991 to meet the needs for construction of wastewater treatment facilities.

A slight change is made to the allotment formula for grants to the States and is identical to the bill approved last year.

The revolving loan fund embodied in this legislation will enable the States to eventually assume full responsibility for construction of wastewater treatment facilities in their jurisdictions.

Mr. President, I would like to conclude by saying this legislation gives us an opportunity to renew our commitment to the national goal of making all of our waters fishable and swimmable. The Water Quality Improvement Act of 1987 strengthens the existing provision of the Clean Water Act and establishes new cleanup programs which will greatly assist us in addressing a new generation of subtle—more devastating—problems posed by toxic pollution, stormwater discharges, nonpoint pollution and contamination of sludges.

I would hope my colleagues will again give this bill a resounding show of support and work with me to pass this legislation as soon as possible so we can continue the job of cleaning up our Nation's waters.

There has been talk of the President vetoing this legislation again. That would be a drastic mistake. This bill is within the agreed upon authorization level of $2.4 billion for wastewater treatment facilities passed by the Senate and the budget resolution. It provides for the orderly phaseout of the Construction Grants Program. And most importantly it gives the American people what has been reflected in public opinion polls conducted across the land—that they want clean water.

At this time, Mr. President, I wish to pay tribute not only to the present chairman of our committee, but also our former chairman, the distinguished Senator from Vermont [Mr. STAFFORD], who has been such a pillar in this effort from the beginning. Also, I would like to pay tribute to several other Senators who have worked so hard on this matter. Especially I would like to mention Senators MOYNIHAN, MITCHELL, and BENTSEN, as well as others, who have participated. I particularly think of those Senators.

I thank the majority leader for yielding.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I yield to the Senator from Wisconsin without losing my right to the floor.

Mr. KASTEN. Mr. President, as an original cosponsor of the Clean Water Act, I urge that the Senate act decisively and quickly to adopt this critical legislation.

The Clean Water Act is one of the most important pieces of Federal legislation to protect the health and safety of millions of Americans. It is one of the most fundamental Federal laws protecting our Nation's environment. We can not tolerate any delay in adopting the Clean Water Act.

Many critical improvements are made in this legislation over current law. One of the most important new sections provides for comprehensive environmental management of the Great Lakes.

The Great Lakes contain 20 percent of the world's freshwater. Fully 95 percent of our Nation's fresh surface water is contained in these five lakes.

Yet the Federal efforts to manage and protect these tremendous resources are abysmal. Currently, no Federal agency is charged with overseeing the comprehensive environmental resources of the Great Lakes. The result is a bureaucratic maze that has resulted in mismanagement and environmental damage to the lakes.

Toxics contaminate the Great Lakes in each of the eight lake States. This contamination not only threatens wildlife and recreational use of the lakes, it also threatens human health.

For 3 years we have struggled with writing and adopting legislation to correct the abuses of the lakes. On a bypartisan basis, this section is now supported. An identical measure was approved by each House of Congress last year.

The future of the Nation's waters, and particularly the Great Lakes, is too important to delay. I hope this can be the first piece of legislation adopted by the 100th Congress. That milestone would set the tone for environmental and resource protection in the years ahead.

S. 1

(The text of the bill (S. 1), the Water Quality Act of 1987, is as follows:)

S. 1

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO FEDERAL WATER POLLUTION CONTROL ACT; DEFINITION OF ADMINISTRATOR.

(a) SHORT TITLE.—This Act may be cited as the "Water Quality Act of 1987".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents; amendments to Federal Water Pollution Control Act; definition of Administrator.
Sec. 2. Limitation on payments.

TITLE I—AMENDMENTS TO TITLE I

Sec. 101. Authorizations of appropriations.
Sec. 102. Small flows clearinghouse.
Sec. 103. Chesapeake Bay.
Sec. 104. Great Lakes.
Sec. 105. Research on effects of pollutants.

TITLE II—CONSTRUCTION GRANTS AMENDMENTS

Sec. 201. Time limit on resolving certain disputes.
Sec. 202. Federal share.
Sec. 203. Agreement on eligible costs.
Sec. 204. Design/build projects.
Sec. 205. Grant conditions; user charges on low-income residential users.
Sec. 206. Allotment formula.
Sec. 207. Rural set-aside.
Sec. 208. Innovative and alternative projects.
Sec. 209. Regional organization funding.
Sec. 210. Marine CSO's and estuaries.
Sec. 211. Authorization for construction grants.
Sec. 212. State water pollution control revolving funds.
Sec. 213. Improvement projects.

Sec. 214. Chicago tunnel and reservoir project.
Sec. 215. Ad valorem tax dedication.
TITLE III—STANDARDS AND ENFORCEMENTS
Sec. 301. Compliance dates.
Sec. 302. Modification for nonconventional pollutants.
Sec. 303. Discharges into marine waters.
Sec. 304. Filing deadline for treatment works modification.
Sec. 305. Innovative technology compliance deadlines for direct dischargers.
Sec. 306. Fundamentally different factors.
Sec. 307. Coal remining operations.
Sec. 308. Individual control strategies for toxic pollutants.
Sec. 309. Pretreatment standards.
Sec. 310. Inspection and entry.
Sec. 311. Marine sanitation devices.
Sec. 312. Criminal penalties.
Sec. 313. Civil penalties.
Sec. 314. Administrative penalties.
Sec. 315. Clean lakes.
Sec. 316. Management of nonpoint sources of pollution.
Sec. 317. National estuary program.
Sec. 318. Unconsolidated quaternary aquifer.
TITLE IV—PERMITS AND LICENSES
Sec. 401. Stormwater runoff from oil, gas, and mining operations.
Sec. 402. Additional pretreatment of conventional pollutants not required.
Sec. 403. Partial NPDES program.
Sec. 404. Anti-backsliding.
Sec. 405. Municipal and industrial stormwater discharges.
Sec. 406. Sewage sludge.
Sec. 407. Log transfer facilities.
TITLE V—MISCELLANEOUS PROVISIONS
Sec. 501. Audits.
Sec. 502. Commonwealth of the Northern Mariana Islands.
Sec. 503. Agricultural stormwater discharges.
Sec. 504. Protection of interests of United States in citizen suits.
Sec. 505. Judicial review and award of fees.
Sec. 506. Indian tribes.
Sec. 507. Definition of point source.
Sec. 508. Special provisions regarding certain dumping sites.
Sec. 509. Ocean discharge research project.
Sec. 510. San Diego, California.
Sec. 511. Limitation on discharge of raw sewage by New York City.
Sec. 512. Oakwood Beach and Red Hook Projects, New York.
Sec. 513. Boston Harbor and adjacent waters.
Sec. 514. Wastewater reclamation demonstration.
Sec. 515. Des Moines, Iowa.
Sec. 516. Study of de minimis discharges.
Sec. 517. Study of effectiveness of innovative and alternative processes and techniques.
Sec. 518. Study of testing procedures.
Sec. 519. Study of pretreatment of toxic pollutants.
Sec. 520. Studies of water pollution problems in aquifers.
Sec. 521. Great Lakes consumptive use study.
Sec. 522. Sulfide corrosion study.
Sec. 523. Study of rainfall induced infiltration into sewer systems.
Sec. 524. Dam water quality study.
Sec. 525. Study of pollution in Lake Pend Oreille, Idaho.

(c) AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act.

(d) DEFINITION.—For purposes of this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 2. LIMITATION ON PAYMENTS.

No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

TITLE I—AMENDMENTS TO TITLE I

SEC. 101. AUTHORIZATIONS OF APPROPRIATIONS.

(a) RESEARCH AND INVESTIGATIONS.—Section 104(u) is amended—

(1) in clause (1) by striking out "and" after "1975,", after "1980,", and after "1981,", and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and not to exceed $22,770,000 per fiscal year for each of the fiscal years 1986 through 1990,";

(2) in clause (2) by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $3,000,000 per fiscal year for each of the fiscal years 1986 through 1990,"; and

(3) in clause (3) by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $1,500,000 per fiscal year for each of the fiscal years 1986 through 1990,".

(b) GRANTS FOR PROGRAM ADMINISTRATION.—Section 106(a)(2) is amended by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $75,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

(c) TRAINING GRANTS AND SCHOLARSHIPS.—Section 112(c) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $7,000,000 per fiscal year for each of the fiscal years 1986 through 1990,".

(d) AREAWIDE PLANNING.—Section 208(f)(3) is amended by striking out "and" after "1974," and after "1980," and by inserting after "1982" the following: ", and such sums as may be necessary for fiscal years 1983 through 1990".

(e) RURAL CLEAN WATER.—Section 208(j)(9) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "and such sums as may be necessary for fiscal years 1983 through 1990,".

(f) INTERAGENCY AGREEMENTS.—Section 304(k)(3) is amended by inserting after "1983" the following: "and such sums as may be necessary for fiscal years 1984 through 1990".

(g) CLEAN LAKES.—Section 314(c)(2) is amended by striking out "and" after "1981," and by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $30,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

(h) GENERAL AUTHORIZATION.—Section 517 is amended by striking out "and" after "1981," and by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $135,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

SEC. 102. SMALL FLOWS CLEARINGHOUSE.

Section 104(q) is amended by adding at the end thereof the following new paragraph:

"(4) SMALL FLOWS CLEARINGHOUSE.—Notwithstanding section 205(d) of this Act, from amounts that are set aside for a fiscal year under section 205(i) of this Act and are not obligated by the end of the 24-month period of availability for such amounts under section 205(d), the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques, consistent with paragraph (3). This paragraph shall apply with respect to amounts set aside under section 205(i) for which the 24-month period of availability referred to in the preceding sentence ends on or after September 30, 1986.".

SEC. 103. CHESAPEAKE BAY.

Title I is amended by adding at the end the following new section:

"SEC. 117. CHESAPEAKE BAY.

"(a) OFFICE.—The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an office, division, or branch of Chesapeake Bay Programs to—

"(1) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the Chesapeake Bay (hereinafter in this subsection referred to as the 'Bay');

"(2) coordinate Federal and State efforts to improve the water quality of the Bay;

"(3) determine the impact of sediment deposition in the Bay and identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

"(4) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on striped bass.

"(b) INTERSTATE DEVELOPMENT PLAN GRANTS.—

"(1) AUTHORITY.—The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter in this section referred to as the 'plan'), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within 1 year after the date of the enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Such grants shall be made subject to such terms and conditions as the Administrator considers appropriate.

"(2) SUBMISSION OF PROPOSAL.—A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State or com-

bination of States commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in such section, the Administrator shall approve such proposal and shall finance the costs of implementing segments of such proposal.

"(3) FEDERAL SHARE.—Grants under this subsection shall not exceed 50 percent of the costs of implementing the management mechanisms contained in the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the management mechanisms contained in the plan during such fiscal year.

"(4) ADMINISTRATIVE COSTS.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this subsection.

"(c) REPORTS.—Any State or combination of States that receives a grant under subsection (b) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

"(1) $3,000,000 per fiscal year for each of the fiscal years 1987, 1988, 1989, and 1990, to carry out subsection (a); and

"(2) $10,000,000 per fiscal year for each of the fiscal years 1987, 1988, 1989, and 1990, for grants to States under subsection (b).".

SEC. 104. GREAT LAKES.

Title I is amended by adding at the end the following new section:

"SEC. 118. GREAT LAKES.

"(a) FINDINGS, PURPOSE, AND DEFINITIONS.—

"(1) FINDINGS.—The Congress finds that—

"(A) the Great Lakes are a valuable national resource, continuously serving the people of the United States and other nations as an important source of food, fresh water, recreation, beauty, and enjoyment;

"(B) the United States should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978 with particular emphasis on goals related to toxic pollutants; and

"(C) the Environmental Protection Agency should take the lead in the effort to meet those goals, working with other Federal agencies and State and local authorities.

"(2) PURPOSE.—It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the Agency, funding of State grants for pollution control in the Great Lakes area, and improved accountability for implementation of such agreement.

"(3) DEFINITIONS.—For purposes of this section, the term—

"(A) 'Agency' means the Environmental Protection Agency;

"(B) 'Great Lakes' means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

"(C) 'Great Lakes System' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes;

"(D) 'Program Office' means the Great Lakes National Program Office established by this section; and

"(E) 'Research Office' means the Great Lakes Research Office established by subsection (d).

"(b) GREAT LAKES NATIONAL PROGRAM OFFICE.—The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

"(c) GREAT LAKES MANAGEMENT.—

"(1) FUNCTIONS.—The Program Office shall—

"(A) in cooperation with appropriate Federal, State, tribal, and international agencies, and in accordance with section 101(e) of this Act, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lakes Water Quality Agreement of 1978;

"(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants;

"(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency;

"(D) coordinate actions of the Agency (including actions by headquarters and regional offices thereof) aimed at improving Great Lakes water quality; and

"(E) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities, so as to ensure the input of those agencies and authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objectives of such agreement.

"(2) 5-YEAR PLAN AND PROGRAM.—The Program Office shall develop, in consultation with the States, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

"(3) 5-YEAR STUDY AND DEMONSTRATION PROJECTS.—The Program Office shall carry out a five-year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments. In selecting locations for conducting demonstration projects under this paragraph, priority consideration shall be given to projects at the following locations: Saginaw Bay, Michigan; Sheboygan Harbor, Wisconsin; Grand Calumet River, Indiana; Ashtabula River, Ohio; and Buffalo River, New York.

"(4) ADMINISTRATOR'S RESPONSIBILITY.—The Administrator shall ensure that the Program Office enters into agreements with the various organizational elements of the Agency involved in Great Lakes activities and the appropriate State agencies specifically delineating—

"(A) the duties and responsibilities of each such element in the Agency with respect to the Great Lakes;

"(B) the time periods for carrying out such duties and responsibilities; and

"(C) the resources to be committed to such duties and responsibilities.

"(5) BUDGET ITEM.—The Administrator shall, in the Agency's annual budget submission to Congress, include a funding request for the Program Office as a separate budget line item.

"(6) COMPREHENSIVE REPORT.—Within 90 days after the end of each fiscal year, the Administrator shall submit to Congress a comprehensive report which—

"(A) describes the achievements in the preceding fiscal year in implementing the Great Lakes Water Quality Agreement of 1978 and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts expended on Great Lakes water quality initiatives in such preceding fiscal year;

"(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes System, including the monitoring of groundwater and sediment, with particular reference to toxic pollutants;

"(C) describes the long-term prospects for improving the condition of the Great Lakes; and

"(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978, which assessment shall—

"(i) show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates; and

"(ii) include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes water quality management efforts.

"(d) GREAT LAKES RESEARCH.—

"(1) ESTABLISHMENT OF RESEARCH OFFICE.—There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

"(2) IDENTIFICATION OF ISSUES.—The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report to Congress on such issues before the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

"(3) INVENTORY.—The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs (and, to the extent feasible, those of private organizations and other nations) relating to the Great Lakes system,

and shall update that inventory every four years.

"(4) RESEARCH EXCHANGE.—The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are ongoing or completed and which affect the Great Lakes System.

"(5) RESEARCH PROGRAM.—The Research Office shall develop, in cooperation with the Coordination Office, a comprehensive environmental research program and data base for the Great Lakes system. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

"(6) MONITORING.—The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College program, other Federal laboratories, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

"(7) LOCATION.—The Research Office shall be located in a Great Lakes State.

"(e) RESEARCH AND MANAGEMENT COORDINATION.—

"(1) JOINT PLAN.—Before October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins in the following calendar year.

"(2) CONTENTS OF PLAN.—Each plan prepared under paragraph (1) shall—

"(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water Quality Agreement of 1978;

"(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such Agreement; and

"(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes System and establish priorities for development of such data base.

"(f) INTERAGENCY COOPERATION.—The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish and Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration, shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

"(g) RELATIONSHIP TO EXISTING FEDERAL AND STATE LAWS AND INTERNATIONAL TREATIES.—Nothing in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of any international body created by treaty with authority relating to the Great Lakes.

"(h) AUTHORIZATIONS OF GREAT LAKES APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section not to exceed $11,000,000 per fiscal year for the fiscal years 1987, 1988, 1989, 1990, and 1991. Of the amounts appropriated each fiscal year—

"(1) 40 percent shall be used by the Great Lakes National Program Office on demonstration projects on the feasibility of controlling and removing toxic pollutants;

"(2) 7 percent shall be used by the Great Lakes National Program Office for the program of nutrient monitoring; and

"(3) 30 percent shall be transferred to the National Oceanic and Atmospheric Administration for use by the Great Lakes Research Office.".

SEC. 105. RESEARCH ON EFFECTS OF POLLUTANTS.

In carrying out the provisions of section 104(a) of the Federal Water Pollution Control Act, the Administrator shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjunction with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal, State, and interstate agencies carrying on such research. Such research shall include, and shall place special emphasis on, the effect that bioaccumulation of these pollutants in aquatic species has upon reducing the value of aquatic commercial and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

TITLE II—CONSTRUCTION GRANTS AMENDMENTS

SEC. 201. TIME LIMIT ON RESOLVING CERTAIN DISPUTES.

Section 201 is amended by adding at the end thereof the following new subsection:

"(p) TIME LIMIT ON RESOLVING CERTAIN DISPUTES.—In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 90 days of the filing of such appeal.".

SEC. 202. FEDERAL SHARE.

(a) LIMITATION ON ELIGIBILITY AFTER 1990.—The last sentence of section 202(a)(1) is amended by inserting before the period at the end the following: "for any grant made pursuant to a State obligation which obligation occurred before October 1, 1990".

(b) PROJECTS UNDER JUDICIAL INJUNCTION.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 percent of the cost of construction thereof.".

(c) PROJECTS UNDER JUDICIAL ORDER AND OTHER PROJECTS.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of the Wyoming Valley Sanitary Authority project mandated by judicial order under a proceeding begun prior to October 1, 1984, and a project for wastewater treatment for Altoona, Pennsylvania, such projects shall be eligible for grants at 75 percent of the cost of construction thereof.".

(d) BIODISC EQUIPMENT.—Section 202(a)(3) is amended by adding at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contactors) in any publicly owned treatment works if the Administrator finds that such equipment has failed to meet design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

(e) INNOVATIVE PROCESS.—The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 percent of the cost thereof.

(f) AVAILABILITY OF CERTAIN FUNDS FOR NON-FEDERAL SHARE.—Notwithstanding any other provision of law, Federal assistance made available by the Farmers Home Administration to any political subdivision of a State may be used to provide the non-Federal share of the cost of any construction project carried out under section 201 of the Federal Water Pollution Control Act.

SEC. 203. AGREEMENT ON ELIGIBLE COSTS.

Section 203(a) is amended by inserting "(1)" after "(a)", by designating the last sentence as paragraph (3) and indenting such sentence as a paragraph, and by inserting before paragraph (3) as so designated the following:

"(2) AGREEMENT ON ELIGIBLE COSTS.—

"(A) LIMITATION ON MODIFICATIONS.—Before taking final action on any plans, specifications, and estimates submitted under this subsection after the 60th day following the date of the enactment of the Water Quality Act of 1987, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.

"(B) LIMITATION ON EFFECT.—Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 501 of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.".

SEC. 204. DESIGN/BUILD PROJECTS.

Section 203 is amended by adding at the end the following new subsection:

"(f) DESIGN/BUILD PROJECTS.—

"(1) AGREEMENT.—Consistent with State law, an applicant who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) LIMITATION ON PROJECTS.—Agreements under this subsection shall be limited to projects under an approved facility plan which projects are—

"(A) treatment works that have an estimated total cost of $8,000,000 or less; and

"(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

"(3) REQUIRED TERMS.—An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

"(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than 1 year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

"(4) LIMITATION ON APPLICATION.—Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

"(5) RESERVATION TO ASSURE COMPLIANCE.—The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) LIMITATION ON OBLIGATIONS.—The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) ALLOWANCE.—The Administrator shall determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(l).

"(8) LIMITATION ON FEDERAL CONTRIBUTIONS.—In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (3).

"(9) RECOVERY ACTION.—In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(10) PREVENTION OF DOUBLE BENEFITS.—A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title for the same project.".

SEC. 205. GRANT CONDITIONS; USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.

(a) INCLUSION OF PROJECT IN AREAWIDE PLAN.—Section 204(a)(1) is amended to read as follows:

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) CONTINUING PLANNING PROCESS.—Section 204(a)(2) is amended to read as follows:

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.—Section 204(b)(1) is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.".

(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act, except that the amendments made by subsections (a) and (b) shall take effect on the last day of the two-year period beginning on such date of enactment.

SEC. 206. ALLOTMENT FORMULA.

(a) FORMULA.—

(1) EXTENSION OF EXISTING FORMULA FOR 1986.—Section 205(c)(2) is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, and September 30, 1986,".

(2) FISCAL YEARS 1987-1990.—Section 205(c) is amended by adding at the end the following new paragraph:

"(3) FISCAL YEARS 1987-1990.—Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the 10th day which begins after the date of the enactment of this paragraph. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

"States:

Alabama	.011309
Alaska	.006053
Arizona	.006831
Arkansas	.006616
California	.072333
Colorado	.008090
Connecticut	.012390
Delaware	.004965
District of Columbia	.004965
Florida	.034139
Georgia	.017100
Hawaii	.007833
Idaho	.004965
Illinois	.045741
Indiana	.024374
Iowa	.013688
Kansas	.009129
Kentucky	.012872
Louisiana	.011118
Maine	.007829
Maryland	.024461
Massachusetts	.034338
Michigan	.043487
Minnesota	.018589
Mississippi	.009112
Missouri	.028037
Montana	.004965
Nebraska	.005173
Nevada	.004965
New Hampshire	.010107
New Jersey	.041329
New Mexico	.004965
New York	.111632
North Carolina	.018253
North Dakota	.004965
Ohio	.056936
Oklahoma	.008171
Oregon	.011425
Pennsylvania	.040062
Rhode Island	.006791
South Carolina	.010361
South Dakota	.004965
Tennessee	.014692
Texas	.046226
Utah	.005329
Vermont	.004965
Virginia	.020698
Washington	.017588
West Virginia	.015766
Wisconsin	.027342
Wyoming	.004965
American Samoa	.000908
Guam	.000657
Northern Marianas	.000422
Puerto Rico	.013191
Pacific Trust Territories	.001295
Virgin Islands	.000527".

(b) EXTENSION OF MINIMUM ALLOTMENTS.—Section 205(e) is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, 1988, 1989, and 1990".

(c) COSTS OF ADMINISTRATION.—Section 205(g)(1) is amended by striking out "October 1, 1985" and inserting in lieu thereof "October 1, 1994".

(d) CONTROL OF POLLUTANTS FROM STORM SEWERS.—Section 211(c) is amended by striking out "1985," and inserting in lieu thereof "1990,".

SEC. 207. RURAL SET ASIDE.

(a) INCREASE IN MANDATORY SET ASIDE FOR RURAL STATES.—The first sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "a total (as determined by the Governor of the State) of not less than 4 percent nor more than 7½ percent".

(b) INCREASE IN AUTHORIZED SET ASIDE FOR OTHER STATES.—The second sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "7½ percent".

SEC. 208. INNOVATIVE AND ALTERNATIVE PROJECTS.

Section 205(i) is amended to read as follows:

"(i) SET-ASIDE FOR INNOVATIVE AND ALTERNATIVE PROJECTS.—Not less than ½ of 1 percent of funds allotted to a State for each of the fiscal years ending September 30, 1979, through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 percent of the funds allotted to a State for each of the fiscal years ending September

30, 1979, and September 30, 1980, and 3 percent of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 percent nor more than 7½ percent of the funds allotted to such State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.".

SEC. 209. REGIONAL ORGANIZATION FUNDING.

Section 205(j)(3) is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 40 percent of the amount granted to such State for a fiscal year under paragraph (2) of this subsection to regional public comprehensive planning organizations in such State and appropriate interstate organizations for the development and implementation of the plan described in this paragraph. In any fiscal year for which the Governor, in consultation with such organizations and with the approval of the Administrator, determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in development and implementation of the plan described in this paragraph and achieving the goals of this Act, the allocation to such organization may be less than 40 percent of such amount.".

SEC. 210. MARINE CSO'S AND ESTUARIES.

Section 205 is amended by adding at the end thereof the following new subsection:

"(l) MARINE ESTUARY RESERVATION.—

"(1) RESERVATION OF FUNDS.—

"(A) GENERAL RULE.—Prior to making allotments among the States under subsection (c) of this section, the Administrator shall reserve funds from sums appropriated pursuant to section 207 for each fiscal year beginning after September 30, 1986.

"(B) FISCAL YEARS 1987 AND 1988.—For each of fiscal years 1987 and 1988 the reservation shall be 1 percent of the sums appropriated pursuant to section 207 for such fiscal year.

"(C) FISCAL YEARS 1989 AND 1990.—For each of fiscal years 1989 and 1990 the reservation shall be 1½ percent of the funds appropriated pursuant to section 207 for such fiscal year.

"(2) USE OF FUNDS.—Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act, relating to the national estuary program.

"(3) PERIOD OF AVAILABILITY.—Sums reserved under this subsection shall be subject to the period of availability for obligation established by subsection (d) of this section.

"(4) TREATMENT OF CERTAIN BODY OF WATER.—For purposes of this section and section 201(n), Newark Bay, New Jersey, and the portion of the Passaic River up to Little Falls, in the vicinity of Beatties Dam, shall be treated as a marine bay and estuary.".

SEC. 211. AUTHORIZATIONS FOR CONSTRUCTION GRANTS.

Section 207 is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "; and for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30, 1990, not to exceed $1,200,000,000.".

SEC. 212. STATE WATER POLLUTION CONTROL REVOLVING FUNDS.

(a) ESTABLISHMENT OF PROGRAM.—The Act is amended by adding at the end thereof the following new title:

"TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

"SEC. 601. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

"(a) GENERAL AUTHORITY.—Subject to the provisions of this title, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conservation and management plan under section 320.

"(b) SCHEDULE OF GRANT PAYMENTS.—The Administrator and each State shall jointly establish a schedule of payments under which the Administrator will pay to the State the amount of each grant to be made to the State under this title. Such schedule shall be based on the State's intended use plan under section 606(c) of this Act, except that—

"(1) such payments shall be made in quarterly installments, and

"(2) such payments shall be made as expeditiously as possible, but in no event later than the earlier of—

"(A) eight quarters after the date such funds were obligated by the State, or

"(B) twelve quarters after the date such funds were allotted to the State.

"SEC. 602. CAPITALIZATION GRANT AGREEMENTS.

"(a) GENERAL RULE.—To receive a capitalization grant with funds made available under this title and section 205(m) of this Act, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

"(b) SPECIFIC REQUIREMENTS.—The Administrator shall enter into an agreement under this section with a State only after the State has established to the satisfaction of the Administrator that—

"(1) the State will accept grant payments with funds to be made available under this title and section 205(m) of this Act in accordance with a payment schedule established jointly by the Administrator under section 601(b) of this Act and will deposit all such payments in the water pollution control revolving fund established by the State in accordance with this title;

"(2) the State will deposit in the fund from State moneys an amount equal to at least 20 percent of the total amount of all capitalization grants which will be made to the State with funds to be made available under this title and section 205(m) of this Act on or before the date on which each quarterly grant payment will be made to the State under this title;

"(3) the State will enter into binding commitments to provide assistance in accordance with the requirements of this title in an amount equal to 120 percent of the amount of each such grant payment within 1 year after the receipt of such grant payment;

"(4) all funds in the fund will be expended in an expeditious and timely manner;

"(5) all funds in the fund as a result of capitalization grants under this title and section 205(m) of this Act will first be used to assure maintenance of progress, as determined by the Governor of the State, toward compliance with enforceable deadlines, goals, and requirements of this Act, including the municipal compliance deadline;

"(6) treatment works eligible under section 603(c)(1) of this Act which will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants under this title and section 205(m) of this Act will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act;

"(7) in addition to complying with the requirements of this title, the State will commit or expend each quarterly grant payment which it will receive under this title in accordance with laws and procedures applicable to the commitment or expenditure of revenues of the State;

"(8) in carrying out the requirements of section 606 of this Act, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

"(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards; and

"(10) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 606(d) of this Act.

"SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

"(a) REQUIREMENTS FOR OBLIGATION OF GRANT FUNDS.—Before a State may receive a capitalization grant with funds made available under this title and section 205(m) of this Act, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

"(b) ADMINISTRATION.—Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this Act.

"(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and imple-

mentation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.

"(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

"(1) to make loans, on the condition that—

"(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed 20 years;

"(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized not later than 20 years after project completion;

"(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

"(D) the fund will be credited with all payments of principal and interest on all loans;

"(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

"(3) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

"(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds will be deposited in the fund;

"(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

"(6) to earn interest on fund accounts; and

"(7) for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this title.

"(e) LIMITATION TO PREVENT DOUBLE BENEFITS.—If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) of this Act for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

"(f) CONSISTENCY WITH PLANNING REQUIREMENTS.—A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, 303(e), 319, and 320 of this Act.

"(g) PRIORITY LIST REQUIREMENT.—The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.

"(h) ELIGIBILITY OF NON-FEDERAL SHARE OF CONSTRUCTION GRANT PROJECTS.—A State water pollution control revolving fund may provide assistance (other than under subsection (d)(1) of this section) to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a treatment works project for which such municipality or agency is receiving assistance from the Administrator under any other authority only if such assistance is necessary to allow such project to proceed.

"SEC. 604. ALLOTMENT OF FUNDS.

"(a) FORMULA.—Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.

"(b) RESERVATION OF FUNDS FOR PLANNING.—Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act.

"(c) ALLOTMENT PERIOD.—

"(1) PERIOD OF AVAILABILITY FOR GRANT AWARD.—Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

"(2) REALLOTMENT OF UNOBLIGATED FUNDS.—The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the second fiscal year of such 2-year period. None of the funds reallotted by the Administrator shall be reallotted to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

"SEC. 605. CORRECTIVE ACTION.

"(a) NOTIFICATION OF NONCOMPLIANCE.—If the Administrator determines that a State has not complied with its agreement with the Administrator under section 602 of this Act or any other requirement of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action.

"(b) WITHHOLDING OF PAYMENTS.—If a State does not take corrective action within 60 days after the date a State receives notification of such action under subsection (a), the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

"(c) REALLOTMENT OF WITHHELD PAYMENTS.—If the Administrator is not satisfied that adequate corrective actions have been taken by the State within 12 months after the State is notified of such actions under subsection (a), the payments withheld from the State by the Administrator under subsection (b) shall be made available for reallotment in accordance with the most recent formula for allotment of funds under this title.

"SEC. 606. AUDITS, REPORTS, AND FISCAL CONTROLS; INTENDED USE PLAN.

"(a) FISCAL CONTROL AND AUDITING PROCEDURES.—Each State electing to establish a water pollution control revolving fund under this title shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for—

"(1) payments received by the fund;

"(2) disbursements made by the fund; and

"(3) fund balances at the beginning and end of the accounting period.

"(b) ANNUAL FEDERAL AUDITS.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the water pollution revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

"(c) INTENDED USE PLAN.—After providing for public comment and review, each State shall annually prepare a plan identifying the intended uses of the amounts available to its water pollution control revolving fund. Such intended use plan shall include, but not be limited to—

"(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 216 of this Act and a list of activities eligible for assistance under sections 319 and 320 of this Act;

"(2) a description of the short- and long-term goals and objectives of its water pollution control revolving fund;

"(3) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV of this Act, terms of financial assistance, and communities served;

"(4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 602(b) of this Act; and

"(5) the criteria and method established for the distribution of funds.

"(d) ANNUAL REPORT.—Beginning the first fiscal year after the receipt of payments under this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c), including identification of loan recipients, loan amounts, and loan terms and similar details on other forms of financial assistance provided from the water pollution control revolving fund.

"(e) ANNUAL FEDERAL OVERSIGHT REVIEW.—The Administrator shall conduct an annual oversight review of each State plan prepared under subsection (c), each State report prepared under subsection (d), and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a water pollution control revolving fund, the State or loan recipient shall make available to the Administrator such records as the Administrator reasonably requires to review and determine compliance with this title.

"(f) APPLICABILITY OF TITLE II PROVISIONS.—Except to the extent provided in this title, the provisions of title II shall not apply to grants under this title.

"SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out the purposes of this title the following sums:

"(1) $1,200,000,000 per fiscal year for each of fiscal years 1989 and 1990;

"(2) $2,400,000,000 for fiscal year 1991;

"(3) $1,800,000,000 for fiscal year 1992;

"(4) $1,200,000,000 for fiscal year 1993; and

"(5) $600,000,000 for fiscal year 1994.".

(b) STATE-OPTION TO USE TITLE II FUNDS.—Section 205 is amended by adding at the end thereof the following new subsection:

"(m) DISCRETIONARY DEPOSITS INTO STATE WATER POLLUTION CONTROL REVOLVING FUNDS.—

"(1) FROM CONSTRUCTION GRANT ALLOTMENTS.—In addition to any amounts deposited in a water pollution control revolving fund established by a State under title VI, upon request of the Governor of such State, the Administrator shall make available to the State for deposit, as capitalization grants, in such fund in any fiscal year beginning after September 30, 1986, such amount of the amounts allotted to such State under this section for such fiscal year as the Governor considers appropriate; except that (A) in fiscal year 1987, such deposit may not exceed 50 percent of the amounts allotted to such State under this section for such fiscal year, and (B) in fiscal year 1988, such deposit may not exceed 75 percent of the amounts allotted to such State under this section for this fiscal year.

"(2) NOTICE REQUIREMENT.—The Governor of a State may make a request under paragraph (1) for a deposit into the water pollution control revolving fund of such State—

"(A) in fiscal year 1987 only if no later than 90 days after the date of the enactment of this subsection, and

"(B) in each fiscal year thereafter only if 90 days before the first day of such fiscal year,

the State provides notice of its intent to make such deposit.

"(3) EXCEPTION.—Sums reserved under section 205(j) of this Act shall not be available for obligation under this subsection.".

(c) REPORT TO CONGRESS.—Section 516 is amended by adding at the end thereof the following new subsection:

"(g) STATE REVOLVING FUND REPORT.—

"(1) IN GENERAL.—Not later than February 10, 1990, the Administrator shall submit to Congress a report on the financial status and operations of water pollution control revolving funds established by the States under title VI of this Act. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

"(2) CONTENTS.—The report under this subsection shall also include the following:

"(A) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

"(B) an estimate of the cost of construction necessary to bring such facilities into compliance with such requirements;

"(C) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for providing assistance for such construction through September 30, 1999, from the water pollution control revolving funds established by the States under title VI of this Act;

"(D) an assessment of the operations, loan portfolio, and loan conditions of such revolving funds;

"(E) an assessment of the effect on user charges of the assistance provided by such revolving funds compared to the assistance provided with funds appropriated pursuant to section 207 of this Act; and

"(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such revolving funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 201 of this Act.".

SEC. 213. IMPROVEMENT PROJECTS.

(a) AVALON, CALIFORNIA.—The Administrator shall make a grant of $3,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1987 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

(b) WALKER AND SMITHFIELD TOWNSHIPS, PENNSYLVANIA.—Out of funds available for grants in the State of Pennsylvania under the third sentence of section 201(g)(1) of the Federal Water Pollution Control Act in fiscal year 1987, the Administrator shall make grants—

(1) to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and

(2) to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

(c) TAYLOR MILL, KENTUCKY.—Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of such Act to the State of Kentucky for fiscal year 1986 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

(d) NEVADA COUNTY, CALIFORNIA.—Out of funds available for grants in the State of California under the third sentence of section 201(g)(1) of the Federal Water Pollution Control Act in fiscal year 1987, the Administrator shall make a grant for the construction of a collection system serving the Glenshire/Devonshire area of Nevada County, California, to deliver waste to the Tahoe-Truckee Sanitary District's regional wastewater treatment facility.

(e) TREATMENT WORKS FOR WANAQUE, NEW JERSEY.—In fiscal year 1987 and succeeding fiscal years, the Administrator shall make grants to the Wanaque Valley Regional Sewerage Authority, New Jersey, from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of New Jersey for such fiscal year, for the construction of treatment works with a total treatment capacity of 1,050,000 gallons per day (including a treatment module with a treatment capacity of 350,000 gallons per day). Notwithstanding section 202 of such Act, the Federal share of the cost of construction of such treatment works shall be 75 percent.

(f) TREATMENT WORKS FOR LENA, ILLINOIS.—The Administrator shall make grants to the village of Lena, Illinois, from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Illinois for fiscal years beginning after September 30, 1986, for the construction of a replacement moving bed filter press for the treatment works of such village. Notwithstanding section 202 of the Federal Water Pollution Control Act, the Federal share of the cost of construction of such project shall be 75 percent.

(g) PRIORITY FOR COURT-ORDERED AND OTHER PROJECTS.—The State of Pennsylvania, from funds allotted to it under section 205 of the Federal Water Pollution Control Act, shall give priority for construction of—

(1) the Wyoming Valley Sanitary Authority Secondary Treatment project mandated under Federal court order, regardless of the date of start of construction made pursuant to the court order; and

(2) a project for wastewater treatment for Altoona, Pennsylvania.

SEC. 214. CHICAGO TUNNEL AND RESERVOIR PROJECT.

The Chicago tunnel and reservoir project may receive grants under the last sentence of section 201(g)(1) of the Federal Water Pollution Control Act without regard to the limitation contained in such sentence if the Administrator determines that such project meets the cost-effectiveness requirements of sections 217 and 218 of such Act without any redesign or reconstruction and if the Governor of the affected State demonstrates to the satisfaction of the Administrator the water quality benefits of such project.

SEC. 215. AD VALOREM TAX DEDICATION.

For the purposes of complying with section 204(b)(1) of the Federal Water Pollution Control Act, the ad valorem tax user charge systems of the town of Hampton and the city of Nashua, New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator shall review such ad valorem tax user charge systems for compliance with the remaining requirements of such section and related regulations of the Environmental Protection Agency.

TITLE III—STANDARDS AND ENFORCEMENTS

SEC. 301. COMPLIANCE DATES.

(a) PRIORITY TOXIC POLLUTANTS.—Section 301(b)(2)(C) is amended by striking out "not later than July 1, 1984," and inserting after "of this paragraph" the following: "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989".

(b) OTHER TOXIC POLLUTANTS.—Section 301(b)(2)(D) is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989".

(c) CONVENTIONAL POLLUTANTS.—Section 301(b)(2)(E) is amended by striking "not later than July 1, 1984," and inserting in lieu thereof "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989, compliance with".

(d) OTHER POLLUTANTS.—Section 301(b)(2)(F) is amended by striking "not" after "subparagraph (A) of this paragraph" and inserting in lieu thereof "as expeditiously as practicable but in no case", and by striking "or not later than July 1, 1984," and all that follows through the end of the sentence and inserting in lieu thereof "and in no case later than March 31, 1989.".

(e) STRICTER BPT.—Section 301(b) is amended by adding at the end the following new paragraph:

"(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but

in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989; and

"(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Water Quality Act of 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.".

(f) DEADLINES FOR REGULATIONS FOR CERTAIN TOXIC POLLUTANTS.—The Administrator shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

Category	Date by which the final regulation shall be promlulgated
Organic chemicals and plastics and synthetic fibers.	December 31, 1986.
Pesticides	December 31, 1986.

SEC. 302. MODIFICATION FOR NONCONVENTIONAL POLLUTANTS.

(a) LISTING OF POLLUTANTS.—Section 301(g) is amended by redesignating paragraph (2) (and any references thereto) as paragraph (3) and by striking out all that precedes subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(g) MODIFICATIONS FOR CERTAIN NONCONVENTIONAL POLLUTANTS.—

"(1) GENERAL AUTHORITY.—The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

"(2) REQUIREMENTS FOR GRANTING MODIFICATIONS.—A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that—".

(b) PROCEDURE FOR LISTING ADDITIONAL POLLUTANTS; REMOVAL.—Section 301(g) is further amended by adding at the end thereof the following new paragraphs:

"(4) PROCEDURES FOR LISTING ADDITIONAL POLLUTANTS.—

"(A) GENERAL AUTHORITY.—Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges) in accordance with the provisions of this paragraph.

"(B) REQUIREMENTS FOR LISTING.—

"(i) SUFFICIENT INFORMATION.—The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

"(ii) TOXIC CRITERIA DETERMINATION.—The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 307(a) of this Act.

"(iii) LISTING AS TOXIC POLLUTANT.—If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 307(a), the Administrator shall list the pollutant as a toxic pollutant under section 307(a).

"(iv) NONCONVENTIONAL CRITERIA DETERMINATION.—If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

"(C) REQUIREMENTS FOR FILING OF PETITIONS.—A petition for listing of a pollutant under this paragraph—

"(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304;

"(ii) may be filed before promulgation of such guideline; and

"(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

"(D) DEADLINE FOR APPROVAL OF PETITION.—A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 304.

"(E) BURDEN OF PROOF.—The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

"(5) REMOVAL OF POLLUTANTS.—The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.".

(c) DEADLINE FOR APPROVAL OF MODIFICATIONS.—Section 301(j) is amended—

(1) in paragraph (2) by striking out "Any" and inserting in lieu thereof "Subject to paragraph (3) of this section, any"; and

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

"(3) COMPLIANCE REQUIREMENTS UNDER SUBSECTION (g).—

"(A) EFFECT OF FILING.—An application for a modification under subsection (g) and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this Act for all pollutants not the subject of such application or petition.

"(B) EFFECT OF DISAPPROVAL.—Disapproval of an application for a modification under subsection (g) shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this Act.

"(4) DEADLINE FOR SUBSECTION (g) DECISION.—An application for a modification with respect to a pollutant filed under subsection (g) must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.".

(d) CONFORMING AMENDMENTS.—(1) Paragraph (3) of section 301(g), as redesignated by subsection (a) of this section, is amended by inserting "LIMITATION ON AUTHORITY TO APPLY FOR SUBSECTION (c) MODIFICATION.—" before "If an owner" and by aligning such paragraph with paragraph (4) of such section, as added by subsection (b) of this section.

(2) Paragraph (2) of section 301(g) (as designated by subsection (a) of this section) is amended by realigning subparagraphs (A), (B), and (C) with subparagraph (A) of paragraph (4), as added by subsection (b) of this section.

(e) APPLICATION.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section shall apply to all requests for modifications under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of this Act and shall not have the effect of extending the deadline established in section 301(j)(1)(B) of such Act.

(2) EXCEPTION.—The amendments made by this section shall not affect any application for a modification with respect to the discharge of ammonia, chlorine, color, iron, or total phenols (4AAP) under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of this Act; except that the Administrator must approve or disapprove such application not later than 365 days after the date of such enactment.

SEC. 303. DISCHARGES INTO MARINE WATERS.

(a) CONSIDERATION OF OTHER SOURCES OF POLLUTANTS.—Section 301(h)(2) is amended by striking out "such modified requirements will not interfere" and inserting in lieu thereof the following: "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,".

(b) LIMITATION ON SCOPE OF MONITORING.—

(1) GENERAL RULE.—Section 301(h)(3) is amended by inserting before the semicolon at the end thereof the following: ", and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge".

(2) LIMITATION ON APPLICABILITY.—The amendment made by subsection (b) shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act.

(c) URBAN AREA PRETREATMENT PROGRAM.—Section 301(h) is amended by redesignating paragraphs (6) and (7), and any references thereto, as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in

combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;".

(d) PRIMARY TREATMENT FOR EFFLUENT.—

(1) GENERAL RULE.—Section 301(h) is amended by striking out the period at the end of paragraph (8) (as redesignated by subsection (c) of this section) and inserting in lieu thereof a semicolon and by inserting after such paragraph (8) the following new paragraph:

"(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of this Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.".

(2) PRIMARY OR EQUIVALENT TREATMENT DEFINED.—Such section is further amended by inserting after the second sentence the following new sentence: "For the purposes of paragraph (9), 'primary or equivalent treatment' means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.".

(e) LIMITATIONS ON ISSUANCE OF PERMITS.—Section 301(h) is further amended by adding at the end thereof the following new sentences: "In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.".

(f) APPLICATION FOR OCEAN DISCHARGE MODIFICATION.—Section 301(j)(1)(A) is amended by inserting before the semicolon at the end thereof the following: ", except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h), may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Act of 1987".

(g) GRANDFATHER OF CERTAIN APPLICANTS.—The amendments made by subsections (a), (c), (d), and (e) of this section shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act; except that such amendments shall apply to all renewals of such permits after such date of enactment.

SEC. 304. FILING DEADLINE FOR TREATMENT WORKS MODIFICATION.

(a) EXTENSION.—The second sentence of section 301(i)(1) is amended by striking out "of this subsection." and inserting in lieu thereof "of the Water Quality Act of 1987.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall not apply to those treatment works which are subject to a compliance schedule established before the date of the enactment of this Act by a court order or a final administrative order.

SEC. 305. INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS.

(a) EXTENSION OF DEADLINE.—Section 301(k) is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection,".

(b) EXTENSION TO CONVENTIONAL POLLUTANTS.—Section 301(k) is amended by inserting "or (b)(2)(E)" after "(b)(2)(A)" each place it appears.

SEC. 306. FUNDAMENTALLY DIFFERENT FACTORS.

(a) GENERAL RULE.—Section 301 is amended by adding at the end the following new subsections:

"(n) FUNDAMENTALLY DIFFERENT FACTORS.—

"(1) GENERAL RULE.—The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

"(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304(b) or 304(g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

"(B) the application—

"(i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

"(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

"(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

"(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

"(2) TIME LIMIT FOR APPLICATIONS.—An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

"(3) TIME LIMIT FOR DECISION.—The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

"(4) SUBMISSION OF INFORMATION.—The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

"(5) TREATMENT OF PENDING APPLICATIONS.—For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on the date of the enactment of this subsection shall be treated as having been submitted to the Administrator on the 180th day following such date of enactment. The applicant may amend the application to take into account the provisions of this subsection.

"(6) EFFECT OF SUBMISSION OF APPLICATION.—An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

"(7) EFFECT OF DENIAL.—If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

"(8) REPORTS.—Every 6 months after the date of the enactment of this subsection, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 301 or 304 of this Act or any national categorical pretreatment standard under section 307(b) of this Act filed before, on, or after such date of enactment.

"(o) APPLICATION FEES.—The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of section 301, section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled 'Water Permits and Related Services' which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.".

(b) CONFORMING AMENDMENT.—Section 301(l) is amended by striking out "The" and inserting in lieu thereof "Other than as provided in subsection (n) of this section, the".

(c) PHOSPHATE FERTILIZER EFFLUENT LIMITATION.—

(1) LIMITATION ON APPLICABILITY.—The effluent limitation established by the Administrator pursuant to section 301(b) of the Federal Water Pollution Control Act for the phosphate subcategory of the fertilizer manufacturing point source category shall not apply to facilities which had commenced construction on or before April 8, 1974, and for which the Administrator is proposing to revise the applicability of such limitations to exclude such facilities.

(2) ISSUANCE OF PERMIT.—As soon as possible after the date of the enactment of this Act, but not later than 180 days after such date of enactment, the Administrator shall issue permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act with respect to the facilities described in paragraph (1). Such permits shall remain in effect until, after such date of enactment, issuance of a permit under effluent guidelines applicable to discharges for the phosphate subcategory.

SEC. 307. COAL REMINING OPERATIONS.

Section 301 is amended by adding at the end thereof the following:

"(p) MODIFIED PERMIT FOR COAL REMINING OPERATIONS.—

"(1) IN GENERAL.—Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 402(b), may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

"(2) LIMITATIONS.—The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 303 of this Act.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) COAL REMINING OPERATION.—The term 'coal remining operation' means a coal mining operation which begins after the date of the enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(B) REMINED AREA.—The term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(C) PRE-EXISTING DISCHARGE.—The term 'pre-existing discharge' means any discharge at the time of permit application under this subsection.

"(4) APPLICABILITY OF STRIP MINING LAWS.—Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.".

SEC. 308. INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.

(a) IN GENERAL.—Section 304 is amended by adding at the end thereof the following new subsection:

"(l) INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.—

"(1) STATE LIST OF NAVIGABLE WATERS AND DEVELOPMENT OF STRATEGIES.—Not later than 2 years after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

"(A) a list of those waters within the State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

"(B) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

"(C) for each segment of the navigable waters included on such lists, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

"(D) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 402 of this Act and water quality standards under section 303(c)(2)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

"(2) APPROVAL OR DISAPPROVAL.—Not later than 120 days after the last day of the 2-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

"(3) ADMINISTRATOR'S ACTION.—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than 1 year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of paragraph (1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day."

(b) JUDICIAL REVIEW.—Section 509(b)(1) is amended—

(1) by striking out "and (F)" and inserting in lieu thereof "(F)"; and

(2) by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

(c) GUIDANCE TO STATES; INFORMATION ON WATER QUALITY CRITERIA FOR TOXICS.—Section 304(a) is amended by adding at the end the following new paragraphs:

"(7) GUIDANCE TO STATES.—The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within 9 months after the date of the enactment of the Water Quality Act of 1987, guidance to the States on performing the identification required by section 304(l)(1) of this Act.

"(8) INFORMATION ON WATER QUALITY CRITERIA.—The Administrator, after consultation with appropriate State agencies and within 2 years after the date of the enactment of the Water Quality Act of 1987, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.".

(d) WATER QUALITY CRITERIA FOR TOXIC POLLUTANTS.—Section 303(c)(2) is amended by inserting "(A)" after "(2)" and by adding the following new subparagraph:

"(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.".

(e) MODIFICATIONS OF EFFLUENT LIMITATIONS.—

(1) IN GENERAL.—Section 302(b) is amended to read as follows:

"(b) MODIFICATIONS OF EFFLUENT LIMITATIONS.—

"(1) NOTICE AND HEARING.—Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within 90 days of such publication hold a public hearing.

"(2) PERMITS.—

"(A) NO REASONABLE RELATIONSHIP.—The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

"(B) REASONABLE PROGRESS.—The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed 5 years if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (i) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (ii) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.".

(2) CONFORMING AMENDMENTS.—Section 302(a) is amended—

(A) by inserting "or as identified under section 304(l)" after "in the judgment of the Administrator"; and

(B) by inserting "public health," after "protection of".

(f) SCHEDULE FOR REVIEW OF GUIDELINES.—Section 304 is amended by adding at the end the following new subsection:

"(m) SCHEDULE FOR REVIEW OF GUIDELINES.—

"(1) PUBLICATION.—Within 12 months after the date of the enactment of the Water Quality Act of 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall—

"(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

"(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

"(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than 4 years after such date of enactment for categories identified in the first published plan or 3 years after the publication of the plan for categories identified in later published plans.

"(2) PUBLIC REVIEW.—The Administrator shall provide for public review and comment on the plan prior to final publication.".

(g) WATER QUALITY IMPROVEMENT STUDY.—

(1) STUDY.—The Administrator shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of the application of best available technology economically achievable pursuant to such section in attaining applicable water quality standards (including the standard specified in section 302(a) of such Act) and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 309. PRETREATMENT STANDARDS.

(a) EXTENSION OF COMPLIANCE DATE BY POTW.—Section 307 is amended by adding at the end the following:

"(e) COMPLIANCE DATE EXTENSION FOR INNOVATIVE PRETREATMENT SYSTEMS.—In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years—

"(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

"(2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator)—

"(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402 or of section 405 or to contribute to such a violation, and

"(B) concurs with the proposed extension.".

(b) INCREASE IN EPA EMPLOYEES.—The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

SEC. 310. INSPECTION AND ENTRY.

(a) UNAUTHORIZED DISCLOSURE.—

(1) IN GENERAL.—Section 308(b) is amended by striking out all that follows "Code" and inserting in lieu thereof a period and the following: "Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.".

(2) CONFORMING AMENDMENT.—Section 308(a)(B) is amended by inserting "(including an authorized contractor acting as a representative of the Administrator)" after "or his authorized representative".

(b) ACCESS BY CONGRESS.—Section 308 is amended by adding at the end the following new subsection:

"(d) ACCESS BY CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of Congress, to such committee.".

SEC. 311. MARINE SANITATION DEVICES.

(a) STATE REGULATION OF HOUSEBOATS.—Section 312(f)(1) is amended by striking out "After" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), after" and by adding at the end thereof the following:

"(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term 'houseboat' means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.".

(b) STATE ENFORCEMENT.—Section 312(k) is amended by adding at the end the following: "The provisions of this section may also be enforced by a State.".

SEC. 312. CRIMINAL PENALTIES.

Section 309(c) is amended to read as follows:

"(c) CRIMINAL PENALTIES.—

"(1) NEGLIGENT VIOLATIONS.—Any person who—

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or by both.

"(2) KNOWING VIOLATIONS.—Any person who—

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8)

of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than 6 years, or by both.

"(3) KNOWING ENDANGERMENT.—

"(A) GENERAL RULE.—Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

"(B) ADDITIONAL PROVISIONS.—For the purpose of subparagraph (A) of this paragraph—

"(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(I) the person is responsible only for actual awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

"(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent;

and such defense may be established under this subparagraph by a preponderance of the evidence;

"(iii) the term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

"(iv) the term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(4) FALSE STATEMENTS.—Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

"(5) TREATMENT OF SINGLE OPERATIONAL UPSET.—For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

"(6) RESPONSIBLE CORPORATE OFFICER AS 'PERSON'.—For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(7) HAZARDOUS SUBSTANCE DEFINED.—For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

SEC. 313. CIVIL PENALTIES.

(a) VIOLATIONS OF PRETREATMENT REQUIREMENTS.—

(1) GENERAL RULE.—Section 309(d) is amended by inserting ", or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act," after "section 404 of this Act by a State,".

(2) SAVINGS PROVISION.—No State shall be required before July 1, 1988, to modify a permit program approved or submitted under section 402 of the Federal Water Pollution Control Act as a result of the amendment made by paragraph (1).

(b) INCREASED PENALTY.—

(1) GENERAL RULE.—Section 309(d) is amended by striking out "$10,000 per day of such violation" and inserting in lieu thereof "$25,000 per day for each violation".

(2) INCREASED PENALTIES NOT REQUIRED UNDER STATE PROGRAMS.—The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in section 309(d) of such Act which has the same monetary amount as the civil penalty established by such section, as amended by paragraph (1). Nothing in this paragraph shall affect the Administrator's authority to establish or adjust by regulation a minimum acceptable State civil penalty.

(c) FACTORS TO CONSIDER IN DETERMINING PENALTY AMOUNT.—Section 309(d) is amended by adding at the end thereof the following: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.".

(d) VIOLATIONS OF SECTION 404 PERMITS.—Section 404(s) is amended—

(1) by striking out paragraph (4);

(2) by redesignating paragraph (5) as paragraph (4); and

(3) in paragraph (4), as so redesignated—

(A) by striking out "$10,000 per day of such violation" and inserting in lieu thereof "$25,000 per day for each violation";

(B) by adding at the end thereof the following: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

SEC. 314. ADMINISTRATIVE PENALTIES.

(a) GENERAL RULE.—Section 309 is amended by adding at the end thereof the following:

"(g) ADMINISTRATIVE PENALTIES.—

"(1) VIOLATIONS.—Whenever on the basis of any information available—

"(A) the Administrator finds that any person has violated section 301, 302, 306, 307, 308, 318, or 405 of this Act, or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 by a State, or

"(B) the Secretary of the Army (hereinafter in this subsection referred to as the 'Secretary') finds that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under this subsection.

"(2) CLASSES OF PENALTIES.—

"(A) CLASS I.—The amount of a class I civil penalty under paragraph (1) may not exceed $10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed $25,000. Before issuing an order assessing a civil penalty under this subparagraph, the

Administrator or the Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) CLASS II.—The amount of a class II civil penalty under paragraph (1) may not exceed $10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed $125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Administrator and the Secretary may issue rules for discovery procedures for hearings under this subparagraph.

"(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed under this subsection, the Administrator or the Secretary, as the case may be, shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

"(4) RIGHTS OF INTERESTED PERSONS.—

"(A) PUBLIC NOTICE.—Before issuing an order assessing a civil penalty under this subsection the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

"(B) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection and of the order assessing such penalty. In any hearing held under this subsection, such person shall have a reasonable opportunity to be heard and to present evidence.

"(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under paragraph (2) before issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with paragraph (2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

"(5) FINALITY OF ORDER.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (8) or a hearing is requested under paragraph (4)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

"(6) EFFECT OF ORDER.—

"(A) LIMITATION ON ACTIONS UNDER OTHER SECTIONS.—Action taken by the Administrator or the Secretary, as the case may be, under this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act; except that any violation—

"(i) with respect to which the Administrator or the Secretary has commenced and is diligently prosecuting an action under this subsection,

"(ii) with respect to which a State has commenced and is diligently prosecuting an action under a State law comparable to this subsection, or

"(iii) for which the Administrator, the Secretary, or the State has issued a final order not subject to further judicial review and the violator has paid a penalty assessed under this subsection, or such comparable State law, as the case may be,

shall not be the subject of a civil penalty action under subsection (d) of this section or section 311(b) or section 505 of this Act.

"(B) APPLICABILITY OF LIMITATION WITH RESPECT TO CITIZEN SUITS.—The limitations contained in subparagraph (A) on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which—

"(i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under this subsection, or

"(ii) notice of an alleged violation of section 505(a)(1) of this Act has been given in accordance with section 505(b)(1)(A) prior to commencement of an action under this subsection and an action under section 505(a)(1) with respect to such alleged violation is filed before the 120th day after the date on which such notice is given.

"(7) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or the Secretary under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

"(8) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this subsection or who commented on the proposed assessment of such penalty in accordance with paragraph (4) may obtain review of such assessment—

"(A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

"(B) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or the Secretary, as the case may be, and the Attorney General. The Administrator or the Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

"(9) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become final, or

"(B) after a court in an action brought under paragraph (8) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,

the Administrator or the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

"(10) SUBPOENAS.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(11) PROTECTION OF EXISTING PROCEDURES.—Nothing in this subsection shall change the procedures existing on the day before the date of the enactment of the Water Quality Act of 1987 under other subsections of this section for issuance and enforcement of orders by the Administrator.".

(b) REPORTS ON ENFORCEMENT MECHANISMS.—The Secretary of the Army and the Administrator shall each prepare and submit a report to the Congress, not later than December 1, 1988, which shall examine and analyze various enforcement mechanisms for use by the Secretary or Administrator, as the case may be, including an administrative civil penalty mechanism. Each of such reports shall also include an examination, prepared in consultation with the Comptroller General, of the efficacy of the Secretary's or the Administrator's existing

enforcement authorities and shall include recommendations for improvements in their operation.

(c) CONFORMING AMENDMENT.—Section 505(a) is amended by inserting "and section 309(g)(6)" after "Except as provided in subsection (b) of this section".

SEC. 315. CLEAN LAKES.

(a) ESTABLISHMENT AND SCOPE OF PROGRAM.—Section 314(a) is amended to read as follows:

"(a) ESTABLISHMENT AND SCOPE OF PROGRAM.—

"(1) STATE PROGRAM REQUIREMENTS.—Each State on a biennial basis shall prepare and submit to the Administrator for his approval—

"(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

"(B) a description of procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes;

"(C) a description of methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes;

"(D) methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;

"(E) a list and description of those publicly owned lakes in such State for which uses are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

"(F) an assessment of the status and trends of water quality in lakes in such State, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

"(2) SUBMISSION AS PART OF 305(b)(1) REPORT.—The information required under paragraph (1) shall be included in the report required under section 305(b)(1) of this Act, beginning with the report required under such section by April 1, 1988.

"(3) REPORT OF ADMINISTRATOR.—Not later than 180 days after receipt from the States of the biennial information required under paragraph (1), the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status of water quality in lakes in the United States, including the effectiveness of the methods and procedures described in paragraph (1)(D).

"(4) ELIGIBILITY REQUIREMENT.—Beginning after April 1, 1988, a State must have submitted the information required under paragraph (1) in order to receive grant assistance under this section.".

(b) DEMONSTRATION PROGRAM.—Section 314 is amended by adding at the end thereof the following new subsections:

"(d) DEMONSTRATION PROGRAM.—

"(1) GENERAL REQUIREMENTS.—The Administrator is authorized and directed to establish and conduct at locations throughout the Nation a lake water quality demonstration program. The program shall, at a minimum—

"(A) develop cost effective technologies for the control of pollutants to preserve or enhance lake water quality while optimizing multiple lakes uses;

"(B) control nonpoint sources of pollution which are contributing to the degradation of water quality in lakes;

"(C) evaluate the feasibility of implementing regional consolidated pollution control strategies;

"(D) demonstrate environmentally preferred techniques for the removal and disposal of contaminated lake sediments;

"(E) develop improved methods for the removal of silt, stumps, aquatic growth, and other obstructions which impair the quality of lakes;

"(F) construct and evaluate silt traps and other devices or equipment to prevent or abate the deposit of sediment in lakes; and

"(G) demonstrate the costs and benefits of utilizing dredged material from lakes in the reclamation of despoiled land.

"(2) GEOGRAPHICAL REQUIREMENTS.—Demonstration projects authorized by this subsection shall be undertaken to reflect a variety of geographical and environmental conditions. As a priority, the Administrator shall undertake demonstration projects at Lake Houston, Texas; Beaver Lake, Arkansas; Greenwood Lake and Belcher Creek, New Jersey; Deal Lake, New Jersey; Alcyon Lake, New Jersey; Gorton's Pond, Rhode Island; Lake Washington, Rhode Island; Lake Bomoseen, Vermont; Sauk Lake, Minnesota; and Lake Worth, Texas.

"(3) REPORTS.—The Administrator shall report annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate on work undertaken pursuant to this subsection. Upon completion of the program authorized by this subsection, the Administrator shall submit to such committees a final report on the results of such program, along with recommendations for further measures to improve the water quality of the Nation's lakes.

"(4) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There is authorized to be appropriated to carry out this subsection not to exceed $40,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

"(B) SPECIAL AUTHORIZATIONS.—

"(i) AMOUNT.—There is authorized to be appropriated to carry out subsection (b) with respect to subsection (a)(1)(D) not to exceed $15,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

"(ii) DISTRIBUTION OF FUNDS.—The Administrator shall provide for an equitable distribution of sums appropriated pursuant to this subparagraph among States carrying out approved methods and procedures. Such distribution shall be based on the relative needs of each such State for the mitigation of the harmful effects on lakes and other surface waters of high acidity that may reasonably be due to acid deposition or acid mine drainage.

"(iii) GRANTS AS ADDITIONAL ASSISTANCE.—The amount of any grant to a State under this subparagraph shall be in addition to, and not in lieu of, any other Federal financial assistance.".

(c) LAKE RESTORATION GUIDANCE MANUAL.—Section 304(j) is amended to read as follows:

"(j) LAKE RESTORATION GUIDANCE MANUAL.—The Administrator shall, within 1 year after the date of the enactment of the Water Quality Act of 1987 and biennially thereafter, publish and disseminate a lake restoration guidance manual describing methods, procedures, and processes to guide State and local efforts to improve, restore, and enhance water quality in the Nation's publicly owned lakes.".

(d) CONFORMING AMENDMENTS.—Section 314 is further amended—

(1) in subsection (b) by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1) by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2) by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

SEC. 316. MANAGEMENT OF NONPOINT SOURCES OF POLLUTION.

(a) IN GENERAL.—Title III is amended by adding at the end the following new section:

"SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.

"(a) STATE ASSESSMENT REPORTS.—

"(1) CONTENTS.—The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which—

"(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act;

"(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

"(C) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

"(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i).

"(2) INFORMATION USED IN PREPARATION.—In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treat-

ment management plans developed pursuant to sections 208(b) and 303, to the extent such elements are consistent with and fulfill the requirements of this section.

"(b) STATE MANAGEMENT PROGRAMS.—

"(1) IN GENERAL.—The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

"(2) SPECIFIC CONTENTS.—Each management program proposed for implementation under this subsection shall include each of the following:

"(A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.

"(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

"(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

"(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

"(E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

"(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(4) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any management program and report required by subsection (b) shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

"(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND MANAGEMENT PROGRAMS.—Each report and management program shall be submitted to the Administrator during the 18-month period beginning on the date of the enactment of this section.

"(d) APPROVAL OR DISAPPROVAL OF REPORTS AND MANAGEMENT PROGRAMS.—

"(1) DEADLINE.—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k)), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

"(2) PROCEDURE FOR DISAPPROVAL.—If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that—

"(A) the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this Act;

"(B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion;

"(C) the schedule for implementing such program or portion is not sufficiently expeditious; or

"(D) the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

"(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit the report required by subsection (a) within the period specified by subsection (c)(2), the Administrator shall, within 30 months after the date of the enactment of this section, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a). Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.

"(e) LOCAL MANAGEMENT PROGRAMS; TECHNICAL ASSISTANCE.—If a State fails to submit a management program under subsection (b) or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) and can be approved pursuant to subsection (d). After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) and a management program submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h).

"(f) TECHNICAL ASSISTANCE FOR STATES.—Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) for those portions of the navigable waters requested by such State.

"(g) INTERSTATE MANAGEMENT CONFERENCE.—

"(1) CONVENING OF CONFERENCE; NOTIFICATION; PURPOSE.—If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of significant pol-

lution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 505 of this Act.

"(2) STATE MANAGEMENT PROGRAM REQUIREMENT.—To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this Act will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

"(h) GRANT PROGRAM.—

"(1) GRANTS FOR IMPLEMENTATION OF MANAGEMENT PROGRAMS.—Upon application of a State for which a report submitted under subsection (a) and a management program submitted under subsection (b) is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 205(j)(5) of this Act may be used to develop and implement such management program.

"(2) APPLICATIONS.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

"(3) FEDERAL SHARE.—The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

"(4) LIMITATION ON GRANT AMOUNTS.—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

"(5) PRIORITY FOR EFFECTIVE MECHANISMS.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will—

"(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

"(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;

"(C) control interstate nonpoint source pollution problems; or

"(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.

"(6) AVAILABILITY FOR OBLIGATION.—The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.

"(7) LIMITATION ON USE OF FUNDS.—States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

"(8) SATISFACTORY PROGRESS.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2).

"(9) MAINTENANCE OF EFFORT.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(10) REQUEST FOR INFORMATION.—The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section.

"(11) REPORTING AND OTHER REQUIREMENTS.—Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.

"(12) LIMITATION ON ADMINISTRATIVE COSTS.—For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

"(i) GRANTS FOR PROTECTING GROUNDWATER QUALITY.—

"(1) ELIGIBLE APPLICANTS AND ACTIVITIES.—Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

"(2) APPLICATIONS.—An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.

"(3) FEDERAL SHARE; MAXIMUM AMOUNT.—The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed $150,000.

"(4) REPORT.—The Administrator shall include in each report transmitted under subsection (m) a report on the activities and programs implemented under this subsection during the preceding fiscal year.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsections (h) and (i) not to exceed $70,000,000 for fiscal year 1988, $100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and $130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed $7,500,000 may be made available to carry out subsection (i). Sums appropriated pursuant to this subsection shall remain available until expended.

"(k) CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS.—The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall

accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.

"(l) COLLECTION OF INFORMATION.—The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.

"(m) REPORTS OF ADMINISTRATOR.—

"(1) ANNUAL REPORTS.—Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

"(2) FINAL REPORT.—Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall—

"(A) describe the management programs being implemented by the States by types and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

"(B) describe the experiences of the States in adhering to schedules and implementing best management practices;

"(C) describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;

"(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

"(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this Act;

"(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and

"(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.

"(n) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—Not less than 5 percent of the funds appropriated pursuant to subsection (j) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.".

(b) POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION.—Section 101(a) is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.".

(c) ELIGIBILITY OF NONPOINT SOURCES.—The last sentence of section 201(g)(1) is amended by—

(1) striking out "sentence," the first place it appears and inserting in lieu thereof "sentences,";

(2) inserting "(A)" after "October 1, 1984, for"; and

(3) inserting before "except that" the following: "and (B) any purpose for which a grant may be made under section 319 (h) and (i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution),".

(d) RESERVATION OF FUNDS.—Section 205(j) is amended by adding at the end the following new paragraph:

"(5) NONPOINT SOURCE RESERVATION.—In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 percent of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.".

(e) CONFORMING AMENDMENT.—Section 304(k)(1) is amended by inserting "and nonpoint source pollution management programs approved under section 319 of this Act" after "208 of this Act".

SEC. 317. NATIONAL ESTUARY PROGRAM.

(a) PURPOSES AND POLICIES.—

(1) FINDINGS.—Congress finds and declares that—

(A) the Nation's estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

(2) PURPOSES.—The purposes of this section are to—

(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

(C) encourage the preparation of management plans for estuaries of national significance; and

(D) enhance the coordination of estuarine research.

(b) MANAGEMENT PROGRAM.—Title III is amended by adding at the end thereof the following new section:

"SEC. 320. NATIONAL ESTUARY PROGRAM.

"(a) MANAGEMENT CONFERENCE.—

"(1) NOMINATION OF ESTUARIES.—The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

"(2) CONVENING OF CONFERENCE.—

"(A) IN GENERAL.—In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

"(B) PRIORITY CONSIDERATION.—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; and Galveston Bay, Texas.

"(3) BOUNDARY DISPUTE EXCEPTION.—In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

"(b) PURPOSES OF CONFERENCE.—The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

"(1) assess trends in water quality, natural resources, and uses of the estuary;

"(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

"(3) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

"(4) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

"(5) develop plans for the coordinated implementation of the plan by the States as

well as Federal and local agencies participating in the conference;

"(6) monitor the effectiveness of actions taken pursuant to the plan; and

"(7) review all Federal financial assistance program and Federal development project in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

"(c) MEMBERS OF CONFERENCE.—The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

"(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

"(2) international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;

"(3) each interested Federal agency, as determined appropriate by the Administrator;

"(4) local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and

"(5) affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

"(d) UTILIZATION OF EXISTING DATA.—In developing a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.

"(e) PERIOD OF CONFERENCE.—A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

"(f) APPROVAL AND IMPLEMENTATION OF PLANS.—

"(1) APPROVAL.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

"(2) IMPLEMENTATION.—Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act to assist States with the implementation of such plan.

"(g) GRANTS.—

"(1) RECIPIENTS.—The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

"(2) PURPOSES.—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan under this section.

"(3) FEDERAL SHARE.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.

"(h) GRANT REPORTING.—Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) shall report to the Administrator not later than 18 months after receipt of such grant and biennially thereafter on the progress being made under this section.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991 for—

"(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

"(2) making grants under subsection (g); and

"(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).

"(j) RESEARCH.—

"(1) PROGRAMS.—In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

"(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameters which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

"(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

"(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

"(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

"(2) REPORTS.—The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

"(A) a listing of priority monitoring and research needs;

"(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

"(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

"(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

"(k) DEFINITIONS.—For purposes of this section, the terms 'estuary' and 'estuarine zone' have the meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.".

SEC. 318. UNCONSOLIDATED QUATERNARY AQUIFER.

Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quaternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946-2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This section may be enforced under sections 309 (a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this section shall be considered a violation of section 301 of the Federal Water Pollution Control Act.

TITLE IV—PERMITS AND LICENSES

SEC. 401. STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS.

(a) LIMITATION ON PERMIT REQUIREMENT.—Section 402(l) is amended by inserting "(1) AGRICULTURAL RETURN FLOWS.—" before "The Administrator" and by adding at the end thereof the following:

"(2) STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS.—The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas explo-

ration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, by-product, or waste products located on the site of such operations.".

(b) CONFORMING AMENDMENTS.—Section 402(l) is further amended—

(1) by inserting "LIMITATION ON PERMIT REQUIREMENT.—" after "(l)"; and

(2) by indenting paragraph (1) of such section, as designated by subsection (a) of this section, and aligning such paragraph with paragraph (2) of such section, as added by such subsection (a).

SEC. 402. ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.

Section 402 is amended by adding at the end thereof the following new subsection:

"(m) ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.—To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

SEC. 403. PARTIAL NPDES PROGRAM.

(a) PARTIAL PERMIT PROGRAM.—Section 402 is amended by adding at the end the following:

"(n) PARTIAL PERMIT PROGRAM.—

"(1) STATE SUBMISSION.—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) MINIMUM COVERAGE.—A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

"(3) APPROVAL OF MAJOR CATEGORY PARTIAL PERMIT PROGRAMS.—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

"(4) APPROVAL OF MAJOR COMPONENT PARTIAL PERMIT PROGRAMS.—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

(b) RETURN OF STATE PERMIT PROGRAM TO ADMINISTRATOR.—

(1) IN GENERAL.—Section 402(c) is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS ON PARTIAL PERMIT PROGRAM RETURNS AND WITHDRAWALS.—A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of—

"(A) a State partial permit program approved under subsection (n)(3) only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

"(B) a State partial permit program approved under subsection (n)(4) only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.".

(2) CONFORMING AMENDMENT.—Section 402(c)(1) is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

SEC. 404. ANTI-BACKSLIDING.

(a) GENERAL RULE.—Section 402 is amended by adding at the end thereof the following new subsection:

"(o) ANTI-BACKSLIDING.—

"(1) GENERAL PROHIBITION.—In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303 (d) or (e), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 303(d)(4).

"(2) EXCEPTIONS.—A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if—

"(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

"(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

"(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B);

"(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

"(D) the permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

"(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this Act or for reasons otherwise unrelated to water quality.

"(3) LIMITATIONS.—In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.".

(b) LIMITATIONS ON REVISION OF CERTAIN EFFLUENT LIMITATIONS.—Section 303(d) of the Act is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS ON REVISION OF CERTAIN EFFLUENT LIMITATIONS.—

"(A) STANDARD NOT ATTAINED.—For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

"(B) STANDARD ATTAINED.—For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum

daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.".

(c) STUDY.—The Administrator shall study—

(1) the extent to which States have reviewed, revised, and adopted water quality standards in accordance with section 24 of the Municipal Wastewater Treatment Construction Grant Amendments of 1981; and

(2) the extent to which modifications of permits issued under section 402(a)(1)(B) of the Federal Water Pollution Control Act for the purpose of reflecting any revisions to water quality standards should be encouraged or discouraged.

The Administrator shall submit a report on such study, together with recommendations, to Congress not later than 2 years after the date of the enactment of this Act.

(d) CONFORMING AMENDMENT.—Section 402(a)(1) is amended by inserting "(A)" after "either" and by inserting "(B)" after "this Act, or".

SEC. 405. MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.

(a) Section 402 is amended by adding at the end thereof the following new subsection:

"(p) MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.—

"(1) GENERAL RULE.—Prior to October 1, 1992, the Administrator or the State (in the case of a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to the following stormwater discharges:

"(A) A discharge with respect to which a permit has been issued under this section before the date of the enactment of this subsection.

"(B) A discharge associated with industrial activity.

"(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

"(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

"(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

"(3) PERMIT REQUIREMENTS.—

"(A) INDUSTRIAL DISCHARGES.—Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 301.

"(B) MUNICIPAL DISCHARGE.—Permits for discharges from municipal storm sewers—

"(i) may be issued on a system- or jurisdiction-wide basis;

"(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

"(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

"(4) PERMIT APPLICATION REQUIREMENTS.—

"(A) INDUSTRIAL AND LARGE MUNICIPAL DISCHARGES.—Not later than 2 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after such date of enactment. Not later than 4 years after such date of enactment, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

"(B) OTHER MUNICIPAL DISCHARGES.—Not later than 4 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after such date of enactment. Not later than 6 years after such date of enactment, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

"(5) STUDIES.—The Administrator, in consultation with the States, shall conduct a study for the purposes of—

"(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection,

"(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

"(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

"(6) REGULATIONS.—Not later than October 1, 1992, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.".

SEC. 406. SEWAGE SLUDGE.

(a) IDENTIFICATION AND REGULATION OF TOXIC POLLUTANTS.—Section 405(d) is amended—

(1) by inserting "(1) REGULATIONS.—" before "The Administrator, after";

(2) by striking "(1)", "(2)", and "(3)" and inserting in lieu thereof "(A)", "(B)", and "(C)", respectively; and

(3) by adding at the end the following new paragraphs:

"(2) IDENTIFICATION AND REGULATION OF TOXIC POLLUTANTS.—

"(A) ON BASIS OF AVAILABLE INFORMATION.—

"(i) PROPOSED REGULATIONS.—Not later than November 30, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

"(ii) FINAL REGULATIONS.—Not later than August 31, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

"(B) OTHERS.—

"(i) PROPOSED REGULATIONS.—Not later than July 31, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

"(ii) FINAL REGULATIONS.—Not later than June 15, 1988, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

"(C) REVIEW.—From time to time, but not less often than every 2 years, the Administrator shall review the regulations promulgated under this paragraph for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements of this paragraph.

"(D) MINIMUM STANDARDS; COMPLIANCE DATE.—The management practices and numerical criteria established under subparagraphs (A), (B), and (C) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance as expeditiously as practicable but in no case later than 12 months after their publication, unless such regulations require the construction of new pollution control facilities, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

"(3) ALTERNATIVE STANDARDS.—For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the Administrator's judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

"(4) CONDITIONS ON PERMITS.—Prior to the promulgation of the regulations required by

paragraph (2), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

"(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section is intended to waive more stringent requirements established by this Act or any other law.".

(b) MANNER OF SLUDGE DISPOSAL.—Section 405(e) is amended to read as follows:

"(e) MANNER OF SLUDGE DISPOSAL.—The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.".

(c) IMPLEMENTATION THROUGH PERMITS.—Section 405 is further amended by adding at the end thereof the following:

"(f) IMPLEMENTATION OF REGULATIONS.—

"(1) THROUGH SECTION 402 PERMITS.—Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1986, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

"(2) THROUGH OTHER PERMITS.—In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.

"(g) STUDIES AND PROJECTS.—

"(1) GRANT PROGRAM; INFORMATION GATHERING.—The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial management or use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, and other beneficial purposes. For the purposes of carrying out this subsection, the Administrator may make grants to State water pollution control agencies, other public or nonprofit agencies, institutions, organizations, and individuals. In cooperation with other Federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and beneficial use of sewage sludge.

"(2) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is authorized to be appropriated for fiscal years beginning after September 30, 1986, not to exceed $5,000,000.".

(d) ENFORCEMENT.—(1) Section 308(a)(4) is amended by inserting "405," before "and 504".

(2) Section 505(f) is amended by striking out "or" before "(6)", and by inserting before the period "; or (7) a regulation under section 405(d) of this Act,".

(3) Section 509(b)(1)(E) is amended by striking out "or 306" and inserting in lieu thereof "306, or 405".

(e) REMOVAL CREDITS.—The part of the decision of Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, No. 84-3530 (3d. Cir. 1986), which addresses section 405(d) of the Federal Water Pollution Control Act is stayed until August 31, 1987, with respect to—

(1) those publicly owned treatment works the owner or operator of which received authority to revise pretreatment requirements under section 307(b)(1) of such Act before the date of the enactment of this section, and

(2) those publicly owned treatment works the owner or operator of which has submitted an application for authority to revise pretreatment requirements under such section 307(b)(1) which application is pending on such date of enactment and is approved before August 31, 1987.

The Administrator shall not authorize any other removal credits under such Act until the Administrator issues the regulations required by paragraph (2)(A)(ii) of section 405(d) of such Act, as amended by subsection (a) of this section.

(f) CONFORMING AMENDMENTS.—Section 405(d) is further amended—

(1) by inserting "REGULATIONS.—" after "(d)";

(2) by indenting paragraph (1) (as designated by subsection (a)(1) of this section) and aligning such paragraph with paragraph (3), as added by subsection (a)(3); and

(3) in such paragraph (1) by aligning subparagraphs (A), (B), and (C) (as designated by subsection (a)(2) of this section) with subparagraph (C) of paragraph (2), as added by subsection (a)(3) of this section.

SEC. 407. LOG TRANSFER FACILITIES.

(a) AGREEMENT.—The Administrator and Secretary of the Army shall enter into an agreement regarding coordination of permitting for log transfer facilities to designate a lead agency and to process permits required under sections 402 and 404 of the Federal Water Pollution Control Act, where both such sections apply, for discharges associated with the construction and operation of log transfer facilities. The Administrator and Secretary are authorized to act in accordance with the terms of such agreement to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

(b) APPLICATIONS AND PERMITS BEFORE OCTOBER 22, 1985.—Where both of sections 402 and 404 of the Federal Water Pollution Control Act apply, log transfer facilities which have received a permit under section 404 of such Act before October 22, 1985, shall not be required to submit a new application for a permit under section 402 of such Act. If the Administrator determines that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act, a separate application for a permit under section 402 of such Act shall not thereafter be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act, modifications to the existing permit under section 404 of such Act to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of such Act.

(c) LOG TRANSFER FACILITY DEFINED.—For the purposes of this section, the term "log transfer facility" means a facility which is constructed in whole or in part in waters of the United States and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. AUDITS.

Section 501(d) is amended by inserting at the end the following new sentences: "For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with independent State audit organizations, consistent with chapter 75 of title 31, United States Code. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.".

SEC. 502. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) DEFINED AS A STATE.—Section 502(3) is amended by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,".

(b) DEFINED AS PART OF UNITED STATES.—Section 311(a)(5) is amended by striking out "the Canal Zone," and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands,",

SEC. 503. AGRICULTURAL STORMWATER DISCHARGES.

Section 502(14) (relating to the definition of point source) is amended by inserting after "does not include" the following: "agricultural stormwater discharges and".

SEC. 504. PROTECTION OF INTERESTS OF UNITED STATES IN CITIZEN SUITS.

Section 505(c) is amended by adding at the end thereof the following new paragraph:

"(3) PROTECTION OF INTERESTS OF UNITED STATES.—Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed

consent judgment by the Attorney General and the Administrator.".

SEC. 505. JUDICIAL REVIEW AND AWARD OF FEES.

(a) LOCATION; DEADLINE FOR APPEAL.—Section 509(b)(1) is amended—

(1) by striking out "transacts such business" and inserting in lieu thereof, "transacts business which is directly affected by such action"; and

(2) by striking out "ninety" and "ninetieth" and inserting in lieu thereof "120" and "120th", respectively.

(b) VENUE; AWARD OF FEES.—Section 509(b) is amended by adding at the end thereof the following new paragraphs:

"(3) VENUE.—

"(A) SELECTION PROCEDURE.—If applications for review of the same agency action have been filed under paragraph (1) of this subsection in 2 or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within 30 days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in 2 or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within 30 days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within 3 business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

"(B) ADMINISTRATIVE PROVISIONS.—Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until 15 days after the Administrative Office has selected the court in which the record shall be filed.

"(C) TRANSFERS.—Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to subparagraph (A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

"(4) AWARD OF FEES.—In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.".

(c) CONFORMING AMENDMENT FOR CITIZEN SUIT ACTIONS.—The first sentence of section 505(d) is amended by inserting "prevailing or substantially prevailing" before "party".

SEC. 506. INDIAN TRIBES.

Title V is amended by redesignating section 518, and any references thereto, as section 519 and by inserting after section 517 the following new section:

"SEC. 518. INDIAN TRIBES.

"(a) POLICY.—Nothing in this section shall be construed to affect the application of section 101(g) of this Act, and all of the provisions of this section shall be carried out in accordance with the provisions of such section 101(g). Indian tribes shall be treated as States for purposes of such section 101(g).

"(b) ASSESSMENT OF SEWAGE TREATMENT NEEDS; REPORT.—The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists under section 216 of this Act, and any obstacles which prevent such needs from being met. Not later than one year after the date of the enactment of this section, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying (1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this Act, and (2) methods by which the participation in and administration of programs under this Act by Indian tribes can be maximized.

"(c) RESERVATION OF FUNDS.—The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under section 205(e), one-half of one percent of the sums appropriated under section 207. Sums reserved under this subsection shall be available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes.

"(d) COOPERATIVE AGREEMENTS.—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

"(e) TREATMENT AS STATES.—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 401, 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—

"(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

"(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (c) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of the Act.

"(f) GRANTS FOR NONPOINT SOURCE PROGRAMS.—The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.

"(g) ALASKA NATIVE ORGANIZATIONS.—No provision of this Act shall be construed to—

"(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally-recognized tribe, traditional Alaska Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), over lands or persons in Alaska;

"(2) create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska; or

"(3) in any way affect any assertion that Indian country, as defined in section 1151 of title 18, United States Code, exists or does not exist in Alaska.

"(h) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Federal Indian reservation' means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

"(2) 'Indian tribe' means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising

governmental authority over a Federal Indian reservation.".

SEC. 507. DEFINITION OF POINT SOURCE.

For purposes of the Federal Water Pollution Control Act, the term "point source" includes a landfill leachate collection system.

SEC. 508. SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES.

(a) FINDING.—The Congress finds that the New York Bight Apex is no longer a suitable location for the ocean dumping of municipal sludge.

(b) GENERAL RULE.—Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is further amended by inserting after section 104 the following new section:

"SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

"SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection:

"(A) The term 'Apex' means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

"(B) The term 'Apex site' means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

"(C) The term 'eligible authority' means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

"(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

"(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

"(A) December 15, 1987; or

"(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

"(b) RESTRICTION ON USE OF THE 106-MILE SITE.—The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the '106-Mile Ocean Waste Dump Site' (as described in 49 F.R. 19005).".

SEC. 509. OCEAN DISCHARGE RESEARCH PROJECTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator is authorized to issue a research permit to the Orange County, California, Sanitation Districts for the discharge of preconditioned municipal sewage sludge into the ocean for the purpose of enabling research to be conducted in assessing and analyzing the effects of disposing of sewage sludge by pipeline into ocean waters—

(1) if the Administrator is satisfied that such local governmental agency is actively pursuing long-term land-based options for the handling of its sludge with special emphasis on remote disposal alternatives set forth in the 1980 LA/OMA sludge management project and on reuse of sludge or use of recycled sludge; and

(2) if the Administrator determines that there is no likelihood of an unacceptable adverse effect on the environment as a result of issuance of such permit and that such permit would meet the requirements of paragraph (2) of section 301(h) of the Federal Water Pollution Control Act, as amended by this Act, and of the sentences following the first sentence of such section if such permit were being issued under such section.

(b) PERMIT TERMS.—

(1) PERIOD.—The permit for the discharge of sludge shall be for a period of 5 years commencing on the date of such discharge and shall not be extended or renewed.

(2) MONITORING.—Such permit shall provide for monitoring (including whole effluent monitoring) of permitted discharges and other discharges into the ocean in the same area and the effects of such discharges (including cumulative effects) in conformance with requirements established by the Administrator, after consultation with appropriate Federal and State agencies, and for the reporting of such monitoring to Congress and the Administrator every 6 months.

(3) VOLUME OF DISCHARGE.—Such permit shall provide that the volume of such local agency's sludge disposed of by such experimental pipeline shall be no more than one and one-half times that being disposed of by such remote disposal and alternatives for the reuse of sludge and the use of recycled sludge. In no event shall the agency dispose of more than 50 percent of its sludge by the pipeline.

(4) TERMINATION.—The permit shall provide for termination of the permit if the Administrator determines that the disposal of sewage sludge is resulting in an unacceptable adverse impact on fish, shellfish, and wildlife. The Administrator may terminate a permit issued under this section if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown. If the effluent from a source with a permit issued under this section is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(c) LIMITATION ON PRECEDENT.—The facts and circumstances described in subsection (a) present a unique situation which will not establish a precedent for the relaxation of the requirements of the Federal Water Pollution Control Act applicable to similarly situated discharges.

(d) REPORT.—Such districts shall report the results of the program and an analysis of such program to Congress under this section not later than four and one-half years after issuance of the permit.

SEC. 510. SAN DIEGO, CALIFORNIA.

(a) PURPOSE.—The purpose of this section is to protect the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

(b) CONSTRUCTION GRANTS.—Upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of State, acting through the American Section of the International Boundary and Water Commission (hereinafter in this section referred to as the "Commission"), or any other Federal agency or any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of—

(1) defensive treatment works to protect the residents of the city of San Diego, California, and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico; and

(2) treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from Mexico, including the city of Tijuana, Mexico.

(c) LIMITATION ON GRANTS.—Notwithstanding subsection (b), the Administrator may make grants for construction of treatment works described in subsection (b)(2) only if, after public notice and comment, the Administrator determines that treatment works in Mexico, in conjunction with any defensive treatment works constructed under this or any other Act, are not sufficient to protect the residents of the city of San Diego, California, and surrounding areas from water pollution originating in Mexico.

(d) OPERATION AND MAINTENANCE.—The Commission or such other agency, commission, or entity as may be designated under subsection (b) is authorized to operate and maintain any treatment works constructed under subsection (b) in order to accomplish the purposes of this section.

(e) APPROVAL OF PLANS.—Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the Commission or such other agency, commission, or entity as may be designated under subsection (b), in consultation with the city of San Diego, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under title II of the Federal Water Pollution Control Act.

(f) FEDERAL SHARE.—Construction of the treatment works under subsection (b) shall be at full Federal expense less any costs paid by the State of California and less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(g) OCEAN OUTFALL PERMIT.—Notwithstanding section 301(j) of the Federal Water Pollution Control Act, upon application of the city of San Diego, California, the Administrator may issue a permit under section 301(h) of such Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this section if the Administrator finds that issuing such permit is in the best interests of achieving the goals and requirements of such Act. The Administrator may waive the requirements of section 301(h)(5) of such Act with respect to the issuance of such permit if the Administrator finds that such waiver is in the best interests of achieving the goals and requirements of such Act.

(h) TREATMENT OF SAN DIEGO SEWAGE.—If any treatment works constructed pursuant to this section becomes no longer necessary to provide protection from pollution originating in Mexico, the city of San Diego, California, may use such treatment works to treat municipal and individual waste originating in the city of San Diego and surrounding areas if the city of San Diego

enters into a binding agreement with the Administrator to pay to the United States 45 percent of the costs incurred in the construction of such treatment works.

(i) DEFINITIONS.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to the Administrator to make grants under this section and such sums as may be necessary to the Commission or such other agency, commission, or entity as the President may designate under subsection (b), to carry out this section.

SEC. 511. LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY.

(a) IN GENERAL.—

(1) NORTH RIVER PLANT.—If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator), except as provided in subsection (b).

(2) RED HOOK PLANT.—If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator), except as provided in subsection (b).

(b) WAIVERS.—

(1) INTERRUPTION OF PLANT OPERATION.—In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) INCREASED PRECIPITATION.—In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) VARIATIONS IN CERTAIN NORTH RIVER DRAINAGE AREA DISCHARGES.—In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) VARIATIONS IN CERTAIN RED HOOK DRAINAGE AREA DISCHARGES.—In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) CIRCUMSTANCES BEYOND CITY'S CONTROL.—The Administrator shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, except such circumstances shall not include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline set forth in subsection (a).

(c) PENALTIES.—Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) CONSENT DECREE DEFINED.—For purposes of this section, the term "consent decree" means the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) COOPERATION.—The Administrator shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) SAVINGS CLAUSE.—Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h) TERMINATION DATES.—

(1) NORTH RIVER PLANT.—The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) RED HOOK PLANT.—The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) MONITORING ACTIVITIES.—The Administrator shall promptly establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a).

(j) ESTABLISHMENT OF METHODOLOGIES.—The Administrator shall establish the methodologies, data base, and any other information required for making determinations under subsection (b)—

(1) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and

(2) for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied.

(k) VIOLATIONS.—In carrying out this section, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

SEC. 512. OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK.

(a) RELOCATION OF NATURAL GAS FACILITIES.—Notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, not to exceed $7,000,000 to carry out this section.

SEC. 513. BOSTON HARBOR AND ADJACENT WATERS.

(a) GRANTS.—The Administrator shall make grants to the Massachusetts Water Resource Authority for purposes of—

(1) assessing the principal factors having an adverse effect on the environmental

quality of Boston Harbor and its adjacent waters;

(2) developing and implementing a management program to improve the water quality of such Harbor and waters; and

(3) constructing necessary waste water treatment works for providing secondary treatment for the areas served by such authority.

(b) FEDERAL SHARE.—The Federal share of projects described in subsection (a) shall not exceed 75 percent of the cost of construction thereof.

(c) EMERGENCY IMPROVEMENTS.—The Administrator is authorized and directed to make grants to the Massachusetts Water Resource Authority for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $100,000,000 to carry out this section for fiscal years beginning after September 30, 1986, to remain available until expended. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 514. WASTEWATER RECLAMATION DEMONSTRATION.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater.

(b) FEDERAL SHARE.—The Federal share of grants made under this section shall be 85 percent of the costs of conducting such demonstration and field test.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not to exceed $2,000,000 to carry out this section for fiscal years beginning after September 30, 1986.

SEC. 515. DES MOINES, IOWA.

(a) GRANT.—The Administrator is authorized to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $50,000,000 for fiscal years beginning after September 30, 1986. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 516. STUDY OF DE MINIMIS DISCHARGES.

(a) STUDY.—The Administrator shall conduct a study of discharges of pollutants into the navigable waters and their regulation under the Federal Water Pollution Control Act to determine whether or not there are discharges of pollutants into such waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant and to determine the most effective and appropriate methods of regulating any such discharges.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study along with recommendations and findings concerning the most effective and appropriate methods of regulating any discharges of pollutants into the navigable waters in amounts which the Administrator determines under such study to be not significant.

SEC. 517. STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES.

(a) EFFECTIVENESS STUDY.—The Administrator shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons for each such State's failure to make such obligations.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

SEC. 518. STUDY OF TESTING PROCEDURES.

(a) STUDY.—The Administrator shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in subsection (a) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 519. STUDY OF PRETREATMENT OF TOXIC POLLUTANTS.

(a) STUDY.—The Administrator shall study—

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged from publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, and shall evaluate the extent to which each such strategy identified may be expected to achieve the goals of this Act;

(5) for each such alternative regulatory strategy, the extent to which removal of toxic pollutants by publicly owned treatment works results in contamination of sewage sludge and the extent to which pretreatment requirements may prevent such contamination or improve the ability of publicly owned treatment works to comply with sewage sludge criteria developed under section 405 of the Federal Water Pollution Control Act; and

(6) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each such alternative strategy.

(b) REPORT.—Not later than 4 years after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 520. STUDIES OF WATER POLLUTION PROBLEMS IN AQUIFERS.

(a) STUDIES.—The Administrator, in conjunction with State and local agencies and after providing an opportunity for full public participation, shall conduct studies for the purpose of identifying existing and potential point and nonpoint sources of pollution, and of identifying measures and practices necessary to control such sources of pollution, in the following groundwater systems and aquifers:

(1) the ground water system of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona;

(2) the Spokane-Rathdrum Valley Aquifer, Washington and Idaho;

(3) the Nassau and Suffolk Counties Aquifer, New York;

(4) the Whidbey Island Aquifer, Washington;

(5) the Unconsolidated Quaternary Aquifer, Rockaway River area, New Jersey;

(6) contaminated ground water under Litchfield, Hartford, Fairfield, Tolland, and New Haven Counties, Connecticut; and

(7) the Sparta Aquifer, Arkansas.

(b) REPORTS.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the studies conducted under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $7,000,000 for fiscal years beginning after September 30, 1986, to carry out this section.

SEC. 521. GREAT LAKES CONSUMPTIVE USE STUDY.

(a) STUDY OF CONSUMPTIVE USES.—In recognition of the serious impacts on the Great Lakes environment that may occur as a result of increased consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our

natural resources while allowing for continued economic growth, the Secretary of the Army in cooperation with the Administrator, other interested departments, agencies, and instrumentalities of the United States, and the 8 Great Lakes States, is authorized to conduct a study of the effects of Great Lakes water consumption on economic growth and environmental quality in the Great Lakes region and of control measures that can be implemented to reduce the quantity of water consumed.

(b) MATTERS INCLUDED.—The study authorized by this section shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, including an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the effect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the effect of laws, regulations, and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the associated environmental impacts and of the economic effects on industry and other interests in the Great Lakes region associated with individual consumptive use control strategies; and

(5) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) GREAT LAKES STATES DEFINED.—For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, $750,000 to carry out this section. Sums appropriated under this section shall remain available until expended.

SEC. 522. SULFIDE CORROSION STUDY.

(a) STUDY.—The Administrator shall conduct a study of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate such effects, and the range of available options to deal with such effects.

(b) CONSULTATION.—The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,000,000 to carry out this section for fiscal years beginning after September 30, 1986.

SEC. 523. STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS.

(a) STUDY.—The Administrator shall study problems associated with rainfall induced infiltration into wastewater treatment sewer systems. As part of such study, the Administrator shall study appropriate methods of regulating rainfall induced infiltration into the sewer system of the East Bay Municipal Utility District, California.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study, along with recommendations on reasonable methods to reduce such infiltration.

SEC. 524. DAM WATER QUALITY STUDY.

The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment of water by dams. The results of such study shall be submitted to Congress not later than December 31, 1987.

SEC. 525. STUDY OF POLLUTION IN LAKE PEND OREILLE, IDAHO.

The Administrator shall conduct a comprehensive study of the sources of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, for the purpose of identifying the sources of such pollution. In conducting such study, the Administrator shall consider existing studies, surveys, and test results concerning such pollution. The Administrator shall report to Congress the findings and recommendations concerning the study conducted under this section.

S. 76—WATER QUALITY ACT OF 1987

Mr. DOLE. Mr. President, at the request of the administration, today I am introducing its proposed reauthorization of the Clean Water Act.

At the outset, I want to urge my colleagues to treat this matter on the merits of the issues—the issue of the need to reauthorize the Clean Water Act as soon as possible. Any member of the committee can tell us the many points of complex controversy contained in a reauthorization of this vital environmental law. It was in conference most of the last Congress.

However, during the last Congress the administration failed to offer a reasonable or acceptable compromise to congressional proposals. To its credit, the administration has now offered such an approach, and it deserves a fair hearing.

Before we rush to judgment, rush toward the battle over the first veto of this Congress, I want, and I think the majority of my colleagues want, to ensure that the Congress has studied and deliberated over all alternatives.

The bill vetoed last year calls for spending $18 billion over 8 years, the administration's bill authorizes $12 billion over 7 years. That's quite a little bit of money for any Senator criticizing the President's budget request for next year and looking for other ways to reach the Gramm-Rudman-Hollings target of $108 billion.

One of the ways the administration's bill was able to save money and an important difference between the two bills is that the measure vetoed last year contained five special projects not contained in the administration bill. Why were these five selected, and why should they be allowed to circumvent the process that all other projects must follow? I am not sure, but I would like an answer before voting on this once again.

Another important difference is the amount of discretion afforded to the States. The bill I am introducing gives the States the discretion to spend up to 3.5 percent of the funds on nonpoint source controls, as opposed to simply adding another $400 million per year to the cost of the measure. In addition, States also receive the discretion to treat these grants as revolving loans, as opposed to spending more money to capitalize a revolving loan program.

The regulatory provisions of both bills are identical. Both responsibly address the need to protect our Nation's water resources. Let us not rush to judgment. Rather, let our committee of jurisdiction and expertise review the proposals and develop the best possible approach.

I ask unanimous consent that a statement explaining that proposal and a comparison of the legislative provisions of that proposal with the proposal introduced by the distinguished majority leader, Senator STAFFORD, Senator BURDICK, Senator CHAFEE, and others, and an additional fact sheet on the differences between the two bills be made part of the RECORD following my comments.

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

CLEAN WATER ACT REAUTHORIZATION

Eligibility: Identical to current CWA (secondary treatment, advanced treatment, infiltration/inflow correction, and new interceptors).
FY 1986-1993 Budget Authority Required: $12 Billion.

FUNDING ANALYSIS

[In billions of dollars]

	Budget authority			Outlays		
	Administration proposal ($6)	Current proposal ($12)	S. 1128 ($18)	Administration proposal ($6)	Current proposal ($12)	S. 1128 ($18)
Fiscal year:						
1986	2.4	1.8	2.4	3.1	3.1	3.1
1987	1.8	2.0	2.4	2.7	2.7	2.8
1988	1.2	2.0	2.4	2.4	2.3	2.5
1989	.6	1.9	2.4	2.2	2.2	2.8
1990	0	1.6	2.4	1.8	2.2	3.1
1991	0	1.2	2.4	1.3	2.0	3.1
1992	0	1.0	1.8	.9	1.8	3.2
1993	0	.5	1.2	.6	1.6	3.0
1994	0	0	.6	.4	1.3	2.1

Principal Features: First use of funds to maintain progress with the enforceable requirements of the act; States free to use funds for loans as well as grants; loan repayments may be used for broader eligibilities, including combined sewer overflows, collector sewers, etc.; FY 87 authority limited to $2 billion ($1.2 billion appropriated plus $800 million supplemental appropriation); outlays schedule for loans equal to outlay schedule for grants; loans buy out needs at same rate as grants; for first use, loan eligibilities same as grant eligibilities.

Rationale: Outlays significantly lower than under S. 1128; first use targets priority projects; strong environmental rationale; allows flexible use of grants and loans; no change required in the allotment formula or eligibilities.

WATER QUALITY ACT OF 1987

Congressional bill (S. 1128)	Administration proposal
Title II—Wastetreatment Grants:	
1. Authorized $18B through 1994 to finance the construction of municipal wastetreatment facilities.	1. Authorizes $12B through 1993 to help finance the construction of municipal wastetreatment facilities
2. Authorized State Revolving Funds, capitalized with federal funds, to continue the wastetreatment grant program.	2. Authorizes State discretionary use of wastetreatment funds as loans repayable to States to administer program.
3. Authorized 5 special projects within State annual allotments and 5 special projects in addition to normal grant program.	3. Authorizes no special interest projects; targets grant funds to most beneficial environmental projects.
4. (No provision)	4. States are authorized (not mandated) to use up to 3.5 percent of their allotment to implement nonpoint source controls.
Title III—Standards and Enforcement:	
1. Nonpoint source programs are authorized at $400M through 1991.	1. No separate program authorized.
2. $100M for Clean lakes; Estuary grant program is established with 75 percent Federal share.	2. Same.
3. Stormwater runoff requirements under current law are modified to ease the burden on municipal and industrial discharges.	3. Same
4. New industrial compliance deadlines, water quality standards programs and conditions for variances from Federal limitations are established.	4. Same.
5. Amendments to current law to improve state permit programs, allow coal remining and establish anti-backsliding policies are included.	5. Same.
6. Enforcement provisions are updated and expanded similar to other Federal laws. Administrative penalties are added to current law.	6. Same.
7. Adds citizen suit provisions allowing individuals to initiate enforcement action.	7. Same.
8. Reauthorizes existing programs such as Great Lakes, Chesapeake Bay at current or higher levels.	8. Same.

COMPARISON OF SELECT LEGISLATIVE PROVISIONS

Provision	Original administration proposal	Administration's new legislative proposal	S. 1128
Budget authority (billions)	$6	$12	$18.
Budget authority (years)	4	8	9.
Type of assistance	Grants	Grants/loans	Grants/loans.
Payment schedule	Grant payment rate	Grant payment rate	Grants: Grant rate. Loans: within 3 yr.
Outlays (fiscal years 1988–93)	$9.2	$12.1	$17.7.
Loan conditions	NA	Similar to S. 1128	20 percent match, market rate or less, 20 yr repayment, most title II requirements apply, repayments must go to dedicated account.
Eligibilities	Phased/segmented projects only	Current eligibilities, maintain progress with grants and loans nps and estuaries [1].	Current eligibilities, maintain progress nps and estuaries.
Allotment formulas	Revised to fit eligibilities	As proposed by Congress	As passed.

[1] 1st target noncompliers and significant water quality projects.

S. 76

(The text of the bill (S. 76), the Water Quality Act of 1987, is as follows:)

S. 76

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

(a) SHORT TITLE.—This Act may be cited as the "Water Quality Act of 1987".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents; amendments to Federal Water Pollution Control Act; definition of Administrator.
Sec. 2. Limitation on payments.

TITLE I—AMENDMENTS TO TITLE I

Sec. 101. Authorizations of appropriations.
Sec. 102. Chesapeake Bay.
Sec. 103. Great Lakes.
Sec. 104. Research on effects of pollutants

TITLE II—CONSTRUCTION GRANTS AMENDMENTS.
Sec. 201. Eligibilities, CSO, Dispute Resolution, Limitations.
Sec. 202. Federal share.
Sec. 203. Agreement on eligible costs.
Sec. 204. Design/build projects.
Sec. 205. Grant conditions; user charges on low-income residential users.
Sec. 206. Allotment formula.
Sec. 207. Rural set aside, Innovative and alternative projects, and Nonpoint source programs.
Sec. 208. Regional organization funding.
Sec. 209. Authorization for construction grants.
Sec. 210. Grants to States for making water pollution control loans.
Sec. 211. Ad valorem tax dedication.
TITLE III—STANDARDS AND ENFORCEMENTS
Sec. 301. Compliance dates.
Sec. 302. Modification for nonconventional pollutants.
Sec. 303. Discharges into marine waters.
Sec. 304. Filing deadline for treatment works modification.
Sec. 305. Innovative technology compliance deadlines for direct dischargers.
Sec. 306. Fundamentally different factors.
Sec. 307. Coal remining operations.
Sec. 308. Individual control strategies for toxic pollutants.
Sec. 309. Pretreatment standards.
Sec. 310. Inspection and entry.
Sec. 311. Marine sanitation devices.
Sec. 312. Criminal penalties.
Sec. 313. Civil penalties.
Sec. 314. Administrative penalties.
Sec. 315. Clean lakes.
Sec. 316. Management of nonpoint sources of pollution.
Sec. 317. National estuary program.
Sec. 318. Unconsolidated quaternary aquifer.
TITLE IV—PERMITS AND LICENSES
Sec. 401. Stormwater runoff from oil, gas, and mining operations.
Sec. 402. Additional pretreatment of conventional pollutants not required.
Sec. 403. Partial NPDES program.
Sec. 404. Anti-backsliding.
Sec. 405. Municipal and industrial stormwater discharges.
Sec. 406. Sewage sludge.
Sec. 407. Log transfer facilities.
TITLE V—MISCELLANEOUS PROVISIONS
Sec. 501. Audits.
Sec. 502. Commonwealth of the Northern Mariana Islands.
Sec. 503. Agricultural stormwater discharges.
Sec. 504. Protection of interests of United States in citizen suits.
Sec. 505. Judicial review and award of fees.
Sec. 506. Indian tribes.
Sec. 507. Definition of point source.
Sec. 508. Special provisions regarding certain dumping sites.
Sec. 509. Ocean discharge research project.
Sec. 510. Limitation on discharge of raw sewage by New York City.
Sec. 511. Study of de minimis discharges.
Sec. 512. Study of effectiveness of innovative and alternative processes and techniques.
Sec. 513. Study of testing procedures.
Sec. 514. Study of pretreatment of toxic pollutants.
Sec. 515. Studies of water pollution problems in aquifers.
Sec. 516. Great Lakes consumptive use study.
Sec. 517. Sulfide corrosion study.
Sec. 518. Study of rainfall induced infiltration into sewer systems.
Sec. 519. Dam water quality study.
Sec. 520. Study of pollution in Lake Pend Oreille, Idaho.

(c) AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act.

(d) DEFINITION.—For purposes of this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 2. LIMITATION ON PAYMENTS.

No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

TITLE I—AMENDMENTS TO TITLE I

SEC. 101. AUTHORIZATIONS OF APPROPRIATIONS.

(a) RESEARCH AND INVESTIGATIONS.—Section 104(u) is amended—

(1) in clause (1) by striking out "and" after "1975,", after "1980,", and after "1981,", and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and not to exceed $22,770,000 per fiscal year for each of the fiscal years 1986 through 1990,";

(2) in clause (2) by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $3,000,000 per fiscal year for each of the fiscal years 1986 through 1990,"; and

(3) in clause (3) by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $1,500,000 per fiscal year for each of the fiscal years 1986 through 1990,".

(b) GRANTS FOR PROGRAM ADMINISTRATION.—Section 106(a)(2) is amended by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $75,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

(c) TRAINING GRANTS AND SCHOLARSHIPS.—Section 112(c) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $7,000,000 per fiscal year for each of the fiscal years 1986 through 1990,".

(d) AREAWIDE PLANNING.—Section 208(f)(3) is amended by striking out "and" after "1974," and after "1980," and by inserting after "1982" the following: ", and such sums as may be necessary for fiscal years 1983 through 1990".

(e) RURAL CLEAN WATER.—Section 208(j)(9) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "and such sums as may be necessary for fiscal years 1983 through 1990,".

(f) INTERAGENCY AGREEMENTS.—Section 304(k)(3) is amended by inserting after "1983" the following: "and such sums as may be necessary for fiscal years 1984 through 1990".

(g) CLEAN LAKES.—Section 314(c)(2) is amended by striking out "and" after "1981," and by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $30,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

(h) GENERAL AUTHORIZATION.—Section 517 is amended by striking out "and" after "1981," and by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $135,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

SEC. 102. CHESAPEAKE BAY.

Title I is amended by adding at the end the following new section:

"SEC. 117. CHESAPEAKE BAY.

"(a) OFFICE.—The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an office, division, or branch of Chesapeake Bay Programs to—

"(1) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the Chesapeake Bay (hereinafter in this subsection referred to as the "Bay");

"(2) coordinate Federal and State efforts to improve the water quality of the Bay;

"(3) determine the impact of sediment deposition in the Bay and identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

"(4) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on striped bass.

"(b) INTERSTATE DEVELOPMENT PLAN GRANTS.—

"(1) AUTHORITY.—The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafer in this section referred to as 'the plan'), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within 1 year after the date of the enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Such grants shall be made subject to such terms and conditions as the Administrator considers appropriate.

"(2) SUBMISSION OF PROPOSAL.—A state or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State or combination of States commits to take within a specific time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in such section, the Administrator shall approve such proposal and shall finance the costs of implementing segments of such proposal.

"(3) FEDERAL SHARE.—Grants under this subsection shall not exceed 50 percent of the costs of implementing the management

mechanisms contained in the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the management mechanisms contained in the plan during such fiscal year.

"(4) ADMINISTRATIVE COSTS.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this subsection.

"(c) REPORTS.—Any State or combination of States that receives a grant under subsection (b) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program. The Administrator transmit each such report along with the comments of the Administrator on such report to Congress.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

"(1) $3,000,000 per fiscal year for each of the fiscal years 1987, 1988, 1989, and 1990, to carry out subsection (a); and

"(2) $10,000,000 per fiscal year for each of the fiscal years 1987, 1988, 1989, and 1990, for grants to States under subsection (b).".

SEC. 103. GREAT LAKES.

Title I is amended by adding at the end the following new section:

"(a) FINDINGS, PURPOSE, AND DEFINITIONS.—

"(1) FINDINGS.—The Congress finds that—

"(A) the Great Lakes are a valuable national resource, continuously serving the people of the United States and other nations as an important source of food, fresh water, recreation, beauty, and enjoyment;

"(B) the United States should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978 with particular emphasis on goals related to toxic pollutants; and

"(C) the Environmental Protection Agency should take the lead in the effort to meet those goals, working with other Federal agencies and State and local authorities.

"(2) PURPOSE.—It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the Agency, funding of State grants for pollution control in the Great Lakes area, and improved accountability for implementation of such agreement.

"(3) DEFINITIONS.—For purposes of this section, the term—

"(A) 'Agency' means the Environmental Protection Agency;

"(B) 'Great Lakes' means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

"(C) 'Great Lakes System' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes;

"(D) 'Program Office' means the Great Lakes National Program Office established by this section; and

"(E) 'Research Office' means the Great Lakes Research Office established by subsection (d).

"(b) GREAT LAKES NATIONAL PROGRAM OFFICE.—The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

"(c) GREAT LAKES MANAGEMENT.—

"(1) FUNCTIONS.—The Program Office shall—

"(A) in cooperation with appropriate Federal, State, tribal, and international agencies, and in accordance with section 101(e) of this Act, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lakes Water Quality Agreement of 1978;

"(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants;

"(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency;

"(D) coordinate actions of the Agency (including actions by headquarters and regional offices thereof) aimed at improving Great Lakes water quality; and

"(E) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities, so as to ensure the input of those agencies and authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objectives of such agreement.

"(2) 5-YEAR PLAN AND PROGRAM.—The Program Office shall develop, in consultation with the States, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 316 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

"(3) 5-YEAR STUDY AND DEMONSTRATION PROJECTS.—The Program Office shall carry out a five-year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments. In selecting locations for conducting demonstration projects under this paragraph, priority consideration shall be given to projects at the following locations: Saginaw Bay, Michigan; Sheboygan Harbor, Wisconsin; Grand Calumet River, Indiana; Ashtabula River, Ohio; and Buffalo River, New York.

"(4) ADMINISTRATOR'S RESPONSIBILITY.—The Administrator shall ensure that the Program Office enters into agreements with the various organizational elements of the Agency involved in Great Lakes activities and the appropriate State agencies specifically delineating—

"(A) the duties and responsibilities of each such element in the Agency with respect to the Great Lakes;

"(B) the time periods for carrying out such duties and responsibilities; and

"(C) the resources to be committted to such duties and responsibilities.

"(5) BUDGET ITEM.—The Administrator shall, in the Agency's annual budget submission to Congress, include a funding request for the Program Office as a separate budget line item.

"(6) COMPREHENSIVE REPORT.—Within 90 days after the end of each fiscal year, the Administrator shall submit to Congress a comprehensive report which—

"(A) describes the achievements in the preceding fiscal year in implementing the Great Lakes Water Quality Agreement of 1978 and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts expended on Great Lakes water quality initiatives in such preceding fiscal year;

"(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes System, including the monitoring of ground water and sediment, with particular reference to toxic pollutants;

"(C) describes the long-term prospects for improving the condition of the Great Lakes; and

"(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978, which assessment shall—

"(i) show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates; and

"(ii) include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes water quality management efforts.

"(d) GREAT LAKES RESEARCH.—

"(1) ESTABLISHMENT OF RESEARCH OFFICE.—There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

"(2) IDENTIFICATION OF ISSUES.—The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report to Congress on such issues before the end of each fiscal year which shall identify any changes in the Great Lakes System with respect to such issues.

"(3) INVENTORY.—The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs (and, to the extent feasible, those of private organizations and other nations) relating to the Great Lakes System, and shall update that inventory every four years.

"(4) RESEARCH EXCHANGE.—The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are ongoing or completed and which affect the Great Lakes System.

"(5) RESEARCH PROGRAM.—The Research Office shall develop, in cooperation with the Coordination Office, a comprehensive environmental research program and data base for the Great Lakes System. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

"(6) MONITORING.—The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College Program, other Federal laboratories, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

"(7) LOCATION.—The Research Office shall be located in a Great Lakes State.

"(e) RESEARCH AND MANAGEMENT COORDINATION.—

"(1) JOINT PLAN.—Before October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins in the following calendar year.

"(2) CONTENTS OF PLAN.—Each plan prepared under paragraph (1) shall—

"(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water Quality Agreement of 1978;

"(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such Agreement; and

"(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes System and establish priorities for development of such data base.

"(f) INTERAGENCY COOPERATION.—The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish and Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration, shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

"(g) RELATIONSHIP TO EXISTING FEDERAL AND STATE LAWS AND INTERNATIONAL TREATIES.—Nothing in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of any international body created by treaty with authority relating to the Great Lakes.

"(h) AUTHORIZATIONS OF GREAT LAKES APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section not to exceed $11,000,000 per fiscal year for the fiscal years 1987, 1988, 1989, 1990, and 1991. Of the amounts appropriated each fiscal year—

"(1) 40 percent shall be used by the Great Lakes National Program Office on demonstration projects on the feasibility of controlling and removing toxic pollutants;

"(2) 7 percent shall be used by the Great Lakes National Program Office for the program of nutrient monitoring; and

"(3) 30 percent shall be transferred to the National Oceanic and Atmospheric Administration for use by the Great Lakes Research Office.".

SEC. 104. RESEARCH ON EFFECTS OF POLLUTANTS.

In carrying out the provisions of section 104(a) of the Federal Water Pollution Control Act, the Administrator shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjunction with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal, State, and interstate agencies carrying on such research. Such research shall include, and shall place special emphasis on, the effect that bioaccumulation of these pollutants in acquatic species has upon reducing the value of aquatic commercial and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

TITLE II—CONSTRUCTION GRANTS AMENDMENTS

SEC. 201. ELIGIBILITIES, CSOs, DISPUTE RESOLUTION, LIMITATIONS

(a) Section 201(g)(1) is amended by striking out the third sentence and inserting in lieu thereof: "Notwithstanding the preceding sentence, the Administrator is authorized to make grants to States for the provision of loans to municipalities or intermunicipal or interstate agencies for the construction of publicly owned treatment works, as provided under section 220. On and after October 1, 1987, grants under this section shall first be made for projects within the categories listed in the preceding sentence that are necessary to maintain progress, as determined by the Governor, to meet the enforceable deadlines, goals, and requirements of the Act.

(b) Section 201(n) is repealed and subsection 201(o) is redesignated 201(n).

(c) Section 201 is amended by adding at the end thereof the following new subsection:

"(o) TIME LIMIT ON RESOLVING CERTAIN DISPUTES.—In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 90 days of the filing of such appeal.".

(d) Section 204(c) is amended by inserting "awarded a grant before October 1, 1990," immediately after "such facility and interceptors".

SEC. 202. FEDERAL SHARE.

(a) Section 202(a)(1) is amended by striking out the period at the end thereof and inserting in lieu thereof", for any such grants made before October 1, 1990.".

(b) PROJECTS UNDER JUDICIAL INJUNCTION.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 percent of the cost of construction thereof.".

(d) BIODISC EQUIPMENT.—Section 202(a)(3) is amended by adding at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contactors) in any publicly owned treatment works if the Administrator finds that such equipment has failed to meet design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

(e) INNOVATIVE PROCESS.—The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 percent of the cost thereof.

(f) AVAILABILITY OF CERTAIN FUNDS FOR NON-FEDERAL SHARE.—Notwithstanding any other provision of law, Federal assistance made available by the Farmers Home Administration to any political subdivision of a State may be used to provide the non-Federal share of the cost of any construction project carried out under section 201 of the Federal Water Pollution Control Act.

SEC. 203. AGREEMENT ON ELIGIBLE COSTS.

Section 203(a) is amended by inserting "(1)" after "(a)", by designating the last sentence as paragraph (3) and indenting such sentence as a paragraph, and by inserting before paragraph (3) as so designated the following:

"(2) AGREEMENT ON ELIGIBLE COST.—

"(A) LIMITATION ON MODIFICATIONS.—Before taking final action on any plans, specifications, and estimates submitted under this subsection after the 60th day following the date of the enactment of the Water Quality Act of 1987, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.

"(B) LIMITATION ON EFFECT.—Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 501 of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.".

SEC. 204. DESIGN/BUILD PROJECTS.

Section 203 is amended by adding at the end the following new subsection:

"(f) DESIGN/BUILD PROJECTS.—

"(1) AGREEMENT.—Consistent with State law, an applicant who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) LIMITATION ON PROJECTS.—Agreements under this subsection shall be limited to projects under an approved facility plan which projects are—

"(A) treatment works that have an estimated total cost of $8,000,000 or less; and

"(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

"(3) REQUIRED TERMS.—An agreement under this subsection shall—

"(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

"(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than 1 year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

"(4) LIMITATION ON APPLICATION.—Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

"(5) RESERVATION TO ASSURE COMPLIANCE.—The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) LIMITATION ON OBLIGATIONS.—The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) ALLOWANCE.—The Administrator shall determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(1).

"(8) LIMITATION ON FEDERAL CONTRIBUTIONS.—In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (3).

"(9) RECOVERY ACTION.—In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(10) PREVENTION OF DOUBLE BENEFITS.—A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title for the same project.".

SEC. 205. GRANT CONDITIONS; USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.

(a) INCLUSION OF PROJECT IN AREAWIDE PLAN.—Section 204(a)(1) is amended to read as follows:

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) CONTINUING PLANNING PROCESS.—Section 204(a)(2) is amended to read as follows:

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.—Section 204(b)(1) is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.".

(d) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act, except that the amendments made by subsections (a) and (b) shall take effect on the last day of the two-year period beginning on such date of enactment.

SEC. 206. ALLOTMENT FORMULA.

(a) FORMULA.—

(1) EXTENSION OF EXISTING FORMULA FOR 1986.—Section 205(c)(2) is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, and September 30, 1986,".

(2) FISCAL YEARS 1987-1990.—Section 205(c) is amended by adding at the end the following new paragraph:

"(3) FISCAL YEARS 1987-1990.—Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1987, 1988, 1989, and 1990 shall be alloted for each such year by the Administrator not later than the 10th day which begins after the date of the enactment of this paragraph. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

"States:

Alabama	.011309
Alaska	.006053
Arizona	.006831
Arkansas	.006616
California	.072333
Colorado	.008090
Connecticut	.012390
Delaware	.004965
District of Columbia	.004965
Florida	.034139
Georgia	.017100
Hawaii	.007833
Idaho	.004965
Illinois	.045741
Indiana	.024374
Iowa	.013688
Kansas	.009129
Kentucky	.012872
Louisiana	.011118
Maine	.007829
Maryland	.024461
Massachusetts	.034338
Michigan	.043487
Minnesota	.018589
Mississippi	.009112
Missouri	.028037
Montana	.004965
Nebraska	.005173
Nevada	.004965
New Hampshire	.010107
New Jersey	.041329
New Mexico	.004965
New York	.111632
North Carolina	.018253
North Dakota	.004965
Ohio	.056936
Oklahoma	.008171
Oregon	.011425
Pennsylvania	.040062
Rhode Island	.006791
South Carolina	.010361
South Dakota	.004965
Tennessee	.014692
Texas	.046226
Utah	.005329
Vermont	.004965
Virginia	.020698
Washington	.017588
West Virginia	.015766
Wisconsin	.027342
Wyoming	.004965
American Samoa	.000908
Guam	.000657
Northern Marianas	.000422
Puerto Rico	.013191
Pacific Trust Territories	.001295
Virgin Islands	.000527".

(b) COSTS OF ADMINISTRATION.—Section 205(g)(1) is amended by striking out "October 1, 1985" and inserting in lieu thereof "October 1, 1994".

(c) CONTROL OF POLLUTANTS FROM STORM SEWERS.—Section 211(e) is amended by striking out "1985," and inserting in lieu thereof "1990,".

SEC. 207. RURAL SET ASIDE, INNOVATIVE AND ALTERNATIVE PROJECTS, AND NONPOINT SOURCE PROGRAMS

(a) Section 205(h) is amended by inserting after "October 1, 1978" the following: "and ending before October 1, 1987".

(b) Section 205(i) is amended by inserting after "beginning after September 30, 1981" the following: "and ending before October 1, 1987".

(c) Section 205 is amended by adding at the end thereof the following:

"(1) The Administrator is authorized to reserve for any fiscal year beginning on or after October 1, 1987 and ending before October 1, 1991, at the request of the Governor, a portion of the sum allotted and available for obligation to each State under this section, not to exceed 3.50 per centum for the fiscal year ending September 30, 1988; 5.32 per centum for the fiscal year ending September 30, 1989; 6.25 per centum for the fiscal year ending September 30, 1990; and 10.83 per centum for the fiscal year ending September 30, 1991. Sums so reserved shall be available for making grants to the States for nonpoint source management programs and groundwater quality protection activities under section 319 of this Act. Sums so reserved shall be available for making such grants for the same period as sums are available from state allotments under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately avail-

able for obligation in the same manner and to the same extent as such last allotment.".

SEC. 208. REGIONAL ORGANIZATION FUNDING.

Section 205(j)(3) is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 40 percent of the amount granted to such State for a fiscal year under paragraph (2) of this subsection to regional public comprehensive planning organizations in such State and appropriate interstate organizations for the development and implementation of the plan described in this paragraph. In any fiscal year for which the Governor, in consultation with such organizations and with the approval of the Administrator, determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in development and implementation of the plan described in this paragraph and achieving the goals of this Act, the allocation to such organization may be less than 40 percent of such amount.".

SEC. 209. AUTHORIZATIONS FOR CONSTRUCTION GRANTS.

Section 207 is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", and for the fiscal year ending September 30, 1986, not to exceed $1,800,000,000; for the fiscal year ending September 30, 1987, and for the fiscal year ending September 30, 1988, not to exceed $2,000,000,000; for the fiscal year ending September 30, 1989, not to exceed $1,900,000,000; for the fiscal year ending September 30, 1990, not to exceed $1,600,000,000; for the fiscal year ending September 30, 1991, not to exceed $1,200,000,000; for the fiscal year ending September 30, 1992, not to exceed $1,000,000,000; and for the fiscal year ending September 30, 1993, not to exceed $500,000,000.".

SEC. 210. GRANTS TO STATES FOR MAKING WATER POLLUTION CONTROL LOANS

Title II is amended by adding at the end thereof the following new sections:

"SEC. 220 GRANTS TO STATES FOR MAKING WATER POLLUTION CONTROL LOANS

"(a) GENERAL AUTHORITY.—Subject to the provisions of this title, the Administrator may make grants under this section to each State from the sums allotted to such State under section 205, for the purpose of (1) providing loans for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) implementing a management program under section 319, and (3) developing and implementing a conservation and management plan under section 320.

"(b) SCHEDULE OF GRANT PAYMENTS.—The Administrator and each State shall jointly establish a schedule of payments under which the Administrator will pay to the State the amount of each grant to be made to the State under this section. Such schedule shall be based on the State's intended use plan under section 223(c). Such schedule shall provide for payments no more frequent than once per quarter year, in amounts and over periods that result in an outlay rate that approximates the rate for payments made under section 201(g)(1) grants, as determined by the Administrator. The average outlay rate for State grant payments under this section shall not exceed the average outlay rate for section 201(g)(1) grant payments.

"(c) GRANT AGREEMENTS.—

"(1) GENERAL RULE.—To receive a grant with funds made available under this section, a State shall enter into an agreement with the Administrator.

"(2) SPECIFIC REQUIREMENTS.—Any agreement entered into by the Administrator under this section shall include, but not be limited to, the provisions listed below, and, in addition, such agreement may be entered into only after the State has established to the satisfaction of the Administrator that—

"(A) the State will accept grant payments with funds to be made available under this section in accordance with a payment schedule established jointly by the Administrator and the State under subsection (b);

"(B) the State will make available from State moneys an amount equal to at least 20 percent of each grant payment made under this section on or before the date on which each such payment will be made to the State;

"(C) the State will enter into binding commitments to provide assistance in accordance with the requirements of this section in an amount equal to 120 percent of the amount of each such grant payment within 1 year after the receipt of such grant payment;

"(D) all funds resulting from grants under this section, i.e. grant funds, matching funds, and loan repayment funds, will be expended in an expeditious and timely manner;

"(E) all such funds resulting from grants under this section will first be used to assure maintenance of progress, as determined by the Governor of the State, toward compliance with enforceable deadlines, goals, and requirements of this Act, including the municipal compliance deadline, in accordance with section 201(g)(1);

"(F) treatment works eligible under sections 201(g)(1) and 221(c) which will be constructed in whole or in part before fiscal year 1995 with funds from grants under this section will meet the requirements of sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, and 511(c)(1) in the same manner as treatment works constructed with assistance under section 201(g)(1) other than by loans;

"(G) in addition to complying with the requirements of this title, the State will commit or expend each grant payment which it will receive under this title in accordance with laws and procedures applicable to the commitment or expenditure of revenues of the States;

"(H) in carrying out the requirements of section 223, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

"(I) the State will require as a condition of making loans from grants under this section that the recipients of such assistance will maintain project accounts in accordance with generally accepted government accounting standards; and

"(J) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 223 of this title.

"(d) APPLICABILITY OF TITLE II PROVISIONS.—Except to the extent explicitly provided in this section and sections 221 and 223, other provisions of title II shall not apply to grants made under this section.".

"SEC. 221. WATER POLLUTION CONTROL LOANS.

"(a) REQUIREMENTS FOR OBLIGATION OF GRANT FUNDS.—Before a State may receive a grant under section 220 with funds made available under this title, the State shall first certify that it will comply with the requirements of this section.

"(b) ADMINISTRATION.—Grant funds received under section 220 shall be administered by the State to satisfy the requirements and objectives of this Act.

"(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The Administrator is authorized to make grants under section 220 to States (1) for the provision of loans to municipalities or intermunicipal or interstate agencies for the construction of publicly owned treatment works for the eligible costs defined in 201(g)(1) and once such deadlines, goals and requirements have been addressed, loans may then be made for any projects within the definition of section 212 of this Act, (2) for the implementation of a management program established under section 319, and (3) for development and implementation of a conservation and management plan under section 320. The State shall make repayments from loans available in perpetuity for providing such financial assistance.

"(d) TYPES OF ASSISTANCE.—A water pollution control grant to a State under this section may be used only—

"(1) to make loans, on the condition that—

"(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed 20 years;

"(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized not later than 20 years after project completion;

"(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans;

"(D) the State will be credited with all payments of principal and interest on all loans; and

"(E) the State ensures that the total amount loaned from any fiscal year authorization shall not exceed, in the aggregate, the total amount that the projects funded would otherwise have received from Federal grants under section 201(g)(1).

"(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 1985;

"(3) as a source of revenue or security for the payment of principal or interest on revenue or general obligation bonds insured by the State if the proceeds of the sale of such bonds will be used to make loans.

"(e) LIMITATION TO PREVENT DOUBLE BENEFITS.—If a State makes, from its grant under section 220, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) for construction of such treatment works and all allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

"(f) CONSISTENCY WITH PLANNING REQUIREMENTS.—A State may provide financial assistance from funds resulting from its grant under section 220 only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, 303(e), 319, and 320 of this Act.

"(g) PRIORITY LIST REQUIREMENT.—The State may provide financial assistance from funds resulting from its grants under sec-

tion 220 only for projects on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such projects on such list.

"SEC. 222. CORRECTIVE ACTION.

"(a) NOTIFICATION OF NONCOMPLIANCE.—If the Administrator determines that a State has not complied with its agreement with the Administrator under section 220 or any other requirement of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action.

"(b) WITHHOLDING OF PAYMENTS.—If a State does not take corrective action within 60 days after the date a State receives notification of such action under subsection (a), the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

"(c) REALLOTMENT OF WITHHELD PAYMENTS.—If the Administrator is not satisfied that adequate corrective actions have been taken by the State within 12 months after the State is notified of such actions under subsection (a), the payments withheld from the State by the Administrator under subsection (b) shall be made available for reallotment in accordance with the formula for allotment of funds under this title in effect at the time of such reallotment.

"SEC. 223. AUDITS, REPORTS, AND FISCAL CONTROLS; INTENDED USE PLAN.

"(a) FISCAL CONTROL AND AUDITING PROCEDURES.—Each State accepting a grant under section 220 shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for such grants:

"(1) payments received;

"(2) disbursements made; and

"(3) balances at the beginning and end of the accounting period.

"(b) ANNUAL FEDERAL AUDITS.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits of grant funds received under section 220 as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

"(c) INTENDED USE PLAN.—After providing for public comment and review for each fiscal year that the State expends grant funds under section 220, the State shall prepare a plan identifying the intended use of the grant amounts available. Such intended use plan shall include, but not be limited to—

"(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 216 of this Act and a list of activities eligible for assistance under sections 319 and 320 of this Act;

"(2) a description of the State's short and long-term water pollution control goals and objectives;

"(3) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV of this Act, terms of financial assistance, and communities served;

"(4) assurances and specific proposals for meeting the requirements of paragraphs (C), (D), (E), and (F) of section 202(c)(2) of this title; and

"(5) the criteria and method established for the distribution of funds.

"(d) ANNUAL REPORT.—For each fiscal year that the State expends grant funds under section 220, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c), including identification of loan recipients, loan amounts, and loan terms.

"(e) ANNUAL FEDERAL OVERSIGHT REVIEW.—The Administrator shall conduct an annual oversight review of each State plan prepared under subsection (c), each State report prepared under subsection (d), and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan, the State or loan recipient shall make available to the Administrator such records as the Administrator reasonably requires to review and determine compliance with this title.".

SEC. 211. AD VALOREM TAX DEDICATION.

For the purposes of complying with section 204(b)(1) of the Federal Water Pollution Control Act, the ad valorem tax user charge systems of the town of Hampton and the city of Nashua, New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator shall review such ad valorem tax user charge systems for compliance with the remaining requirements of such section and related regulations of the Environmental Protection Agency.

TITLE II—STANDARDS AND ENFORCEMENTS

SEC. 301. COMPLIANCE DATES.

(a) PRIORITY TOXIC POLLUTANTS.—Section 301(b)(2)(C) is amended by striking out "not later than July 1, 1984," and inserting after "of this paragraph" the following: "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989".

(b) OTHER TOXIC POLLUTANTS.—Section 301(b)(2)(D) is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989".

(c) CONVENTIONAL POLLUTANTS.—Section 301(b)(2)(E) is amended by striking out "not later than July 1, 1984," and inserting in lieu thereof "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989, compliance with".

(d) OTHER POLLUTANTS.—Section 301(b)(2)(F) is amended by striking "not" after "subparagraph (A) of this paragraph" and inserting in lieu thereof "as expeditiously as practicable but in no case", and by striking "or not later than July 1, 1984," and all that follows through the end of the sentence and inserting in lieu thereof "and in no case later than March 31, 1989.".

(e) STRICTER BPT.—Section 301(b) is amended by adding at the end the following new paragraph:

"(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989; and

"(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Water Quality Act of 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.".

(f) DEADLINES FOR REGULATIONS FOR CERTAIN TOXIC POLLUTANTS.—The Administrator shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

Category	Date by which the final regulation shall be promulgated
Organic chemicals and plastics and synthetic fibers.	December 31, 1986
Pesticides	December 31, 1986

SEC. 302. MODIFICATION FOR NONCONVENTIONAL POLLUTANTS.

(a) LISTING OF POLLUTANTS.—Section 301(g) is amended by redesignating paragraph (2) (and any references thereto) as paragraph (3) and by striking out all that precedes subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(g) MODIFICATIONS FOR CERTAIN NONCONVENTIONAL POLLUTANTS.—

"(1) GENERAL AUTHORITY.—The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

"(2) REQUIREMENTS FOR GRANTING MODIFICATIONS.—A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that—".

(b) PROCEDURE FOR LISTING ADDITIONAL POLLUTANTS; REMOVAL.—Section 301(g) is further amended by adding at the end thereof the following new paragraphs:

"(4) PROCEDURES FOR LISTING ADDITIONAL POLLUTANTS.—

"(A) GENERAL AUTHORITY.—Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges) in accordance with the provisions of this paragraph.

"(B) REQUIREMENTS FOR LISTING.—

"(i) SUFFICIENT INFORMATION.—The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

"(ii) TOXIC CRITERIA DETERMINATION.—The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 307(a) of this Act.

"(iii) LISTING AS TOXIC POLLUTANT.—If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 307(a), the Administrator shall list the pollutant as a toxic pollutant under section 307(a).

"(iv) NONCONVENTIONAL CRITERIA DETERMINATION.—If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

"(C) REQUIREMENTS FOR FILING OF PETITIONS.—A petition for listing of a pollutant under this paragraph—

"(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304;

"(ii) may be filed before promulgation of such guideline; and

"(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

"(D) DEADLINE FOR APPROVAL OF PETITION.—A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 304.

"(E) BURDEN OF PROOF.—The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

"(5) REMOVAL OF POLLUTANTS.—The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.".

(c) DEADLINE FOR APPROVAL OF MODIFICATIONS.—Section 301(j) is amended—

(1) in paragraph (2) by striking out "Any" and inserting in lieu thereof "Subject to paragraph (3) of this section, any"; and

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

"(3) COMPLIANCE REQUIREMENTS UNDER SUBSECTION (g).—

"(A) EFFECT OF FILING.—An application for a modification under subsection (g) and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this Act for all pollutants not the subject of such application or petition.

"(B) EFFECT OF DISAPPROVAL.—Disapproval of an application for a modification under subsection (g) shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this Act.

"(4) DEADLINE FOR SUBSECTION (g) DECISON.—An application for a modification with respect to a pollutant filed under subsection (g) must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.".

(d) CONFORMING AMENDMENTS.—(1) Paragraph (3) of section 301(g), as redesignated by subsection (a) of this section, is amended by inserting "Limitation on authority to apply for subsection (c) modification.—" before "If an owner" and by aligning such paragraph with paragraph (4) of such section, as added by such subsection (c).

(2) Paragraph (2) of section 301(g) (as designated by subsection (a) of this section) is amended by realigning subparagraphs (A), (B), and (C) with subparagraph (A) of paragraph (4), as added by subsection (b) of this section.

(e) APPLICATION.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section shall apply to all requests for modifications under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of this Act and shall have the effect of extending the deadline established in section 301(j)(1)(B) of such Act.

(2) EXCEPTION.—The amendments made by this section shall not affect any application for a modification with respect to the discharge of ammonia, chlorine, color, iron, or total phenols (4AAP) under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of this Act; except that the Administrator must approve or disapprove such application not later than 365 days after the date of such enactment.

SEC. 303. DISCHARGES INTO MARINE WATERS.

(a) CONSIDERATION OF OTHER SOURCES OF POLLUTANTS.—Section 301(h)(2) is amended by striking out "such modified requirements will not interfere" and inserting in lieu thereof the following: "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,".

(b) LIMITATION ON SCOPE OF MONITORING.—

(1) GENERAL RULE.—Section 301(h)(3) is amended by inserting before the semicolon at the end thereof the following: ", and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge".

(2) LIMITATION ON APPLICABILITY.—The amendment made by subsection (b) shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act.

(c) URBAN AREA PRETREATMENT PROGRAM.—Section 301(h) is amended by redesignating paragraphs (6) and (7), and any references thereto, as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;".

(d) PRIMARY TREATMENT FOR EFFLUENT.—

(1) GENERAL RULE.—Section 301(h) is amended by striking out the period at the end of paragraph (8) (as redesignated by subsection (c) of this section) and inserting in lieu thereof a semicolon and by inserting after such paragraph (8) the following new paragraph:

"(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of this Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.".

(2) PRIMARY OR EQUIVALENT TREATMENT DEFINED.—Such section is further amended by inserting after the second sentence the following new sentence: "For the purposes of paragraph (9), 'primary or equivalent treatment' means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.".

(e) LIMITATIONS ON ISSUANCE OF PERMITS.—Section 301(h) is further amended by adding at the end thereof the following new sentences: "In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.".

(f) APPLICATION FOR OCEAN DISCHARGE MODIFICATION.—Section 301(j)(1)(A) is amended by inserting before the semicolon at the end thereof the following: ", except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h), may apply for a modification of subsection (h), may apply for a modification of subsection (h) in its own right not later than 30 days after the

date of the enactment of the Water Quality Act of 1987".

(g) GRANDFATHER OF CERTAIN APPLICANTS.—The amendments made by subsections (a), (c), (d), and (e) of this section shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act; except that such amendments shall apply to all renewals of such permits after such date of enactment.

SEC. 304. FILING DEADLINE FOR TREATMENT WORKS MODIFICATION.

(a) EXTENSION.—The second sentence of section 301(i)(1) is amended by striking out "of this subsection." and inserting in lieu thereof "of the Water Quality Act of 1987.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall not apply to those treatment works which are subject to a compliance schedule established before the date of the enactment of this Act by a court order or a final administrative order.

SEC. 305. INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGES.

(a) EXTENSION OF DEADLINE.—Section 301(k) is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection,".

(b) EXTENSION TO CONVENTIONAL POLLUTANTS.—Section 301(k) is amended by inserting "or (b)(2)(E)" after "(b)(2)(A)" each place it appears.

SEC. 306. FUNDAMENTALLY DIFFERENT FACTORS.

(a) GENERAL RULE.—Section 301 is amended by adding at the end the following new subsections:

"(n) FUNDAMENTALLY DIFFERENT FACTORS.—

"(1) GENERAL RULE.—The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

"(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304(b) or 304(g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

"(B) the application—

"(i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

"(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

"(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

"(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

"(2) TIME LIMIT FOR APPLICATONS.—An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

"(3) TIME LIMIT FOR DECISION.—The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

"(4) SUBMISSION OF INFORMATION.—The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

"(5) TREATMENT OF PENDING APPLICATIONS.—For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on the date of the enactment of this subsection shall be treated as having been submitted to the Administrator on the 180th day following such date of enactment. The applicant may amend the application to take into account the provisions of this subsection.

"(6) EFFECT OF SUBMISSION OF APPLICATION.—An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

"(7) EFFECT OF DENIAL.—If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

"(8) REPORTS.—Every 6 months after the date of the enactment of this subsection, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 301 or 304 of this Act or any national categorical pretreatment standard under section 307(b) of this Act filed before, on, or after such date of enactment.

"(o) APPLICATION FEES.—The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of section 301, section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled 'Water Permits and Related Services' which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.".

(b) CONFORMING AMENDMENT.—Section 301(l) is amended by striking out "The" and inserting in lieu thereof "Other than as provided in subsection (n) of this section, the".

(c) PHOSPHATE FERTILIZER EFFLUENT LIMITATION.—

(1) LIMITATION ON APPLICABILITY.—The effluent limitation established by the Administrator pursuant to section 301(b) of the Federal Water Pollution Control Act for the phosphate subcategory of the fertilizer manufacturing point source category shall not apply to facilities which had commenced construction on or before April 8, 1974, and for which the Administrator is proposing to revise the applicability of such limitations to exclude such facilities.

(2) ISSUANCE OF PERMIT.—As soon as possible after the date of the enactment of this Act, but not later than 180 days after such date of enactment, the Administrator shall issue permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act with respect to the facilities described in paragraph (1). Such permits shall remain in effect until, after such date of enactment, issuance of a permit under effluent guidelines applicable to discharges for the phosphate subcategory.

SEC. 307. COAL REMINING OPERATIONS.

Section 301 is amended by adding at the end thereof the following:

"(p) MODIFIED PERMIT FOR COAL REMINING OPERATIONS.—

"(1) IN GENERAL.—Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 402(b), may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

"(2) LIMITATIONS.—The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remaining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 303 of this Act.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) COAL REMINING OPERATION.—The term 'coal remining operation' means a coal mining operation which begins after the date of the enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(B) REMINED AREA.—The term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(C) PRE-EXISTING DISCHARGE.—The term 'pre-existing discharge' means any discharge at the time of permit application under this subsection.

"(4) APPLICABILITY OF STRIP MINING LAWS.—Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.".

SEC. 308 INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.

(a) IN GENERAL.—Section 304 is amended by adding at the end thereof the following new subsection:

"(l) INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.—

"(1) STATE LIST OF NAVIGABLE WATERS AND DEVELOPMENT OF STRATEGIES.—Not later than 2 years after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

"(A) a list of those waters within the State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

"(B) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

"(C) for each segment of the navigable waters included on such lists, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

"(D) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 402 of this Act and water quality standards under section 303(c)(2)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

"(2) APPROVAL OR DISAPPROVAL.—Not later than 120 days after the last day of the 2-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

"(3) ADMINISTRATOR'S ACTION.—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than 1 year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of paragraph (1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day."

(b) JUDICIAL REVIEW.—Section 509(b)(1) is amended—

(1) by striking out "and (F)" and inserting in lieu thereof "(F)"; and

(2) by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

(c) GUIDANCE TO STATES; INFORMATION ON WATER QUALITY CRITERIA FOR TOXICS.—Section 304(a) is amended by adding at the end the following new paragraphs:

"(7) GUIDANCE TO STATES.—The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within 9 months after the date of the enactment of the Water Quality Act of 1987, guidance to the States on performing the identification required by section 304(l)(1) of this Act.

"(8) INFORMATION ON WATER QUALITY CRITERIA.—The Administrator, after consulation with appropriate State agencies and within 2 years after the date of the enactment of the Water Quality Act of 1987, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.".

(d) WATER QUALITY CRITERIA FOR TOXIC POLLUTANTS.—Section 303(c)(2) is amended by inserting "(A)" after "(2)" and by adding the following new subparagraph:

"(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.".

(e) MODIFICATIONS OF EFFLUENT LIMITATIONS.—

(1) IN GENERAL.—Section 302(b) is amended to read as follows:

"(b) MODIFICATIONS OF EFFLUENT LIMITATIONS.—

"(1) NOTICE AND HEARING.—Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within 90 days of such publication hold a public hearing.

"(2) PERMITS.—

"(A) NO REASONABLE RELATIONSHIP.—The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

"(B) REASONABLE PROGRESS.—The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed 5 years if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (i) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (ii) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.".

(2) CONFORMING AMENDMENTS.—Section 302(a) is amended—

(A) by inserting "or as identified under section 304(l)" after "in the judgment of the Administrator"; and

(B) by inserting "public health," after "protection of".

(f) SCHEDULE FOR REVIEW OF GUIDELINES.—Section 304 is amended by adding at the end the following new subsection:

"(m) SCHEDULE FOR REVIEW OF GUIDELINES.—

"(1) PUBLICATION.—Within 12 months after the date of the enactment of the Water Quality Act of 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall—

"(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

"(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

"(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than 4 years after such date of enactment for categories identified in the first published plan or 3 years after the publication of the plan for categories identified in later published plans.

"(2) PUBLIC REVIEW.—The Administrator shall provide for public review and comment on the plan prior to final publication.".

(g) WATER QUALITY IMPROVEMENT STUDY.—

(1) STUDY.—The Administrator shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of the application of best available technology economically achievable pursuant to such section in attaining applicable water quality standards (including the standard specified in section 302(a) of such Act) and an analysis of the effectiveness of the water quality program

under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 309. PRETREATMENT STANDARDS.

(a) EXTENSION OF COMPLIANCE DATE BY POTW.—Section 307 is amended by adding at the end the following:

"(e) COMPLIANCE DATE EXTENSION FOR INNOVATIVE PRETREATMENT SYSTEMS.—In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years—

"(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

"(2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator)—

"(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402 or of section 405 or to contribute to such a violation, and

"(B) concurs with the proposed extension.".

(b) INCREASE IN EPA EMPLOYEES.—The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

SEC. 310. INSPECTION AND ENTRY.

(a) UNAUTHORIZED DISCLOSURE.—

(1) IN GENERAL.—Section 308(b) is amended by striking out all that follows "Code" and inserting in lieu thereof a period and the following: "Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.".

(2) CONFORMING AMENDMENT.—Section 308(a)(B) is amended by inserting "(including an authorized contractor acting as a representative of the Administrator)" after "or his authorized representative".

(b) ACCESS BY CONGRESS.—Section 308 is amended by adding at the end the following new subsection:

"(d) ACCESS BY CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of Congress, to such committee.".

SEC. 311. MARINE SANITATION DEVICES.

(a) STATE REGULATION OF HOUSEBOATS.—Section 312(f)(1) is amended by striking out "After" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), after" and by adding at the end thereof the following:

"(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term 'houseboat' means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.".

(b) STATE ENFORCEMENT.—Section 312(k) is amended by adding at the end the following: "The provisions of this section may also be enforced by a State.".

SEC. 312. CRIMINAL PENALTIES.

Section 309(c) is amended to read as follows:

"(c) CRIMINAL PENALTIES.—

"(1) NEGLIGENT VIOLATIONS.—Any person who—

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator of a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or by both.

"(2) KNOWING VIOLATIONS.—Any person who—

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than 6 years, or by both.

"(3) KNOWING ENDANGERMENT.—

"(A) GENERAL RULE.—Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

"(B) ADDITIONAL PROVISIONS.—For the purpose of subparagraph (A) of this paragraph—

"(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(I) the person is responsible only for actual awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

"(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent;

and such defense may be established under this subparagraph by a preponderance of the evidence;

"(iii) the term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

"(iv) the term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(4) FALSE STATEMENTS.—Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

"(5) TREATMENT OF SINGLE OPERATIONAL UPSET.—For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

"(6) RESPONSIBLE CORPORATE OFFICER AS 'PERSON'.—For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(7) HAZARDOUS SUBSTANCE DEFINED.—For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

SEC. 313. CIVIL PENALTIES.

(a) VIOLATIONS OF PRETREATMENT REQUIREMENTS.—

(1) GENERAL RULE.—Section 309(d) is amended by inserting ", or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act," after "section 404 of this Act by a State,".

(2) SAVINGS PROVISION.—No State shall be required before July 1, 1988, to modify a permit program approved or submitted under section 402 of the Federal Water Pollution Control Act as a result of the amendment made by paragraph (1).

(b) INCREASED PENALTY.—

(1) GENERAL RULE.—Section 309(d) is amended by striking out "$10,000 per day of such violation" and inserting in lieu thereof "$25,000 per day for each violation".

(2) INCREASED PENALTIES NOT REQUIRED UNDER STATE PROGRAMS.—The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in section 309(d) of such Act which has the same monetary amount as the civil penalty established by such section, as amended by paragraph (1). Nothing in this paragraph shall affect the Administrator's authority to establish or adjust by regulation a minimum acceptable State civil penalty.

(c) FACTORS TO CONSIDER IN DETERMINING PENALTY AMOUNT.—Section 309(d) is amended by adding at the end thereof the following: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, and good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.".

(d) VIOLATIONS OF SECTION 404 PERMITS.—Section 404(s) is amended—

(1) by striking out paragraph (4);

(2) by redesignating paragraph (5) as paragraph (4); and

(3) in paragraph (4), as so redesignated—

(A) by striking out "$10,000 per day of such violation" and inserting in lieu thereof "$25,000 per day for each violation";

(B) by adding at the end thereof the following: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

SEC. 314. ADMINISTRATIVE PENALTIES.

(a) GENERAL RULE.—Section 309 is amended by adding at the end therefor the following:

"(g) ADMINISTRATIVE PENALTIES.—

"(1) VIOLATIONS.—Whenever on the basis of any information available—

"(A) the Administrator finds that any person has violated section 301, 302, 306, 307, 308, 318, or 405 of this Act, or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 by a State, or

"(B) the Secretary of the Army (hereinafter in this subsection referred to as the 'Secretary') finds that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary.

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under this subsection.

"(2) CLASSES OF PENALTIES.—

"(A) CLASS I.—The amount of a class I civil penalty under paragraph (1) may not exceed $10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed $25,000. Before issuing an order assessing a civil penalty under this subparagraph, the Administator or the Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) CLASS II.—The amount of a class II civil penalty under paragraph (1) may not exceed $10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed $125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Administrator and the Secretary may issue rules for discovery procedures for hearings under this subparagraph.

"(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed under this subsection, the Administrator or the Secretary, as the case may be, shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

"(4) RIGHTS OF INTERESTED PERSONS.—

"(A) PUBLIC NOTICE.—Before issuing an order assessing a civil penalty under this subsection the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

"(B) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection and of the order assessing such penalty. In any hearing held under this subsection, such person shall have a reasonable opportunity to be heard and to present evidence.

"(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under paragraph (2) before issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with paragraph (2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty. If the the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner,

and publish in the Federal Register, notice of and the reasons for such denial.

"(5) FINALITY OF ORDER.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (8) or a hearing is requested under paragraph (4)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

"(6) EFFECT OF ORDER.—

"(A) LIMITATION ON ACTIONS UNDER OTHER SECTIONS.—Action taken by the Administrator or the Secretary, as the case may be, under this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act; except that any violation—

"(i) with respect to which the Administrator or the Secretary has commenced and is diligently prosecuting an action under this subsection,

"(ii) with respect to which a State has commenced and is diligently prosecuting an action under a State law comparable to this subsection, or

"(iii) for which the Administrator, the Secretary, or the State has issued a final order not subject to further judicial review and the violator has paid a penalty assessed under this subsection, or such comparable State law, as the case may be,

shall not be the subject of a civil penalty action under subsection (d) of this section or section 311(b) or section 505 of this Act.

"(B) APPLICABILITY OF LIMITATION WITH RESPECT TO CITIZEN SUITS.—The limitations contained in subparagraph (A) on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which—

"(i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under this subsection, or

"(ii) notice of an alleged violation of section 505(a)(1) of this Act has been given in accordance with section 505(b)(1)(A) prior to commencement of an action under this subsection and an action under section 505(a)(1) with respect to such alleged violation is filed before the 120th day after the date on which such notice is given.

"(7) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or the Secretary under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

"(8) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this subsection or who commented on the proposed assessment of such penalty in accordance with paragraph (4) may obtain review of such assessment—

"(A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

"(B) in the case of assessment of a class II civil penalty, in the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or the Secretary, as the case may be, and the Attorney General. The Administrator or the Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

"(9) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become final, or

"(B) after a court in an action brought under paragraph (8) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,

the Administrator or the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

"(10) SUBPOENAS.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(11) PROTECTION OF EXISTING PROCEDURES.—Nothing in this subsection shall change the procedures existing on the day before the date of the enactment of the Water Quality Act of 1987 under other subsections of this section for issuance and enforcement of orders by the Administrator.".

"(b) REPORTS ON ENFORCEMENT MECHANISMS.—The Secretary of the Army and the Administrator shall each prepare and submit a report to the Congress, not later than December 1, 1988, which shall examine and analyze various enforcement mechanisms for use by the Secretary or Administrator, as the case may be, including an administrative civil penalty mechanism. Each of such reports shall also include an examination, prepared in consultation with the Comptroller General, of the efficacy of the Secretary's or the Administrator's existing enforcement authorities and shall include recommendations for improvements in their operation.

(c) CONFORMING AMENDMENT.—Section 505(a) is amended by inserting "and section 309(g)(6)" after "Except as provided in subsection (b) of this section".

SEC. 315. CLEAN LAKES.

(a) ESTABLISHMENT AND SCOPE OF PROGRAM.—Section 314(a) is amended to read as follows:

"(a) ESTABLISHMENT AND SCOPE OF PROGRAM.—

"(1) STATE PROGRAM REQUIREMENTS.—Each State on a biennial basis shall prepare and submit to the Administrator for his approval—

"(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

"(B) a description of procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes;

"(C) a description of methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes;

"(D) methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;

"(E) a list and description of those publicly owned lakes in such State for which uses are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

"(F) an assessment of the status and trends of water quality in lakes in such State, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

"(2) SUBMISSION AS PART OF 305(b)(1) REPORT.—The information required under paragraph (1) shall be included in the report required under section 305(b)(1) of this Act, beginning with the report required under such section by April 1, 1988.

"(3) REPORT OF ADMINISTRATOR.—Not later than 180 days after receipt from the States of the biennial information required under paragraph (1), the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status of water quality in lakes in the United States, including the effectiveness of the methods and procedures described in paragraph (1)(D).

"(4) ELIGIBILITY REQUIREMENT.—Beginning after April 1, 1988, a State must have submitted the information required under paragraph (1) in order to receive grant assistance under this section.".

"(b) DEMONSTRATION PROGRAM.—Section 314 is amended by adding at the end thereof the following new subsections:

"(d) DEMONSTRATION PROGRAM.—

"(1) GENERAL REQUIREMENTS.—The Administrator is authorized and directed to establish and conduct at locations throughout the Nation a lake water quality demonstration program. The program shall, at a minimum—

"(A) develop cost effective technologies for the control of pollutants to preserve or enhance lake water quality while optimizing multiple lakes uses;

"(B) control nonpoint sources of pollution which are contributing to the degradation of water quality in lakes;

"(C) evaluate the feasibility of implementing regional consolidated pollution control strategies;

"(D) demonstrate environentally preferred techniques for the removal and disposal of contaminated lake sediments;

"(E) develop improved methods for the removal of silt, stumps, aquatic growth, and other obstructions which impair the quality of lakes;

"(F) construct and evaluate silt traps and other devices or equipment to prevent or abate the deposit of sediment in lakes; and

"(G) demonstrate the costs and benefits of utilizing dredged material from lakes in the reclamation of despoiled land.

"(2) GEOGRAPHICAL REQUIREMENTS.—Demonstration projects authorized by this subsection shall be undertaken to reflect a variety of geographical and environmental conditions. As a priority, the Administrator shall undertake demonstration projects at Lake Houston, Texas; Beaver Lake, Arkansas; Greenwood Lake and Belcher Creek, New Jersey; Deal Lake, New Jersey; Alcyon Lake, New Jersey; Gorton's Pond, Rhode Island; Lake Washington, Rhode Island; Lake Bomoseen, Vermont; Sauk Lake, Minnesota; and Lake Worth, Texas.

"(3) REPORTS.—The Administrator shall report annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate on work undertaken pursuant to this subsection. Upon completion of the program authorized by this subsection, the Administrator shall submit to such Committees a final report on the results of such program, along with recommendations for further measures to improve the water quality of the Nation's lakes.

"(4) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There is authorized to be appropriated to carry out this subsection not to exceed $40,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

"(B) SPECIAL AUTHORIZATIONS.—

"(i) AMOUNT.—There is authorized to be appropriated to carry out subsection (b) with respect to subsection (a)(1)(D) not to exceed $15,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

"(ii) DISTRIBUTION OF FUNDS.—The Administrator shall provide for an equitable distribution of sums appropriated pursuant to this subparagraph among States carrying out approved methods and procedures. Such distribution shall be based on the relative needs of each such State for the mitigation of the harmful effects on lakes and other surface waters of high acidity that may reasonably be due to acid deposition or acid mine drainage.

"(iii) GRANTS AS ADDITIONAL ASSISTANCE.—The amount of any grant to a State under this subparagraph shall be in addition to, and not in lieu of, any other Federal financial assistance.".

(c) LAKE RESTORATION GUIDANCE MANUAL.—Section 304(j) is amended to read as follows:

"(j) LAKE RESTORATION GUIDANCE MANUAL.—The Administrator shall, within 1 year after the date of the enactment of the Water Quality Act of 1987 and biennially thereafter, publish and disseminate a lake restoration guidance manual describing methods, procedures, and processes to guide State and local efforts to improve, restore, and enhance water quality in the Nation's publicly owned lakes.".

(d) CONFORMING AMENDMENTS.—Section 314 is further amended—

(1) in subsection (b) by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1) by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2) by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

SEC. 316. MANAGEMENT OF NONPOINT SOURCES OF POLLUTION.

(a) IN GENERAL.—Title III is amended by adding at the end the following new section:

"SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.

"(a) This section shall apply only to programs funded in whole or in part with sums reserved under section 205(l) of this Act.

"(b) STATE MANAGEMENT PROGRAMS.—

"(1) IN GENERAL.—The Governor of each State, for that State or in combination with adjacent States, may, after notice and opportunity for public comment, prepare and submit to the Administrator a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

"(2) SPECIFIC CONTENTS.—Each management program proposed for implementation under this subsection should include each of the following:

"(A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (b)(1)(B), taking into account the impact of the practice on ground water quality.

"(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

"(C) A schedule containing annual milestones for (1) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (b)(1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

"(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

"(E) Sources of Federal and other assistance and funding (other than assistance provided under subsection (i) and (j)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

"(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a management program under this subsection, a State should to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(4) DEVELOPMENT ON WATERSHED BASIS.—A State should, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

"(d) GRANT PROGRAM.—

"(1) GRANTS FOR IMPLEMENTATION OF MANAGEMENT PROGRAMS.—Upon submission by a State of a management program under subsection (b), the Administrator may make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program.

"(2) APPLICATIONS.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

"(4) LIMITATION ON USE OF FUNDS.—States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assist-

ance is related to the costs of demonstration projects.

"(6) MAINTENANCE OF EFFORT.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(7) REQUEST FOR INFORMATION.—The administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section.

"(j) GRANTS FOR PROTECTING GROUNDWATER QUALITY.—

"(1) ELIGIBLE APPLICANTS AND ACTIVITIES.—Upon submission by a State of a plan under subsection (b), the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

"(2) APPLICATIONS.—An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.

"(k) CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS.—The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (c)(2)(F) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.

"(l) COLLECTION OF INFORMATION.—The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practicies to control nonpoint sources of pollution.

(b) POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION.—Section 101(a) is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.".

(d) CONFORMING AMENDMENT.—Section 304(k)(1) is amended by inserting "and nonpoint source pollution management programs approved under section 319 of this Act" after "208 of this Act".

SEC. 317. NATIONAL ESTUARY PROGRAM.

(a) PURPOSES AND POLICIES.—

(1) FINDINGS.—Congress finds and declares that—

(A) the Nation's estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

(2) PURPOSES.—The purposes of this section are to—

(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

(C) encourage the preparation of management plans for estuaries of national significance; and

(D) enhance the coordination of estuarine research.

(b) MANAGEMENT PROGRAM.—Title III is amended by adding at the end thereof the following new section:

"SEC. 320. NATIONAL ESTUARY PROGRAM.

"(a) MANAGEMENT CONFERENCE.—

"(1) NOMINATION OF ESTUARIES.—The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

"(2) CONVENING OF CONFERENCE.—

"(A) IN GENERAL.—In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

"(B) PRIORITY CONSIDERATION.—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; and Galveston Bay, Texas.

"(3) BOUNDARY DISPUTE EXCEPTION.—In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

"(b) PURPOSE OF CONFERENCE.—The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

"(1) assess trends in water quality, natural resources, and uses of the estuary;

"(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

"(3) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resoures;

"(4) develop a comprehensive conservation and management plan that recommends priority corrective actions of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

"(5) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

"(6) monitor the effectiveness of actions taken pursuant to the plan; and

"(7) review all Federal financial assistance program and Federal development project in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

"(c) MEMBERS OF CONFERENCE.—The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

"(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

"(2) international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;

"(3) each interested Federal agency, as determined appropriate by the Administrator;

"(4) local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and

"(5) affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

"(d) UTILIZATION OF EXISTING DATA.—In developing a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.

"(e) PERIOD OF CONFERENCE.—A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

"(f) APPROVAL AND IMPLEMENTATION OF PLANS.—

"(1) APPROVAL.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plans if the plan meets the requirements of this section and the affected Governor or Governors concur.

"(2) IMPLEMENTATION.—Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act to assist States with the implementation of such plan.

"(g) GRANTS.—

"(1) RECIPIENTS.—The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

"(2) PURPOSES.—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan under this section.

"(3) FEDERAL SHARE.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.

"(h) GRANT REPORTING.—Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) shall report to the Administrator not later than 18 months after receipt of such grant and biennially thereafter on the progress being made under this section.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991 for—

"(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

"(2) making grants under subsection (g); and

"(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).

"(j) RESEARCH.—

"(1) PROGRAMS.—In order to determine the need to convene a management conference under this section or at the request of such management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

"(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameter which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

"(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

"(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

"(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

"(2) REPORTS.—The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

"(A) a listing or priority monitoring and research needs;

"(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

"(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

"(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

"(k) DEFINITIONS.—For purposes of this section, the terms 'estuary' and 'estuarine zone' have the meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.".

SEC. 318. UNCONSOLIDATED QUATERNARY AQUIFER.

Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quaternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946-2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This section may be enforced under sections 309 (a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this section shall be considered a violation of section 301 of the Federal Water Pollution Control Act.

TITLE IV—PERMITS AND LICENSES

SEC. 401. STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS.

(a) LIMITATION ON PERMIT REQUIREMENT.—Section 402(l) is amended by inserting "(1) Agricultural return flows.—" before "The Administrator" and by adding at the end thereof the following:

"(2) STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS.—The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, by-product, or waste products located on the site of such operations.".

(b) CONFORMING AMENDMENTS.—Section 402(l) is further amended—

(1) by inserting "LIMITATION ON PERMIT REQUIREMENT.—" after "(1)"; and

(2) by indenting paragraph (1) of such section, as designated by subsection (a) of this section, and aligning such paragraph with paragraph (2) of such section, as added by such subsection (a).

SEC. 402. ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.

Section 402 is amended by adding at the end thereof the following new subsection:

"(m) ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.—To the extent a treatment works (as defined in section 212 of this Act) which is publicly

owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

SEC. 403. PARTIAL NPDES PROGRAM.

(a) PARTIAL PERMIT PROGRAM.—Section 402 is amended by adding at the end the following:

"(n) PARTIAL PERMIT PROGRAM.—

"(1) STATE SUBMISSION.—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) MINIMUM COVERAGE.—A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

"(3) APPROVAL OF MAJOR CATEGORY PARTIAL PERMIT PROGRAMS.—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

"(4) APPROVAL OF MAJOR COMPONENT PARTIAL PERMIT PROGRAMS.—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

(b) RETURN OF STATE PERMIT PROGRAM TO ADMINISTRATOR.—

(1) IN GENERAL.—Section 402(c) is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS ON PARTIAL PERMIT PROGRAM RETURNS AND WITHDRAWALS.—A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of—

"(A) a State partial permit program approved under subsection (n)(3) only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

"(B) a State partial permit program approved under subsection (n)(4) only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.".

(2) CONFORMING AMENDMENT.—Section 402(c)(1) is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

SEC. 404. ANTI-BACKSLIDING.

(a) GENERAL RULE.—Section 402 is amended by adding at the end thereof the following new subsection:

"(o) ANTI-BACKSLIDING.—

"(1) GENERAL PROHIBITION.—In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303 (d) or (e), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 303(d)(4).

"(2) EXCEPTIONS.—A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if—

"(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

"(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

"(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B);

"(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

"(D) the premittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

"(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case of limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this Act or for reasons otherwise unrelated to water quality.

"(3) LIMITATIONS.—In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.".

(b) LIMITATIONS ON REVISION OF CERTAIN EFFLUENT LIMITATIONS.—Section 303(d) of the Act is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS ON REVISION OF CERTAIN EFFLUENT LIMITATIONS.—

"(A) STANDARD NOT ATTAINED.—For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste loan allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) and the designated use which is not being attained is removed in accordance with regulations established under this section.

"(B) STANDARD ATTAINED.—For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.".

(c) STUDY.—The Administrator shall study—

(1) the extent to which States have reviewed, revised, and adopted water quality standards in accordance with section 24 of the Municipal Wastewater Treatment Construction Grant Amendments of 1981; and

(2) the extent to which modifications of permits issued under section 402(a)(1)(B) of the Federal Water Pollution Control Act for the purpose of reflecting any revisions to water quality standards should be encouraged or discouraged.

The Administrator shall submit a report on such study, together with recommendations, to Congress not later than 2 years after the date of the enactment of this Act.

(d) CONFORMING AMENDMENT.—Section 402(a)(1) is amended by inserting "(A)" after "either" and by inserting "(B)" after "this Act, or".

SEC. 405. MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.

(a) Section 402 is amended by adding at the end thereof the following new subsection:

"(p) MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.—

"(1) GENERAL RULE.—Prior to October 1, 1992, the Administrator or the State (in the case of a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to the following stormwater discharges:

"(A) A discharge with respect to which a permit has been issued under this section before the date of the enactment of this subsection.

"(B) A discharge associated with industrial activity.

"(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

"(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

"(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwaterOdVMcharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

"(3) PERMIT REQUIREMENTS.—

"(A) INDUSTRIAL DISCHARGES.—Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 301.

"(B) MUNICIPAL DISCHARGE.—Permits for discharges from municipal storm sewers—

"(i) may be issued on a system- or jurisdiction-wide basis;

"(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

"(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

"(4) PERMIT APPLICATION REQUIREMENTS.—

"(A) INDUSTRIAL AND LARGE MUNICIAPAL DISCHARGES.—Not later than 2 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after such date of enactment. Not later than 4 years after such date of enactment, the Administrator, or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

"(B) OTHER MUNICIPAL DISCHARGES.—Not later than 4 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after such date of enactment. Not later than 6 years after such date of enactment, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

"(5) STUDIES.—The Administrator, in consultation with the States, shall conduct a study for the purposes of—

"(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection,

"(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

"(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

"(6) REGULATIONS.—Not later than October 1, 1992, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.".

SEC. 406. SEWAGE SLUDGE.

(a) IDENTIFICATION AND REGULATION OF TOXIC POLLUTANTS.—Section 405(d) is amended—

(1) by inserting "(1) REGULATIONS.—" before "The Administrator, after";

(2) by striking "(1)", "(2)", and "(3)", and inserting in lieu thereof "(A)", "(B)", and "(C)", respectively; and

(3) by adding at the end the following new paragraphs:

"(2) IDENTIFICATION AND REGULATION OF TOXIC POLLUTANTS.—

"(A) ON BASIS OF AVAILABLE INFORMATION.—

"(i) PROPOSED REGULATIONS.—Not later than November 30, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

"(ii) FINAL REGULATIONS.—Not later than August 31, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

"(B) OTHERS.—

"(i) PROPOSED REGULATIONS.—Not later than July 31, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

"(ii) FINAL REGULATIONS.—Not later than June 15, 1988, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

"(C) REVIEW.—From time to time, but not less often than every 2 years, the Administrator shall review the regulations promulgated under this paragraph for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements of this paragraph.

"(D) MINIMUM STANDARDS; COMPLIANCE DATE.—The management practices and numerical criteria established under subparagraphs (A), (B), and (C) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance as expeditiously as practicable but in no case later than 12 months after their publication, unless such regulations require the construction of new pollution control facilities, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than 2 years from the date of their publication.

"(3) ALTERNATIVE STANDARDS.—For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the Administrator's judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as well assure the proper operation and maintenance of any such element of design or equipment.

"(4) CONDITIONS ON PERMITS.—Prior to the promulgation of the regulations required by paragraphs (2), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

"(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section is intended to waive more stringent requirements established by this Act or any other law.".

(b) MANNER OF SLUDGE DISPOSAL.—Section 405(e) is amended to read as follows:

"(e) MANNER OF SLUDGE DISPOSAL.—The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.".

(c) IMPLEMENTATION THROUGH PERMITS.—Section 405 is further amended by adding at the end thereof the following:

"(f) IMPLEMENTATION OF REGULATIONS.—

"(1) THROUGH SECTION 402 PERMITS.—Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Driking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1986, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

"(2) THROUGH OTHER PERMITS.—In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.

"(g) STUDIES AND PROJECTS.—

"(1) GRANT PROGRAM; INFORMATION GATHERING.—The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial management or use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, and other beneficial purposes. For the purposes of carrying out this subsection, the Administrator may make grants to State water pollution control agencies, other public or nonprofit agencies, institutions, organizations, and individuals. In cooperation with other Federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and beneficial use of sewage sludge.

"(2) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is authorized to be appropriated for fiscal years beginning after September 30, 1986, not to exceed $5,000,000.".

(d) ENFORCEMENT.—(1) Section 308(a)(4) is amended by inserting "405," before "and 504".

(2) Section 505(f) is amended by striking out "or" before "(6)", and by inserting before the period "; or (7) a regulation under section 405(d) of this Act,".

(3) Section 509(b)(1)(E) is amended by striking out "or 306" and inserting in lieu thereof "306, or 405".

(e) REMOVAL CREDITS.—The part of the decision of Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, No. 84-3530 (3d. Cir. 1986), which addresses section 405(d) of the Federal Water Pollution Control Act is stayed until August 31, 1987, with respect to—

(1) those publicly owned treatment works the owner or operator of which received authority to revise pretreatment requirements under section 307(b)(1) of such Act before the date of the enactment of this section, and

(2) those publicly owned treatment works the owner or operator of which has submitted an application for authority to revise pretreatment requirements under such section 307(b)(1) which application is pending on such date of enactment and is approved before August 31, 1987.

The Administrator shall not authorize any other removal credits under such Act until the Administrator issues the regulations required by paragraph (2)(A)(ii) of section 405(d) of such Act, as amended by subsection (a) of this section.

(f) CONFORMING AMENDMENTS.—Section 405(d) is further amended—

(1) by inserting "REGULATIONS.—" after "(d)";

(2) by indenting paragraph (1) (as designated by subsection (a)(1) of this section) and aligning such paragraph with paragraph (3), as added by subsection (a)(3); and

(3) in such paragraph (1) by aligning subparagraphs (A), (B), and (C) (as designated by subsection (a)(2) of this section) with subparagraph (C) of paragraph (2), as added by subsection (a)(3) of this section.

SEC. 407. LOG TRANSFER FACILITIES.

(a) AGREEMENT.—The Administrator and Secretary of the Army shall enter into an agreement regarding coordination of permitting for log transfer facilities to designate a lead agency and to process permits required under sections 402 and 404 of the Federal Water Pollution Control Act, where both such sections apply, for discharges associated with the construction and operation of log transfer facilities. The Administrator and Secretary are authorized to act in accordance with the terms of such agreement to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

(b) APPLICATIONS AND PERMITS BEFORE OCTOBER 22, 1985.—Where both of sections 402 and 404 of the Federal Water Pollution Control Act apply, log transfer facilities which have received a permit under section 404 of such Act before October 22, 1985, shall not be required to submit a new application for a permit under section 402 of such Act. If the Administrator determines that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act, a separate application for a permit under section 402 of such Act shall not thereafter be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act, modifications to the existing permit under section 404 of such Act to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of such Act.

(c) LOG TRANSFER FACILITY DEFINED.—For the purposes of this section, the term "log transfer facility" means a facility which is constructed in whole or in part in waters of the United States and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. AUDITS

Section 501(d) is amended by inserting at the end the following new sentences: "For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with independent State audit organizations, consistent with chapter 75 of title 31, United States Code. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts."

SEC. 502. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) DEFINED AS A STATE.—Section 502(3) is amended by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,".

(b) DEFINED AS PART OF UNITED STATES.—Section 311(a)(5) is amended by striking our "the Canal Zone," and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands,".

SEC. 503. AGRICULTURAL STORMWATER DISCHARGES.

Section 502(14) (relating to the definition of point source) is amended by inserting after "does not include" the following: "agricultural stormwater discharges and".

SEC. 504. PROTECTION OF INTERESTS OF UNITED STATES IN CITIZEN SUITS.

Section 505(c) is amended by adding at the end thereof the following new paragraph:

"(3) PROTECTION OF INTERESTS OF UNITED STATES.—Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.".

SEC. 505. JUDICIAL REVIEW AND AWARD OF FEES.

(a) LOCATION; DEADLINE FOR APPEAL.—Section 509(b)(1) is amended—

(1) by striking out "transacts such business" and inserting in lieu thereof, "transacts business which is directly affected by such action"; and

(2) by striking out "ninety" and "ninetieth" and inserting in lieu thereof "120" and "120th", respectively.

(b) VENUE; AWARD OF FEES.—Section 509(b) is amended by adding at the end thereof the following new paragraphs:

"(3) VENUE.—

"(A) SELECTION PROCEDURE.—If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within 30 days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of

Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within 30 days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within 3 business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

"(B) ADMINISTRATIVE PROVISIONS.—Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until 15 days after the Administrative Office has selected the court in which the record shall be filed.

"(C) TRANSFERS.—Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to subparagraph (A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

"(4) AWARD OF FEES.—In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.".

(c) CONFORMING AMENDMENT FOR CITIZEN SUIT ACTIONS.—The first sentence of section 505(d) is amended by inserting "prevailing or substantially prevailing" before "party".

SEC. 506. INDIAN TRIBES.

Title V is amended by redesignating section 518, and any references thereto, as section 519 and by inserting section 517 the following new section:

"SEC. 518. INDIAN TRIBES.

"(a) POLICY.—Nothing in this section shall be construed to affect the application of section 101(g) of this Act, and all of the provisions of this section shall be carried out in accordance with the provisions of such section 101(g). Indian tribes shall be treated as States for purposes of such section 101(g).

"(b) ASSESSMENT OF SEWAGE TREATMENT NEEDS; REPORT.—The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds alloted to States under section 205 of this Act and priority lists under section 216 of this Act, and any obstacles which prevent such needs from being met. Not later than 1 year after the date of the enactment of this section, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying (1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this Act, and (2) methods by which the participation in and administration of programs under this Act by Indian tribes can be maximized.

"(c) RESERVATION OF FUNDS.—The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under section 205(e), one-half of 1 percent of the sums appropriated under section 207. Sums reserved under this subsection shall be available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes.

"(d) COOPERATIVE AGREEMENTS.—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

"(e) TREATMENT AS STATES.—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 308, 314, 319, 401, 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—

"(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

"(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (c) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of the Act.

"(f) GRANTS FOR NONPOINT SOURCE PROGRAMS.—The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe was a State. Not more than one-third of 1 percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.

"(g) ALASKA NATIVE ORGANIZATIONS.—No provision of this Act shall be construed to—

"(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally-recognized tribe, traditional Alaska Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), over lands or persons in Alaska;

"(2) create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska; or

"(3) in any way affect any assertion that Indian country, as defined in section 1151 of title 18, United States Code, exists or does not exist in Alaska.

"(h) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Federal Indian reservation' means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

"(2) 'Indian tribe' means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.".

SEC. 507. DEFINITION OF POINT SOURCE.

For purposes of the Federal Water Pollution Control Act, the term "point source" includes a landfill leachate collection system.

SEC. 508. SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES.

(a) FINDING.—The Congress finds that the New York Bight Apex is no longer a suitable location for the ocean dumping of municipal sludge.

(b) GENERAL RULE.—Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is further amended by inserting after section 104 the following new section:

"SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

"SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection:

"(A) The term 'Apex' means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

"(B) The term 'Apex site' means that site within the Apex at which the dumping of

municipal sludge occurred before October 1, 1983.

"(C) The term 'eligible authority' means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

"(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

"(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

"(A) December 15, 1987; or

"(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

"(b) RESTRICTION ON USE OF THE 106-MILE SITE.—The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the '106-Mile Ocean Waste Dump Site' (as described in 49 F.R. 19005).".

SEC. 509. OCEAN DISCHARGE RESEARCH PROJECTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator is authorized to issue a research permit to the Orange County, California, Sanitation Districts for the discharge of preconditioned municipal sewage sludge into the ocean for the purpose of enabling research to be conducted in assessing and analyzing the effects of disposing of sewage sludge by pipeline into ocean waters—

(1) if the Administrator is satisfied that such local governmental agency is actively pursuing long-term land-based options for the handling of its sludge with special emphasis on remote disposal alternatives set forth in the 1980 LA/OMA sludge management project and on reuse of sludge or use of recycled sludge; and

(2) if the Administrator determines that there is no likelihood of an unacceptable adverse effect on the environment as a result of issuance of such permit and that such permit would meet the requirements of paragraph (2) of section 301(h) of the Federal Water Pollution Control Act, as amended by this Act, and of the sentences following the first sentence of such section if such permit were being issued under such section.

(b) PERMIT TERMS.—

(1) PERIOD.—The permit for the discharge of sludge shall be for a period of 5 years commencing on the date of such discharge and shall not be extended or renewed.

(2) MONITORING.—Such permit shall provide for monitoring (including whole effluent monitoring) of permitted discharges and other discharges into the ocean in the same area and the effects of such discharges (including cumulative effects) in conformance with requriements established by the Administrator, after consultation with appropriate Federal and State agencies, and for the reporting of such monitoring to Congress and the Administrator every 6 months.

(3) VOLUME OF DISCHARGE.—Such permit shall provide that the volume of such local agency's sludge disposed of by such experimental pipeline shall be no more than one and one-half times that being disposed of by such remote disposal and alternatives for the reuse of sludge and the use of recycled sludge. In no event shall the agency dispose of more than 50 percent of its sludge by the pipeline.

(4) TERMINATION.—The permit shall provide for termination of the permit if the Administrator determines that the disposal of sewage sludge is resulting in an unacceptable adverse impact on fish, shellfish, and wildlife. The Administrator may terminate a permit issued under this section if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown. If the effluent from a source with a permit issued under this section is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(c) LIMITATION ON PRECEDENCE.—The facts and circumstances described in subsection (a) present a unique situation which will not establish a precedent for the relaxation of the requirements of the Federal Water Pollution Control Act applicable to similarly situated discharges.

(d) REPORT.—Such districts shall report the results of the program and an analysis of such program to Congress under this section not later than 4½ years after issuance of the permit.

SEC. 510. LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY.

(a) IN GENERAL.—

(1) NORTH RIVER PLANT.—If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator), except as provided in subsection (b).

(2) RED HOOK PLANT.—If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator), except as provided in subsection (b).

(b) WAIVERS.—

(1) INTERRUPTION OF PLANT OPERATION.—In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) INCREASED PRECIPITATION.—In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) VARIATIONS IN CERTAIN NORTH RIVER DRAINAGE AREA DISCHARGES.—In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) VARIATIONS IN CERTAIN RED HOOK DRAINAGE AREA DISCHARGES.—In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) CIRCUMSTANCES BEYOND CITY'S CONTROL.—The Administrator shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, except such circumstances shall not include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline set forth in subsection (a).

(c) PENALTIES.—Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) CONSENT DECREE DEFINED.—For purposes of this section, the term "consent decree" means the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) COOPERATION.—The Administrator shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) SAVINGS CLAUSE.—Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h) TERMINATION DATES.—

(1) NORTH RIVER PLANT.—The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) RED HOOK PLANT.—The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) MONITORING ACTIVITIES.—The Administrator shall promptly establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a).

(j) ESTABLISHMENT OF METHODOLOGIES.—The Administrator shall establish the methodologies, data base, and any other information required for making determinations under subsection (b)—

(1) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and

(2) for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied.

(k) Violations.—In carrying out this section, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

SEC. 511. STUDY OF DE MINIMIS DISCHARGES.

(a) STUDY.—The Administrator shall conduct a study of discharges of pollutants into the navigable waters and their regulation under the Federal Water Pollution Control Act to determine whether or not there are discharges of pollutants into such waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant and to determine the most effective and appropriate methods of regulating any such discharges.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study along with recommendations and findings concerning the most effective and appropriate methods of regulating any discharges of pollutants into the navigable waters in amounts which the Administrator determines under such study to be not significant.

SEC. 512. STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES.

(a) EFFECTIVENESS STUDY.—The Administrator shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons for each such State's failure to make such obligations.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

SEC. 513. STUDY OF TESTING PROCEDURES.

(a) STUDY.—The Administrator shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in subsection (a) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 514. STUDY OF PRETREATMENT OF TOXIC POLLUTANTS.

(a) STUDY.—The Administrator shall study—

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged from publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, and shall evaluate the extent to which each such strategy identified may be expected to achieve the goals of this Act;

(5) for each such alternative regulatory strategy, the extent to which removal of toxic pollutants by publicly owned treatment works results in contamination of sewage sludge and the extent to which pretreatment requirements may prevent such contamination or improve the ability of publicly owned treatment works to comply with sewage sludge criteria developed under section 405 of the Federal Water Pollution Control Act; and

(6) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each such alternative strategy.

(b) REPORT.—Not later than 4 years after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 515. STUDIES OF WATER POLLUTION PROBLEMS IN AQUIFERS.

(a) STUDIES.—The Administrator, in conjunction with State and local agencies and after providing an opportunity for full public participation, shall conduct studies for the purpose of identifying existing and potential point and nonpoint sources of pollution, and of identifying measures and practices necessary to control such sources of pollution, in the following ground water systems and aquifers:

(1) the ground water system of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona;

(2) the Spokana-Rathdrum Valley Aquifer, Washington and Idaho;

(3) the Nassau and Suffolk Counties Aquifer, New York;

(4) the Whidbey Island Aquifer, Washington;

(5) the Unconsolidated Quaternary Aquifer, Rockaway River area, New Jersey;

(6) contaminated ground water under Litchfield, Hartford, Fairfield, Tolland, and New Haven Counties, Connecticut; and

(7) the Sparta Aquifer, Arkansas.

(b) REPORTS.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the studies conducted under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $7,000,000 for fiscal years beginning after September 30, 1986, to carry out this section.

SEC. 516. GREAT LAKES CONSUMPTIVE USE STUDY.

(a) STUDY OF CONSUMPTIVE USES.—In recognition of the serious impacts on the Great Lakes environment that may occur as a result of increased consumption of Great Lakes water, including loss of wetlands and

reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our natural resources while allowing for continued economic growth, the Secretary of the Army in cooperation with the Administrator, other interested departments, agencies, and instrumentalities of the United States, and the 8 Great Lakes States, is authorized to conduct a study of the effects of Great Lakes water consumption on economic growth and environmental quality in the Great Lakes region and of control measures that can be implemented to reduce the quantity of water consumed.

(b) MATTERS INCLUDED.—The study authorized by this section shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, including an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the effect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the effect of laws, regulations, and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the associated environmental impacts and of the economic effects on industry and other interests in the Great Lakes region associated with individual consumptive use control strategies; and

(5) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) GREAT LAKES STATES DEFINED.—For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, $750,000 to carry out this section. Sums appropriated under this section shall remain available until expended.

SEC. 517. SULFIDE CORROSION STUDY.

(a) STUDY.—The Administrator shall conduct a study of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate such effects, and the range of available options to deal with such effects.

(b) CONSULTATION.—The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,000,000 to carry out this section for fiscal years beginning after September 30, 1986.

SEC. 518. STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS.

(a) STUDY.—The Administrator shall study problems associated with rainfall induced infiltration into wastewater treatment sewer systems. As part of such study, the Administrator shall study appropriate methods of regulating rainfall induced infiltration into the sewer system of the East Bay Municipal Utility District, California.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study, along with recommendations to reduce such infiltration.

SEC. 519. DAM WATER QUALITY STUDY.

The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment of water by dams. The results of such study shall be submitted to Congress not later than December 31, 1987.

SEC. 520. STUDY OF POLLUTION IN LAKE PEND OREILLE, IDAHO.

The Administrator shall conduct a comprehensive study of the sources of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, for the purpose of identifying the sources of such pollution. In conducting such study, the Administrator shall consider existing studies, surveys, and test results concerning such pollution. The Administrator shall report to Congress the findings and recommendations concerning the study conducted under this section.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the distinguished Presiding Officer.

SELECT COMMITTEE ON IRAN AND NICARAGUA

Mr. BYRD. Mr. President, I am about to ask unanimous consent that the Senate proceed to the consideration of a resolution establishing the select committee of the Senate to conduct an investigation. This resolution has been widely discussed.

I shall ask unanimous consent shortly that the Senate proceed to the immediate consideration of the resolution. If that consent is granted—Mr. President, may we have order in the Senate?

The PRESIDING OFFICER (Mr. BINGAMAN). The Senate will be in order.

The majority leader is recognized.

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

Mr. President, the resolution will be open for amendment, of course, and would be subject to debate.

Before I make the request, may I say that I have modified the resolution in several ways, and I have not had an opportunity to inform the distinguished Republican leader of the modifications.

The modifications comport with the recommendations of Senators INOUYE and RUDMAN, the chairman and vice chairman of the select committee to be, and also comport with the recommendations of, or at least commands the support of, the incoming new chairman of the Senate Select Committee on Intelligence, Mr. BOREN.

Mr. President, for the benefit of the press and all Senators, particularly the distinguished Republican leader, the changes would be as follows:

On the first page, in the resolving clause establishing the select committee, the name of the select committee would be changed from "Select Committee on Secret Military Assistance to Iran and the Nicaraguan Contras" to the "Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition."

The next modifications which I will make, appear on page 7 of the resolution which Senators have in their hands. The first modification on page 7 states that the staff shall work for the select committee as a whole. Here is the modification: "shall report to the chairman and vice chairman."

So, what is being done here is this: The language did not provide that the staff would report to the chairman and the vice chairman. The language as appears in the resolution is as follows: "All staff shall work for the select committee as a whole and, except as otherwise provided by the select committee, shall be under the immediate direction of the staff director."

It is changed to read as follows: "All staff shall work for the select committee as a whole and shall report to the chairman and vice chairman, and, except as otherwise provided by the select committee, shall be under the direction of the chairman," instead of under the direction of the staff director.

The next modification on page 7 would provide for the designation by the majority and minority leaders of the Senate of one staff person to serve on the staff of the select committee, to serve as the liaison to the select committee on behalf of the distinguished Republican leader and the majority leader.

On page 17, the following language is added as (b)(1): "The Select Committee on Intelligence is hereby directed to prepare and provide to the select committee, in closed session, a report of its investigation into any matter described in section 1 of this resolution, which report shall include a summary of the testimony and chronology of events developed by the Select Committee on Intelligence, together with a listing of any unresolved questions and issues which it recommends be pursued by the select committee as soon as practicable."

May I say that the resolution gives to the select committee access, in any event, to the materials, documents, papers, et cetera—not only the Senate Select Committee on Intelligence but

also any other committees that have investigative jurisdiction or jurisdiction which would put those committees into the possession of papers, documents, whatever, that the new select committee would require in order to carry out its mandate under the resolution creating the select committee.

The final modification is as follows: "The select committee shall make a final public report * * * at the earliest practicable date, but not later than August 1, 1987, provided that on or before August 1, 1987, a privileged motion made by the majority leader, to be debatable for no more than 1 hour, in the usual form, shall be in order, with the exception that no motion to reconsider, no motion to refer or commit, and no motion to table will be in order."

That privileged motion shall read as follows: "I move that the time be extended from August 1, 1987, to October 30, 1987, for the investigation and final report of the select committee."

So that the date for the final report of the select committee, as embraced in this resolution, is August 1, 1987, unless circumstances are such that the committee needs an extension of time; and the language that is now in the resolution provides for further action by the Senate on a privileged motion that the majority leader will be authorized to make.

Under the limitations I have stated, the Senate then may wish to extend the time to October 30, 1987, which is the date within the original resolution, before the modification.

That, I think, completes my statement with respect to modifications.

Before I ask unanimous consent that the Senate proceed to the consideration of the resolution, does the distinguished minority leader wish me to yield to him?

Mr. DOLE. If the distinguished majority leader will yield, as I understand, there were a couple of changes also on page 6.

Mr. RUDMAN. And 7.

Mr. BYRD. The distinguished Republican leader is correct.

On page 6, the top of the page, paragraph 2, "A majority of the voting members of the select committee shall constitute a quorum for the transaction of business." The change is as follows: the words "transaction of business" are stricken and inserted in lieu thereof are the following words "reporting a matter or recommendation to the Senate."

This would mean that the resolution then would read thusly: "A majority of the voting members of the select committee shall constitute a quorum for reporting a matter or recommendation to the Senate," and then going on using the present language or the language that is in the copy that has been circulated, "except that the select committee may fix a lesser number as a quorum for the purpose of taking testimony before the select committee or for conducting the business of the select committee."

The word "other" would be inserted just before "business" making the language read "except that the select committee may fix a lesser number as a quorum for the purpose of taking testimony before the select committee or for conducting the other business of the select committee."

Mr. DOLE. Mr. President, will the majority leader yield further?

Mr. BYRD. Yes.

Mr. DOLE. I am advised by the distinguished Senator from New Hampshire that on page 7 there was one omission, if the Senator will yield to the Senator from New Hampshire.

Mr. BYRD. Yes.

May I say, Mr. President, that I am not satisfied with the modification that I just read.

Mr. DOLE. The one on 6?

Mr. BYRD. The one on page 6.

So for the moment I would withhold that modification.

May we go to page 7?

Mr. RUDMAN. If the distinguished majority leader will yield, I believe on page 7 it has been agreed that on line 1 the sentence should end with a period after the word "staff" and all other should be stricken. I believe the chairman had discussed that with the committee and the committee felt they do not want that kind of delimitation.

I would make one other observation for the majority leader.

I believe that on the title page of Senate Resolution 1, the distinguished majority leader did in fact state a correction on page 5. I believe there is also a change that he inadvertently omitted in the midpart of that sentence the word "terrorist" in the first part which we had agreed to be stricken. Other than that, I believe that the distinguished majority leader's caption of this complicated legislation is absolutely correct.

Mr. BYRD. Mr. President, I thank the distinguished Senator. The distinguished Senator is correct. I overlooked the striking of the word "terrorist." We all know that Iran is a terrorist state and has been so designated by our own State Department.

I am striking the word "terrorist" from the preamble.

Now, the distinguished Senator called another inadvertent oversight to my attention, and I believe that was on page 5?

Mr. DOLE. Page 6.

Mr. BYRD. Page 6.

Mr. RUDMAN. I believe I said line 5.

Mr. DOLE. No, line 1.

Mr. RUDMAN. Line 1, page 7.

Mr. BYRD. Yes, line 1, page 7. The Senator is correct again as usual. There is a period at the end of the word "staff" in the first line of page 7 and the remaining words are stricken, they being "including a staff director and a chief counsel."

So that paragraph would read as follows. It is very short. "Section 3(a)(1) to assist the select committee in its investigation of the study, the chairman after consultation with the vice chairman and the approval of the select committee, shall appoint committee staff," period.

Were there any other changes?

Mr. RUDMAN. I thank the distinguished majority leader. That is now correct to my understanding.

Mr. DOLE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. DOLE. Mr. President, we discussed the resolution. In fact, the distinguished Senator from New Hampshire clearly set forth the provisions of the resolution in the Republican conference meeting this morning. I think the change that has been made will accommodate, I guess with one or two exceptions, the concerns that were raised. There were some opposed to the resolution.

The distinguished Senator from Nevada, Senator HECHT, will speak in opposition to the resolution. But I know of no objection to considering the resolution.

It would be my hope we might be able to resolve one additional area and probably save several hours here. This is the area I discussed with the distinguished chairman of the Intelligence Committee, Senator BOREN. It would include not only the Select Committee on Intelligence being directed to prepare and provide to this select committee but at the same time release to the public a report which I am advised by the distinguished Senator from Oklahoma, Senator BOREN, would be probably different than the report that was discussed yesterday in the Intelligence Committee. If there could be some agreement on that, it might save an amendment and some few hours of debate. If not, we certainly have no objection to the consideration of the resolution with or without that change but there could be an amendment and there could be considerable debate.

I am perfectly willing we consider the resolution with or without that change. I hope there may be some way to work it out.

It is my view we could probably pass this resolution quickly if that could be done. There are questions that are going to be raised. I think they can be resolved by colloquies between the Senator from New Hampshire and the distinguished chairman, the Senator from Hawaii, Senator INOUYE.

I am advised that in those areas there may be some questions raised by Senators, but I do believe that it is our hope that we can pass this resolution this afternoon.

Mr. BYRD. Mr. President, do I still have the floor?

The PRESIDING OFFICER. Yes; the Senator from West Virginia has the floor.

Mr. BYRD. I thank the Chair. I only continue to hold it until we resolve this matter we are discussing here now on whether or not it will be called up.

I yield to the distinguished Senator from Hawaii with the same understanding as before.

Mr. INOUYE. Mr. President, I would like to join in the discussion on the leader's amendment to direct the Select Committee on Intelligence to prepare a report and to submit that to the Select Committee on Nicaragua and Iran.

I would hope that the Senate would leave it to the wisdom and judgment of the select committee to determine whether we should release and if so what portions of that Intelligence Committee report, because we have the responsibility of continuing this investigation, and if it is in our judgment not in the interest of our Nation or the committee's work to release any or all of that Intelligence Committee report I think we should have the privilege and the authority not to do so.

But to at this juncture, by this resolution, require the select committee to make public the findings, the allegations, the innuendoes that may be in the Intelligence Committee report may not only add to the confusion that we find in our Nation but very likely make our work that much more difficult.

I hope the Republican leader will leave it up to Senator RUDMAN and me to make a determination as to whether the Intelligence Committee report should be released all or in part.

I can assure you that we have been working on this matter in a thoroughly bipartisan manner. We have had full cooperation and I am certain Senator RUDMAN will be the first to state that I have maintained an open file with him. I have not hidden anything from him. I can assure you that everything I know he knows and I also am assured that everything he knows I know.

We want to start this committee on a bipartisan manner, proceed in a similar fashion, and to end in a manner that will be in the best interests of our Nation. We will try to do our work expeditiously, thoroughly, in a way that will not bring any disgrace to this body.

So I hope the Republican leader will agree with the majority leader and just permit the Intelligence Committee to report to us and just have it up to us as to what we do after that.

Mr. BOREN. Mr. President, will the distinguished majority leader yield?

Mr. BYRD. Yes; I ask unanimous consent that I may yield under the same conditions as heretofore noted.

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

The Senator from Oklahoma.

Mr. BOREN. I thank the distinguished majority leader. I have just heard the conversation which has taken place. I want to associate myself with the remarks that have just been made by the Senator from Hawaii. All of us hope and plan to operate in a totally bipartisan fashion.

As I take on the responsibilities of the chairmanship of the Select Committee on Intelligence, I do so knowing that I am dealing with the national interest. I seek to deal with it as an American first, without regard to political considerations.

I would say to the distinguished minority leader that it is my hope that our committee—and I discussed this with Senator COHEN, the distinguished vice chairman—can put together a report in a deliberative fashion as quickly as possible, but thoroughly and carefully, judiciously, that can be passed on to the select committee that will be created by this resolution; and that, in addition, it is my hope and will certainly be my intent that we would attempt to make as much of the information public, release it to the public, as we possibly can, consistent with national security and consistent with the interests of the ongoing investigation which will be conducted by the select committee and the independent counsel. It would certainly be our intent to do so.

And if this legislation were to authorize us to proceed in that fashion, if it were to say that we were authorized to release as much as could be released, consistent with the national security and in the interest of fairness of the ongoing investigation, we would strive to do so. We would strive to do so as quickly and as thoroughly as possible and we would operate totally in good faith.

As we have been hearing the witnesses in that committee earlier, some of the witnesses appeared under promise of anonymity for national security reasons. Witnesses were, in essence, sequestered. They were asked not to discuss some details of their testimony with other witnesses that were before us because, of course, in any investigation it is sometimes important to keep information compartmentalized. But I know from speaking with him that the Senator from Maine shares my desire to work cooperatively to bring out as many of the facts as we can to the public, to summarize as much of the evidence as we can summarize and make as much public as possible. And it would be my intent to work in good faith to do so if this resolution were simply to authorize us to do so.

I think it might be inadvisable to direct us to release a public report at this point, in that, in consultation with the Senator from Hawaii and the Senator from New Hampshire, there might be certain information they felt we should not release in light of their ongoing investigation. Certainly, I want to assure everyone concerned that it is our desire to act in good faith to bring as many facts as we can, not only to the new committee, but also to the American people.

I want to assure both the majority leader and minority leader that if they should decide to put language in this resolution that authorize us and directs us to report to the select committee and authorizes us to make public as much as possible of that report, we will endeavor to do so in a good faith fashion. I hope that that would be the final resolution of this matter, to allow us to operate in this way, to use our discretion, under the assurance that, as chairman, and also having talked with Senator COHEN, I know that he as vice chairman will work with me, working together with other members of the committee, to try to make as much know to the public as we possibly can and as quickly as we can.

Mr. BYRD. Mr. President, will the distinguished Republican leader indicate again his proposal so that I might listen once more.

Mr. DOLE. Again, let me state that I have no real quarrel with anything that has been said. I think it is necessary that we start off on a totally nonpartisan or bipartisan basis. I think there were some who have read into yesterday's vote in the Intelligence Committee a display of partisanship. I do not believe that is accurate. We do not want that to spill over into the first day of the existence of the new committee.

On the other hand, I know the President of the United States had planned on issuing a statement this afternoon to again urge the Intelligence Committee to make this report public. There have been a lot of stories and a lot of speculation about what happened—some of it accurate and some of it inaccurate. But the net result is to bring down the President insofar as the public confidence is concerned as demonstrated by the polls.

The President, I think in good faith, indicated he was going to send his people up here to come before the Intelligence Committee. And it was always his impression—and I am not certain quite what it was based on, whether it was public statements or whatever—when the Intelligence Committee completed its work, it would make public, after declassification, all the information it could.

In my view, the President is correct. We should not try to manage what the

public should hear. At the same time, we know that there are areas of national security that we should not release. And I have every confidence in the distinguished chairman of the Intelligence Committee, Senator BOREN.

It would seem to me we might be able to work out some language and then have some discussion on the floor—we have already had some—that would indicate his desire not to in any way interfere with the select committee chaired by Senator INOUYE, but at the same time to carry out what some feel to be a responsibility of the Intelligence Committee to release information that can be made public. No one knows, I have not read the report, that was discussed yesterday. As I understand it, not many people have. I do not know who it exonerates or who it embarrasses. I do not believe that should be the question.

But the question is, how soon will the American public have information based upon sworn testimony? And I believe the President of the United States is entitled to have that made public at the earliest possible date.

So that leads me to the original proposal that the distinguished Senator from Oklahoma and the Senator from New Hampshire brought to my attention. This language has since been stricken. Let me read the language I would suggest either be modified or included. These are the words "and the select committee shall release as much of the information in this report for the public which is consistent with the interest of the public and national security."

I think there has been a suggestion that we change the word "shall" to "may," and that would be satisfactory, because I have no question about the good faith of any Senator in this Chamber. My only quest has been to get everything out and get it out as quickly as we could.

If that were agreeable with the distinguished majority leader and we could have some debate after the resolution is before us, I think that would be very helpful. I thank the majority leader for yielding.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader. I believe and I hope that we can reach some amicable and appropriate resolution of this impending question that deals with the modification on page 17, or the proposed modification. May I say, however, so that the record will be clear on both sides, that we all want the public to know the facts. The public is entitled to know the facts. The public deserves to know the facts. The President is entitled for all the facts to be made known, and each of us has the responsibility, as far as each can promote such, to make the facts known to the public with respect to the arms sales or arms shipments to Iran and also with respect to the reported use of any moneys from such shipments or sales or transfers, diversion of such to the Nicaraguan Contras or for any other purpose that may be found to have been illegal, unethical or unauthorized.

Mr. President, nobody is well served by making available to the public only part of the record. The full record has not been written yet. Last evening we were discussing the release of a report to the public, the draft of which had not been read by Members who were going to be asked to vote on the release of that report. I do not have a vote as an ex officio member of the committee. I had not read the draft of the report. But there were also others who had not read the draft of the report. The draft had been prepared by the staff, working with the representatives of the White House, the National Security Council, and other agencies and representatives of the Government, the appropriate purpose of which was to be sure that any classified information would not be released. But there was at least one example that was made very clear in the presence of all who were there of the elimination of a good many sentences and/or paragraphs which were not classified. And so this Senator was unwilling to release—some days down the road, 10 days or 12 days, whatever it was—a report, make it public, which this Senator has not had a chance to read. The idea was, when I left the committee—I do not know exactly what went on after that—to release the report 10 or 12 days down the road. In the meantime, we could read the draft. I am not willing to buy a pig in the poke, take it "sight unseen" and say, "OK, I will vote to do that."

I want to make the facts public, too, and I am sure the President wants to make the facts public. The facts would long ago have been public but the President, in signing the January 17, 1986, finding, instructed the CIA to avoid informing the committees of the Congress. So for many months Congress and the public did not know anything about it, nothing.

Now the great rush is to get all the facts out, and we should get the facts out as soon as possible. But let us have all the facts. That is the purpose of creating the select committee, to develop the truth, the whole truth and nothing but the truth—the full facts, and lay them all out. When all the facts are laid out, I am sure that any persons who should be exonerated will be exonerated. But I think we make a mistake in prematurely releasing a partial record. There are witnesses who have not been heard. There are witnesses whose names probably even are not yet known who will need to be heard. And so on the part of those of us, lest there be some perception that it was a partisan vote last night as I have heard that it was—and as I say being an ex officio member, neither the distinguished minority leader nor I has a vote on that committee, but may I say that if we recall the days when Mr. Nixon was having his problem—and there were a lot of cries going up from the other side of the aisle, may I say, in this body and in the other, that the President ought to be "impeached"—this Senator was saying, "Let us go slow, let us go slow; let us not rush to judgment."

That is what I am saying at this point. Let us get the full facts. To release a report at this time, or force the select committee to do so, would be a disservice to that committee and could get in the way of its work and could likewise prove to be an impediment to the special counsel.

I will read the following, and I read this for the purpose of responding to the distinguished Republican leader to see if we might change the language so that it will fit with the language that is in the present law regarding the Select Committee on Intelligence. Section 8(a)—Senators will find this on page 137 of the book Senate Manual, Standing Orders of the Senate. Section 8(a), "The select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest"—the public interest—"would be served by such disclosure."

Now, the words "public interest" were not casually chosen in the enactment of that law. I wonder if the distinguished Republican leader and Mr. INOUYE and Mr. RUDMAN and Mr. BOREN those who have spoken thus far on that matter—would be agreeable to changing the language to read as follows: "The Select Committee on Intelligence is hereby directed to prepare and provide to the select committee, in closed session, report of its investigation into matters described in section 1 of this resolution, which report shall include a summary of the testimony and chronology of events developed by the Select Committee on Intelligence, together with a listing of unresolved questions and issues which it recommends be pursued by the select committee as soon as possible and the select committee may release as much of the information in this report to the public as it deems advisable which is consistent with the interest of the public and national security and is deemed to be by the committee in the public interest after a determination by such committee that the public interest would be served by such disclosure."

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. I personally have no problem with that based on the stat-

ute, based on what I know to be the good faith of the distinguished chairman of that committee, Senator BOREN. I have not talked to the ranking member on that committee, Senator COHEN, but I understand his objection yesterday, and he voted with the majority, was the report itself; that he felt it was too long, too cumbersome; he felt there could be a shorter summary that would in effect give the public as much information. So I have no objection. I am advised it is satisfactory to the distinguished ranking Republican on the new select committee, Senator RUDMAN, and I do believe it would serve the purpose. And if it were agreed to I would advise the White House, Don Regan specifically, that we are making an effort to accommodate not just the President; it is not a question of accommodating the President, but accommodating the American public, by getting out the information, by making as much of it public as advisable I think were the words used by the majority leader and consistent with the present statute because those words were chosen with care.

We could discuss it later, but I guess we could agree on this language if there would be some indication by the chairman of the Intelligence Committee that that matter would be proceeded with rather expeditiously.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader.

Does the Senator from Oklahoma wish me to yield?

Mr. BOREN. Yes.

Mr. BYRD. I yield.

Mr. BOREN. I think the solution which has been proposed is a very good one. I will repeat what I said earlier. We will operate in good faith and as expeditiously as we can to try to determine what information can be made public consistent with public interest and national security concerns.

There was a concern expressed by the Senator from Maine about the issuance of a report last night. I do not believe there was really any partisan feeling about that matter. It was a matter of judgment about whether or not, since many members of the committee had not had the opportunity to read the report, with the staff having worked many long hours, with a monumental job and acting very diligently, were simply not able to finish the revised drafts until just before the meeting. Therefore, virtually none of the 15 members of the committee had the opportunity to read the report. There was a feeling that perhaps it was too late and that a more concise summary of the testimony given to us could be put together.

I say simply that there was some difference of opinion on the committee, an honest difference of opinion about it. That reflected the opinion of the Senator from Maine, myself, and others. We certainly want to get as many of the facts out as we can, as quickly as we can, consistent with our responsibility to national security and to the select committee to make certain that anything we do will not hamper their ongoing investigation. We will want to carefully consult with the chairman and vice chairman of the new select committee as well to begin to put something together.

I assure the distinguished minority leader if this language is adopted we will certainly diligently operate in our committee to determine what can be made public and try to bring out the facts as quickly as we can, in addition to trying to make a helpful report to the select committee as it begins its work.

I see the distinguished Senator from Minnesota on the floor. He has certainly done outstanding work over the past 2 years chairing our committee. It has been my privilege to serve with him on that committee. He made a very great effort to try to have a report put together in time for our committee to act. Certainly, the work which he has done will be of great help as we try to go ahead and complete some kind of report which we can make.

I think this is a good suggestion which has been made, that the language is good language, and I assure all concerned that our committee will operate in good faith to carry out the spirit of that language.

Mr. DURENBERGER. I wonder if the distinguished majority leader will yield me some time?

Mr. BYRD. I yield to the distinguished chairman, the vice chairman of the Select Committee on Intelligence, without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. I rise for just a few minutes, Mr. President. Obviously, there is a temptation on an occasion like this on the chairman of the Intelligence Committee to explain why in the last couple of years we failed to do a good job of oversight so that we did not discover this little operation acting under our noses. Now that we know it has been operating under the President's nose, and he does not know a lot about it, you do not feel too badly about that.

There is a temptation, nonetheless, to take this occasion to let the people of this country as well as the President and our colleagues to know exactly what we on the Senate Select Committee on Intelligence know.

It is not a problem for me to reject the temptation because I am bound by the requirements of secrecy and the security process under which all of the testimony was taken.

Mr. President, I wish to take just a minute to clarify just a couple of points of fact, perhaps.

One is that when we entered into the process in the beginning of December to be the committee which would take as much testimony and gather as much evidence as possible on what is the covert action, nothing more than that, just the covert action involved in the Iran arms sale, we also undertook to do that as expeditiously as possible and to make the benefit of our work available to those who need to know the product as quickly as we possibly could do that.

At the end of the taking of testimony process on the 18th or 19th of December we discussed whether or not a public report could be made and what form it ought to take.

At that point in time it was clear we had 3 weeks of testimony taken from individuals under examination and we had a lot of documentary evidence as well gathered from all over the country. It would be very difficult to put together a meaningful body of information, but it was worth the try.

So we did that. The product of that is a document which is currently about 133 pages in length. I have it right here.

I think it very fairly summarizes what went on in the covert action in which the President decided to use arms sales as a medium of foreign policy and national security policy.

What it does not do, Mr. President, is arrive at some specific conclusions about what went wrong and who ought to be blamed.

We did not see that as our charge because ours was a preliminary effort.

Our effort was to be preliminary, to be intense, to get to all of the people involved as quickly as possible before they could, what people call, cook their stories, compare notes behind the scenes and make sure the public never knew what went on and make sure that then nobody could fix responsibility.

All along it was quite clear that our work would have to be succeeded by the work of others.

As we began our work, it became clear that an independent counsel would become necessary to cover some of the criminal elements. As we began our work, it became clear that this body and the House would come to judgment on a select committee process to pick up on our work.

But at no time, as chairman of this committee, was I ever under the impression that this committee, the committee of the 99th Congress under which this covert action was conducted by this administration, that this committee should not inform its colleagues and the administration and the public of this country, who are served or disserved, as the case may

be, as to what we knew about the facts in this case.

It is for that reason, at the encouragement of the President of the United States, who is going to be, as he currently is, embarrassed, if you will, by this; at the urging of myself who is embarrassed that this happened on my watch, so to speak; the encouragement of the majority leader who has had the responsibility for the congressional part of national security policy, that we did make an effort to put together this report, which does not get in the way of select committee conclusions, does not get in the way of independent counsel's criminal conclusions, but merely lays out the facts as they are known to this committee and does it in a narrative fashion so the facts mean something rather than appear simply as a cold, sterile chronology of events.

My colleague and my successor, for whom I have an incredible amount of respect, has accurately indicated that one of the arguments used against the release of this report by this committee, the committee of the 99th Congress, is that the document that I hold in my hand today was completed only yesterday morning, and many of us including the Chair of the committee did not have an opportunity to read all 133, or whatever it is, pages of this document.

I made provision, as my colleagues who are here on the floor and who were in attendance at that meeting did, for that eventuality; that is, that I suggested that this report might be adopted subject to editorial or other modification and released sometime after the 12th of January, giving us all a normal 2 weeks maybe, week or 2 weeks, to examine it, come to some conclusions, make changes that we thought were appropriate, and then release it.

I cannot comment as others have on the fact of the vote or the result of the vote. Others have commented on it. But I can endorse what I understand to be the accommodation suggested here to the authorizing legislation by the resolution on this committee; that this report or something approximating this report—and I understand Senator DOLE has had a chance to look at this perhaps, and the new majority leader who was the minority leader, and an ex officio member of this committee, has this copy together with the original copy.

I know my colleague, my successor, has this copy and the preceding copy which we have all read. And I would hope that before we leave the floor today we can agree that the proposition that the leader has put before us in terms of modified language is appropriate, and that we can also agree that his commitment to us, his colleagues, and his commitment to the American people and the commitment of my successor, the chairman of this committee, who I know takes this responsibility very seriously, is to come as close to this report as is possible, given the realities that have been spoken to on this floor in terms of national security. But the important thing I think is for the people of this country as well as the people involved to have something that is meaningful.

We cannot wait until February when hearings begin. We cannot wait until October when a report is released to know that we already know, Mr. President.

So I urge my colleagues to give their immediate attention, and particularly to my successor to give his immediate personal attention to getting a report as much like this as possible out to the people of this country.

Mr. SPECTER. Will the majority leader yield? I have something along the same line.

Mr. BYRD. Mr. President, I will yield shortly for that purpose. The distinguished Republican leader and I no later than 3 o'clock need to carry out our duties as the Senate has mandated and inform the President that the Senate has established a quorum and is ready to do business.

But before I leave the floor, may I say to the distinguished Senator from Oklahoma, the people are going to know the truth. Let us be careful. Let us be careful that we do not act in a way that would deprive them in the final analysis of the full truth and all of the facts. Whoever should be exonerated will be exonerated. If there is nothing to hide, nothing to be found. But let us not push out here with a partial report. I will never vote to report a matter 10 days from now as sensitive as this without having read what I am voting to report 10 days from now.

May I say that the distinguished chairman of the Senate Intelligence Committee has done an extraordinarily good job. He has worked unceasingly, tirelessly, and, in the limited period in which the committee has had to work, he has done well. The committee deserves much admiration. Attendance at all hearings was good on both sides of the aisle. But in such limited time, obviously, any report that would be submitted at this time to the public would be incomplete, and it would be filled with gaps. There are witnesses who have not been heard, who must be heard, and some of whose names we do not even know. They may be in Israel. They may be in Central America. They may be somewhere else. All of this hurry to reveal to the public the facts which we do not yet know is not in the public interest. And that is what the law says. It uses the words "public interest."

Is it in the public interest, and is it in the interest of the President to release something now that is only partial in its nature? That is only part of the record? Is it in the interest of the public that that be done if perchance it impedes the work of the independent counsel, whose responsibility it is under the law, and whose responsibility it is under the court's mandate, to follow the threads, if the law has been broken, wherever they may lead, to prosecute one or more individuals, and to go before a grand jury, and to ask a court that "use immunity" be granted? Are we tying the independent counsel's hands? Has anyone asked the independent counsel how he feels about releasing this report? It could very well get in the way of the select committee. Why all the hurry?

It is all going to be revealed. Everything is going to be made known. But everything can only be made known after the select committee has done its work, and after the independent counsel has completed his work.

So let us not get in too big a rush here. Nobody is saying that the public should not know. But let us not confuse the public. Let us not fool the public into thinking that it is going to know everything merely if we release the report which I have not read, which the members of the committee have not read, and which has been "sanitized" by representatives of the White House, representatives of the National Security Council, and other entities whose representatives have appeared as witnesses. And in the course of "sanitizing" to remove classified material, we learned at least one glaring example last evening of testimony that was not classified that had been deleted.

I am not in favor of voting to release such a report at this time. And it is not political on my part. I have a responsibility to this institution. And I have a responsibility to the people of this country, my own constituency included. I have a responsibility to the President of the United States to help to do what I can to get to the bottom of the matter, get the facts, all the facts, nothing but the facts, the clear record, the complete record, and lay it all out.

As far as I am concerned that is what we are going to do. It is unfair to the American people to do anything less.

Mr. BOREN. Will the Senator yield?

Mr. SPECTER. Will the Senator yield?

Mr. BYRD. I should like to go with the distinguished Republican leader and call on the President.

Mr. President, I ask unanimous consent that I may now yield to the distinguished Senator from Pennsylvania [Mr. SPECTER], for 10 minutes, and that I may then yield 10 minutes to the distinguished Senator from Oklahoma [Mr. BOREN]—and that in this one instance I may be considered as

having held the floor, even though I have to yield the floor; that Mr. HECHT may have 5 minutes; that Mr. HELMS may have 5 minutes all for the purpose only of making statements; and that when I return from having carried out the order of the Senate in calling the President, with my distinguished colleague, the minority leader, I may again have the floor.

Mr. SPECTER. I thank the distinguished majority leader for yielding to me at this time.

While he is still on the floor, I would say that a great many of the questions which the majority leader has raised would be answered when he has an opportunity to take the time to read the report.

I serve on the Intelligence Committee, and I have taken the time to read the report, and it answers many of the objections which Senator BYRD has raised here this afternoon.

In support of what Senator DURENBERGER, the outgoing chairman of the Intelligence Committee, has said, it is my view that the Intelligence Committee report ought to be released promptly, after the Members have had a chance to read it and make whatever suggestions or modifications they have.

As I read the report and analyze the situation, Mr. President, it is my firm view that the interests of the American people would be well served by knowing what the Intelligence Committee has found during the course of its investigation.

At the outset, when Senator DOLE and Senator BYRD announced their intention with respect to the select committee, it seemed to me in early December, that that would be a good idea. As the Intelligence Committee moved further into its investigation, however, and we moved ahead to interview witnesses and to spend long days in session, gathering the evidence, I had a doubt, based on the fact that the Intelligence Committee might well have moved ahead to make a determination of the very basic issues in this matter, that perhaps the complete investigation would not be fulfilled during the month of December, but a great deal could be completed.

As I say, I have read the report; and those of us on the Intelligence Committee, like the majority leader, have a responsibility to this institution and a responsibility to this country, and that report ought to be released because it answers a great many questions.

I do not believe that the majority leader, Senator BYRD, is correct in condemning the release of the report until he at least has had a chance to read the report.

I believe further, Mr. President, that the contents of the report ought to be released, through one process or another, perhaps by the new select committee, at the earliest possible date, and I would urge the select committee to move very promptly on the issue of immunity, limited-use immunity, for Admiral Poindexter and Lieutenant Colonel North.

I took the position in the Intelligence Committee's deliberations—and continue to strongly believe—that limited-use immunity should promptly be granted to Lieutenant Colonel North and Admiral Poindexter, so that there can be a determination on the issue of any Presidential involvement in the diversion of funds to the Contras. I am convinced that this could be done without prejudicing any possible prosecution of either Lieutenant Colonel North or Admiral Poindexter.

The distinguished majority leader has raised the issue of speed or undue haste, and I would say that there is no speed or undue haste in releasing the report or in moving ahead with that limited-use immunity, because the prosecution can be protected.

There is, in fact, a very important purpose to be served by moving ahead with speed, because there is a cloud now over the Presidency; the operation of the executive branch is impeded. For much of December, the entire executive branch was run out of room 219 in the Hart Senate Office Building, where we had the Chief of Staff, the Secretary of Defense, and the Attorney General. The executive branch was preoccupied, if not paralyzed, over this Iran matter and the diversion of funds to the Contras.

The Intelligence Committee did not seriously consider, as this Senator urged, a movement toward a grant of limited-use immunity to Poindexter and North. When the independent counsel was appointed on December 19, that was an occasion which could have activated the 10-day notice under the statute, and we could have moved ahead to obtain the testimony of North and Poindexter.

It should be borne in mind, Mr. President—and it is widely misunderstood—that once limited-use immunity is granted, it does not preclude the prosecution of prospective defendants, but only bars the use of their testimony or leads from their testimony.

There is a practice—which has been followed under Watergate and otherwise—to seal the evidence which is available, and that could have been accomplished and there would not have been any realistic danger to a further possible prosecution as to either North or Poindexter by very carefully limiting the questions to the President's role, the role of the Chief of Staff, and those who were in the chain of command.

Through that approach, this key testimony could have been obtained, and I urge the new Senate select committee to proceed in the same way.

When the distinguished majority leader talks about the role of the independent counsel, it should be noted that the law is plain, that Congress is the paramount determiner of when use immunity should be granted for issues of this sort.

This matter was litigated fully in the Watergate proceeding, when the select committee chaired by Senator Ervin pressed ahead over the vehement objection of Special Prosecutor Archibald Cox. The court held that once the congressional determination had been made, that was that, and Congress made the determination of what was in the public interest on such disclosure.

So it seems to me, Mr. President, that what ought to be done at the earliest moment is to make a disclosure to the American people, so that there is an understanding as to what has happened. Numerous witnesses were called, and it is that testimony summarized in the report which the Intelligence Committee has prepared.

I believe that once the distinguished majority leader has a chance to read it and others have had a chance to read it, they will see that there is much to be gained in the public interest from the release of that report.

That report has not been sanitized, Mr. President, as I read the report. It may be that there have been some items which, under the judgments of some, are classified and ought not be put in the public domain; and if there is a disagreement, that can be resolved. But I do not believe it is an accurate characterization, in any way, shape, or form, to say that the report has been sanitized.

Mr. President, there are matters of enormous importance that have to be accomplished by the President and the executive branch which are being impeded so long as the cloud hangs over the Presidency. There is the issue of arms control. There is the issue of the budget. There are many, many matters which require attention. I am not suggesting that any of the guilty should go free or that prosecutions should be impaired. With some experience as a prosecuting attorney, I know that limited use immunity can be granted to men like North and Poindexter, and the criminal prosecutions can be preserved, and testimony can be obtained on the very narrow range—the issue of any Presidential involvement.

I am not suggesting that there is any Presidential involvement, but that is a question which is in the public domain, and immunity ought to be granted. The testimony of North and Poindexter should be taken and can be obtained consistent with the preservation of their prosecutions.

The American people are entitled to know the facts at the earliest possible moment, and the American people ought not be denied the facts because

of the kinds of theoretical objections the majority leader has raised without having read the report.

I yield the floor.

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER (Mr. ZORINSKY). The Senator from Oklahoma is recognized.

Mr. BOREN. Mr. President, I want to clarify again the factual situation with which we are dealing. I think we have an honest difference of opinion.

The Senator from Minnesota felt very strongly last night that our committee should vote to issue a report. The majority of the members of the committee felt at that time the particular report before us should not be released for a number of reasons.

First of all, during the committee deliberations an assessment was made of how many members of the committee had had an opportunity at that point when the vote was to be taken, how many members of the committee had read this report, and, Mr. President, there was not a single member of the committee at that point who indicated that he had read the latest version of the report on which we were asked to vote.

I myself had seen an earlier draft over the weekend. I read that draft through thoroughly. Three or four other Senators, including the chairman, had read the earlier draft all the way through. But significant editorial changes were made in it before it was presented to us for a vote.

So, Mr. President, we were asked to vote on issuing a committee report with our names and our personal credibility attached to it, that none of the members of the committee had read, and then we were told we could have editorial changes made in that report by the staff at the discretion of the staff after members had had a chance to read the report, if members would give their suggestions to the staff for changes, in other words, delegating out to members of the staff who were not elected under the constitutional process, to act in the names of the Senators who were members of that committee.

Mr. President, I just in all honesty am not in the habit of delegating the right to someone else to put words in my mouth as a member of this Senate. I am not in the habit of voting on reports that the members of a committee, including myself, have not had an opportunity to read.

There was another question raised. Before many of the staff members of the committee and before many of the members of the committee themselves were given an opportunity to see the latest draft of which we were asked to vote, editorial changes were suggested by two members of the White House staff and one member of the National Security Council staff. We were unable at the time of the vote to have before us the draft to see what editorial changes had been suggested by the members of the White House staff.

So I would say, Mr. President, it is an honest difference of opinion. This Senator simply did not feel it would be in the interest of the Nation, or of the President of the United States, or of the credibility of the Intelligence Committee or the Senate as an institution to pass unread a report that had been edited by members of the White House staff, had not been read by the Senators on the committee and to delegate to the staff members on the committee the right to make further editorial changes in it before it was issued 10 or 12 days hence.

Having said that, let me say that I believe that the Senator from Minnesota and others acted in good faith to try to put together a report to try to summarize the extensive hearings which we had held, and I think the committee did a service. We were able to preserve testimony. We were able to take testimony under oath while it was still fresh and to pass on transcripts of that testimony to the successor select committee.

I think the committee has done a service. I think the chairman and vice chairman of that committee performed a service in their diligence in conducting those hearings.

But let me say again let us be fair. Let us be thorough. Let us give the American people the facts and let us make sure that we are not giving them a distorted view.

I am sure—and I speak for the Senator from Maine as well as for myself—in saying that we will diligently try to determine again in consultation with the chairman and vice chairman of the committee and with consideration for any concerns that might be voiced by the independent counsel to try to work toward passing on to that successor committee as much information as we can in a summary form and to determine as has been stated by the majority leader if in the national interest and the public interest we can release additional portions to the public as much as we can release to the public as much as is in the public interest, in the national security interest, to release.

I am committed to trying to do and to do it in a way that will not mislead the public but will indicate the nature, the very partial nature, the piecemeal nature of the information which we have recovered because I cannot answer the questions, has the law been violated, if so, by whom?

We do not even know at this point how much money actually changed hands and where that money ended up in terms of its final distribution.

Until we have the answers to those questions, we cannot answer the questions that are on the minds of the American public and indeed the kinds of questions that the President himself has raised.

But for a committee to issue a report, without reading it, to delegate to the staff the right to rewrite it, a report which has at least had editorial comment made upon it by members of the White House staff before it was even given to members of the committee itself I think would not serve the pulbic interest. It would not set this matter to rest. It would not have the effect of untangling the President from this controversy.

I come from a State, Mr. President, that is hard hit with all sorts of economic problems. I want to get on to other business of the country, the economic problems and the other challenges that we face, I do not want us to continue these deliberations longer than is absolutely necessary but for the sake of the country, for the sake of the President, we must be thorough, we must be judicious, we must act in a responsible manner, and the majority of the members of that committee last night acted in conscience and did in conscience what they thought was in the national interest, not for any political purpose because this is not a time for politics. This is a time for statesmanship and putting the national interest first.

I again assure my colleagues. Our committee will proceed in that spirit to try to bring out as many of the facts as we possible can.

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

Mr. HECHT. Thank you very much.

I agree with many of the remarks of my Republican colleagues today. I want to focus on the resolution that we are looking at at the moment.

What that resolution is going to do is form a new select committee.

I serve as a member of this Select Committee on Intelligence.

I want to compliment our distinguished former chairman, DAVID DURENBERGER, and his staff for an excellent job.

As Senator DURENBERGER said in the middle of December, about the 18th or 19th, one of those days, "We have this matter 95 percent put together. There is 5 percent of the puzzle we don't have."

At that time our President asked limited-use immunity for Admiral Poindexter and Lieutenant Colonel North. That was denied, and as a result, we were not able to finish our work by Christmas which we certainly could have done had we had the testimony of Lieutenant Colonel North and Admiral Poindexter.

Last night or yesterday morning before the President went in for surgery, he asked us to release a sanitized report. By that I mean taking out all classified information, so we could get

this matter out to the American public.

But rather than clearing this matter up, what we are doing today is forming a new committee. I do not know at the moment how many committees have been formed in the House of Representatives and the Senate, but there are several. Also a special counsel is working as is the Tower commission.

I question why we need a new committee. We have all of the facts. I think what we are doing is dragging this on and on and on into the next year.

Let me tell you some of my fears, Mr. President. First of all, by dragging this out for many, many months, which is obviously going to happen, we are going to jeopardize further dealings with all countries. This is going to have a devastating effect on our present and future intelligence operations all around the world.

Mr. President, during the Christmas break when I was fortunate to be in my home State of Nevada with my family, I got a chance to talk to the people back home. Let me tell you what they want. The American people want the facts. The American people are willing to take the consequences and the American people want Congress to proceed with the job we have been elected to do, that is, to get on with the important business of running our country.

Mr. President, I am going to vote against this resolution and I urge my colleagues to do the same.

Thank you.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum until the arrival on the floor of the distinguished Republican leader and other Senators and that I may not lose my right to the floor by virtue of—Mr. President, I withdraw that request.

Mr. President, I believe the distinguished Senator from North Carolina, Mr. HELMS, had earlier indicated he wished to speak on this subject. I yield the floor for that purpose.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 5 minutes.

Mr. HELMS. Mr. President, I thank the distinguished majority leader, and I thank the Chair.

I will say to my friend from West Virginia that I had wanted primarily to ask a few questions of Senator BOREN. He is not on the floor, so, if it is all right with you, let me yield back that time and request it later.

Mr. BYRD. Very well.

Mr. HELMS. Thank you.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. I thank the Chair.

Mr. President, in order that I may yield the floor and give other Senators the opportunity to get the floor in their own right, I send to the desk a resolution on behalf of myself, Mr. DOLE, and Mr. INOUYE, and Mr. RUDMAN, establishing the select committee which we have been discussing for quite some time on the floor, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 23) establishing a select committee of the Senate to conduct an investigation and study of activities by the National Security Council and other agencies of the United States Government with respect to the direct or indirect sale, shipment, or other provision of arms to Iran and the use of the proceeds from any such transaction to provide assistance to any faction or insurgency in Nicaragua or in any other foreign country, or to further any other purpose, and related matters.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

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

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DOLE. Mr. President, I understand the distinguished Senator from New Hampshire, Senator RUDMAN, and others on this side wish to speak, and there are certain colloquies they would like to enter into.

Let me indicate that I believe, with the modifications made by the majority leader, that the resolution should be approved. There are some questions as to the scope. There will be questions as to private funding of the Contras and there will be some questions raised about that. There are some who believe—and I am one of those—that if, in fact, that is going to be within the scope, then maybe we should determine whether or not there is any private funding for the Sandinistas. But, in any event, that will be raised by others.

I do believe that shortening the time period from October 30 to August 1 is a step in the right direction. If, in fact, we do want to complete action on this resolution at the earliest possible time, then certainly the August 1 date will be extremely helpful.

It is my understanding that it is the intention of the majority leader to complete action, the Senate's action, this session, before the end of October. If there is no report until the end of October, it means it goes over until next year. And if there are recommendations made by the committee, as I assume there will be recommendations made by the Select Committee on Legislation, then we would be in 1988 with this matter still before us with more hearings on legislation. It would seem to me we ought to be able to shorten that time, expedite it and complete work on this matter hopefully before August 1, but certainly no later than August 1.

The modification does provide that if the work cannot be completed, then there will be a vote. I have no quarrel with that, and I hope that would be satisfactory—I know the distinguished Senator from North Carolina, Senator HELMS, would like to pose some questions to the distinguished Senator from Oklahoma, Senator BOREN—regarding making information public. It seems to me, if someone wanted to, they could stand right on the Senate floor and read that report. It is not classified. I am not suggesting that, but I assume if the report is available, you could stand here and read it and it would be public. I am talking about the report that we discussed in the Intelligence Committee yesterday afternoon. And the release of that report was rejected by a vote of 7 to 6.

But I am convinced that the Senator from Oklahoma, Senator BOREN, who is the new chairman of that committee, is acting in good faith, along with Senator COHEN.

I have listened to Senator DURENBERGER and others. I do not agree that we have to wait until we have all the facts until we release the information. We may never have all the facts. In that case, we would never release any information. Who is going to determine when we have all the facts? Who is going to make the judgment there is nothing else out there that we do not know and therefore we can safely release this information to the public? Much of it, as I understand, has already been testified to in open hearings on the House side.

So I hope that there will be some expeditious handling of this matter. I also hope that those who are in the business of informing the public would help us obtain this information. In fact, I read a report in one of the papers this morning that sort of characterized much of the statement not made public. I do not know who the informer was or who the source was, but there was information in that article that indicated that somebody was talking to someone.

It is my belief that there have been all kinds of stories and innuendos, some have been accurate, some have been inaccurate, some had no truth at all in them. They have been on the nightly news. They have been headlines in papers across the country. And if there is some way to lay out the truth—maybe not all of it, but whatever we have—lay it out as it comes, as long as it does not undermine our security or the public interest, then I would have a hard time trying to defend not releasing it to the public.

That is what it is all about around here. We have open hearings when we can. We cannot exclude the press. We do not try to exclude the press. We ad-

journ to our offices and have informal discussions, things of that kind.

But when we are making judgments, it seems to me that if the information is declassified, there is no reason and really no right to withhold it from the American people. That is the point the President has been making. I hope that we can resolve that one area in this resolution. And if that can be done, I would see no reason for any extended debate, although there may be some reason I am not aware of.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. (Mr. SIMON). The Senator from North Carolina.

Mr. HELMS Mr. President, we are being asked to vote on a resolution that no Senator has read beyond the leadership. I just saw a copy of the amended form, or modified form. It looks like it was written with a pencil and edited with a typewriter.

I wonder if it would not be better to make a copy of the resolution, as offered, available to Senators and let us look at it. I do not like to legislate in the fashion that after the fact you find this wrong and that wrong.

Furthermore, there is a point about what do we owe the President of the United States. I have been in a position a number of times wherein I was faced with false charges. In the middle of 1986 the New York Times and others spread across the front page charges that "Helms to be probed by the FBI for alleged violations." Well, here we are into January 1987 and not one scintilla of information has been released to the public about that.

Now, I do not like to see the President of the United States hamstrung. Can we not at least say whether the President is guilty of any intentional misstatement or any other culpability? The President of the United States is the Chief Executive of this country charged with the conduct of foreign policy, and yet he has been hamstrung by innuendo, misrepresentations, flatout falsehoods, and nobody is willing to stand up and say the President is not guilty of this. I think the President, any President, whether he be Democrat or Republican, is entitled at some point early in the game to have the Senate Intelligence Committee or the House Intelligence Committee say, "We have no evidence," or, "We do have some evidence." To string this thing out even to August is totally irresponsible as far as I am concerned and I cannot vote under the circumstances of this legislation as it is now at the desk to create an additional investigating committee.

Let me ask anybody who knows—there are not many people on the floor—how many groups, entities, or organizations are investigating this matter today? Can anybody answer that for me? My question is, how many committees, commissions, or other entities are now investigating this matter? I cannot count them.

Mr. BYRD. Mr. President, that is the purpose of the resolution which I have submitted and I believe I have the cosponsorship——

Mr. HELMS. I am sorry, I cannot hear the Senator.

Mr. BYRD. I say the purpose of the resolution which I have submitted, with the cosponsorship of the distinguished Republican leader and Mr. RUDMAN and Mr. INOUYE, is to provide that there be a select committee in the Senate——

Mr. HELMS. I understand.

Mr. BYRD [continuing]. To do the investigating so as to avoid investigations by a plethora of committees, a plethora of committee staffs, and it is in the interest of concentrating the whole force, with the Senate's backing, of an investigation in one special committee.

Mr. HELMS. One committee in the House, one committee in the Senate.

Mr. BYRD. Yes.

Mr. HELMS. Then there is the one downtown and Lord knows how many others.

Mr. BYRD. Well, I know of no committee downtown. The President has appointed a board, or commission, to study the National Security Council, but that is not an investigative committee. As I understand it, the life of that commission or board, whatever it is called, is very short; it is not an investigative entity, and it is not expected to do the work that the select committee of the Senate and the select committee of the House will do.

Other than that, the independent counsel under the law has been appointed by the Court at the request of the Attorney General of the United States and that independent counsel, of course, will carry out a criminal investigation. If crimes have been committed and if persons are accused, it will be the function of that independent counsel to prosecute them. But as I see it, there will only be two committees, the Senate select committee and the House select committee which will go forward with this work.

Mr. HELMS. Could I ask the Senator if he personally knows of any culpability of the President or any evidence indicating that?

Mr. BYRD. No, I do not personally know—and I have said this publicly, not once but many times—I personally have no evidence that the President is culpable, of having knowingly violated a law, but that does not mean I know everything that is ultimately to be known. It would seem to me if he were a President of my party—he is my President, but if he were the President of my party, I should think that in the final analysis I would want all the facts, believing as I would, not having seen evidence to the contrary, that he is not guilty of having violated the law.

But I would not want to shutoff an investigation or do anything to impede an investigation. The result of my action then would be a hue and cry that there was a whitewash or that the people did not get the facts or that I tried to obstruct justice.

Mr. HELMS. But the Senator——

Mr. BYRD. I would want the complete facts, I would want all the facts. If my President is not guilty, he will not be found guilty.

Mr. HELMS. Of course, he is presumed innocent, under the system in this country.

Mr. BYRD. I beg the Senator's pardon?

Mr. HELMS. I said he is presumed innocent until he is proven guilty.

Mr. BYRD. Of course he is.

Mr. HELMS. But the Senator is saying as of now he knows of no culpability on the part of the President?

Mr. BYRD. As of now, I do not know of any violation of law on the part of anybody. I cannot go into a court and swear that this man is guilty or that man is guilty or that this man is not guilty or that man is not guilty. That is the purpose of having the independent counsel. He is going to find out if a law has been broken and, if so, by whom, and if someone has broken the law he will prosecute.

Mr. HELMS. That was the point I was making earlier. The independent counsel is already in place and I am sure will do his job. But let me ask the Senator, how much will this investigation cost the taxpayers, this additional investigation?

Mr. BYRD. Yes. We do not know what it will cost, but the legislation provides, whatever it costs, for it to come out of the contingent funds of the Senate. We do not know what the dollar costs are.

Mr. HELMS. But it is still the taxpayers' money.

Mr. BYRD. It is the taxpayers' money. If the Senator will allow me to interrupt for a moment——

Mr. HELMS. If I interrupted him, I apologize.

Mr. BYRD. No, the Senator did not interrupt me. May I say if we are going to talk in terms of costs, this is the 200th anniversary of the Constitution of the United States.

Mr. HELMS. Correct.

Mr. BYRD. And there is no price tag on the constitutional system which has been around for 200 years and which has worked very well and which will continue to work very well. Under our constitutional system, there is a doctrine that we speak of as checks and balances, and that is precisely what is being done here. The Congress has a constitutional responsibility of oversight, a constitutional responsibility of informing the people, a constitu-

tional responsibility of legislating. Now, before it can legislate, it has to have hearings. In order to conduct its oversight responsibilities—I am saying this for the record; I am not telling the Senator anything he does not know, but its oversight responsibilities and its informing responsibilities, which Woodrow Wilson said were as important, if not more important, as legislative responsibilities, are done mostly by committees.

Now a problem has developed which we will not go into but which everybody has been reading about for quite some time and it is incumbent upon all of us to try to see what the facts are. There is no pricetag on that constitutional system. If there is one thing we can do in this 200th year of the writing of the Constitution, it would be to reassure the faith of the American people in that constitutional and political system, and one way of doing it is to find out about all of these things that we have been hearing, and the way to do it is to go at it, put our hand at the plow and develop the facts. The termination date is written into the resolution. It will not go on and on, like Tennyson's brook, forever, and whatever the costs may be those costs are justified. If a crime has been committed, the people want to see justice done, they want to see criminals brought to the courts.

If no crimes have been committed, then the people need to know that. But if while no crimes may have been committed, if there are improvements to be made in the structure of the National Security Council, in the way we formulate our foreign policy, in the way we carry out our covert policies in the interest of national security—if there are flaws, if there are weaknesses—if there can be improvements, then let us find out what they are because it is in the interest of the American people that we do that and this is the way we do it.

We simply close up shop and say, "Well, I do not believe so and so is guilty, so I will just forget about it," because that is one good way of assuring that it will happen over and over again.

I thank the distinguished Senator for yielding.

Mr. HELMS. Mr. President, I agree with the distinguished Senator about the price tag. I also feel that there ought not to be a price tag on the presumption of innocence. Yet I have heard castigations every night, innuendos, remarks, and all the rest of it.

I have known Ronald Reagan for a long time, long before he ran for public office and long before I did. He has had many, many occasions when it might have been more comfortable for him to have shaded the truth. Not once, Mr. President, has he ever done that.

Furthermore, at some point I think Congress ought to consider what it is doing in terms of being an obstruction to the President in the conduct of foreign policy.

I say to you, Mr. President, that if Franklin Roosevelt had been required to prosecute World War II under the same conditions and handicaps and obstructionism that Ronald Reagan faces every day of his life, the French people would have been making vichyssoise today out of sauerkraut because they would have lost the war.

At some point, Mr. President, we have to make up our minds whether really subconsciously, consciously, intentionally or unintentionally, we play politics with this issue.

The distinguished majority leader has just said that he knows of no evidence indicating culpability on the part of the President of the United States. I think that needs to be made clear.

As for another investigation, I do not think another one is necessary. We have enough people investigating, spending enough of the taxpayers' money. While I have the highest respect and admiration for DANNY INOUYE and WARREN RUDMAN, I just do not feel that another investigation, duplicating efforts, going back over the same treadmill, is worth it. I think we ought to get on with trying to balance the budget and some of the other problems facing this Nation.

I thank the Chair and I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, may I assure the distinguished Senator from North Carolina that we will get on with the other problems that confront this Nation. If we want this select committee, then the select committee itself will deal with this matter on a separate track. The select committee is proposed to be made up of six Democrats and five Republicans. The distinguished Republican leader and I are not on the select committee. We will be able to devote our energies to the other problems of the country.

I assure the distinguished Senator from North Carolina that I am going to do everything I possibly can to keep the other problems right up front, in full view and on a main track, but at the same time the select committee can be carrying on its important work.

It is not a matter solely of determining that somebody broke the law or did not break the law; it is also very important to know what went wrong, why did this happen, what was going on down in the basement of the White House, who was in charge.

Surely, all these things cannot be done by some colonel and admiral who are working in the basement of the White House. If all of the things that we hear were done by those two alone and with their knowledge alone, then we have reason for real concern because if they can engage this Nation and put it in danger, perhaps, and commit it to dangerous activities without someone above them knowing it, then we should be as equally concerned as we are if laws have been violated.

Somebody has to be in charge. That is one of the purposes of the investigation by the select committee: what went wrong? What is wrong with the way policy is formulated? What is wrong if covert operations can be carried out by two individuals in the basement of the White House without the Commander in Chief knowing what they may be committing this Nation to? Then we have cause for real alarm.

I feel that the Senate will well serve the people by enacting this legislation and I join with others in hoping that it will be enacted today.

I yield the floor.

Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I thank the Chair.

Mr. President, I just want to say a few brief words.

First, in response to the colloquy between the distinguished majority leader and the Senator from North Carolina, there is a preemption clause specifically designed by the majority and the Republican leaders to ensure economy of resources and energy of the Senate. That is found on page 4, paragraph C, line 17. That has been interpreted by all to mean that it is this select committee which will do this work, thus obviating the necessity of as many as a half dozen committees on this side of the Capitol being involved.

So there is certainly something to be said for that.

I want to just speak briefly to some of the comments made by, I believe, the Senator from Nevada.

I would like to believe that he is right, that all it would take would be another couple of witnesses and we can wind this whole thing up and be done with it. I am sure my friend from Hawaii shares my desire.

My experience before I came here indicates to me that anything as complex as this normally has facets that are undiscovered until one goes forward and this must go forward because there has been enought concern on the part of the American people that the truth must be known.

I want to briefly say about the chairman of this committee, the Senator from Hawaii, that I have known him a scant 6 years, but he is one I have respected for a long time before that, before I knew him.

He has demonstrated a fairness and sensitivity in what we have done up to

now. I know if we were left to our own devices we will have a fair, thorough, bipartisan, careful inquiry into this matter.

Senator INOUYE, in the best traditions of the Senate, is going to try to make this committee an example of how an honest, bipartisan inquiry can be carried out and I will join him with everything that I can in my 6 years of experience here, very little in comparison to him, to make sure that that, in fact, does occur.

I want to thank him, one, for his generosity in deciding he would designate me as vice chairman of this committee rather than the normal. I would expect ranking member which would have been fine, but Senator INOUYE thought differently.

Second, I guess I can announce today with some certainty it will happen that the chairman has managed to work out a system where we will have a joint staff, a unified staff, not a Democratic staff and a Republican staff, but a unified staff. That is due to the efforts of the Senator from Hawaii, who is trying diligently to ensure that this matter is handled fairly and thoroughly.

I believe that there is a brief colloquy that, I will now have with the Senator from Hawaii to address a couple of issues where concerns were raised by Members, and rather than attempt to redraft what has already been fairly meticulously drafted legislative language, the Senator from Hawaii and I decided with agreement from those others that we might have this colloquy. So I would like to pose just two questions to our chairman.

Mr. President, in reference to section 1(b)(1)(iv)(III) of the resolution, is it the chairman's intention that the committee conduct a complete investigation of all private funding of the Nicaraguan Contras?

Mr. INOUYE. The intention of this section is to assure that the committee has sufficiently broad jurisdiction to look into all aspects of the issues we are investigating. It is not the intention of the committee to conduct an investigation into any private funding of the Contras in which there is no direct or indirect Government involvement.

Mr. Chairman, what I am trying to suggest is that without the section in question, the select committee would not be able to inquire into the event involving Mr. Hasenfus because as of this moment there has been no evidence to suggest that war materiel aboard the aircraft was paid for directly or indirectly by funds derived from the sale of arms to Iran.

But I think we should have this opportunity, and if it turns out that funds directly or indirectly were used, fine. If not, I can assure the Senator as chairman of the committee that the investigation will not go any further.

Mr. RUDMAN. I thank the chairman.

I have one additional question. This question is raised because of what lawyers refer to as the boilerplate in terms of the powers of the committee. Although anyone really ought to know that we cannot by language nullify any legal principle or privilege that exists. Nevertheless, I will ask the question since others have raised it.

I would also like to clarify section 5(d)(7)(A). In defining the committee subpoena power, are we denying the possibility of the President asserting executive privilege for some litigimate reason?

Mr. INOUYE. I would like to state that executive privilege is a legitimate Presidential prerogative. However, as the courts have determined that executive privilege cannot be asserted in all cases, it is important to clearly define the committee's subponea powers so that there is no question as to the committee's authority to obtain access to information and materials important to this investigation.

Mr. RUDMAN. I thank the chairman. I would again state to him that I know that everyone on this side of the aisle appreciates his leadership, and will work together to try to conduct this investigation thoroughly and as expeditiously as is possible.

I yield the floor.

Mr. INOUYE. Mr. President, I would like to thank my colleague from New Hampshire for his very generous words. I would like to join my vice chairman in assuring our colleagues in the U.S. Senate that this matter will be thoroughly considered, expeditiously handled, and honestly presented to the Senate and to the people of the United States.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I am somewhat heartened by the assurance of both the chairman and the vice chairman of the select committee that this investigation will be handled on an expeditious basis. However, I have to say that I am concerned about the termination date of August 1. My hope would be that they could beat that by a considerable amount of time. I know that in an earlier draft of the proposed resolution, the date was October 30, which I think would be entirely out of the question. It would seem to me that even August 1—that is 7 months' time. I am not sure. I have not been told whether the House has a termination date or not. Apparently the termination date for the House investigation is October 30.

Mr. President, let me say I did not agree with the arms sale. I think that the administration made a mistake. I think it is perfectly fine for Congress to be making an inquiry, making a thorough inquiry, getting the information out before the American people, doing so completely, and doing so quickly.

I myself believe that the Intelligence Committee should have granted immunity to Colonel North and Admiral Poindexter to compel their testimony. What is significant here is to get the information out, and not whether or not certain evidence is going to be available to prosecute two individuals. We have a national interest in getting the information before the American people, and then getting this issue behind us. It does not serve the national interest to belabor a point. It does not serve the national interest to keep an issue alive month after month after month after month.

Mr. President, three committees of the Congress have already held hearings on the Iran-Contra affair. Three committees of Congress have already held hearings. The Senate Intelligence Committee has held hearings, the House Intelligence Committee has held hearings, and the House Foreign Relations Committee has held hearings.

I do not know how long those hearings lasted but I was just talking to the outgoing chairman of the Senate Intelligence Committee, and he told me that his committee held 16 days of hearings. He told me that some of those days of hearings were 9 a.m. to 9 p.m. days. He told me that probably for those 16 days the average for the hearings was 8 to 10 hours a day for 16 days.

So, Mr. President, that would mean that one of the three committees that has had hearings has held maybe say 130 to 160 hours of hearings so far. Now we are setting up a select committee, and we are giving it 7 months to go into this matter. The House is setting up a separate committee. It has 10 months to conduct its hearings and investigations. Witnesses are going to be having scheduling problems, and probably already have going from one committee meeting to another.

Again, I do not minimize the importance of getting all the information out. I thought that we should have done a better job of getting it out. I thought that the information from our Intelligence Committee should have been made public, and that the two witnesses who did not testify should have been granted immunity and forced to testify so that everything would hang out and do so very, very quickly.

I do not begrudge our select committees the time to go into this matter in a very comprehensive fashion. But I think we have business to do before our country. I think that our Government has business to do, and I believe that all of us have a stake in having a President of the United States who is

able to function and an executive branch of our Government that it able to function.

I think that the American people expect us to be making progress on some of these issues we have in the United States now. I think that if the American people got the impression that we were belaboring an issue and dragging it out and beating a dead horse, they would not appreciate our stewardship of a public trust.

So I have great confidence in the chairman and the vice chairman of this committee, each of whom is on the floor now. I think they are two of our finest Senators. But I implore them to beat this deadline of August 1 and get this matter exposed to the American people and get it behind us as quickly as we possibly can.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from New York.

Mr. MOYNIHAN . Mr. President, I rise for the twofold purpose of addressing the pride this Senator has—I think it is shared with this entire Chamber—in the Senator from Hawaii and the Senator from New Hampshire, two such eminently fairminded, capable, and experienced persons who will carry out this inquiry.

I can speak as one who has sat through more than the better part of the hearings held by the Select Committee on Intelligence which the Senator from Missouri has mentioned; and I must say, in all truth, that to meet their deadline will require very considerable exertion. The scope of things not known and things not knowable in this inquiry impress anyone who has just made the preliminary investigations that we were able to do.

I am not asking for any response, but I make a simple statement: As we inquire into the central issue involved here—which is, have the laws of the United States been abided by?—I hope that the committee might find some time to inquire into the whole question of international law as an element binding on American policymakers and American operatives.

The law of nations is the law of the United States, as provided by article I, section B, clause 10 of the Constitution. Much of the sadness we observe, much of the destruction we observe, began with a decision that was made in the executive branch to violate the law of nations with respect to the mining of Nicaraguan harbors, in contradiction to traditional and conventional international law. An executive branch alive to that responsibility would not have made that decision, or so I believe.

I was vice chairman of the Intelligence Committee when the chairman, our beloved former colleague, Senator Goldwater, and I learned—to our horror—that this mining had occurred and we had not been consulted.

The role of international law as binding on the operatives of this Nation is a real thing, one to which we committed ourselves in our Constitution two centuries ago, and to which we have committed ourselves over and over again in such matters as the Rio Treaty and the Organization of American States.

I hope this does not pass unnoticed by men who, although legislators, attain to the quality of jurists and who will be judging in the interests of nations as this matter proceeds.

Mr. INOUYE. Mr. President, I wish to respond to the very legitimate concern expressed by my dear friend from Missouri in the matter of time.

I should like to advise my colleagues that when I was asked as to what would constitute adequate time for consideration by the select committee, I suggested the end of this year. I based my response on a bit of experience I had a few years ago with the so-called Watergate Committee.

Mr. President, that committee spent 16 months carrying out the mandate of the U.S. Senate—3 of those months just to get itself organized. It took the Justice Department approximately 2 months to complete the process of security clearance.

Senator RUDMAN and I have arranged with the Justice Department, the Federal Bureau of Investigation, to carry out this process in 4 weeks, and that is setting aside just about everything, so that our staff people can be cleared to handle classified information.

The Watergate Committee took 3 months to complete its final report. I would hope that this select committee would be able to complete its final report in less than that—maybe a month.

To further assure my friend from Missouri that everything is being done to assure that this is not going to be a congressional circus, we have made tentative agreements with our House counterparts.

For example, first, we will have serving in the House committee a liaison person assigned by us. They will do the same. So it will not be a situation where secretly one side is trying to outdo the other, rushing for headlines, rushing for the big leak.

Second, and I think this is very important, we have made a tentative agreement—and the Senate committee has agreed upon this proposal—that we alternate the hearings. Instead of having two committees, as the Senator described, having hearings at the same time, and witnessing the spectacle of a witness running from one end of the Capitol to the other and trying to schedule himself at the same time with both committees, the House will meet for 1 week and we will meet the following week, and alternate.

I can assure the Senator that it will not be repetitive. We will be exchanging information, and we will be sharing classified material.

The chairman and the ranking member on the House side and Senator RUDMAN and I have committed to really meet the deadline. It is not going to be easy, but our meeting hours will be long. If one wishes to really expedite this matter, we should proceed after a thorough investigation has been conducted, so that on that basis we could proceed with public hearings. Right now, if we began our public hearings, it would be a sham. It would be a fishing expedition, and that would not add to the credibility of the U.S. Senate, and I would not want to be a party to that type of activity.

I just wish to assure my friend from Missouri that this select committee is committed to carry out its mandate in a nonpartisan, bipartisan manner. We will do our utmost to complete the work by August 1.

And if it is not possible, we will call upon the majority leader for an extension of time. But whatever it is, in that short period of time we will make every endeavor to come forth with an honest report after thorough consideration, without in any way damaging the credibility of this institution.

That, I promise you, sir.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. Mr. President, I understand there may not be any further requests for time here. If we could resolve this one area, then I am advised by the Senator from New Hampshire that the other matters have been clarified either through colloquy or statements. The record has been made. The legislative history has been made, and I think the only point of contention is the provision that was added on page 17. It would direct the Select Committee on Intelligence to release to the public a report prepared by Senator BOREN, the new chairman on that committee, along with Senator COHEN, the ranking Republican member of that committee, and as would serve the public interest and not violate national security would be made public.

It has been suggested that, "and the select committee may by a vote of the majority of the select committee, subject to the provisions of section 8 of Senate Resolution 400, 94th Congress, expose publicly such information in such report after determination by the select committee that the public interest would be served by such disclosure."

The only problem with that is first it says, "may" which means it is not mandatory, and then it says "by ma-

jority vote of the committee." If it becomes part of the majority, of course, we are not going to release it in any event. The language is rather meaningless in its present form. I mean it is an indication there could be a report and the report might be released if there was a majority vote.

As I understand section 8 of Senate Resolution 400, any member of the committee could require a vote by giving 5 days' notice. I assume that would be by reference a part of this provision.

So if I am a member of the Senate Intelligence Committee and I ask for a vote to release certain information to the public then within 5 days there must be a vote by the committee. If that is the case, then maybe it is not necessary to have a precise date. Obviously, if the majority does not want to release the report, they have the votes.

So it would seem to me there is nothing to be lost by saying that we should make the report public unless a majority determines not to do that. I would hope we might be able to resolve that provision.

I would repeat—I know the distinguished majority leader is looking at that provision—I cannot think of any greater responsibility we have than disclosing information that should be made public. It seems to me that is an obligation. I know it does not directly involve the select committee we are about to establish.

I do believe that a lot of minds have been made up on who may or may not be guilty of something, either malfeasance or misinformation or no information or failure to act based on reports that have been circulated in the last 6 or 7 weeks.

The sooner the facts are available, in my view, the sooner American people can then judge what they have heard and what they have seen and what they may have read with what the facts are as disclosed by the Intelligence Committee before they make a final judgment.

It does affect the President. It happens in this case the President is a Republican. But it also affects the Presidency.

It would seem to me that the President is willing to have the report released. If it is not classified, if someone should stand on this Senate floor as a colleague of mine did a few years back with the Pentagon Papers, and read it all into the record, as far as I know that could be done right now. There is nothing in that report that would in any way impact on the national security or the public interest, but I do understand there are legitimate concerns about that particular report, the one we discussed in the Intelligence Committee yesterday. That is why it would be our hope that perhaps with Senator BOREN and Senator COHEN could take a look at the report prepared by Senator DURENBERGER and his staff, make the necessary changes and then hopefully vote to release it to the public.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, there are two things I want to say at this point.

One is with reference to the distinguished minority leader's statement, and he has made this statement twice that I recall, that there is nothing to keep any Senator from standing on this floor right now and reading this report and making it public. I would say that if a Senator began to do that, any Senator may immediately rise and ask that the doors be closed, and that Senator who makes that request needs only a single second by any other Senator and the doors of the Senate will be automatically closed, the galleries will be cleared, and there will be a secret session.

So it is not quite so easy to just show up on the floor and say "Well, I will read this report. To heck with what the members of the committee may want. I am going to read it. It is going to be made public."

When that is done there is a protection against that and it is in the good interest of the public and the good interest of our national security that a Senator with one second can put this Senate into closed secret session and then, of course, all Senators know what the restrictions are upon them if they reveal what went on in that secret session. A Senator is subject to being expelled, and any employee or officer of the Senate who reveals what went on in that secret session is subject to the loss of his job and punishment for contempt.

So, having said that, let me go on to the matter that I think we need to resolve here at the moment.

May I say that I have modified the amendment and will further modify it to make some slight changes. I have the transcript of what I said that I would use as a modification thereof.

I make it clear that I did not say that we would incorporate the provisions of section 8 of Senate Resolution 400 of the 94th Congress. I did not say that.

Here is what I said. I will read the following and I read this for the purpose of responding to the distinguished Republican leader to see if we might change the language so that it will fit with the language that is in the present law regarding the Select Committee on Intelligence. Senators will find this on page 137 of the Senate Manual Standing Orders of the Senate. Section 8(a) quoting therefrom:

> The select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure.

And I went on to say I wonder if the distinguished Republican leader, Mr. INOUYE, Mr. RUDMAN, and Mr. BOREN, those who have spoken thus far, would be agreeable to changing the language to read as follows. Here is the way I modify my amendment, exactly.

> The Select Committee on Intelligence is hereby directed to prepare and provide for the Select Committee, in closed session, a report of its investigation into matters described in section 1 of this resolution, which report shall include a summary of the testimony and the chronology of events developed by the Select Committee on Intelligence, together with a listing of unresolved questions and issues which it recommends be pursued by the Select Committee as soon as possible and the Select Committee may release as much of the information in this report to the public as it deems advisable which is consistent with the interest of the public and national security and is deemed to be by the committee in the public interest after a determination by such committee that the public interest would be served by such disclosure.

Now, that was it. And I was reading some verbiage from section 8(a) of that law to be sure that I included the words "public interest" therein—"public interest would be served by such disclosure."

The following words came out of that law, section 8(a): "After a determination by such committee that the public interest would be served by such disclosure."

That is all I took out verbatim of that law. So I would not want the distinguished Republican leader or any Senator to be under any false impression, not through their fault, perhaps through mine, as to the modification that I included in the resolution before I sent it to the desk.

Now, I prefer to leave the modification as it is. I think it is fair as it is. It included the language that had been posed to me and, after a discussion, we changed the word "shall" to "may." And the distinguished Republican leader then asked if I would yield and I said yes, and Mr. DOLE then said: "I personally have no problem with that based on the statute, based on what I know to be the good faith of the distinguished chairman of that committee, Senator BOREN," and so on.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes, I am happy to yield.

Mr. DOLE. I do not believe I have any problem with that. I was handed another draft. Maybe it was not the majority leader's draft, but somebody handed me another draft which went back to section 8 and added a request for a majority vote.

Mr. BYRD. Yes, somebody handed me that, too. I apologize to the distinguished Republican leader. That was not my writing and is not my proposal. I do not think the person who wrote

that did it—I am sure he did it with good intentions, and I think he misunderstood me. I think that is what led that language to be written. But when I saw it, I said, "That is not my modification."

Mr. DOLE. In other words, if I understand it correctly, your modification would be as you just read it there. I think, as read and modified with some technical modifications by the distinguished majority leader, in my view, based on the statements by Senator BOREN, Senator INOUYE, Senator RUDMAN, Senator DURENBERGER, the majority leader, this Senator, and others, I would have no objection to that modification.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader. I made some slight grammatical modifications. I have inserted commas and shifted the words "to be" from prior to the words by the committee to following the words by the committee, changed the word "this" report to "such" report and put in the article "a" to precede the word "report." So this modification is a grammatical improvement over the previous modification, but substantively is the same. I thank the Republican leader. I yield the floor.

The PRESIDING OFFICER. The resolution will be so modified.

The modification reads as follows:

On page 17, insert in lieu of the matter inserted between lines 13 and 14: "The Select Committee on Intelligence is hereby directed to prepare and provide to the select committee, in closed session a report of its investigation into matters described in Section 1 of this resolution, which report shall include a summary of the testimony and chronology of events developed by the Select Committee on Intelligence, together with a listing of unresolved questions and issues which it recommends be pursued by the select committee as soon as possible, and the select committee may release as much of the information in such report to the public as it deems advisable, consistent with the interest of the public and national security, and is deemed by the committee to be in the public interest after a determination by such committee that the public interest would be served by such disclosure."

The resolution, as modified, reads as follows:

S. RES. 23

Resolved,

ESTABLISHMENT OF THE SELECT COMMITTEE

SECTION 1. (a) There is established a select committee of the Senate to be known as the Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition (hereafter in this resolution referred to as the "select committee").

(b) The purpose of the select committee is—

(1) to conduct an investigation into, and study of, all matters which have any tendency to reveal the full facts about—

(A) any activity of—

(i) the National Security Council or of any member or staff thereof,

(ii) any other department, agency, or entity of the United States Government or of any officer or employee thereof,

(iii) any foreign government, or of any agency or instrumentality thereof, or of any officer or employee thereof, or

(iv) any other individual, group, corporation, entity, or organization,

which relates to—

(I) the direct or indirect sale, shipment, or other provision of arms, or the direct or indirect provision of materiel, funds, or other assistance, to Iran,

(II) the use of the proceeds from any transaction described in subclause (I) to provide assistance to any faction or insurgency in Nicaragua or in any other foreign country, or to further any political purpose or activity within the United States, or to further any other purpose of any nature whatsoever,

(III) the generation and use of any other money, item of value, or service to provide assistance to the Nicaraguan democratic resistance, or

(IV) the provision or coordination of support for persons or entitites engaged as insurgents in armed conflict with the Government of Nicaragua,

in order to determine whether any such activity was illegal, improper, unauthorized, or unethical;

(B) any other activity, circumstance, material, or transaction having a tendency to prove or disprove that any official of the United States Government, or any other person, acting either individually or in combination with others, engaged in any activity which was illegal, improper, unauthorized, or unethical, in connection with any activity described in subclause (I), (II), (III), or (IV) of clause (A) or in connection with the operations described in clause (C); and

(C) the suitability of the structure and operations of the National Security Council, and persons serving as staff, consultants, or agents thereto, for any function related to the formulation, implementation, or conduct of American national security policy; and

(2)(A) to make such findings of fact as are warranted and appropriate;

(B) to make such recommendations, including recommendations for new legislation and amendments to existing laws and any administrative or other actions, as the select committee may determine to be necessary or desirable; and

(C) to fulfill the Constitutional oversight and informing function of the Congress with respect to the matters described in this section.

(c) For purposes of this section, the term "Iran" includes the Government of Iran, any agency or instrumentality thereof, any officer or employee thereof, or any person purporting to represent the Government of Iran or any agency or instrumentality thereof, any national of Iran, or any person located in Iran.

MEMBERSHIP AND ORGANIZATION OF THE SELECT COMMITTEE

SEC. 2. (a)(1) The select committee shall consist of eleven members of the Senate, six of whom shall be appointed by the President pro tempore of the Senate from the majority party of the Senate upon the recommendation of the Majority Leader of the Senate, and five of whom shall be appointed by the President pro tempore of the Senate from the minority party of the Senate upon the recommendation of the Minority Leader of the Senate.

(2) Vacancies in the membership of the select committee shall not affect the authority of the remaining members to execute the functions of the select committee and shall be filled in the same manner as original appointments to it are made.

(3) For the purpose of paragraph 4 of rule XXV of the Standing Rules of the Senate, service of a Senator as a member, chairman, or vice chairman of the select committee shall not be taken into account.

(b)(1) The chairman of the select committee shall be selected by the Majority Leader of the Senate and the vice chairman of the select committee shall be selected by the Minority Leader of the Senate. The vice chairman shall discharge such responsibilities as the select committee or the chairman may assign.

(2) A majority of the voting members of the select committee shall constitute a quorum for reporting a matter or recommendation to the Senate, except that the select committee may fix a lesser number as a quorum for the purpose of taking testimony before the select committee or for conducting the other business of the select committee.

(c)(1) The select committee shall promptly adopt rules and procedures not inconsistent with the rules and procedures of the Senate.

(2) The rules and procedures of the select committee shall—

(A) govern the proceedings of the select committee; and

(B) consistent with section 6 of this resolution—

(i) provide for the security of the records of the select committee and the protection of classified information and materials; and

(ii) prevent the unauthorized disclosure of information and materials obtained by the select committee in the course of its investigation and study.

STAFF OF THE SELECT COMMITTEE

SEC. 3. (a)(1) To assist the select committee in its investigation and study, the chairman, after consultation with the vice chairman and the approval of the select committee, shall appoint the committee staff.

(2) All staff shall work for the select committee as a whole, shall report to the Chairman and Vice Chairman and, except as otherwise provided by the select committee, shall be under the direction of the Chairman.

(b) To assist the select committee in its investigation and study, the Senate Legal Counsel and Deputy Senate Legal Counsel shall work with and under the jurisdiction and authority of the select committee.

(c) The Majority and Minority leaders of the Senate may each designate one staff person to serve on the staff of the select committee to serve as their liaison to the select committee.

(d) The Comptroller General of the United States is requested to provide from the General Accounting Office whatever personnel, investigatory, material, or other appropriate assistance may be required by the select committee.

PUBLIC ACTIVITIES OF THE COMMITTEE

SEC. 4. (a) Consistent with—

(1) the rights of persons subject to investigation and inquiry,

(2) considerations of national security, including the protection of sources and methods of intelligence gathering and analysis, and

(3) the interests of the relationship of the United States with other nations,

the select committee shall make every effort to fulfill the right of the public and the Congress to know the essential facts and implications of the activities of officials of the United States Government and other persons and entities with respect to the matters under investigation and study as described in section 1.

(b) In furtherance of the public's and Congress' right to know, the select committee—

(1) shall hold, as it considers appropriate, open hearings;

(2) may make interim reports to the Senate as it considers appropriate; and

(3) shall make a final comprehensive public report to the Senate which contains a description of all relevant factual determinations consistent with subsection (a) of this section and section 1(b)(2) and which contains recommendations for new legislation and other actions pursuant to the goal of an open, lawful, and effective conduct of American national security policy and, when necessary, lawful intelligence activities in support of American national security policy.

(c) The decision as to what matters shall be heard in closed or open session shall be determined by the select committee in accordance with paragraph 5(b) of rule XXVI of the Standing Rules of the Senate.

POWERS OF THE SELECT COMMITTEE

SEC. 5. (a) The select committee shall do everything necessary and appropriate under the laws and Constitution of the United States to make the investigation and study specified in section 1.

(b) The select committee is authorized to issue subpoenas for obtaining testimony and for the production of documentary or physical evidence. A subpoena may be authorized and issued by the select committee, acting through the chairman or any other member designated by the chairman, and may be served by any person designated by such chairman or other member anywhere within or without the borders of the United States to the full extent permitted by law. The chairman of the select committee, or any other member thereof, is authorized to administer oaths to any witnesses appearing before the committee.

(c) The select committee may exercise the powers conferred upon committees of the Senate by sections 6002 and 6005 of title 18, United States Code.

(d) The select committee is authorized to do the following:

(1) To employ and fix the compensation of such clerical, investigatory, legal, technical, and other assistants as the select committee considers necessary or appropriate.

(2) To sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate.

(3) To hold hearings for taking testimony under oath or to receive documentary or physical evidence relating to the matters and questions it is authorized to investigate or study.

(4) To require by subpoena or order the attendance, as witnesses before the select committee or at depositions, of any person who may have knowledge or information concerning any of the matters the select committee is authorized to investigate and study.

(5) To take depositions and other testimony under oath anywhere within the United States or in any other country, to issue orders by the chairman or any other member designated by the chairman which require witnesses to answer written interrogatories under oath, to make application for issuance of letters rogatory, and to request, through appropriate channels, other means of international assistance, as appropriate.

(6) To issue commissions and to notice depositions for staff members to examine witnesses and to receive evidence under oath administered by an individual authorized by local law to administer oaths. The select committee, acting through the chairman, may authorize and issue, and may delegate to designated staff members the power to authorize and issue, commissions and deposition notices.

(7) To require by subpoena or order—

(A) any department, agency, entity, officer, or employee of the United States Government,

(B) any person or entity purporting to act under color or authority of State or local law, or

(C) any private person, firm, corporation, partnership, or other organization,

to produce for its consideration or for use as evidence in the investigation or study of the select committee any book, check, canceled check, correspondence, communication, document, financial record, paper, physical evidence, photograph, record, recording, tape, or any other material relating to any of the matters or questions such committee is authorized to investigate and study which they or any of them may have in their custody or under their control.

(8) To make to the Senate any recommendations, including recommendations for criminal or civil enforcement, which the select committee may consider appropriate with respect to—

(A) the willful failure or refusal of any person to appear before it, or at a deposition, or to answer interrogatories, in obedience to a subpoena or order;

(B) the willful failure or refusal of any person to answer questions or give testimony during his appearance as a witness before such committee, or at a deposition, or in response to interrogatories; or

(C) the willful failure or refusal of—

(i) any officer or employee of the United States Government,

(ii) any person or entity purporting to act under color or authority of State or local law, or

(iii) any private person, partnership, firm, corporation, or organization,

to produce before the committee, or at a deposition, or at any time or place designated by the committee, any book, check, canceled check, correspondence, communiucation, document, financial record, paper, physical evidence, photograph, record, recording, tape, or any other material in obedience to any subpoena or order.

(9) To procure the temporary or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(10) To use on a reimbursable basis, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration of the Senate, the services of personnel of such department or agency.

(11) To use, with the prior consent of the chairman of any other Senate committee or the chairman of any subcommittee of any committee of the Senate, the facilities or services of any members of the staff of such other Senate committee whenever the select committee or its chairman considers that such action is necessary or appropriate to enable the select committee to make the investigation and study provided for in this resolution.

(12) To have access through the agency of any members of the select committee, staff director, chief counsel, or any of its investigatory assistants designated by the chairman, to any data, evidence, information, report, analysis, document, or paper—

(A) which relates to any of the matters or questions which the select committee is authorized to investigate or study;

(B) which is in the custody or under the control of any department, agency, entity, officer, or employee of the United States Government, including those which have—

(i) the power under the laws of the United States to investigate any alleged criminal activities or to prosecute persons charged with crimes against the United States; or

(ii) the authority to, or with in fact has, conducted intelligence gathering or intelligence activities,

without regard to the jurisdiction or authority of any other Senate committee; and

(C) which will aid the select committee to prepare for or conduct the investigation and study authorized and directed by this resolution.

(13) To report violations of any law to the appropriate Federal, State, or local authorities.

(14) To expend, to the extent the select committee determines necessary and appropriate, any moneys made available to such committee by the Senate to make the investigation, study, and reports authorized by this resolution.

(e) The level of compensation payable to any employee of the select committee shall not be subject to any limitation on compensation otherwise applicable to any employee of the Senate.

PROTECTION OF CONFIDENTIAL AND CLASSIFIED INFORMATION

SEC. 6. (a)(1) Before being given access to any classified information, any member of the staff of, or consultant to, the select committee shall have the appropriate security clearance and a need to know such information. The chairman of the select committee shall decide which select committee staff members and consultants are required to have security clearances.

(2) All staff members and consultants shall, as a condition of employment, agree in writing to abide by the conditions of an appropriate nondisclosure agreement promulgated by the select committee.

(3) The case of any Senator who violates the security procedures of the select committee may be referred to the Select Committee on Ethics of the Senate for the imposition of sanctions in accordance with the rules of the Senate. Any staff member or consultant who violates the security procedures of the select committee shall immediately be subject to removal from office or employment with the select committee or shall be subject to such other sanction as may be provided in the rules of the select committee.

(b)(1) Any classified information obtained by the select committee either directly from the Executive branch of the United States Government, through the Select Committee on Intelligence of the Senate, or by other means, shall be disclosed only in the same manner in which such information may be disclosed under the provisions of section 8

of Senate Resolution 400 (Ninety-fourth Congress, second session), except that references to the Select Committee on Intelligence in such section shall be deemed to be references to the select committee established under this resolution.

(2) The select committee shall make suitable arrangements, in consultation with the Select Committee on Intelligence of the Senate, for the physical protection and storage of classified information provided to the select committee.

(3) Upon the termination of the select committee pursuant to section 9 of this resolution, all records, files, documents, and other materials in the possession, custody, or control of the select committee, under appropriate conditions established by such committee, shall be transferred to the Select Committee on Intelligence of the Senate.

RELATION TO OTHER INVESTIGATIONS

SEC. 7. (a) In order to—

(1) expedite the thorough conduct of the investigation and study authorized by this resolution,

(2) promote efficiency among all the various investigations underway in all branches of the United States Government, and

(3) engender a high degree of confidence on the part of the public regarding the conduct of such investigation,

the select committee is encouraged—

(A) to seek the full cooperation of all relevant investigatory bodies, and

(B) to seek access to all information which is acquired and developed by such bodies.

(b)(1) The Select Committee on Intelligence is hereby directed to prepare and provide to the select committee, in closed session, a report of its investigation into matters described in Section 1 of this resolution, which report shall include a summary of the testimony and chronology of events developed by the Select Committee on Intelligence, together with a listing of unresolved questions and issues which it recommends be pursued by the select committee as soon as possible, and the select committee may release as much of the information in such report to the public as it deems advisable, consistent with the interest of the public and national security, and is deemed by the committee to be in the public interest after a determination by such committee that the public interest would be served by such disclosure.

(2) The select committee, through its members and appropriate staff, shall be provided full access to all records, files, documents and other materials in the possession, custody, or control of the Select Committee on Intelligence of the Senate, obtained or produced by the Select Committee on Intelligence of the Senate with respect to any matter described in section 1 of this resolution.

(3) All subpoenas issued by the Select Committee on Intelligence of the Senate on any matter described in section 1 of this resolution shall continue in force and may be enforced by the select committee as if issued by the select committee.

(c) The Senate requests that any independent counsel appointed pursuant to chapter 39 of title 28, United States Code, to investigate any matter related to a matter described in section 1 of this resolution, make available to the select committee, as expeditiously as possible, all documents and information which may assist the select committee in its investigation and study.

SALARIES AND EXPENSES

SEC. 8. Such sums as are necessary shall be available from the contingent fund of the Senate out of the Account for Expenses for Inquiries and Investigations for payment of salaries and other expenses of the select committee under this resolution, which shall include sums which shall be available for the procurement of the services of individual consultants or organizations thereof, in accordance with section 5(d)(9). Payments of expenses shall be disbursed upon vouchers approved by the chairman of the select committee, except that vouchers shall not be required for the disbursement of salaries paid at an annual rate.

REPORTS; TERMINATION

SEC. 9. (a)(1) The select committee shall make a final public report to the Senate of the results of the investigation and study conducted by such committee pursuant to this resolution, together with its findings and any recommendations at the earliest practicable date, but not later than August 1, 1987, provided that on or before August 1, 1987 a privileged motion made by the Majority Leader, to be debatable for no more than 1 hour, in the usual form, shall be in order, namely, "I move that the time be extended from August 1, 1987 to October 30, 1987 for the investigation by and final report of the select committee." The select committee shall also submit to the Senate such interim reports as it considers appropriate.

(2) The final report of the Select committee may be accompanied by whatever classified or confidential annexes are necessary to protect classified or confidential information, particularly intelligence sources and methods.

(b) After submission of its final report, the select committee shall conclude its business and close out its affairs as expeditiously as practicable.

Mr. BYRD. Mr. President, I ask for the yeas and nays on the resolution.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate?

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

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. BYRD. Mr. President, in the interest of getting some business done while Senators may have 2 or 3 additional minutes to get to the floor before the vote, I am going to introduce some resolutions to provide for rules changes. I would assume they would be objected to and, in that case, they would go on the Calendar, under Motions and Resolutions Over, Under the Rule. But I want to do this today, in any event. If the distinguished Republican leader will bear with me if he wishes to object.

PROVIDING THAT SUBSTITUTE AMENDMENTS BE CONSIDERED AS FIRST-DEGREE AMENDMENTS UNDER CLOTURE

Mr. BYRD. Mr. President, I send a resolution to the desk to provide that substitute amendments be considered as first-degree amendments under cloture and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. I object.

The PRESIDING OFFICER. Objection having been heard to the immediate consideration of the resolution, the resolution will go over under rule XIV, paragraph 6.

The resolution reads as follows:

S. RES. 24

Resolved, That the third paragraph of paragraph 2 of Rule XXII of the Standing Rules of the Senate is amended by inserting the following immediately after the words "first degree" in the second sentence—

", which under cloture an amendment in the nature of a substitute shall be considered as an amendment in the first degree".

ESTABLISHING A PROCEDURE IN ORDER TO OVERTURN THE CHAIR ON QUESTIONS OF GERMANENESS UNDER CLOTURE

Mr. BYRD. Mr. President, I send a resolution to the desk to establish a procedure in order to overturn the Chair on questions of germaneness under cloture and I ask for its immediate consideration.

Mr. DOLE. I object.

The PRESIDING OFFICER. Objection having been heard to the immediate consideration of the resolution, the resolution will go over under rule XIV, paragraph 6.

The resolution reads as follows:

S. RES. 25

Resolved, That the third paragraph of paragraph 2 of Rule XXII of the Standing Rules of the Senate is amended by adding the following new sentence:

"Whenever an appeal is taken under this rule from a decision of the Presiding Officer on the question of germaneness of an amendment, the vote necessary to overturn the decision of the Presiding Officer shall be three-fifths of the Senators duly chosen and sworn—except on a measure or motion to amend the Senate rules, in which case the necessary vote shall be two-thirds of the Senators present and voting.".

LIMITATION OF LEGISLATIVE AMENDMENTS

Mr. BYRD. Mr. President, I send a resolution to the desk to limit legislative amendments to the general appropriations bill and I ask unanimous concent for its immediate consideration.

Mr. DOLE. I object.

The PRESIDING OFFICER. Objection again having been heard to the immediate consideration of this reso-

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lution, this resolution will also go over under rule XIV, paragraph 6.

The resolution reads as follows:

S. RES. 26

Resolved, That Rule XVI, paragraph 4, of the Standing Rules of the Senate is amended—

(1) by inserting "(a)" after "4"; and

(2) by adding at the end of such paragraph the following new subparagraph:

"(b) If a point of order is made by any Senator against an amendment to a general appropriations bill on the ground that such amendment proposes general legislation or proposes a limitation or restriction not authorized by law and is to take effect or cease to be effective upon the happening of a contingency, it shall not be in order to raise the defense of germaneness unless there is House legislative language to which that amendment could be germane remaining in the bill.".

GERMANENESS OR RELEVANCY OF AMENDMENTS

Mr. BYRD. Mr. President, I send a resolution to the desk to provide for germaneness or relevancy of amendments, and I ask unanimous consent for its immediate consideration.

Mr. DOLE. I object.

The PRESIDING OFFICER. Objection having been heard to the immediate consideration of the resolution, the resolution will go over under rule XIV, paragraph 6.

The resolution reads as follows:

S. RES. 27

Resolved, That Rule XV of the Standing Rules of the Senate is amended—

(1) by inserting after "MOTIONS" in the caption a semicolon and the following: "GERMANENESS";

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

"6. (a) At any time during the consideration of a bill or resolution, it shall twice be in order during a calendar day to move that no amendment, other than the reported committee amendments, which is not germane or relevant to the subject matter of the bill or resolution or to the subject matter of an amendment proposed by the committee which reported the bill or resolution, shall thereafter be in order. The motion shall be priviledged and shall be decided after one hour of debate, without any intervening action, to be equally divided and controlled by the Majority Leader and the Minority Leader or their designees.

"(b) If a motion made under subparagraph (a) is agreed to by an affirmative vote of three-fifths of the Senators present and voting, then any floor amendment not already agreed to (except amendments proposed by the Committee which reported the bill or resolution) which is not germane or relevant to the subject matter of the bill or resolution, or the subject matter of an amendment proposed by the Committee which reported the bill or resolution, shall not be in order.

"(c) When a motion made under subparagraph (a) has been agreed to as provided in subparagraph (b) with respect to a bill or resolution, points of order with respect to questions of germaneness or relevancy of amendments shall be decided without debate, except that the Presiding Officer may entertain debate for his own guidance prior to ruling on the point of order. Appeals from the decision of the Presiding Officer on such points of order shall be decided without debate.

"(d) Whenever an appeal is taken from a decision of the Presiding Officer on the question of germaneness of an amendment, or whenever the Presiding Officer submits the question of germaneness or relevancy of an amendment to the Senate, the vote necessary to overturn the decision of the Presiding Officer or hold the amendment germane or relevant shall be three-fifths of the Senators present and voting. No amendment proposing sense of the Senate or sense of the Congress language that does not directly relate to the measure or matter before the Senate shall be considered germane.".

WAIVER OF READING OF AMENDMENTS UNDER CLOTURE

Mr. BYRD. Mr. President, I send to the desk a resolution to waive the reading of amendments under cloture, and I ask unanimous consent for its immediate consideration.

Mr. DOLE. Mr. President, I object.

The PRESIDING OFFICER. Objection having been heard to the immediate consideration of this resolution, the resolution will go over under rule XIV, paragraph 6.

The resolution reads as follows:

S. RES. 28

Resolved, That rule XXII of the Standing Rules of the Senate is amended by striking the last sentence of paragraph 2 and inserting in lieu thereof the following:

"After cloture is invoked, the reading of any amendment, including House amendments, shall be dispensed with.".

ELECTRONIC VOTING

Mr. BYRD. Mr. President, in order to save the time of the Senate throughout the year and throughout a Congress, I send a resolution to the desk to provide for electronic voting in the Senate and I ask for its immediate consideration.

Mr. DOLE. Mr. President, I object.

The PRESIDING OFFICER. Objection having been heard to the immediate consideration of the resolution, the resolution will go over under rule XIV, paragraph 6.

The resolution reads as follows:

S. RES. 29

Resolved, That rule XII of the Standing Rules of the Senate is amended—

(1) by striking the first clause of paragraph 1 and inserting in lieu thereof the following; "Except as provided in paragraph 5 of this rule, when the yeas and nays are ordered,".

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

"5. Whenever the Majority Leader, with concurrence of the Minority Leader, shall determine, the names of Senators voting upon any roll call shall be recorded by electronic device. Senators shall have not more than fifteen minutes from the beginning of the roll call to have their vote recorded.

"6. The Majority Leader, with concurrence of the Minority Leader, may announce that any recorded vote that is scheduled to or does occur immediately after another recorded vote shall be no longer than five minutes in duration.".

ORDER FOR INTRODUCTION OF BILLS AND RESOLUTIONS

Mr. BYRD. Mr. President, I ask unanimous consent that Senators may be authorized to introduce bills and resolutions throughout the remainder of this day and to have statements printed in support thereof in the RECORD as though read.

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

SENATE ARMS CONTROL OBSERVER GROUP

Mr. BYRD. Now, Mr. President, while we are waiting and we have the rollcall vote ordered on the resolution to create a select committee, I have discussed with the distinguished Republican leader a resolution that would extend the life of the Senate Arms Control Observer Group and I am prepared to send a resolution to the desk to extend the life of that group without naming the members thereof at this time. I have shown this resolution to the distinguished Republican leader. I believe that we have discussed it. I ask unanimous consent that the Senate proceed to the consideration immediately of this resolution.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. No objection.

The PRESIDING OFFICER. The Chair hears none. It is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A resolution, S. Res. 30, to reauthorize and redesignate the Senate Arms Control Observer Group.

The Senate proceeded to consider the resolution.

SENATE ARMS CONTROL OBSERVER GROUP

Mr. BYRD. Mr. President, the distinguished minority leader and I are today offering a resolution which would reauthorize, for the life of the 100th Congress, the Arms Control Observer Group. We are also redesignating, in this measure, the members of that successful monitoring and advising body.

The observer group was created by the Senate on February 28, 1985, in the early days of the 99th Congress. Its purpose is to supplement the activities of the Foreign Relations Committee by providing a more regular and systematic involvement of the full Senate in any arms control negotiations which the United States is officially undertaking with the Soviet Union, without in any sense assuming the role of participants or negotiators in such talks. While the Foreign Relations Committee oversees arms control negotiations on a continuing basis, the

full Senate had, prior to the creation of this group, focused its attention only sporadically on the vital aspects of such talks, usually developing a knowledge and understanding of the issues being negotiated after the fact—that is, after a draft treaty had been signed by the executive branch. The result of this fitful process had been generally unsatisfactory, and we sought to avoid a recurrence of the problems of the 1970's, when three successive arms control treaties, signed by three Presidents, were never approved for ratification by the Senate. These include the SALT II Treaty of 1979, the Threshold Test Ban Treaty of 1974, and the Peaceful Nuclear Explosions Treaty of 1976.

The U.S. Senate has the constitutional responsibility of providing advice and consent in the making of treaties. This responsibility imposes upon Senators the obligation to become as knowledgeable as possible concerning the salient issues which are being addressed in the context of the negotiating process. Any accord with the Soviet Union to control or reduce our strategic weapons carries considerable weight for our Nation. It will vitally affect our national security and that of our allies. Any agreement must be undergirded by substantial national consensus to stand the test of time, and I believe that such a consensus is best achieved through the traditional treatymaking process which has been followed in the field of strategic arms control agreements.

I feel particularly strongly that it is far better for the United States to walk away from cosmetic agreements, which provide only the illusion of progress on arms reduction, and certainly, as well, walk away from any agreement which runs counter to either our own national security interests or those of our allies and friends. Only those arms reduction agreements which enhance our military security vis-a-vis the Soviet Union should be contemplated. I am sure that this sentiment is shared by all Members of this body.

Mr. President, the Senate Arms Control Observer Group acquitted itself admirably during the 99th Congress. The distinguished minority leader and I led the group's first trip to the Geneva talks from March 9 to 12, 1985, and subsequently, the group returned to Geneva to consult with our negotiators and to exchange views with the Soviet negotiators during each of the negotiating rounds, approximately every 3 months—with the exception of the last round, this past October, when the press of Senate business was too intense for the scheduled visit to be accomplished.

I think there has been a general consensus that the long-term cross-fertilization of views between the members of the group and our negotiators has been very healthy and, in fact, a new development in executive-legislative relations in this field. In addition to the visits to the negotiating site, the group developed excellent rapport with the key executive branch officials, such as Ambassador Paul Nitze and Ambassador Ron Lehman, here in Washington, and very satisfactory arrangements were developed for regular briefings of the group by those officials on the status of the negotiations and the perspective of the executive branch on where they were going. I might add that I believe the executive branch officials also benefited from the perspectives conveyed by the Senators on the group as to the status of those talks as well.

Mr. PRESIDENT, I have heard nothing but praise regarding the maturity, the responsibility, the continuing and steady high level of interest, the expertise and common sense of the Senators on this group in carrying out their responsibilities, and I congratulate them for that. I particularly want to commend the four cochairmen, including the distinguished Senator from Alaska, Mr. STEVENS, the distinguished Senator from Georgia, Mr. NUNN, the distinguished Senator from Rhode Island, Mr. PELL, and the distinguished Senator from Indiana, Mr. LUGAR, for their leadership in this regard.

One often hears the complaint from officials in the executive branch that Congress can't keep a secret. Well, I can think of no better refutation of that thesis than the history of this group. In accord with arrangements made with the Secretary of State, the Senators in this group received timely information on the sensitive details of the negotiations, regularly, week by week, over nearly a 2-year period. Mr. President, I cannot recount a single instance of a leak of any kind coming out of that group, to the news media, which in any way could be construed to compromise the information passed to the group. On the other hand, I cannot say the same for some officials of the executive branch, because it was often clear that substantial information was coming out of the executive branch, and I believe that there were instances when the information leakage could well have weakened the hands of our negotiators. I deplore that kind of behavior, and I am proud of the fact that the 12 Senators who participated as members of this group were above it. I have every reason to be confident that this will remain the case. For my part, I am appointing the same Senators from the Democratic side of the aisle to serve in the 100th Congress. Messrs. CLAIBORNE PELL and SAM NUNN will continue to serve as the Democratic cochairmen. In addition, I am renewing the appointments of the distinguished Senator from Massachusetts, Mr. KENNEDY, the distinguished Senator from New York, Mr. MOYNIHAN, and the distinguished Senator from Tennessee, Mr. GORE.

I am confident that the continuing process of monitoring the negotiations during the 100th Congress will put the Senate in a much better position to consider any treaty which might result from those talks. Furthermore, I am confident that the advice and consultation that the group can provide our negotiators during this process will provide a helpful perspective for them on the views of key Senators.

In closing, I would like also to extend my appreciation to the Secretary of State, Mr. Shultz, to our chief negotiator in Geneva, Ambassador Max Kampleman and his team, and to Mr. Nitze here in Washington, and his assistants, for their cooperation in this effort, and my hope for a continuation of the excellent relationship that has evolved during the life of this enterprise.

ARMS CONTROL OBSERVER GROUP

Mr. DOLE. Mr. President, I am pleased to join Senator BYRD today in introducing this resolution, reauthorizing a Senate Arms Control Observer Group for the 100th Congress.

VALUABLE CONTRIBUTION TO 99TH CONGRESS

The bipartisan observer group which we formed the first day of the 99th Congress served the Senate very well throughout that Congress. It monitored the arms control negotiations in Geneva; worked effectively with the Foreign Relations and Armed Services Committees, which have important responsibilities for arms control issues; and helped all of us achieve a better understanding of the complex issues under negotiation.

The members of the group—Republicans and Democrats—brought a true bipartisan spirit to their work. They also maintained a very cooperative relationship with the administration, including with the President's top arms control advisers here in Washington and with Max Kampelman's outstanding negotiating team in Geneva. They set a fine example for the rest of the Senate in how to go about dealing with these critical issues. All of them deserve our thanks—the administrative cochairman, Senator STEVENS; the other three cochairmen, Senators LUGAR, NUNN, and PELL; and all the other members of the group.

100TH CONGRESS NEEDS SIMILAR INPUT FROM GROUP

It is my expectation that the Arms Control Observer Group can provide an equally valuable service in the 100th Congress.

Arms control issues will remain central to our Nation's security, and a top priority of the administration. Building on the progress achieved in Reykjavik and Geneva, the President is determined to continue exploring every avenue to achieve a significant,

balanced and verifiable nuclear arms reduction agreement with the Soviet Union. We can expect the talks in Geneva to be active, and we can reasonably hope they will be productive. It is useful, and important, that the Senate be represented in Geneva, and be heard in the counsels of the administration, as these events unfold.

The work of the observer group, as it did last Congress, will also impinge on our discussions and decisions on arms control-related issues across the board. And we have a great many of those issues to address—the nuclear testing treaties, SALT compliance, SDI and a whole host of others. While primary responsibility for consideration of those issues will continue to rest with Foreign Relations and Armed Services, the observer group can play an important role in keeping the Senate informed of the substance and evolution of those issues, especially as they are dealt with in the Geneva talks. And that input can be critical to the judgments the Senate finally draws.

ABLE, EXPERIENCED REPUBLICANS TO BE NAMED

Assuming we pass this resolution—and I expect it will get the unanimous support it deserves—I will be designating the Republican members in the coming days. We will have a very able, very experienced group of Republicans, just as we did last year. I expect that the majority leader will also name a good group of Democrats. And I am confident that, together, that bipartisan group will continue to perform ably and responsibly, for the Senate and for the country.

Mr. President, let me congratulate the distinguished majority leader. As my colleagues may recall—maybe not my new colleagues—it was the idea of the distinguished Senator from West Virginia, Senator BYRD, that we do this in the first instance and it has worked very successfully. I believe it should be continued and I am happy to cosponsor this resolution.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader. I compliment the members of the observer group on both sides and in particular I compliment Mr. STEVENS, who during the past few years has in particular done the administrative work of the group in a very fine and dedicated manner. I commend all Members on both sides of the aisle, Republicans and Democrats, who made up that group, and the Secretary of State, Mr Shultz, who originally did not let all of his weight down in supporting the resolution but upon several occasions observed to me that he was quite happy with the group and felt that it had contributed positively to his work and the work of the negotiators.

Now, Mr. President, have we acted on this resolution?

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 30) was agreed to, as follows:

S. RES. 30

Resolved, That the bipartisan group of Senators designated by S. Res. 86, 99th Congress (agreed to February 18, 1985) is hereby redesignated and reauthorized to act during the 100th Congress as official observers on the United States delegation to any formal arms reduction or control negotiations to which the United States is a party (which group shall hereinafter be referred to as the "Senate Observer Group") and S. Res. 86, 99th Congress is hereby amended. The Group shall be headed by four Senators, serving as Co-Chairmen, two from the Majority party, to be appointed by the Majority Leader, Robert C. Byrd, and two from the Minority party, to be appointed by the Minority Leader, Robert Dole, one from each party to be appointed as Administrative Co-Chairman. The Majority and Minority Leaders shall serve on the Group in an ex officio capacity, and shall each appoint, in addition three other Senators to serve as members of the Group. The appointments shall be made in writing to the President pro tempore of the Senate.

Only Senators appointed as members of the Group may participate in official travel and activities of the Group. In the event that either the Majority Leader or the Minority Leader does not travel on an official trip of the Observer Group, he may designate one other Senator not a member of the Group to travel and participate in the activities of the Group in his stead. Any vacancy occurring in the Senate Arms Control Observer Group shall be filled in the same manner in which the original appointment was made.".

SEC. 2. (a) The Senate Observer Group is authorized, from funds made available under section 3, to employ such staff (including consultants at a daily rate of pay) in the manner and at a rate not to exceed that allowed for employees of a standing committee of the Senate under paragraph (3) of section 105 (e) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(e)), and incur such expenses as may be necessary or appropriate to carry out its duties and functions. Payments made under this section for receptions, meals, and food-related expenses shall be authorized, however, only for those actual expenses incurred by the Senate Observer Group in the course of conducting its official duties and functions, provided, that notwithstanding any other provision of this Resolution, such amounts received as reimbursement for such expenses shall not exceed $6,000 in any fiscal year. Amounts received as reimbursement for such food expenses shall not be reported as income, and the expenses so reimbursed shall not be allowed as a deduction under title 26 of the United States Code. This provision is effective with respect to expenditures incurred on or after February 28, 1985.

(b) Each Co-Chairman of the Senate Observer Group is authorized to designate a professional staff member. The Designated Group staff shall also include, a secretary selected by, and responsible to, the Majority, and a secretary selected by, and responsible to, the Minority. The funds necessary to compensate any such staff member who is an employee of a Senate or of a Senate Committee, who has been designated to perform service for the Senate Observer Group, such staff member shall continue to be paid by such Senator or such Committee, as the case may be, but the account from which such staff member is paid shall be reimbursed for his services (including agency contributions when appropriate) out of funds made available under section 3(a) of this resolution. The four professional staff members, authorized by this subsection, shall serve all of the members of the Senate Observer Group, and carry out such other functions as their respective Co-Chairmen may specify.

(c) The Majority and Minority Leaders may each designate one staff member to serve the Observer Group. Funds necesary to compensate leadership staff shall be transferred from the funds made available under section 3(b) of this resolution to the respective account from which such designated staff member is paid.

"(d) All foreign travel of the Group shall be authorized solely by the Majority and Minority Leaders, upon the recommendation of the Administrative Co-Chairmen. Participation by staff members in authorized foreign travel by the Group, access to all official activities and functions of the Group during such travel, and access to all classified briefings and information made available to the Group during such travel, shall be limited exclusively to delegation members with appropriate clearances. No travel or other funding shall be authorized by any Committee of the Senate for the use of staff, other than delegation staff, in regard to above mentioned activities, without the written authorization of the Majority Leader and the MinorityLeader to the Chairman of such Committee.".

SEC. 3. (a) The expenses of the Senate Observer Group shall be paid from the contingent fund of the Senate, out of the account of Miscellaneous Items, upon vouchers approved jointly by the Chairmen for Administrative purposes (except that vouchers shall not be required for the disbursement of salaries of employees who are paid at an annual rate). For any fiscal year, not more than $400,000 shall be expended for staff (including consultants) and for expenses (excepting expenses incurred for foreign travel).

(b) In addition to the amount referred to in section 3(a), for any fiscal year, not more than $150,000 shall be expended from the contingent fund of the Senate, out of the account for Miscellaneous Items, for Leadership staff as designated in section 2(c) for salaries and expenses (excepting expenses incurred for foreign travel).

(c)(1) Of the amount authorized in section 3(a), an amount not to exceed $50,000 may be spent by the Senate Observer Group, with the prior approval of the Committee on Rules and Administration, to procure the temporary services (not in excess of one year) or intermittent services, including related and necessary expenses, of individual consultants, or organizations thereof, to make studies or advise the Senate Observer Group.

(2) Such services in the cases of individuals or oranizations may be procured by contract as independent contractors, or in the case of individuals by employment at daily rates of compensation not in excess of the per diem equivalent to the highest gross rate of compensation which may be paid to a regular employee of a standing committee of the Senate. Such contracts shall not be subject to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provisions of law requiring advertising.

(3) Any such consultant shall be selected by the Administrative co-chairmen acting

jointly. The Senate Observer Group shall submit to the Committee on Rules and Administration information bearing on the qualifications of each consultant whose services are procured pursuant to this subsection, including organizations, and such information shall be retained by the Senate Observer Group and shall be made available for public inspection upon request.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was adopted.

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

The motion to lay on the table was agreed to.

RESOLUTION RELATING TO SOVIET POLICY TOWARD AFGHANISTAN

Mr. BYRD. Now, Mr. President, shortly I will have a resolution that deals with the Soviet policy toward Afghanistan.

I would expect to have a rollcall vote on that resolution. We could arrange to have that vote immediately following the vote on the resolution creating the select committee. But before I proceed I think Mr. MOYNIHAN has a suggested modification to the resolution.

Mr. MOYNIHAN. I have, Mr. President. May I speak to that?

Mr. BYRD. Yes.

Mr. DOLE. Is this on the Afghan?

Mr. BYRD. Yes, on the Afghan. I have not yet introduced it, but I yield to the distinguished Senator. I yield the floor so the distinguished Senator can comment on the resolution, a copy of which I have supplied.

Mr. MOYNIHAN. I thank the distinguished majority leader, and I relish the fact that this is the first occasion I have had this year to call him majority leader. It is a special pleasure.

Mr. President, it appears to me that this excellent resolution in support of the Afghan mujeheddin, freedom fighters as they have been called, needs something added to the declaration of our commitment to that purpose and our concern with the transparent cynicism of Soviet calls for amnesty and cease fires. I think it should be recorded that American military aid to the mujeheddin began within weeks of the Soviet invasion. The Soviet invasion took place at the end of December 1979. In mid-January, within weeks, the U.S. Government had commenced supplying small arms to the resistance which began almost immediately after the invasion took place.

I do not hesitate to bring this matter to the attention of the Senate in public because on February 15, 1980, the White House so announced. We made no secret of the fact that we were doing this, nor ought we have done so. The administration at the time imposed a grain embargo, canceled the Olympics and began supplying military aid. I think that commitment to supporting the Afghan resistance should continue. Mr. President, it is my hope that the amendment might be modified to provide for such an addition. In closing, Mr. President, might I ask that the newspaper report of the New York Times of February 16, 1980, recording this White House announcement be included in the RECORD at this point.

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

[New York Times, February 16, 1980]

U.S. SUPPLYING AFGHAN INSURGENTS WITH ARMS IN A COVERT OPERATION

(By David Binder)

WASHINGTON.—The United States began an operation to supply light infantry weapons to Afghan insurgent groups in mid-January, White House officials said today.

The decision to funnel arms to rebel forces resisting Soviet troops in Afghanistan was made by the Special Coordination Committee of the National Security Council, which is chaired by Zbigniew Brzezinski, President Carter's national security adviser. It was subsequently approved by the President, a senior official of the council said.

The Central Intelligence Agency was assigned to carry out the covert mission, its first of this nature and magnitude since the Angolan civil war ended in 1976.

The arms being sent to Afghan insurgent groups are largely of Soviet design, including Kalashnikov AK-47 automatic rifles, according to the officials, who declined to specify whether the weapons were manufactured in the Soviet bloc or in China. Nor would they confirm reports that some of the arms might have come from stocks of Soviet weapons acquired by Egypt.

ARMS SHIPPED THROUGH PAKISTAN

The weapons are being shipped to the Afghan insurgents through Pakistan, which shares a long frontier with Afghanistan through rough and lightly populated terrain.

On Wednesday the Egyptian Ministry of Defense announced that it has begun a military training program for Afghans opposed to the Soviet military intervention in their homeland and that Egypt would send them back with weapons. Previously Western military officials had indicated that China and Iran had shipped limited amounts of weapons to the insurgents.

The Soviet Union has accused China and the United States of aiding the anti-Communist forces in Afghanistan ever since uprisings began against a Marxist Government that was installed by a coup in April 1978. Moscow began to criticize Egypt for involvement in the situation at about the time that the Soviet forces intervened in Afghanistan on Dec. 27.

Rumors that a C.I.A. covert operation had begun to help supply Afghan insurgents started circulating in Washington in the second week of January.

Disclosure of the secret supply program comes at a time when Government specialists on Afghan affairs say that the pace of fighting between insurgents and Soviet forces accelerated over the last two weeks.

The specialists said today that in their estimates the Soviet forces had incurred about 3,000 casualties since the intervention.

The American analysts added that Afghan insurgents and regular Afghan Army units that had gone over to the insurgent side had probably suffered twice or three times the number of casualties incurred by the Russians. They put the Soviet casualty rate at about 500 a week, of whom they said about one in six had probably been killed.

During the Vietnam War, by comparison, in the last week of September 1966 there were 970 American casualties, at a time when the fighting was intensifying.

The bulk of the fighting has taken place in the north and northeast of Afghanistan, the analysts said, with pitched battles being fought for control of the town of Narin, in the north, since Jan. 8. Narin is strategically located astride a major supply route running between the Soviet frontier and Kabul, they remarked, and was also the home base of the Afghan Army's 19th Division.

Mr. MOYNIHAN. I yield the floor and thank the Chair.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I send to the desk a certain modification which is agreeable to me and which has been proposed by Mr. MOYNIHAN, Mr. DOLE, and others. No action having been taken on the resolution, I believe I am entitled to make this modification.

The PRESIDING OFFICER. The resolution is so modified.

Is there further debate?

Mr. HUMPHREY addressed the Chair.

The PRESIDING OFFICER. The Chair will ask if the modification has been sent to the desk.

The Chair thanks the majority leader and thanks the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. HUMPHREY. Mr. President, I want to speak for a few moments on this important subject. I commend the Senator from West Virginia and others who are involved in trying to focus the attention of the Senate, the executive department, and the American people on the outrages being daily committed, day in and day out, month in and month out, year in and year out, by the Soviet Army in Afghanistan.

Mr. President, 1 million people have died in Afghanistan. How many is 1 million? If you apply that ratio to the United States, you are talking about 16 million dead Americans. Imagine 16 million dead Americans. But for the Afghans, it is not a matter of imagination, it is a matter of daily reality.

By the way the casualties are not just or even primarily combatants, those bearing arms, but primarily the casualties, the dead and the wounded, are women, the elderly, and children.

Surely, every Member of this body has heard of the Soviet toy bombs disseminated by helicopters throughout the country and whose sole, explicit, exclusive purpose is to blow off the

hands of children and to blow off their faces.

It is ironic, tragic, that the establishment is enchanted with Mr. Gorbachev's public smile, while in the remoteness and privacy of Afghanistan, children have their smiles and faces blown away by Mr. Gorbachev's bombs.

One million children, five million driven into foreign exile. How many is 5 million? One-third of the Afghan population. If you apply that ratio to the United States, you are referring to 80 million driven into exile.

It is a horrible thing going on in Afghanistan. I am very sorry to say that for our part or for the most part it is business as usual with the Soviet Union even though the Soviet Union leadership is dripping with the blood of innocent Afghan victims. There is business as usual and more than that business as usual, more friendly and warm than at any time since the invasion in 1979.

Mr. President, to address the resolution before the body, it once again calls upon the executive to investigate and to evaluate our policy of continuing to recognize, by maintaining an embassy in Kabul, this criminal regime, a puppet regime set up by a Soviet invasion, maintained for 7 years by over 100,000 Soviet troops using the most advanced weapons and the most indescribable kind of brutality and violence.

It calls upon the State Department to do something we asked them to do last summer, I would emphasize, last June 25.

This body adopted an amendment offered by the Senator from West Virginia and this Senator from New Hampshire which asked the administration to examine this policy of continuing to maintain an embassy at the seat of the government against which freedom fighters of Afghanistan are struggling at this hour with our encouragement, to examine that duplicitous policy and to examine also, at the same time, the wisdom of permitting this criminal regime to maintain an embassy here in Washington as though that were some kind of legitimate regime instead of a gang of criminals cooperating with the Soviets in the genocide of their own people.

We are asking for a second time now.

As far as I can determine, there was never any investigation by the State Department in response to last summer's Senate resolution, nor has there been, as far as I can uncover, even a communication to Senator BYRD or to this Senator from New Hampshire in response to that first request.

The resolution before us also asks again, as we did last summer, for the administration to determine whether Soviet actions in Afghanistan constitute the international crime of genocide. It is no small question. As far as we can tell, last summer's request went unheeded, not even a response in writing to this Senator at least or any other Senator that I know of. Indeed, the only followup I have gotten was a reply of December 18 from the State Department in which it says, "There is no United States policy with respect to continued recognition."

How about that for a statement of duplicity? How about that for having one foot on each side of the fence? They do not even have a policy. They say, "There is no United States policy with respect to continued recognition."

Well, that is not true. There is a policy. The de facto policy is that we have an embassy there at the seat of that regime propped up by 100,000 Soviet troops. That is our policy, whether the State Department can see it or not.

So I commend the Senator from West Virginia for renewing his effort in this important matter and I encourage my colleagues to join with us in trying to force the administration to take a stronger role, to bring some pressures to bear beyond the military pressure—diplomatic pressures, economic pressures, the pressures of international public opinion, in which latter categories we are failing to do anything at all, to the shame of this country and the principles for which it stands.

I thank the Chair.

Mr. BYRD. Mr. President, the distinguished Senator from South Carolina [Mr. HOLLINGS] wishes to address his remarks to the matter of creating a select committee. The yeas and nays have been ordered on that.

As soon as the distinguished Senator from South Carolina finishes his statement, I would be very happy to proceed with a vote on that. I understand Mr. GARN has to catch a plane. Then we can deal with the Afghan resolution.

SELECT COMMITTEE ON IRAN AND NICARAGUA

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I will be as brief as I possibly can. In fact, I have done my level best to just quietly go along on this issue for some time. However, Mr. President, it appears now that I am prepared to vote against the resolution and I take this opportunity to explain why.

What you have involved here, Mr. President, are three particular policies. One deals with the endeavor by the executive branch—the President and the White House—to open up lines of communication for an association or affiliation with a possible future successor Iranian Government. It is quite obvious that the Carter administration was found totally devoid of a policy after the fall of the shah, and we had not built up any inroads there since that time.

Yet, many people go mentally back to the loss of our Marines at Beirut, an act which we all regretted and condemned Iran for. Still we live in the real world and that is the reality by which we judge whether or not this Iran initiative was a good or bad policy. I think it was an honest endeavor and I do not think it was any kind of callous effort such as, "Heck, we can lose Marines any time we want to, but let us get on with the Iranians". It was not that kind of thing at all. Rather this administration was trying to open up channels of communciation with the future government. It did not work. But it was an honest effort.

Second, with respect to the hostages, it is now clear we were paying ransom while at the same time we were chastising everyone else not to. That was a mistake. But that is what we now know to have been the policy.

Third, there was the $100 million in aid to the Contras which Congress enacted on October 1. There are those around here who did not like that vote, and in my opinion are using every effort in order to thwart it, turn it back around, and reverse that policy. But I happen to support the President on that policy.

Those are the three policies involved here now. Bad or good, mistaken or not, that is what occurred. And it is also quite apparent to everyone involved in this area that the White House, and the administration were doing their dead-level best to keep the Contras alive until they could change the mind of the Congress and gain financial support last October.

In the meantime, the true question is not "what did he know and when did he know it," but rather "what did he give and when did he give it?" I am talking authority, not necessarily expressed authority, but apparent authority; not necessarily a written command or Executive order, but rather an environment. You run your office with an appropriate environment. We have a good working environment in the Senate. Indeed, while we are primarily U.S. Senators, we are also looking after our constituencies. I do not have a written order about that. But my staff knows when they help a South Carolina constituent that is what we are here for, and that is what keeps us here. I was pleased to be sworn in for the fifth time to serve South Carolina just a few hours ago.

Similarly, at the White House, if you could find a way to help the Contras and keep them alive until we could change the Congress' mind, an endeavor that went on for a good 4 years, that was certainly not opposed by President Reagan or that White

House. That was their particular environment.

In fact, we watched the news and we watched the bits of information inform us of this environment. The media criticized us for not exercising the fullest of oversight so we came up and we said you could not give direct aid. Then we saw other infringements. We saw more fudging and so we strengthened further the Boland amendment to cover direct or indirect aid. Then, there is the question about the legality of the Boland language, and the Iranian or American money used. There was a violation, but certainly the Congress and the Boland amendment did not proclaim it a felony and did not proclaim it a misdemeanor. We simply established a provision to restrict the expenditure of funds.

That is the law. Of course the Executive has sworn to uphold the law and I am not saying, "Let's disobey the law and forget it." It is not that kind of thing that warrants tying up the whole National Government for the next 6 or 9 months.

What really occurred in November when this Iran program broke apart is that President Reagan got the wrong advice. He was told by his administration, "Mr. President, you cannot know any of this. We have the Boland amendment, and a restriction is there. We have covert action reporting procedures and you know about that. In fact, you asked last January to get an opinion from your Attorney General that you did not have to inform the Congress about this program. But now we do not want to find you to be involved and know anything. It would hurt you to know." And that is the big mistake of advice that they are now bogged down in. Because if someone had come around and said, "Mr. President, it hurts you more not to know than to know, there is just too much information, too much of an involvement for you not to know all of this going around, you would end up after a 5- or 10-month investigation as the most ill-informed fellow that ever served in the White House as the President of these United States."

Look at the volume of information, and not just from specific witnesses but from your common sense. In the State Department you have the Assistant Secretary for Latin American Affairs, Mr. Elliott Abrams, calling up the Sultan of Brunei and saying "Put some money in the bank. America and the administration are in trouble. We need help." Then you get the Ambassador to Israel, the Ambassador to Labanon, the Ambassador to Nicaragua, the Ambassador to Costa Rica, the Ambassador to El Salvador, the Ambassador to Honduras, and others in the State Department involved. Common sense tells you the Secretary of State cannot come up here and realistically say, "There isn't anybody here except us chickens. We did not know that anything was going on." Yet they call in that Ambassador and put on a Hollywood act. Everybody thinks this is Hollywood East. All you have to do is put on an act and ignore the common sense of the public. Or you take the matter of the Defense Department. Reportedly tons of equipment and millions in reimbursement from bases all over this country were involved, yet the Secretary of Defense signs off on this activity while still maintaining, "there isn't anybody here except us chickens. I don't know anything about this policy." Come on. Who is kidding whom?

When you get the CIA, they told Mr. Casey but they also said: "Look, Mr. Casey, if we have you in this, you will have to tell the Intelligence Committee, and if you tell the Intelligence Committee, you might as well go on TV. So remember, you don't know anything. But let's use the mechanisms of the Central Intelligence Agency in support of the program and if you have to talk, say "I don't know anything. There isn't anybody here except us chickens. We don't know anything about what is going on."

The National Security Council, the Treasury Department, the Attorney General's Office, the Justice Department; you have six or seven agencies and departments, and almost a dozen countries involved here. But we are supposed to believe that they were all manipulated by a lieutenant colonel down in the White House basement. Come on.

(Mr. PROXMIRE assumed the chair.)

We have had reporting before the House that this particular lieutenant colonel would not act except without authority. That has been his life. He is not a wild card. He might skip a step. He is enthusiastic. He is gung ho. We, who serve, respect that kind of officer, and we understand that man is the military type. But as far as a criminal, no way. I do not think so.

Poindexter is also straightlaced. He was tops in Annapolis, 30 years of service, and ready to be CNO. Yet do we think that at 9 o'clock daily briefings, particularly after aid was approved by the Congress, that this program was kept secret from his boss? He must have at least said or suggested, "Mr. President, as you well know, we kept Contra aid alive. Now we have got $100 million." At least give him some idea to get some credit for it.

If the President would stop hollering criminal, then the Congress could go to work on other important issues. If he would only say, "Look, as President of the United States I cannot keep up with every agency and department." Everyone knows that. But as a general proposition, as John F. Kennedy said in the Bay of Pigs, "This was my policy. This was my mistake. I accept the responsibility for it."

These people could have overstepped their bounds and they could be reassigned. They are not criminals. But as long as he stands in the White House and says for example: "Get the FBI and cross-examine the Chief of Staff and find out what he knew and when he knew it" we will get nowhere. And, as an aside, he did not know anything. They kept him out of the loop, which was not difficult to do. But do we have to go through this entire process, to prove after 6 or 9 months that either the President of the United States misinformed the people of America or certainly he was ill-informed himself? Neither course serves the Presidency nor the Government itself; and it does not serve us in Congress, either.

This land is full of common sense, and the people out there understand that mistakes have been made. They understand the questions of policy and the differences we all have. They understand it and do not need a congressional investigation to go through and call witnesses in, day in and day out, to get to a conclusion they have already reached.

They are not going to like the results, and they are not going to like Congress for reaching those results.

That is why I, in a general sense, am opposed to this resolution and said that in the sessions we had in the Intelligence Committee. But I certainly understand the supporters of an investigation because the President was supposed to change his mind by the end of the year and say: "I assume the responsibility." But he did not and in fact he is still coming to Congress saying, "Mr. Congressman, will you investigate my staff and my White House?" That is a ludicrous position for all of us to be giving so much attention to.

Washington is the Olympics of emotion and sentiment. Everything is egregious, disastrous, or some other bit of hyperbole. But out there in the country, they want to just move on past this issue.

We have a President and he is going to be there for 2 years. We have the Congress with all these other important problems that should be confronted. And, yes, we have a news media that has a heyday selling more newspapers, with all their banner headlines and scandals.

But, I do not happen to think this was so scandalous. I can see a President operating this way and making these mistakes. It is not necessarily a so-called scandal. But what will be a scandal is if we go along and report a lot of this information before it is whole or complete. I refer to the latter part of this resolution, about the make public a report from the Intelligence Committee.

You can see the original requirement on the other side of the aisle: They want everything reported. They want to force feed the public and a report. But I am a member of the Intelligence Committee, and I voted with the majority yesterday that we just were not yet in a position to report.

It reminds me of the advent of Telstar, when G.K. Chesterton said: "One of greatest advances in communications came at a time when man had nothing to say."

Here are all the politicians. They are trying to make a report. But they also have been almost better then O.J. Simpson, ducking the press and sneaking out of the committee room so they would not have to report. Because you see, we only have five pieces of the story, not 95, as former chairman of the Intelligence Committee DURENBERGER said.

Common sense tells us what happened here. More witnesses could be called and following the money trail would produce some scandals, no doubt. But is it worth the time of the national Congress to be wrapped up on this? Are we going to play politics with this select committee and say we are going to force-feed a report?

We are ready, as Intelligence Committee members, to make a report in a closed session, to the new committee. And incidentally, Senator INOUYE is an outstanding member. Everyone knows my regard, also, for Senator RUDMAN. In fact, I have a high regard for the entire new committee. I do not think there is a better selection on either side of the aisle.

We are ready to sit down with the new committee and report the findings of the Intelligence Committee, and I would be glad to talk to the others, so we can bring this to a fast conclusion. We are prepared to do that.

Peruse what the former majority had in that document—they wanted to publish and you find that there are dunces running around in the White House. All, except, of course, the President himself. There are also some security breaches in the report and it is way too long.

It pays us as a committee to give our honest judgment, and we did, on yesterday afternoon. But now they are trying to force-feed me to make a bad report, and I am not in a position to do so.

Anxious as I am to take this hard work and bring it to a conclusion, I think we are on a 100-mile road, and we have only gone 15 or 20 miles down the road. It will be up to that select committee to go the same 20 miles plus the additional 80, in a coherent, responsible and professional manner.

We should not be politically forced into prematurely making a report, to be used over the next 6 to 9 months to contradict the work of the select committee by saying, "The Intelligence Committee reported something different." We are not in a position to report. There are all kinds of unfinished details in the chronology. Some of it, a good part of it, we think we know; but there could be some dramatic changes in this if we had all of the witnesses before the Intelligence Committee during this past month.

So, somewhere, sometime, somebody should get up and say, "I'm opposed to this."

We know the policy has been aid to the Contras. That has been the affirmative policy of President Reagan. He might not have known about the education department. He might not have understood or appreciated our environmental laws. I know he wants to do away with the inner city. And he has not been much for feeding the poor or providing health care. But he has been loyal and kept knowledgeable on Contras. That is his No. 1 policy.

On that particular score, I happen to feel—common sense tells me—that he has been generally informed. I support him in it. But for him to have that policy, going on over several years, and then claim he just found out about it is similar to the captain of the Love Boat finding out two passengers have fallen in love during the cruise and then saying, "Whoo! Get the police! How can that happen aboard this ship?" But that is what the President is saying, "I hope Congress can tell me what is going on in the Love Boat."

Everybody in America knows what is going on with the Contras. We do not need a committee to find it out.

But as long as the President hollers, "Criminals! Police!" we have to do something about it. But I wish he would quit hollering and call the people up, find out what happened, and move on with this thing, rather than making a Federal case out of it.

We have Senator NUNN, and Senator BOREN, Senator HATCH, and Senator COHEN—four members of the Intelligence Committee—who are members of the new select committee. I congratulate the leaders, the majority and minority both, for establishing that continuity with outstanding appointees. But we should not force a report that is not ready.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I congratulate the distinguished Senator from South Carolina on his statement. I think it serves an excellent purpose. I feel very much as he does that such a report should not be issued until such time as it is clearly in the public interest. I resisted the use of the word "shall." I have used the word "may."

The amendment was not my proposal to begin with. It was supported by Senator BOREN, Senator INOUYE, and Senator RUDMAN. I think considerable legislative history has been made here today, part of which I hope I contributed to, to the effect that we should not be rushed into issuing a public report until such time it is clearly in the public interest, knowing that in the final analysis it is all going to be laid out. It should be laid out but not prematurely and not an incomplete report. That is what all the fuss was about yesterday evening in the Intelligence Committee.

The distinguished Senator from South Carolina is on that committee, and I subscribe to his viewpoint in that respect entirely.

Mr. President, I yield the floor.

Mr. DOLE. Mr. President, I am pleased to join Senator BYRD today in introducing this resolution, establishing a Senate select committee to examine the issues of American arms sales to Iran and the possible diversion of money from those sales to the Democratic Resistance Forces in Nicaragua.

Since these issues first arose, I have been pushing hard for prompt and full disclosure of all the facts, to the Congress and to the American people. That is the only way to get this matter behind us, once and for all—so that the President, the Congress and the country can get on with the critical work that confronts us all.

Senator BYRD and I first proposed creation of this committee 6 weeks ago, as one important step in getting to the bottom of this affair quickly and efficiently. The President endorsed our proposal and promised his full cooperation.

OUTSTANDING LEADERS, TALENTED MEMBERS

And the committee we have put together can fulfill the important responsibilities we envisioned for it. It has outstanding leaders, in Chairman DAN INOUYE and Vice Chairman WARREN RUDMAN. It is composed of 11 talented and experienced members, 6 Democrats and 5 Republicans. I commend Senator BYRD for his selections from the Democratic side; I'm proud of mine, from this side.

FUNCTIONS OF COMMITTEE

By creating this committee, we have avoided the specter of a multitude of separate, overlapping, and competing investigations, by the many standing committees which might have had jurisdiction over various aspects of the Iran-Contra situation. The select committee will assume the sole authority to—and I quote the resolution—"fulfill the constitutional oversight and informing functions of Congress" on the issues described in its mandate. In effect, we are saying: the select committee will handle the investigation of these issues for the Senate; standing committees will be freed to do the other important work they have on their agendas.

At the same time, should the select committee, on the basis of its investi-

gation, conclude that new legislation is needed, it will make that recommendation to the Senate and to the appropriate standing committees, so that they can perform their normal legislative function in holding hearings on and reporting out any resulting bills.

MANDATE AND POWERS OF COMMITTEE

Through this resolution, the Committee also gets the mandate it needs to do a complete investigation; and the investigative powers it might require to do a thorough job. Indeed, if we have erred at all, it may be in providing the committee with a broader investigative charter, and with more investigative power, than it will need to get to the whole truth. But we all recognized the importance of allowing the committee to move ahead smoothly wherever its investigation leads, and to uncover the facts quickly by all appropriate legal means. All of us, Republicans as well as Democrats, are determined to see this happen.

At the same time, I am heartened by what I understand to be the strong commitment of both the chairman and vice chairman to avoid fishing expeditions; and to keep the committee focused on the real issues here—the Iran arms sales and the possible diversion of money from those sales to the democratic resistance in Nicaragua. And I also understand that the chairman and the vice chairman will indicate in a colloquy a useful understanding on the matter of executive privilege, so that there should be no misunderstanding of the language of the resolution on access to executive branch documentation.

COMMITTEE SHOULD MOVE AS QUICKLY AS POSSIBLE

I am also pleased to note that—as a result of a series of discussions which have involved myself, the majority leader, and the chairman and vice chairman-designate of the committee—we have changed the date on which the committee's authorization will expire to August 1.

This is a good amendment. I expect that the committee can—and hope that it will—complete its work by the August 1 date. Thanks to the efforts of the Intelligence Committee, and to other investigative efforts, we have already compiled a mass of information about the Iran-Contra questions. To a significant degree, we already know what happened and why. While we do have gaps in our knowledge, we largely know where they are. And we have a good idea how to fill them in. Unless new avenues of investigation open up—and I doubt they will—the committee ought to be able to complete its work and issue its report by August 1. If such avenues do open up unexpectedly, then we have put procedures in place so that we can extend the life of the committee.

INTELLIGENCE COMMITTEE REPORT

Finally, I am very pleased that we have added to the resolution provisions for the select committee—at the earliest possible date—to release publicly a report covering the findings of the Intelligence Committee's investigation of the Iran-Contra affair. As the Senate knows, I have been pushing hard for this step, along with the President and with others. All of us believe that the public has the right—and the need—to get all the facts, as soon as possible. So I think this is a major improvement in this resolution, as well as in our entire handling of this matter.

SENATE REPUBLICANS PREPARED TO SUPPORT COMMITTEE

The select committee has a big and important job to do. As Republican leader, I stand ready to work with the committee and provide it whatever support I can. I am confident all 45 Senate Republicans—and I expect all 55 Senate Democrats—feel much the same way.

Let's pass this resolution unanimously. Let's put this committee to work. Let's get to the bottom of this affair. And then let's go forward with renewed unity and strength—into this new year, into this new Congress and into a future of great challenges and opportunities for America.

RELEASE OF INTELLIGENCE COMMITTEE REPORT

GETTING ALL THE FACTS ON THE TABLE

It is clear that the first real business of this Congress will be to establish a select committee to investigate the Iran-Contra issue. That's as it should be. There is no priority higher than getting the full facts of this matter out on the table, for the Congress and the public to see. That is the only way we can put it behind us and get on with our other important work.

INTELLIGENCE COMMITTEE REPORT SHOULD BE MADE PUBLIC

The fact of the matter is, though, that—even before the select committee gets down to business—we already know a great deal about what happened and why. After a month of intensive work, and a series of sharply focused hearings, the Senate Intelligence Committee has compiled an excellent, quite comprehensive report of findings. It is not the final word on the Iran-Contra affair. If it was, we wouldn't need the select committee. But it does lay out what we know about the Iran-Contra affair now, and what we still need to find out.

The report ought to be made public, now. There is no good reason to deny to the public this important, extensive and well-organized body of information.

ALL OF US HAVE CALLED FOR FULL DISCLOSURE

For weeks and weeks, virtually all of us—myself, the majority leader, many of the members of the Intelligence Committee, and many others here today—we've been saying, over and over again: We have to get to the bottom of this; we have to get all the facts out; we have to let the American people know what really happened. The words Senate BYRD used earlier today, in his opening statement, were: "The American people want to know what is going on."

Well, every one of us who said that—we were absolutely right. The public does have a right to know what we have learned. The public does have a need to know what we have learned. And in fact, we have learned a great deal. Why not let the American people in on it?

PRESIDENT SEEKS RELEASE OF REPORT

The President has urged, in the strongest possible terms, that the committee release its report. He has nothing to hide. He wants the public to know as much as possible, as soon as possible, about this affair.

There are no national security concerns at issue. Appropriate administration officials have looked at the Intelligence Committee report. Working with committee members and staff, they have insured that all sensitive, national security information has been deleted.

And there are no legitimate concerns about compromising other investigations—either the select committee's or the independent counsel's. On the contrary, release of this report will facilitate the efforts of other investigations, particularly the select committee investigation.

RELEASING REPORT WILL CLEAR UP PUBLIC MISUNDERSTANDING

Fears that this is an incomplete report, that will somehow breed misunderstanding or mislead the public—those fears are also groundless. On the contrary, release of the Intelligence Committee report would very much help clarify what now is a very disjointed and dangerously confusing record of public disclosures on the Iran-Contra issue.

For weeks and weeks, we have been nearly buried under an avalanche of media reporting; comments by administration officials, Members of Congress and others; leaks from our various investigations; and the like. Much of what we've all heard and read has turned out to be inaccurate, distorted or misleading.

The Intelligence Committee report will not clear up every confusing point. But it can help us all immensely to make some sense out of this morass. Equally important, it can help us put to rest, once and for all, some of the phony accusations, unfounded rumors and irresponsible speculation to which we have all been subject.

I would also remind the Senate that the select committee we're setting up will hold a series of public hearings. Each one of those hearings will, in

effect, be another, quote, "incomplete report," unquote, in the form of the testimony of one or two witnesses. That is the inevitable nature of any major congressional investigation—you build a case piece by piece, witness by witness. That's not always the best way, but it is the only way.

So it makes absolutely no sense to oppose the release of this kind of clear, well-organized, reasonably comprehensive report—while at the same time supporting the select committee, which will inevitably be presenting the public a case in bits and pieces. It just makes no sense.

THE BOTTOM LINE: THE PUBLIC'S RIGHT TO KNOW

The bottom line is this. Do we want the public to have all the available information? Or don't we?

I have made my position clear. I want all the facts out. The President has made his position clear. He wants all the facts out. Now it's time for each Senator to indicate his position, by his vote on this amendment.

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

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Minnesota [Mr. COHEN], the Senator from Utah [Mr. GARN], the Senator from Oregon [Mr. HATFIELD], the Senator from Idaho [Mr. MCCLURE], and the Senator from Alaska [Mr. MURKOWSKI] are necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. GARN], the Senator from Oregon [Mr. HATFIELD], and the Senator from Alaska [Mr. MURKOWSKI] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 4, as follows:

[Rollcall Vote No. 1 Leg.]

YEAS—88

Adams	Daschle	Heflin
Armstrong	DeConcini	Heinz
Baucus	Dixon	Inouye
Bentsen	Dodd	Johnston
Bingaman	Dole	Kassebaum
Bond	Domenici	Kasten
Boren	Durenberger	Kennedy
Bradley	Evans	Kerry
Breaux	Exon	Lautenberg
Bumpers	Ford	Leahy
Burdick	Fowler	Levin
Byrd	Glenn	Lugar
Chiles	Gore	Matsunaga
Cochran	Graham	McCain
Conrad	Gramm	McConnell
Cranston	Grassley	Melcher
D'Amato	Harkin	Metzenbaum
Danforth	Hatch	Mikulski
Mitchell	Rockefeller	Stevens
Moynihan	Roth	Symms
Nickles	Rudman	Thurmond
Nunn	Sanford	Trible
Packwood	Sarbanes	Wallop
Pell	Sasser	Warner
Pressler	Shelby	Weicker
Proxmire	Simon	Wilson
Pryor	Simpson	Wirth
Quayle	Specter	Zorinsky
Reid	Stafford	
Riegle	Stennis	

NAYS—4

Hecht	Hollings
Helms	Humphrey

NOT VOTING—8

Biden	Cohen	McClure
Boschwitz	Garn	Murkowski
Chafee	Hatfield	

So the resolution (S. Res. 23), as modified, was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The PRESIDING OFFICER. The motion to lay on the table was agreed to.

ADDITION OF COSPONSORS TO AFGHANISTAN RESOLUTION

Mr. BYRD. Mr. President, for the information of Senators, there will be one more rollcall vote and I believe that it will occur shortly. It will be on the adoption of a resolution expressing the sense of the Senate with respect to the situation in Afghanistan. That resolution is submitted by myself on behalf of Mr. DOLE, Mr. HUMPHREY, Mr. MOYNIHAN, and Mr. BURDICK. I shall ask unanimous consent that any other Senators who wish to add their names may do so.

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

ORDER FOR ROUTINE MORNING BUSINESS

Mr. BYRD. Mr. President, now that action has been taken on the resolution creating the select committee, and the legislation dealing with the cleaning up the Nation's waters has been placed on the calendar, and the housekeeping resolutions, most of which have already been taken care of, will be completed before the end of this day, I ask unanimous consent that there may be a period for the transaction of routine morning business, following the next rollcall vote, and that Senators may speak therein for not to exceed 5 minutes.

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

Mr. BYRD. I ask unanimous consent that that period for the transaction of routine morning business not last beyond 30 minutes.

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I should state for the benefit of Senators, the Senate will come in on next Monday at 12 noon. It will be my intention to move to take up the water bill, and there could be rollcall votes. If that measure is not disposed of on Monday, the Senate will be on it on Tuesday and the Senate will be on it daily until the matter is disposed of. So Senators may expect rollcall votes to occur on that matter and on other matters.

Once that matter is disposed of, if it is disposed of on Monday or Tuesday of next week, it would be my intention to come in at 2 or 3 o'clock in the afternoons or some such time thereafter for a few days to accommodate committees in conducting meetings so as to fulfill their oversight responsibilities and report legislation to the calendar for action on the floor. Mr. CHILES' committee, the Budget Committee, will meet tomorrow. There may be other committees meeting tomorrow.

It is my understanding that Mr. CHILES will have a Budget Committee meeting also on Thursday. I do not see him on the floor right at this moment. It is his intention to have hearings tomorrow and Thursday on the budget.

I do not presume to say beyond that what his plans are.

Let me say for the benefit of Members on my side of the aisle there will be a conference—I say it here because some will soon be leaving the Chamber so I say it here and apologize to the Senate for announcing a party conference at this point—there will be a party conference tomorrow beginning at 12:30 in room S-207 and lunch will be served. The conference will go along throughout the afternoon.

As I indicated sometime ago, that will be a plenary conference and it will last into the late afternoon and early evening, if we can finish. Otherwise, we will have a continuation of the conference the next day. I fully believe, however, we ought to complete our work in that conference tomorrow.

So that conference will begin at 12:30, with lunch.

Having said that, if there are any questions about the schedule, I will be glad to entertain those right now and then I will yield the floor and, hopefully, we will vote on the remaining resolution.

SENATE RESOLUTION (S. RES. 31)—EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO THE SITUATION IN AFGHANISTAN

Mr. BYRD. Mr. President, this resolution expresses the sense of the Senate with respect to Afghanistan. I call up the resolution, which is at the desk.

The PRESIDING OFFICER (Mr. MELCHER). The clerk will report the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 31) expressing the sense of the Senate with respect to the situation in Afghanistan.

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

The Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, I ask for the yeas and nays on the resolution.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate?

SEVEN YEARS OF SOVIET TREACHERY

Mr. DOLE. Mr. President, I rise in strong support of the resolution on Afghanistan offered by the distinguished majority leader and the distinguished Senator from New Hampshire.

On December 27, we marked the seventh anniversary of the Soviet invasion of Afghanistan. For 7 long years, Soviet Forces have occupied that Nation. For 7 long years, Soviet power has subjugated the Afghan people. For 7 long years, Soviet terror and genocide have been waged against the Afghan population and culture.

And for those 7 long and terrible years, the Afghan people have struggled to win back their country and their freedom. Led by the democratic resistance forces, the Mujaheddin; with the direct material and political support of the United States; and with the moral support of free people everywhere, they have carried on a courageous struggle, in the face of overwhelming odds. And still they struggle today.

U.S. SUPPORT MUST REMAIN STRONG

As long as they must struggle—until the day when freedom is restored to Afghanistan—we must continue to provide strong, concrete help. We cannot be intimidated by Soviet threats, to us, to Pakistan or to the Mujaheddin. We cannot be dissuaded by phony Soviet peace overtures or negotiating proposals, such as we have recently seen. We cannot lose sight of the fact that our own long-term security is very much at stake in the immediate struggle of the Afghan people.

Let us serve notice once again on the Kremlin that we will be there as long as we have to. Let us pass this resolution today and unanimously.

PROVIDING FOR AN ADJOURNMENT FOR THE SENATE AND THE HOUSE OF REPRESENTATIVES

Mr. BYRD. Mr. President, I send to the desk a concurrent resolution and I ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 1) providing for an adjournment for the Senate and the House of Representatives.

S. CON. RES. 1

Resolved by the Senate (the House of Representatives concurring), That when the Senate adjourns on Tuesday, January 6, 1987, Wednesday, January 7, 1987, Thursday, January 8, 1987 or Friday, January 9, 1987, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12 o'clock meridian on Monday, January 12, 1987, and that when the House of Representatives adjourns on Thursday, January 8, 1987, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12 o'clock meridian on Tuesday, January 20, 1987, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House, after consultation with the Minority Leader of the House, shall notify the Members of the House to reassemble whenever, in his opinion, the public interest shall warrant it.

Mr. BYRD. Mr. President, this will announce what the plans are for the Senate.

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

The concurrent resolution (S. Con. Res. 1) was agreed to.

EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO THE SITUATION IN AFGHANISTAN

The Senate resumed consideration of the resolution.

The PRESIDING OFFICER. Is there further debate on the Senate resolution pertaining to Afghanistan? The question is on agreeing to the resolution. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Maine [Mr. COHEN], the Senator from Utah [Mr. GARN], the Senator from Oregon [Mr. HATFIELD], the Senator from Idaho [Mr. MCCLURE], and the Senator from Alaska [Mr. MURKOWSKI] are necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. GARN] and the Senator from Alaska [Mr. MURKOWSKI] would each vote "yea."

The PRESIDING OFFICER (Mr. PELL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 2 Leg.]

YEAS—92

Adams	Graham	Packwood
Armstrong	Gramm	Pell
Baucus	Grassley	Pressler
Bentsen	Harkin	Proxmire
Bingaman	Hatch	Pryor
Bond	Hecht	Quayle
Boren	Heflin	Reid
Bradley	Heinz	Riegle
Breaux	Helms	Rockefeller
Bumpers	Hollings	Roth
Burdick	Humphrey	Rudman
Byrd	Inouye	Sanford
Chiles	Johnston	Sarbanes
Cochran	Kassebaum	Sasser
Conrad	Kasten	Shelby
Cranston	Kennedy	Simon
D'Amato	Kerry	Simpson
Danforth	Lautenberg	Specter
Daschle	Leahy	Stafford
DeConcini	Levin	Stennis
Dixon	Lugar	Stevens
Dodd	Matsunaga	Symms
Dole	McCain	Thurmond
Domenici	McConnell	Trible
Durenberger	Melcher	Wallop
Evans	Metzenbaum	Warner
Exon	Mikulski	Weicker
Ford	Mitchell	Wilson
Fowler	Moynihan	Wirth
Glenn	Nickles	Zorinsky
Gore	Nunn	

NAYS—0

NOT VOTING—8

Biden	Cohen	McClure
Boschwitz	Garn	Murkowski
Chafee	Hatfield	

So the resolution (S. Res. 31), was agreed to, as follows:

S. RES. 31

Whereas December 27, 1986, marked the seventh anniversary of the Soviet invasion of Afghanistan;

Whereas the Soviet occupation has been characterized by extreme brutality and a campaign of indiscriminate violence that has taken the lives of an estimated 1 million Afghans, and displaced more than 4 million others;

Whereas the Special Rapporteur of the United Nations Commission on Human Rights, in his November 5, 1985, report documented examples of a barbaric Soviet military campaign against civilians, including attacks on women and children, and in a subsequent report of February 14, 1986, found the situation unchanged and concluded that the "only solution to the human rights situation in Afghanistan is the withdrawal of the foreign troops";

Whereas (the Soviet invasion was a major factor in the postponement of consideration by the Senate of the SALT II Treaty of 1979, and) the presence of Soviet troops in Afghanistan today continues to adversely affect the prospects for the long-term improvement of the United States-Soviet bilateral relationship in general;

Whereas the Soviet leadership appears to be engaged in a cynical and hypocritical public relations campaign aimed at portraying an ongoing staged withdrawal of Soviet troops from Afghanistan in the apparent belief that words will substitute for genuine action in shaping world opinion;

Whereas the offer by the Soviet puppet regime in Kabul for a cease-fire and amnesty in the name of "national reconciliation"

is a transparent attempt to isolate the democratic resistance (the mujaheddin), confuse the populace and accomplish the surrender of the democratic resistance while the Soviet military occupation continues unabated; and

Whereas the Congress condemned Soviet policy toward and behavior in Afghanistan in Public Law 99-399, calling for appropriate provision of material support to the people of Afghanistan, so long as the Soviet military occupation continues: Now, therefore, be it

Resolved, That the Senate hereby—

(1) renews its condemnation of the continued Soviet invasion and occupation of the sovereign state of Afghanistan, against the will of the Afghan people, an activity which violates all standards of conduct befitting a responsible nation, which contravenes all recognized principles of international law, and which has been reflected in seven United Nations resolutions of condemnation;

(2) finds that recent Soviet representations concerning withdrawal of Soviet troops have been indisputably demonstrated to be a sham, are a cynical and calculated campaign of disinformation, and do not reflect genuine reductions in the Soviet occupation force, which continues to stand at an estimated 120,000 troops inside Afghanistan, with 30,000 more positioned in contiguous areas of the Soviet Union, available for use against the Afghan population;

(3) finds that recent offers of a ceasefire, amnesty, and a government of national reconciliation advanced by the Soviet puppet regime in Kabul fail to provide the essential framework for a settlement, undermine the prospects for genuine progress, and should be spurned by the Afghan resistance so long as Soviet troops continue to occupy Afghanistan;

(4) believes that the only acceptable formula for a settlement of the Afghan situation is one which results in a government genuinely representative of the Afghan people, outlines a definite timetable for the complete withdrawal of Soviet troops in the near future, and provides for the return of refugees in safety and dignity;

(5) renews its commitment, which was begun within weeks of the Soviet invasion of Afghanistan in December 1979 when the United States government began to supply light infantry weapons to Afghan freedom fighters, a fact made public by the White House on February 15, 1980, to support its people of Afghanistan through the provision of appropriate material support;

(6) urges the Secretary of State to—

(A) develop continued multilateral initiatives aimed at encouraging Soviet military withdrawal, the return of an independent and nonaligned status to Afghanistan, and a peaceful political settlement acceptable to the people of Afghanistan, including provision for the return of Afghan refugees in safety and dignity;

(B) develop a vigorous public information campaign to bring the facts of the situation in Afghanistan to the attention of the world on a frequent basis;

(C) encourage the Soviet leadership and the Soviet puppet regime in Kabul to remove the barriers erected against the entry into and reporting of events in Afghanistan by journalists;

(D) makes vigorous efforts to impress upon the Soviet leadership the penalty that continued military action in Afghanistan imposes upon the building of a long-term constructive relationship with the United States, because of the negative effect that Soviet policies in Afghanistan have on attitudes toward the Soviet Union among the American people and the Congress; and

(E) review United States policy with respect to the continued recognition of the Soviet puppet regime, and continued U.S. diplomatic presence in Kabul to determine whether such recognition and presence is in the interest of the United States and the people of Afghanistan;

(7) urges the Soviet Union to present, through its Afghan puppet representatives, an expeditious timetable of no more than four months in accord with the stated position of the government of Pakistan, for the complete withdrawal of its forces at the next session of United Nations-sponsored indirect negotiations in February 1987, with representatives of Pakistan; and

(8) urges the government of Pakistan to resist the pressure of the Soviet Union to accept anything less than such a timetable for withdrawal at those indirect United Nations-sponsored negotiations.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order there will now be a period for the transaction of routine morning business, which includes the introduction of bills and resolutions, for not to exceed 30 minutes, during which time Senators are permitted to speak for up to 5 minutes.

CENTRAL AMERICA—A NEW BEGINNING

Mr. DODD. Mr. President, just prior to the Christmas holidays, I spent almost 2 weeks visiting Mexico and the five Spanish-speaking Central American nations. I made the trip for several reasons. First, as the incoming chairman of the Subcommittee on Western Hemisphere Affairs of the Foreign Relations Committee, I felt it incumbent upon me to take a fresh, first-hand look at developments in the region and to discuss them in person with the leaders in the area. Second, I was especially interested in getting their reaction to the Iran-Contra funding scandal and assessing its impact on United States policy toward the region. Third, I wanted to visit Contra bases and other facilities in order to get an up-to-date reading on their activities and the war effort in general. Finally, I undertook this trip for the purpose of discussing the status of the Contadora peace initiative and the overall prospects for a diplomatic solution to the Nicaraguan conflict.

While it is difficult to measure the success of a trip like this one, I am convinced in my own mind that I accomplished what I set out to do, thanks to all of the people in the region who gave so generously of their time for the purpose of discussing and debating issues of mutual concern. In particular I am indebted to leaders of the region—to Vinicio Cerezo of Guatemala, to Napoleon Duarte of El Salvador, to Oscar Arias of Costa Rica, to Jose Azcona of Honduras, to Daniel Ortega of Nicaragua, and to Miguel de la Madrid of Mexico—for the opportunity to have met at length with each one of them. Their willingness to answer the myriad questions I asked stands as a tribute to their determination to help this gringo better understand the latino perspective on events in the region and in particular the impact of U. S. policy on them. I am also grateful for their forebearance in allowing me to speak to them in the kind of Spanish that the members of the Royal Academy in Madrid would have rejected out of hand.

Mr. President, as a result of my conversations with these heads of state, with top military officials, with a variety of political observers, with representatives of the church and the private sector, including business and labor, and with our own Embassy personnel, I am more convinced than ever that the military option being pursued in Central America serves neither our interest nor that of the region. The long and the short of it is this: It was flawed policy in the spring of 1981, it was a flawed policy in the winter of 1986, and it is a flawed policy today.

By any reasonable standard, success has repeatedly eluded the administration's policy in dealing with President Ortega and his fellow commandantes. In January 1987, is there anyone who doubts that the Sandinistas' political, military and economic ties to Moscow and Havana are stronger than they were in January 1981? In January 1987, is there anyone who doubts that there are more Cuban, Soviet and Soviet bloc advisers, both military and civilian, in Nicaragua than there were when Ronald Reagan took office? In January 1987, is there anyone who doubts that the size of the Sandinista armed forces bears any relationship to the rag-tag militia that overthrew the Samoza dynasty? And in January 1987, is there anyone who doubts that there is less political freedom in Nicaragua, less press freedom and less religious freedom than there was when President Reagan was inaugurated to serve his first term of office?

The conclusion is obvious: More of the same will not do it. More of the same will not prevent the existence of a Communist-run state in Nicaragua. I deplore that situation as much as anyone, but deploring the deplorable is no answer either.

The real answer, I suspect, is this: For the foreseeable future there is precious little, short of direct U.S. military intervention, that we can do to change the political orientation of the Sandinista government. That may

not happen in our lifetime, but at the same time, I am firmly convinced that we can have a more positive impact on what the Sandinistas do and don't do if we stop waging war against them and begin treating them as we treat any number of other governments which have yet to earn our good housekeeping seal of approval.

Mr. President, there is every reason to believe that the Sandinista leadership is prepared to sign the kind of agreement that would go a long way toward eliminating our immediate national security concerns in that troubled region. Such an agreement would bar the establishment of foreign military bases, Soviet or otherwise, in Nicaragua. It would provide for the removal of all foreign military advisers. It would prohibit support for guerrilla movements elsewhere in the region. It would place limitation on the size and force structures of the military organizations in each of the Central American States, including Nicaragua. And it would provide for verification procedures in order to ensure compliance.

All of this we can get, and we can get it now. It may not add up to unconditional surrender on the part of the Sandinista government, but it certainly takes care of the legitimate security requirements of the folks in and around Harlingen, TX.

This stands in stark contrast to our current policy. Let's be honest about that policy—our support for the Contras is the foreign policy equivalent of the Edsel. We can continue to pump more dollars into the program; we can continue to tinker with the trim and tail-lights; we can fiddle with the hood ornaments and we can restyle the grill. But after we have done all of that—after we've had hours of meetings, hours of discussions, hours of debates—the reality is, we have still got an Edsel. That's why arms were sold to Iran and a portion of the proceeds used to fund the Contras: it was the National Security Council's last-ditch efforts to salvage the wreck. But like all wrecks, burial is inevitable. For the Contras, as a military force, this means an end to the funding. That will happen. The only questions are now how soon and in what manner. Will be prolong the agony? Will we contribute to more butchery and bloodletting? Will we wait until American military units have crossed the Rio Coco? And in the end, will there be that inevitable scene, American officials scrambling abroad a helicopter as it prepares to lift off from an embassy rooftop, with the local hires desperately clutching at the landing skids?

Had we faced up to these questions two decades ago in Southeast Asia, that scene at the United States Embassy in Saigon would never have taken place and a generation of Americans would not be left with the kind of political and social scar tissue that can never be erased. No, we cannot go back. We cannot redo or undo Southeast Asia. But we can learn from that experience, providing we have the political will and political courage to do it. To evidence that will, that courage, a new legislative direction will be required.

Accordingly, Mr. President, I am introducing legislation today which seeks to chart a different course for U.S. policy in Central America. This bill would authorize an additional $300 million in economic assistance in this fiscal year for Costa Rica, El Salvador, Guatemala, and Honduras. Clearly, Congress intended to provide this level of funding last year, but in the warning hours of the session, it was allowed to fall through the cracks. Given our own economic circumstances, it will not be easy to come up with these funds. But the need for this assistance is urgent and there is an outstanding commitment to provide it. If we are truly interested in bolstering democratic forces in Central America we will deliver on that commitment.

The next point on the policy compass is the money—the funding for the Contras, the funding that has allowed them to wage war against the people, if not the military forces, of Nicaragua. That funding must stop. No more funding for military equipment. No more funding for humanitarian assistance. No more funding, directly or indirectly, to supply the Contra war effort, period.

To reinforce this prohibition, my proposal also seeks to circumscribe other potential funding sources—namely, from allies or Third World aid recipients. Obviously this administration, even in the absence of the colonel and the admiral—is not above exerting pressure on foreign government to persuade them to maintain the Contra program. The temptation is particularly strong with respect to governments which receive economic or military assistance and/or participate in the foreign military sales program, whether on a cash or credit basis. In order to remove this temptation, this legislation would bar economic or military assistance and/or participate in the foreign military sales program, whether on a cash or credit basis. In order to remove this temptation, this legislation would bar economic or military assistance, or military sales, to any country which provdes financial or material assistance to the Contra forces or to one of their front organizations. So when the White House emissaries come knocking on the door in search of new funds for the Contras, the Government of Israel or the Government of South Korea or the government of any other country has a pretty good reason for slamming it in their face. Choosing between aid for the Contras or aid for themselves should be a pretty easy decision.

Finally, the legislation I am offering would direct that the funds previously appropriated for the Contras be used solely for the following purposes: First, these funds would be available to disband and relocate the Contra forces. Having been largely responsible for nurturing the growth and development of these forces, we cannot simply abandon them. We have a responsibility to facilitate their relocation and their resettlement. Second, these funds would be available to support the Contadora peace initiative or to help implement such an agreement. Diplomatic efforts to achieve a negotiated settlement to the Nicaraguan conflict deserve the full support of the United States Government. To the extent these diplomatic efforts require financial backing, we must make sure that it is readily at hand. Third, these funds would be available to support civilian democratic forces inside Nicaragua. These forces are alive in that wartown country, but they are not well. They need all the help and assistance we can provide. Indeed, if democracy has any future in Nicaragua it will be because of the dissidents inside Managua, not the week-end warriors in Miami.

Mr. President, in broad outline, these are the essential points contained in the proposal I am submitting today. In the days ahead, I hope my colleagues will have an opportunity to examine it in detail and give me the benefit of their thoughts on it. In the meantime, I will be talking to the new chairman of the Foreign Relations Committee, my distinguished friend and colleague from the State of Rhode Island, Senator CLAIBORNE PELL, about scheduling hearings on this proposal. I hope we can move forward with such hearings as soon as possible.

The fundamental purpose of these hearings will be to focus attention on the foreign policy options available to us in Central America. This seems to me to be of the utmost importance, if for no other reason than so much attention has been, is being and will continue to be focused on the Iranian-arms-sales-Contra-funding controversy. That's a major issue and it deserves all the attention and consideration it is receiving. But that attention and consideration must not be at the expense of the larger policy issues involved. Like the mining of Nicaraguan harbors in 1984, the Contra-funding scandal is but one aspect of the overall policy. Losing sight of the forest for the trees makes no more sense in foreign policy matters than it does in anything else.

Mr. President, sooner or later, we will have to think about the first step on the long road back to developing some kind of modus vivendi with the

Sandinistas. A security agreement that bars Soviet and other Communist forces and installations from Nicaragua offers an important first step in that direction. It would certainly be in our interests to have such an agreement. And in the broader, regional context—the future of Central America may depend on it.

Mr. President, from the rubble left by the administration's policy, I am hopeful that we can generate a new beginning, a new beginning that will restore respect for the values and the traditions of an inter-American system that we helped to forge in the aftermath of the Second World War. What the United States and the nations of Central America desperately need is a joint endeavor to reestablish those values and traditions and to build on them. Compared to what this administration has been doing in the region, those values and traditions, whether viewed from San Jose, Guatemala City, or Washington, DC, look better and better every day.

ECONOMIC ASSISTANCE TO CENTRAL AMERICAN DEMOCRACIES—S. 184

Mr. DODD. Mr. President, I am introducing a bill in conjunction with this matter that will very briefly do the following three things: It would terminate Contra funding at an appropriate time when that can be debated in the Senate, I presume sometime in February.

Second, it would also prohibit or at least reserve the right to cut off funding to any third country that provided assistance to the Contras. That would take into consideration the kind of situation we presently have encountered.

Third, it would provide assistance to the Contras for relocation; also, support for the balance of those funds; and assistance to the political elements inside Nicaragua that are opposed to the Sandinista government.

Last, it would provide some $300 million that we promised a year ago to the Central American nations, the democratic countries of Central America.

Mr. President, I ask unanimous consent that this bill, which I am introducing on behalf of myself and Senator WEICKER of Connecticut, be printed in the RECORD and referred to the appropriate committee of jurisdiction.

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

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

S. 184

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

STATEMENT OF POLICY

SECTION 1. (a) It is the policy of the United States to encourage and support the building of democracy, the restoration of peace, and the improvement of living conditions in the nations of Central America. The Congress believes that the efforts by the nations of Central America to build and maintain the social and economic institutions necessary to achieve self-sustaining growth and to provide opportunities to improve the quality of life for their people must rest primarily upon these nations' successfully marshalling their own economic and human resources.

(b) However, the Congress recognizes that, at the present time, the magnitude of the effort required to mobilize domestic resources is far in excess of what is presently available to these nations, particularly in light of the substantial external debt obligations confronting these countries.

(c) Therefore, the Congress finds that it is in the foreign policy interest of the United States to provide substantial economic assistance to the nations of Central America.

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. There are authorized to be appropriated to the President for assistance to the Central American democracies (Costa Rica, El Salvador, Guatemala, and Honduras) in accordance with the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, $300,000,000 for fiscal year 1987, which shall remain available until expended. Such sums shall in addition to amounts already appropriated for such purposes.

PROHIBITION

SEC. 3. (a) Notwithstanding any other provision of law and except as provided in subsection (c), no funds appropriated pursuant to any provision of law and no proceeds from the sale or other transfer of United States property, including any defense article, may be obligated or expended for or on behalf of the Nicaraguan democratic resistance on or after the date of enactment of this Act.

(b)(1) No defense article or other goods or technology subject to the jurisdiction of the United States may be exported to the Nicaraguan democratic resistance or to any agency thereof, and not such article, goods, or technology may be exported to the Nicaraguan democratic resistance or to any agency thereof by any person subject to the jurisdiction of the United States.

(2) The President shall prescribe such regulations as may be necessary to carry out paragraph (1).

(3) The authorities contained in section 38(e) of the Arms Export Control Act shall apply to violations of paragraph (1).

(c) Funds available for the Nicaraguan democratic resistance which are prohibited from obligation or expenditure pursuant to subsection (a) shall be available only—

(1) for relocation of the members of the Nicaraguan democratic resistance away from the areas of Honduras or Costa Rica bordering on Nicaragua;

(2) for support for a continuation of discussions under the auspices of the Contadora countries with a view toward resolving the armed conflict in Central America or for support for the implementation of an agreement relating to such conflict concluded by or through the Contadora countries; or

(3) for support for civilian democratic forces in Nicaragua, including such civilian democratic forces which are constituted as political parties, labor unions, and private sector organizations.

(d) No foreign country which provides assistance to the Nicaraguan democratic resistance on or after the date of enactment of this Act may be eligible to receive assistance under the Foreign Assistance Act of 1961 or the Arms Export Control Act.

Mr. DODD. I yield very briefly to my colleague from Connecticut, whom I have just seen enter the Chamber, for any comments he may have on this particular bill.

Mr. WEICKER. I thank my distinguished colleague. I commend him on the introduction of this bill.

I wonder if I might have 2 minutes in my own right so I do not have to take away from anyone. It is on the same subject matter.

Mr. DODD. Whatever time I have left, I yield.

Mr. WEICKER. I ask unanimous consent that I may have 2 minutes in my own right.

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

Mr. WEICKER. Mr. President, I support fully the investigation of those matters. The simple fact remains that the very matters that are being investigated were, at least insofar as the Contras were concerned, were matters of total public knowledge to the American public at large, to the Senate of the United States, to the House.

It stands to reason that grubby policies—and we all knew about the policy—beget grubby details. For everybody to feign shock and amazement is not, to me, the appropriate emotion, in light of what was known by the constitutional process of this Nation, which included not just the President but the Senate and the House and the American people.

The way we deal with this situation is to eliminate the policy. By that I mean the business of trying to overthrow by force a government that we recognize.

Swiss bank accounts and the channeling of money, should come as no surprise.

For those who come down on Mr. Reagan's head, I sort of refer to this as the King Henry the Second scenario. King Henry, in the presence of his knights, said, "Will nobody rid me of this troublesome thing?" The knights went out and murdered the archbishop. When they came back, the king threw up his hands and said, "I did not mean for you to do that."

Now the Nation throws up its hands when it learns the further details of everything this Nation stands for.

Investigation is fine, but what needs to be done here is to eliminate the policy that brought about the details now being investigated. It is fair to say that the swap of arms for hostages we did not know about. That is new matter. But the matter of the Contras is not something new to this body.

I commend the distinguished junior Senator from Connecticut for getting at the heart of the matter and saying let us be done with a bizarre policy—the first I can recall in the history of this Nation where, by force, we seek to overthrow a government we recognize.

If you want to face up to the matter and do not like the government, fine. Let us have a little debate on a declaration of war here. I do not think anybody is going to vote for that. But the surreptitious policy has been approved in a thousand ways, and there is pointing with shock to the President, when so many of our colleagues, Democrat and Republican, had a hand in it. The time to deal with it is now, and this legislation does just that.

Mr. President, if indeed there is concern about what we are now dealing with on the part of the Senate and the House and the Nation, instead of pointing the finger at the President of the United States, let us go ahead and take the appropriate action—end the policy. Otherwise, we are part of it. I do not think that continued funding finds much support among the American people at this juncture.

OUR NATION'S FOOD INSPECTION PROGRAM

Mr. WILSON. Mr. President, today marks the beginning of a new legislative session. Accordingly, I will ask my colleagues to support legislation that I intend to introduce in the upcoming weeks that will strengthen our Nation's inspection system for monitoring imported foods for illegal pesticide residues.

Mr. President, simply stated, the bitter irony of our situation is that American farmers are asked to comply with health standards for the protection of the American consumer, and rightly so, and yet we permit the importation of a flood of tainted foodstuffs from foreign lands where no such requirements are imposed.

There is a grave danger to the American consumer and a great inequity posed to the American farmer.

This legislation that I described I hope will have wide cosponsorship on both sides of the aisle. It is necessary both for the protection of health and to cure a competitive inequity.

As you know, Mr. President, one of the major responsibilities of the Food and Drug Administration is to protect the public from unsafe foods imported into the United States. Over 20 million tons of food enters the United States annually, up 43 percent from 1978, and that figure is expected to increase. Almost half of these products appear to be from developing countries, where consumer safety practices may be at low levels, if existent at all. Food safety and quality standards are also a concern with products from developed countries. Recent discoveries of tainted European wine and French brie cheese are two startling examples.

Food that is imported into this country is subject to U.S. regulations which establish levels of pesticide residues that are not allowed to be present on food, as determined by the Environmental Protection Agency. However, according to a recent, exhaustive study undertaken by the General Accounting Office, at the request of Representative FRANK HORTON and myself, the Food and Drug Administration's pesticide monitoring system provides at best limited protection against public exposure to illegal pesticide residues in imported food.

According to the GAO, large quantities of fruits and vegetables bearing pesticides banned by EPA, are regularly allowed into the United States. In fact, FDA annually samples less than 1 percent of approximately 1 million imported food shipments, with shipments from many countries that regularly export commodities to the United States going unsampled.

Yet, our Nation's farmers must comply with stringent U.S. pesticide laws that often require costly pesticide registration processes, while their foreign competitors are being allowed virtually unhindered access to our markets. I believe that this is extremely unfair and that it compounds that unfairness when those same foreign growers are allowed to ship their produce into this country under the very noses of FDA.

In fact, the GAO estimated that around 6 percent of all produce entering this country is tainted by pesticide whose use is forbidden to our own farmers.

Even more disturbing is that imported food shipments found to contain illegal pesticide residues will probably be marketed and consumed rather than re-exported or destroyed. Under current law, those commodities suspected of containing illegal residues are to be withheld from the marketplace until FDA completes its laboratory analysis. However, importers often ignore FDA's requirement and go on to distribute the commodities.

Although adequate enforcement regulations and penalties exist for FDA to utilize, importers who illegally distribute contaminated foods to the market are rarely penalized. Consequently, there is little incentive for importers not to distribute their contaminated shipments to market. The real irony is that the importer who complies with U.S. regulations by removing adulterated shipments from the marketplace incurs an economic loss, while those that do not, incur no economic loss. FDA's inaction in this case is, in my opinion, both dangerous and inexcusable. My legislation will direct the FDA Commissioner to improve implementation of the enforcement mechanisms that Congress has provided.

Additionally, this legislation will improve FDA's information gathering abilities, with a specific emphasis on pesticide usage by our foreign competitors. It will also redirect FDA's inspection resources to improve the monitoring of imported foods. Finally, the bill will require the FDA Commissioner to report annually to Congress on FDA's inspection activities.

In closing, Congress should approve legislation to ensure not only that FDA's Pesticide Monitoring Program provides maximum protection against public exposure to illegal pesticide residues in food, but also that our Nation's agricultural industry is provided with a fair environment in which to compete. I urge my colleagues to join me in my efforts.

PREMIER POET LAUREATE AN INSPIRING TEACHER

Mr. MATSUNAGA. Mr. President, a most interesting revelation about our first U.S. Poet Laureate, when he was a professor at the University of Minnesota nearly 40 years ago, appeared in the Minneapolis Star and Tribune recently. Robert Penn Warren was an outstanding, inspiring teacher and an unforgettable one, according to columnist James Shannon, whose commentary on the poet was entitled: "Overdue tribute to a teacher who made a lifelong difference." Because of its insights into the character of our Nation's premier poet laureate as an inspiring teacher of the young, I ask that Mr. Shannon's article be printed in the RECORD so that my colleagues and others may gain a further appreciation of the qualities of the gentleman and literary giant who has been named the first Poet Laureate of the United States. As the introducer of the legislation which created the office for the purpose of inspiring talented young Americans into the writing of poetry as an art, I am increasingly pleased over the choice of Robert Penn Warren.

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

[From the Minneapolis Star and Tribune, Sept. 7, 1986]

OVERDUE TRIBUTE TO A TEACHER WHO MADE A LIFELONG DIFFERENCE

(By James Shannon)

The opening of the school year turns my thoughts to the debt I owe some great teachers who, in different ways, took me in hand years ago and helped me discover the difference between learning and doing homework. In my youth the term "mentor" had not acquired the currency it has today. Looking back I realize now that six, maybe eight, of my teachers over the years were also models and mentors for me.

On occasion I have been able to tell some of them how much richer my life has been

because of their influence on it. One such mentor I have never thanked explicitly. Today I would like to make amends for this omission.

Thirty-eight years ago this month I began my first class in graduate school at the University of Minnesota. The course was "The Technique of the Novel." The teacher was Robert Penn Warren—novelist, poet, scholar, gentleman and teacher par excellence.

I can still recall many details of that first day in a third-floor room in Folwell Hall. Two modest red and white wall signs proclaimed "No Smoking." There were about a dozen of us in the class. Warren entered, carrying one sheet of paper and a pack of cigarettes. He lit up and started to talk as he paced back and forth in front of the blackboard.

From this single sheet he read off the titles of 10 novels we were to read, one a week for 10 weeks. For two hours each week we were to discuss the style and technique of a different author. We were all to buy paperback copies of the same edition of each text, so that we could mark them up and so that we could all cite the same words on the same page in analyzing a given passage.

Lighting a fresh cigarette from a spent one, Warren, moving all the time, asked us to do him a favor. He knew that the title of the course was "The Technique of the Novel." But he admitted that he could not define a novel. He had read several. He had written some. But he would have to ask us to proceed on the premise that we knew in some vague way what this term signified, even though none of us could define it.

Without notes or text he spoke easily and rapidly about the myriad elements a novelist must somehow balance and fuse. Even in such introductory remarks his evident passion for his subject conveyed intellectual excitement to me. I was charmed. My earlier sense of apprehension on Day One of graduate school melted away.

In later classes Warren never told us we ought to like something we read. By framing his comments as queries he drew us steadily into dialogue. Here was a widely published, successful author (he had just sold the movie rights to "All The King's Men") talking to us about writing, from the inside out.

His was an inductive method of close textual analysis, with dozens of questions about what works best in writing and why—the reverse of many pedants I had known who waxed eloquent about the beauty of a literary passage but with nary a clue as to why it was good writing. Warren pressed us for specific reasons whenever he sensed our agreement that a given passage did what its author intended.

In his class there was no such thing as a dumb question. Deeply courteous Southern gentleman that he is, Warren would take a poor question, fashion it into a good question, and give it an excellent answer. He taught me as much about courtesy between teacher and student as he did about rapport between a writer and a reader.

One day in his office I was present while he was being interviewed by a reporter from the New York Herald Tribune. In a classically inept question the reporter asked, "Dr. Warren, how does one go about writing a great novel?" Warren slowly looked out the window, at the floor, at the ceiling and then said, "I cannot tell you how any writer goes about writing a great novel. But I will tell you this. In order to write a very bad novel a writer must have a vast lack of interest in a host of other worthwhile topics." The wisdom in that one statement has been a guideline ever since for me about how to focus my energy and my time.

At the heart of my admiration of Robert Penn Warren is the fact that he is an accomplished and disciplined artist who made a decision early on to divide his time between the art of writing and the art of teaching. The Herald Tribune reporter also asked him why he continued to teach when his novels were best sellers. His simple reply was: "I could not write those novels unless I had regular contact with those irreverent students who have the audacity to question my judgments daily. They charge my batteries."

Warren is now Poet Laureate of the United States, the first person to hold this distinguished title. True to his own demanding principles, he has promised never to write testimonial verses for state occasions.

As one of his aging but grateful students I thank him from the heart for the tough-minded, graceful and generous guidance he gave many of us nearly 40 years ago, and for his fidelity to this day to the standards of personal and artistic integrity he exemplified then.

SENATOR JOHN STENNIS, THE FOURTH PRESIDENT PRO TEMPORE FROM MISSISSIPPI

Mr. COCHRAN. Mr. President, today Senator JOHN STENNIS was elected President pro tempore of the U.S. Senate. My senior colleague from Mississippi thereby became the fourth Senator from Mississippi to begin service as President pro tempore of the Senate.

Senators may notice that in the Senate Manual, a copy of which each Senator has in his desk, there is a listing of each Senator who has served in this capacity. Prior to 1890, it says that Senators were selected as Presidents pro tempore for the occasion only. But after 1890, the Senate provided that Senators who were selected as Presidents pro tempore would serve until the Senate otherwise ordered. Therefore, in the early days of the Senate, there were many Senators who served during the same session and in some sessions there were not any Presidents pro tempore selected.

But under the old rules, the first President pro tempore from Mississippi was George Poindexter. He was elected on June 28, 1834.

More than 100 years later, the second Mississippian was selected to serve as President pro tempore. Pat Harrison, a Senator who had risen to prominence as chairman of the Senate Finance Committee, was elected to serve in this capacity on January 6, 1941.

Our third President pro tempore was James O. Eastland. Many Senators who are serving now in the Senate recall serving when Senator Eastland presided as President pro tempore. He was elected on July 28, 1972. He served during four Congresses, the 92d, the 93d, the 94th and the 95th, as President pro tempore.

Now JOHN STENNIS, our fourth Mississippian, begins his service as the Senate's President pro tempore. The people of Mississippi are very proud of JOHN STENNIS and the fact that he has been elected to serve in this capacity.

I rise to congratulate him, Mr. President, and to commend him on his illustrious and distinguished career as a U.S. Senator. He was first elected on November 4, 1947 to fill an unexpired term and he has served with great distinction since that date. In November of this year, he will have served for 40 years as a U.S. Senator from the State of Mississippi.

Today the Washington Times carried a very good article, an excellent article, written by Cathryn Donohoe, about Senator STENNIS, describing many of his traits and qualities that are the reasons why he is such a beloved Member of the U.S. Senate.

Mr. President, I ask unanimous consent that this fine article be printed in the RECORD.

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

[From the Washington Times, Jan. 6, 1987]

STENNIS—SENATE LEGEND IS ON DUTY AS 100TH CONGRESS OPENS

(By Cathryn Donohoe)

What the old man in the wheelchair hasn't lived through, he's heard tell of. The rest he can imagine.

"Your mother tells you something and you don't forget it," he says, blue eyes alight.

She was born two years before the War Between the States began, when the desk he uses on the Senate floor belonged to his predecessor, Jefferson Davis.

She told him about Vicksburg. "See, we were holding it down there, and as long as we had Vicksburg we had control of the river," he recalls, rolling out ri-vuh in those flush tones of Mississippi that make Northern speech sound pinched.

She told him about how Grant besieged the town. About how, when Vicksburg fell after 47 days, the law broke down and the bandits combed the land to take whatever they could find. And how his mother's mother, "out at home," put the table silver in a box and buried it.

He tamps imagined soil to show how she covered her cache, and snow-white French cuffs bob up and down above his office desk. He wears cuff links the size of quarters: on blue stones, in gold, the Great Seal of the United States.

Beside his desk, the flag of Mississippi incorporates the Stars and Bars of the Confederacy.

His mother's mother tried to hide their cattle in the swamps, and couldn't. She was a widow by Vicksburg's time. The cattle broke out through the trees. The marauders came through to get food for the Union army and took 'em all off, easy.

They missed the silver.

"Tore our country up bad, that war did," John Stennis says.

He tells it as if Vicksburg happened yesterday. From his vantage point at 85, it did: U.S. Grant died only 16 years before John Cornelius Stennis came along.

Today Mr. Stennis is the oldest fellow of a chamber that reveres stability. Dean of the Senate, this November he will have served 40 years.

He keeps a vision of America most have forgotten—"earning and doing for yourself rather than having government do everything for you"—and laces conversation with memories of legislative giants now gone.

He talks of Russell, Hayden, Javits, Vandenberg, Taft. And Lucius Quintus Cincinnatus Lamar, a Mississippi man who came to Washington more than a century ago.

His is a gentility that prompts him to call the 28th president "Mr." Wilson; to hand visitors his calling card, engraved and immaculate; to thank them for their time.

Some might call it the mellowness of age, some the old Southern tradition. But those who know John Stennis say that's just the way he is.

"I've never heard him raise his voice in conversation to anybody in the entire 38 years I've known him. He's always been thoughtful and considerate," says Russell Long. Second only to Mr. Stennis in Senate longevity, Mr. Long has just retired, at 68, as Louisiana's senior senator.

"It's part of his personality. It isn't just a matter of doing it because the etiquette books say so. That's the way he lives his life," Mr. Long says.

Sen. Thad Cochran, Mr. Stennis' Republican colleague from Mississippi, says his senior can find something commendable in everyone, no matter what their merit.

"He may be somebody that drives you crazy," Mr. Cochran laughs, "but it's always 'This senator, isn't he a worker? Isn't he a worker?' "

Yet Mr. Stennis can wheel and deal on issues that mean jobs for his state. "Think Mississippi," reads a plaque on his desk. And "jobs" in the Senate means the ultimately powerful Committee on Appropriations, a body that controls how much money—some would say "pork"—goes where.

Since 1955 the senator has used his committee seat to nickel-and-dime a total of $2 billion from Congress for the Tennessee-Tombigbee Waterway, a 234-mile canal project linking the coal fields of Tennessee to the Gulf of Mexico.

Forty years in the planning and building, called by its critics "an idea whose time has gone," the canal opened in 1985. Since then its economic benefit has not met expectations, but even today it is dear to Mr. Stennis' heart.

"There's never been any way found to carry heavy goods at lower cost than water travel, traveling on the water in small boats," he says.

Three years ago Mr. Stennis pulled rank to displace Wisconsin's Sen. William Proxmire as the committee's top Democrat, claiming the move would give him even greater breadth.

The result: John Stennis today becomes the committee's chairman when the 100th Congress convenes at noon and his party retakes the Senate.

With Mississippi's Rep. Jamie L. Whitten in charge of the House appropriations committee, one of the nation's poorest states now has a commanding claim to funds for agriculture, flood control and other public works.

Vicksburg is avenged.

Mr. Stennis also takes over the appropriations committee's subcommittee on defense—a key to the health of the Pascagoula shipyards on the Gulf—and remains a member of the Committee on Armed Services. It is a unique dual assignment that gives him a major voice in both military policy and military spending.

An internationalist schooled in the way of the old bipartisan foreign policy, Mr. Stennis has always supported a strong defense. Awards from military and veterans' groups dominate one wall of his outer office.

Yet he opposed American dabbling in Vietnam as early as 1954, and in 1971 was among the first to attempt a check on the president's war powers. In his view, a constitutional issue was at stake: Only Congress can declare war.

And to hear him talk today, the Reagan administration's tax-reduction program means that military outlays—including funds for the Strategic Defense Initiative—must be reined in to balance the budget. Lean days, and perhaps a sharp look at tax policy, may be in order.

"He gave you tax reduction to quick," Mr. Stennis says of the president.

Today the senator also resumes the job he gave up when the Republicans captured the Senate six years ago—its presidency pro tempore, a post reserved for the majority's senior member.

Four of his colleagues weren't born when John Stennis came to Washington in 1947. With them he can be expected to take the gentle mentor's role, much as he has with the incoming majority leader, 16 years younger and his junior by a dozen years.

"Stennis gave me a word of advice one day, and he did it in a very careful way," says Sen. Robert C. Byrd of West Virginia, who whenever he took the chair as a freshman would gavel down even Lyndon Johnson to bring order. And he would let his anger show.

"Stennis said, 'Doin' a great job doin' a great job. You're a man who gets order in this Senate. But be careful that you don't ever show that you're a little angry. Just keep on doin' like you're doin'. But if you get a little impatient or frustrated, don't let it show'."

John Stennis has never let it show. He sits erect, the left trouser leg of his dark blue suit folded under where a tumor was until two years ago. He has endured heart surgery and repeated bouts with pneumonia, and in 1973 almost died after muggers shot him twice in front of his Washington home.

He took 17 months to recover, and even dreamed then of a headline on a Mississippi paper. "Stennis Dies in His Sleep." Colleagues worried they would lose him.

But with the tenacity that pulled him through then, he keeps coming back. And he stays. As one late-night session flowed into another in the closing days of the last session, Mr. Byrd recalls, toward midnight he would repeatedly urge Mr. Stennis to go home and turn in—to no avail.

" 'Well, now, I don't want to go if you need me. If you think you need me or you think there's going to be a vote or something here, I don't want to go,' " Mr. Byrd remembers Mr. Stennis saying.

"He's always at his post of duty," the West Virginian says.

"Duty" to John Stennis can mean many things. It can mean the nuance of senatorial courtesy that requires members to stand when speaking on the Senate floor.

As if his colleagues expected him to meet that obligation, Mr. Stennis has had the old Davis desk altered to receive a wooden bar. To speak he grasps the bar and pulls himself up. And he stands.

"Duty" can mean stewardship and the integrity of one's vote. That issue is dear to Mr. Stennis' heart.

"It's the constitutional duty, and the fact that people are trusting us, to do the things that are necessary to make our system survive, even if it costs you your seat in the Senate," he says. "That's not written out there, but that's what the meaning is."

Russell Long recalls wondering how to vote, in 1951, on whether Senate hearings on Gen. Douglas MacArthur's dismissal as Korean War commander should be televised. The people liked the idea, but vital military information could spill out. He asked John Stennis what he thought.

"He has a way of holding his lips together tightly when he thinks something is very serious, and shaking his head, and he said, 'Russell, sometimes you have to vote to save this country even if it's not pupular'."

They voted "no."

"Duty" means a commitment to his state, "the home place." Mr. Stennis holds out his hand palm up, then brushes his fingertips down his thumb when he talks about the soil of Mississippi's Delta. His eyes sparkle. His speech, it seems, takes on an even more opulent tone.

"Ovun own the Big Rivuh, the Miss'sippi Rivuh, now, that's alloovial soil. Al-loovial soil," he says, working his fingers. "Ver'rich land, like the Nile valleh."

He may have come to the Senate a circuit court judge, but he learned his books in an agricultural high school and grew up on a cotton farm. He remembers when the boll weevils hit in 1910 and how the price of cotton dropped to 5 cents a pound in the Depression.

Those days are over now, he says. They don't even grow much cotton in his county anymore. His grown daughter's dresses say "Made in Hong Kong."

The economic realities make Mississippi a needy state. From that his devotion to the Senate springs. The U.S. Senate is a body where a state like Mississippi stands level with New York.

And from that comes a reverence for the Constitution and its framers—as men who, after months of wrangling that almost aborted the nation, in Philadelphia 200 years ago finally struck a Great Compromise on the nature of the Senate.

It gave each state two votes, the equal voice denied them in the House, and allowed a union of big states and small. Mississippi was a dream then, but John Stennis' feel for its stake in the proceedings is vivid.

"I wasn't there, now," Mr. Stennis warns a visitor as if honesty demanded it. Yet like a man who's pulled off a sharp deal and aches to tell about it, he bends forward and drops his vocie to a conspiratorial whisper. That bunch from the big, rich states could be just around the corner, after all.

"That was a highly unusual agreement," he confides urgently. "But they had to do that to get the Constitution. Delaware and all that crowd were gonn' pull out. Delaware, that's the smallest state, and New Jersey, they were gonn' pull out. And he told 'em so."

He did Gunning Beford of Delaware told 'em that if the small states didn't get their two votes, they would confederate and ally themselves with a foreign power. They got their two votes. Article I, Section 3 sealed the compact.

"And the fella says, 'Next year you're gonna repeal that and put it back to one' So they made 'em write it in there: 'This shall not be reduced except through the consent of the state in question.'

"So we got two forever," he says, and chuckles long over this obscure clause

tacked to the tail of Article V, as if it were a steal.

"You got to hold to that Constitution, you know. That structure of government. It's the principles, you see," he says.

The principles John Stennis can derive from the Constitution today include civil rights for blacks. In 1982, under the rare pressure of a contested election, Mr. Stennis said "yes" for the first time to a civil rights measure, the extension of the Voting Rights Act of 1965.

The early days were different. Because the poll tax kept the poor—most of them black—from voting. Mississippi's black vote was minuscule.

According to Russell Long, "it was political suicide to be for the civil rights program, and if you opposed it, that more or less assured your re-election."

Mr. Stennis in this case did the popular thing, entering the Senate in favor of "a reasonable and proper segregation." Mr. Long remembers him as the only "uniform-wearing Confederate" besides himself on the rules committee in 1949, standing with him "like 'Horatius at the Bridge'" against a Republican civil rights onslaught.

On constitutional grounds, Mr. Stennis waged a protracted defense of the poll tax. He helped write The Southern Manifesto, a bitter attack by Southern legislators on the Supreme Court for its 1954 decision desegregating the schools.

Ten years later he co-sponsored an amendment to the Civil Rights Act that offered federal aid to blacks who would agree to resettle in states with small black populations.

His fight was long and harsh, but it is not hard to hear a wounded South in his 1970 critique of de facto segregation in the North: "There is one rule for the South and another rule beyond the South as to segregation, after all."

Even today, with a touch of the old obstinacy, Mr. Stennis will refer to the poll tax as a fair measure, one applied across the board to both black and white. "Everyone ought to pay some tax," he says.

Yet it's "history," he says, something that's "all straightened out now." And in 1982 he won the state 2-1 with black support.

If John Stennis runs again next year, wins and serves until Sept. 18, 1989, he will break the record for Senate longevity set by Carl Hayden of Arizona. He says he's too busy to think about that now; he has a job to do in Washington.

But Paul LaCoste of Jackson, Miss., the senator's finance chairman in 1982, says it wouldn't surprise him to see Mr. Stennis make the race again.

"He has never said anything that would lead me to believe, or make this supposition," Mr. LaCoste says, "It's just that you sort of know the man."

The pull can be strong. The senator's life and work are in Washington. His son and daughter have families of their own. His wife, "Miss Coy," died in 1983 after 54 years of marriage.

Yet "the home place" has a deep attraction. On a wall of his office Mr. Stennis keeps a watercolor of that place, "the little house" on 25 acres where he has lived for 50 years outside DeKalb. He looks at the painting and talks of the driveway, the town, the stands of *tim-buh.*

Then he tells of how his father's father used to send his cotton in ships down the Pearl River to market in New Orleans. And how his mother's father used to take his east to Gainesville, Ala., and put it south to Mobile on the Tombigbee. The families lived near one another, you see.

He reaches to the wall beside his desk and takes down a photograph. "My mother," he says.

The blurred picture shows a man, a woman, five young children and a baby in arms.

His mother is the infant.

She and his father are buried in a family cemetery at the old place. He goes out there on Sundays when he's home.

"You got to hold on to things, you know," he says.

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. MELCHER. Mr. President, I ask unanimous consent to extend morning business under the same conditions for an additional 15 minutes.

The PRESIDING OFFICER (Mr. MATSUNAGA). Is there objection? Without objection, it is so ordered.

PUBLIC FINANCING OF SENATE ELECTIONS

Mr. BOREN. Mr. President, last year, through a lengthy process and after much deliberation about the need for reform, the Senate had an initial vote to make major changes in our system of campaign finance. I was pleased to be joined by many concerned and sympathetic colleagues who had firsthand knowledge and experience with the alarming trend toward runaway spending in elections funneled by an unhealthy amount of special interest money.

Now in the 100th Congress, on the heels of the last election cycle, we must bring a renewed focus on the problems caused by money in politics and the divisiveness it promotes.

Having talked to many Members and read the many news accounts of the increased tidal wave of money and the negative effect it has had on our election process, I again come to the floor of the Senate to discuss legislation on this issue which I am introducing with the distinguished majority leader and others. I am proud to join with him in this effort. Others have already joined us and we are just now commencing to seek cosponsors. Concern about this matter cuts across the spectrum of American politics. Senator TERRY SANFORD of North Carolina, the past president of Duke University, has joined in this bill as had Senator JOHN STENNIS of Mississippi, the President pro tempore of the Senate—Senator LAWTON CHILES, chairman of the Budget Committee and the senior Senator from Massachusetts and chairman of the Labor and Human Resources Committee have already joined in sponsoring the bill along with Senator BYRD and myself.

The legitimacy of our democratic political system rests on the integrity of the election process. We have a clear duty to act now to protect that integrity. We face a threat to our political system that can no longer be placed on the back burner.

Mr. President, the bill on which the Senate positively voted 69 to 30 last year was primarily directed at the undue influence of political action committees and the problems associated with the over $104 million they pumped into the system in the previous cycle. However, that bill never directly addressed the overriding problem, which was and is: limiting campaign expenditures.

Mr. President, in the last election cycle, there has been a continuing increase in the cost of winning a seat in this Chamber. In 1976, that figure was $609,000; in 10 years, that figure has gone to over $3 million.

This has been caused in part by the estimated $140 million of PAC contributions which went to Senate and House candidates. This is a 25-percent increase in just 2 years. And while final figures on independent expenditures on congressional races are not yet complete, it is very apparent it will easily exceed the $6 million in the 1984 election cycle.

There is only one way in which to practically limit campaign spending while staying within the confines of a 1976 Supreme Court decision—Buckley versus Valeo—that is through the implementation of a system of partial public financing, similar to the Presidential system, coupled with provisions which continue to encourage appropriate private contributions and participation at the grassroots.

In this bill, the proposal to limit total spending is added to the other components of S. 2 which limit PAC contributions, close the bundling loophole, clarify the definition of "independent expenditures," and limit the role of foreign interests in establishing PAC's. It stakes out a strong starting point as we begin to travel the road of comprehensive reform.

I believe, as does my principal cosponsor, Senate Majority Leader ROBERT C. BYRD, that with the serious threat posed to our constitutional system, the time is right to move toward this system.

Further, I introduce this bill as a starting point for work which is going forward in several forums. Both parties have had task forces working on campaign finance reform. I am privileged to chair the Democratic working group organized by Senator BYRD for that purpose. These groups, in addition to the Rules and Administration Committee, under the chairmanship of Senator WENDELL FORD, can serve as productive forums for the discussion of the many components of campaign finance reform which should be addressed in this Congress in a bipartisan fashion.

There are four key elements of this spending limitation bill.

First, it is strictly a voluntary system, applicable to only Senate general elections.

Second, qualification is very restrictive due to a high threshold requirement calling for several, in-State, small contributions to the participating candidate—whose election is then subject to a modest expenditure limit. Fringe candidates will not be able to meet threshold requirements.

Third, private grassroots contributions are not displaced by public funds. In fact, private contributors will be encouraged to participate as candidates seek to meet threshold requirements.

It should reverse the current sharp decline in the number of small contributors from the home States of the Members of Congress.

Fourth, the system has a ceiling on funds available from the Senate General Election Campaign Fund. Once a nonparticipating candidate exceeds by 200 percent, that State's spending limit is lifted.

The bill also includes the same aggregate limit on the amount of PAC contributions that a candidate can receive. Additionally, due to the vote by the Senate in August on the Boschwitz amendment, I have implemented a provision calling for an aggregate limit on the amount of PAC contributions that a national party can receive as well.

There are other issues which need to be studied and will be in the very near future. However, in an effort to again demonstrate the critical state of our current system, I am proud to join with Senator BYRD in introducing this bill on the first day of the Congress and to urge immediate consideration and quick debate.

Mr. President, at a time when the need for national leadership and consensus is so great—with looming budget deficits, a frightening trade imbalance, and grave concerns over foreign policy—we in the Congress must promote integrity within this body and unity among our citizens, rather than falling into the trap of division promoted by our system of having special economic interests or single-issue groups finance our campaigns.

Every action we take and every vote we cast is justifiably under scrutiny by the American people. If we allow our democratic system of elections to continually be placed on the auction block, we can never hope to fairly address the national needs of our country. Instead, our energies will be expended in raising money and bowing to the constant pressures of special interests. How can any institution effectively serve the needs of its people when its central concern centers around raising millions of dollars for reelection campaigns?

The 100th Congress must face this serious problem. Let's hope this Congress will be the one to have the fortitude to, in the words of our First Lady's national antidrug campaign slogan, "Just say, 'no'!"

"No" to increasing dependence on special interest campaign money.

"No" to spending time going from one fundraiser to the next instead of working on the problems we were elected to solve.

"No" to spending more time and money on 30-second negative ads attacking opponents, instead of meeting the people at the grassroots level and learning how we can better serve them.

And finally and most importantly, "no" to allowing another election cycle to pass without acting on this issue.

The flood of money now polluting our campaign finance system is like the drug to the addict. The longer we go without admitting we have the problem of addiction, the more ingrained the addiction becomes and the harder it will be to ever break the habit.

In conclusion, I ask unanimous consent that a summary of S. 2, and the bill text be printed in the RECORD.

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

S. 2

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 "Senatorial Election Campaign Act of 1987."

SEC. 2. The Federal Election Campaign Act of 1971 (hereinafter referred to as "the Act") is amended by adding at the end the following new title:

"TITLE V—SPENDING LIMITS AND PUBLIC FINANCING FOR SENATE GENERAL ELECTIONS

"DEFINITIONS

"SEC. 501. For purposes of this title—

"(1) unless otherwise provided in this title the definitions set forth in section 301 of this Act apply to this title unless otherwise provided in the title;

"(2) the term 'authorized committee' means, with respect to any candidate for election to the United States Senate, any political committee which is authorized in writing by such candidate to accept contributions or make expenditures on behalf of such candidate to further the election of such candidate.

"(3) the term 'eligible candidate' means a candidate who is eligible under section 502 to receive payments under this title.

"(4) the term 'general election' means any election which may directly result in the election of a person to the United States Senate;

"(5) the term 'general election period' means the period beginning on the day after the date on which the candidate qualifies for the general election under the law of the state involved and ending on the date of the election or the date on which the candidate withdraws from the campaign or otherwise ceases actively to seek election, whichever occurs first.

"(6) the term 'Senate Fund' means the Senate General Election Campaign Fund maintained by the Secretary of the Treasury in the Presidential Campaign Fund established by section 9006(a) of the Internal Revenue Code of 1954, (26 U.S.C. § 9006(a)).

"(7) the term 'major party' means 'major party' as defined in section 9002(6) of the Presidential Election Campaign Fund Act, (26 U.S.C. § 9002(6)).

"(8) The term 'immediate family' means a candidate's spouse, and any child, stepchild, parent, grandparent, brother, half-brother, sister or half-sister, of the candidate and the spouses of such persons and any child, stepchild, parent, grandparent, brother, half-brother, sister or half-sister of the candidate's spouse and the spouses of any such persons.

"ELIGIBILITY TO RECEIVE PAYMENTS

"SEC. 502. (a) To be eligible to receive payments under this title a candidate shall, within seven days after qualifying for the general ballot under the law of the State involved—

"(1) certify to the Commission under penalty of perjury that during the period beginning on January 1 of the calendar year preceding the year of the general election involved, or in the case of a special election during the period beginning on the day on which the vacancy occurs in the Senate office involved, such candidate has received contributions aggregating at least $250,000 or 20 percent of the limit set forth for such candidate in section 503(b), whichever is less;

"(2) certify to the Commission that 80 percent of such contributions have come from individuals residing in such candidate's state;

"(3) certify to the Commission that at least one other candidate has qualified for the same general election ballot under the law of the state involved;

"(4) agree in writing that such candidate and the candidate's authorized committees—

"(A) will not make any expenditure which exceeds the limitations established in section 503;

"(B) will not accept any contributions in violation of section 315;

"(C) will not accept any contribution for the general election involved except to the extent that such contribution is necessary to defray expenditures for such election that in the aggregate do not exceed the difference between the amount of the expenditure limitation established in section 503(b) and the amount of payments provided for in section 504(a) (1) and (2);

"(D) will deposit all payments received under this section at a national or State bank in a separate checking account which shall contain only funds so received. No expenditures of funds received under this section shall be made except by checks drawn on such account.

"(E) will furnish campaign records, evidence of contributions and other appropriate information to the Commission;

"(F) will cooperate in the case of any audit and examination by the Commission under Section 507;

"(G) apply to the Commission for a payment as provided for in Section 504.

"(b) For the purposes of subsection (a)(1) and sections 504 (a)(2) and (a)(6), in determining the amount of contributions received by a candidate and the candidate's authorized committees—

"(1) no contribution other that a gift of money made by a written instrument which identifies the person making the contribution shall be taken into account;

"(2) no contribution made through or by an intermediary or conduit as defined in section 315(a)(8) shall be taken into account;

"(3) no contribution received from any person other than an individual shall be taken into account, and no contribution received from an individual shall be taken into account to the extent such contribution exceeds $250 when added to the amount of all other contributions made by such individual to or for the benefit of such candidate during the applicable period specified in subsection (4); and

"(4) no contribution received prior to January 1 of the calendar year preceding the year of the general election involved or received after the date on which the general election involved is held shall be taken into account, and in the case of a special election no contribution received prior to the date on which the vacancy occurs in the Senate office involved or after the date on which such election is held shall be taken into account.

"LIMITATION ON EXPENDITURES

"SEC. 503. (a) No candidate who receives a payment for a general election under this title shall make expenditures from the personal funds of such candidate, or the funds of any member of the immediate family of such candidate, aggregating in excess of $20,000, for such general election.

"(b) No candidate who receives a payment for a general election under this title shall make expenditures for such general election which in the aggregate exceed $600,000 plus 25 cents multiplied by the voting age population of the state involved in such general election, provided that such limitation on expenditures shall be subject to the provisions of section 504 (b) and (c).

"(c) For purposes of this section, voting age population means the figures certified by the Commission under subsection (e) of Section 315.

"(d) For purposes of this section, the amount set forth in subsection (b) shall be increased at the beginning of each calendar year based on the increase in the price index as determined under section 315(c) provided that for purposes of determining such increase the term 'base period' used in section 315(c) shall means the calendar year 1987.

"ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS

"SEC. 504. (a) An eligible candidate shall be entitled to—

"(1) a payment under section 506 in the case of a major party candidate, in an amount equal to the difference between the limitation for such candidate provided in section 503(b) and the amount required to be raised by such candidate to establish eligibility under section 502(a)(1); or

"(2) matching payments under section 506 in the case of a candidate who is not a major party candidate, equal to the amount of each contribution received by such candidate and the candidate's authorized committees provided that in determining the amount of each such contribution the provisions of section 502(b) shall apply, the total amount of payments to which a candidate is entitled under this subsection shall not exceed 50 percent of the limitation set forth in section 503(b) applicable to such candidate, and the contributions required by section 502(a)(1) shall not be eligible for matching payments under this title.

"(3) the broadcast media rates provided under section 315(b) of Title 47 of the United States Code.

"(4) payments under section 506 equal to the aggregate total amount of the independent expenditures by any person in excess of $25,000 made in the general election involved in opposition to, or on behalf of an opponent of, such eligible candidate.

"(5) a payment under section 506 in the case of a major party candidate, equal in amount to the amount set forth in section 503(b) with regard to such candidate, if any candidate in the same general election not eligible to receive funds under this title either raises aggregate contributions or makes aggregate expenditures for such election which exceed the amount set forth under section 503(b) for such election.

"(6) matching payments under section 506, in the case of a candidate who is not a major party candidate, equal to the amount of each contribution received by such candidate and the candidate's authorized committees if any candidate in the same general election not eligible to receive payments under this title either raises aggregate contributions or makes aggregate expenditures for such election which exceed the amount set forth in section 503(b) for such election, provided that in determining the amount of each such contribution the provisions of section 502(b) shall apply, the total amount of payments to which a candidate is entitled under this subsection shall not exceed 50 percent of the limitation set forth in section 503(b) applicable to such candidate and contributions matched under subsection 504(a)(2) or required to be raised under section 504(a)(1) shall not be eligible to be matched under this subsection.

"(b) A candidate who receives payments under subsection (a)(4), (a)(5), or (a)(6) may spend such funds to defray expenditures in the general election without regard to the provisions of section 503(b).

"(c) A candidate who receives payments under this section may receive contributions and make expenditures for the general election without regard to the provisions of section 502(a)(4)(C) or 503(b) if and when any candidate in the same general election not eligible to receive payments under this section either raises aggregate contributions or makes aggregate expenditures for such election which exceed twice the amount provided in section 503(b) for such election.

"(d) Payments received by a candidate under this section shall be used only to defray expenditures incurred with respect to the general election period for such candidate. Such payments shall not be used: (1) To repay any loan to any person or to make any payments, directly or indirectly, to such candidate or to any member of the immediate family of such candidate, (2) to make any expenditure other than expenditures to further the general election of such candidate, or (3) to make any expenditures which constitute a violation of any law of the United States or of the state in which the expenditure is made.

"CERTIFICATION BY COMMISSION

"SEC. 505. (a) No later than 48 hours after an eligible candidate files a request with the Commission to receive payments under section 504 the Commission shall certify such eligibility to the Secretary of the Treasury for payment in full of the amount to which such candidate is entitled. The request referred to in the preceding sentence shall contain—

"(1) such information and be made in accordance with such procedures as the Commission may provide by regulation; and

"(2) a verification signed by the candidate and the treasurer of the principal campaign committee of such candidate stating that the information furnished in support of the request, to the best of their knowledge, is correct and fully satisfies the requirements of this title.

"(b) Certifications by the Commission under subsection (a) and all determinations made by the Commission under this title, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 507 and judicial review under section 508.

"ESTABLISHMENT OF FUND; PAYMENTS TO ELIGIBLE CANDIDATES

"SEC. 506. (a) The Secretary shall maintain in the Presidential Election Campaign Fund ("Fund") established by paragraph 9006(a) of the Internal Revenue Code of 1954, in addition to any other accounts maintained under such section, a separate account to be known as the 'Senate Election Campaign Fund'. The Secretary shall deposit into the Senate Fund, for use by candidates eligible to receive payments under this title, the amounts available after the Secretary determines that the amounts in the Funds necessary for payments under subtitle H of the Internal Revenue Code of 1954 are adequate. The monies designated for such account shall remain available wihout fiscal year limitation.

"(b) Upon receipt of a certification from the Commission under section 505, the Secretary shall promptly pay to the candidate involved in the certification out of the Senate Fund the amount certified by the Commission.

"(c) If at the time of a certification by the Commission under section 505 for payment to an eligible candidate, the Secretary determines that the monies in the Fund and the Senate Fund are not, or may not be, sufficient to satisfy the full entitlement of all such eligible candidates, the Secretary shall withhold from such payment such amount as he determines to be necessary to assure that an eligible candidate will receive his or her pro rata share of his or her full entitlement. Amounts so withheld shall be paid when the Secretary determines that there are sufficient monies in the Senate Fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there are not sufficient monies in the Senate Fund to satisfy the full entitlement of an eligible candidate, the amounts so withheld shall be paid in such manner that each eligible candidate receives his or her pro rata share of his or her full entitlement.

"EXAMINATION AND AUDITS; REPAYMENTS

"SEC. 507. (a)(1) After each general election, the Commission shall conduct an examination and audit of the campaign account of 10 percent of the eligible candidates of each major party and 10 percent of all other eligible candidates, as designated by the Commission through the use of an appropriate statistical method of random selection to determine whether such candidates have complied with the expenditure limits and other conditions of eligibility and requirements under this title.

"(2) After each special election, the Commission shall conduct such an examination and audit of the campaign accounts of each eligible candidate in such election to determine whether such candidates have com-

plied with the expenditure limits and other conditions of eligibility and requirements under this title.

"(3) The Commission may conduct an examination and audit of the campaign accounts of any eligible candidate in a general election if the Commission, by an affirmative vote of 4 members, determines that there exists reason to believe that such candidate has violated any provision of this title.

"(b) If the Commission determines that any portion of the payments made to a candidate under this title was in excess of the aggregate payments to which such candidate was entitled, the Commission shall so notify such candidate, and such candidate shall pay to the Secretary an amount equal to the excess.

"(c) If the Commission determines that any amount of any payment made to a candidate under this title was not used as provided for in this title, the Commission shall so notify such candidate and such candidate shall pay to the Secretary an amount equal to 200 percent of the amount of such funds.

"(d) If the Commission determines that any candidate who has received payments under this title has made expenditures which in the aggregate exceed by 5 percent or less the limitation set forth in section 503(b), the Commission shall so notify such candidate and such candidate shall pay to the Secretary an amount equal to the amount of excess expenditure.

"(e) If the Commission determines that any candidate who has received payments under this title has made expenditures exceeding by more than 5 percent the limitation set forth in section 503(b), the Commission shall so notify such candidate and such candidate shall pay the Secretary an amount equal to three times the amount of the excess expenditure.

"(f) Any amount received by an eligible candidate under this title may be retained for a period not exceeding 60 days after the date of the general election for the liquidation of all obligations to pay general election campaign expenses incurred during this general election period. At the end of such 60 day period any unexpended funds received under this title shall be promptly repaid to the Secretary.

"(g) No notification shall be made by the Commission under this section with respect to an election more than 3 years after the date of such election.

"(h) All payments received under this section shall be deposited in the Senate Fund.

"JUDICIAL REVIEW

"SEC. 508. (a) Any agency action by the Commission made under the provisions of this title shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within 30 days after the agency action by the Commission for which review is sought.

"(b) The provisions of chapter 7 of title 5, United States Code, apply to the judicial review of any agency action, as defined in section 551(13) of title 5, United States Code, by the Commission.

"PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS

"SEC. 509. (a) The Commission is authorized to appear in and defend against any action instituted under this section and under section 508 either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

"(b) The Commission is authorized through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined under section 507 to be payable to the Secretary.

"(c) The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United States for such injunctive relief as is appropriate to implement any provision of this title.

"(d) The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgements or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

"REPORTS TO CONGRESS; REGULATIONS

"SEC. 510. (a) The Commission shall, as soon as practicable after each election, submit a full report to the Senate setting forth—

"(1) the expenditures (shown in such detail as the Commission determines appropriate) made by each eligible candidate and the authorized committees of such candidate;

"(2) the amounts certified by the Commission under section 505 for payment to each eligible candidate;

"(3) the amount of repayments, if any, required under section 507, and the reasons for each payment required; and

"(4) the balance in the Presidential Election Campaign Fund, and the balance in the Senate Fund and any other account maintained in the Fund.

Each report submitted pursuant to this section shall be printed as a Senate document.

"(b) The Commission is authorized to prescribe such rules and regulations in accordance with the provisions of subsection (c), to conduct such examinations and investigations, and to require the keeping and submission of such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this title.

"(c) Thirty days before prescribing any rules or regulation under subsection (b), the Commission shall transmit to the Senate a statement setting forth the proposed rule or regulation and containing a detailed explanation and justification of such rules or regulation.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 511. There are authorized to be appropriated to the Commission for the purpose of carrying out functions under this title, such sums as may be necessary.

"SENATE FUND

"SEC. 512. Section 6096(a) of Title 26 of the Internal Revenue Code of 1954 is amended by striking "$1" whenever it appears in the subsection and inserting in lieu thereof "$2" and by striking "$2" whenever it apears in that subsection inserting in lieu thereof "$4".

"BROADCAST RATES

"SEC. 513. Section 315(b)(1) of the Communications Act of 1934 [47 U.S.C. 315(b)(1)] is amended by striking the semicolon and inserting in lieu thereof the following:

"provided that in the case of a candidate in an election which may directly result in the election of a person to the office of United States Senator, this provision shall only apply if such candidate has been certified by the Federal Election Commission as eligible to receive payments under Title V of the Federal Election Campaign Act;".

"CANDIDATE REPORTING REQUIREMENTS

"SEC. 3. Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. § 434) is amended by adding at the end thereof the following new subsections—

"(d)(1) Declaration by Senate candidates. Not later than the day after the date on which a candidate qualifies for the ballot for an election which may directly result in the election of a person to the office of Senator, each candidate in such election shall file with the Commission a declaration of whether or not such candidate intends to make expenditures in excess of the limitation on expenditures provided under section 503(b).

"(2) Any declaration filed pursuant to paragraph (1) may be amended or changed at any time within 7 days after the filing of such declaration. Such amended declaration may not be amended or changed further.

"(e) Notification by Senate Candidates. Any candidate who qualifies for the ballot for an election which may directly result in the election of a person to the office of Senator who is (i) not eligible to receive payments under section 502 and, (ii) who either raises aggregate contributions or makes aggregate expenditures for such election which exceed the amount specified in section 503(b) for such Senate election, shall file a report with the Commission within 24 hours after such contributions have been raised or such expenditures have been made setting forth the candidate's total contributions and total expenditures for such election. Such candidate thereafter shall file a report with the Commission within 24 hours after either raising aggregate contributions or making aggregate expenditures for such election which exceed twice the amount specified in section 503(b), setting forth the candidate's total contributions and total expenditures for such election.

"The Commission shall notify each candidate in the election involved eligible to receive payments under section 502 about each such report within 24 hours after the report has been filed.

"Notwithstanding the report requirement established in this subsection, the Commission may make its own determination that a candidate in an election which may directly result in the election of a person to the office of United States Senator who is not eligible to receive payments under section 502 has raised aggregate contributions or made aggregate expenditures for such election which exceed the amount specified in section 503(b) for such election or exceed double such amount. The Commission shall notify each candidate in the general election involved eligible to receive payments under section 502 about each such determination within 24 hours after such determination is made."

"(f) Independent Expenditures Relating to Senate Candidates. Any independent expenditures (including those described in subsection (b)(6)(B)(iii)) by any person with regard to an election which may directly result in the election of a person to the office of United States Senator which in the aggregate total more than $25,000 shall be reported by such person to the Commission within 24 hours after each independent expenditures are made. Thereafter, any inde-

pendent expenditures by such person in the election aggregating more than $5,000 shall be reported by such person to the Commission within 24 hours after such independent expenditures are made.

"Such statements shall be filed with the Commission and Secretary of State for the state of the election involved and shall contain the information required by subsection (b)(6)(B)(iii) of the section and a statement under penalty of perjury by the person making the independent expenditures indicating whom the independent expenditures are actually intended to help elect or defeat. The Commission shall notify any candidate in the election involved who is eligible to receive payments under section 502 about each such report within 24 hours after the report is made.

"Notwithstanding the reporting requirements established in this paragraph, the Commission may make its own determination that a person has made independent expenditures with regard to an election which may directly result in the election of a person to the office of United States Senator that in the aggregate total more than $25,000, and thereafter that in the aggregate total more than $5,000.

"The Commission shall notify each candidate in the election involved eligible to receive payments under section 502 about each such determination within 24 hours after such determination is made."

"LIMITS ON CONTRIBUTIONS BY MULTICANDIDATE POLITICAL COMMITTEES

"SEC. 4. Section 315(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 441a(a)(2)) is amended—

(1) by striking out "or" at the end of subparagraph (B);

(2) by striking out "$5,000." in subparagraph (C) and inserting in lieu thereof "$3,000;"; and

(3) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(4) by adding at the end the following new subparagraphs:

"(D) to any candidate and his authorized political committees with respect to—

"(i) a general or special election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress (including any primary election, convention, or caucus relating to such general or special election) which exceed $100,000 ($125,000 if at least two candidates qualify for the ballot in the general or special election involved and at least two candidates qualify for the ballot in a primary election relating to such general or special election) when added to the total of contributions previously made by multicandidate political committees, other than multicandidate committees of a political party, to such candidate and his authorized political committees with respect to such general or special election (including any primary election, convention, or caucus relating to such general or special election); or

"(ii) a runoff election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress which exceed $25,000 when added to the total of contributions previously made by muliticandidate political committees, other than multicandidate committees of a political party, to such candidate and his authorized political committees with respect to such runoff election, or

"(E) to any candidate and his authorized political committees with respect to—

"(i) a general or special election for the office of Senator (including any primary election, convention, or caucus relating to such general or special election) which exceed the greater of $175,000 ($200,000 if at least two candidates qualify for the ballot in the general or special election involved and at least two candidates qualify for the ballot in a primary election relating to such general or special election) or the amount equal to $35,000 times the number of Representatives to which the State involved is entitled, when added to the total of contributions previously made by multicandidate political committees, other than multicandidate committees of a political party, to such candidate and his authorized political committees with respect to such general or special election (including any primary election, convention, or caucus relating to such general or special election);

"(ii) a runoff election for the office of Senator which exceed the greater of $25,000 or the amount equal to $12,500 times the number of Representatives to which the State involved is entitled, when added to the total of contributions previously made by multicandidate political committees, other than multicandidate committees of a political party, to such candidate and his authorized political committees with respect to such runoff election; or

"(iii) a general or special election for the office of Senator (including any primary election, runoff election, convention, or caucus relating to such general or special election) which exceed $750,000 when added to the total of contributions previously made by multicandidate political committees, other than multicandidate committees of a political party, to such candidate and his authorized political committees with respect to such general or special election (including any primary election, convention, or caucus relating to such general or special election).".

"(F) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any two year election cycle, which, in the aggregate, exceed $2,000,000 when added to the total of contributions previously made by multicandidate political committees in such election cycle.

"INTERMEDIARY OR CONDUIT

"SEC. 5. Section 315 of the Federal Election Campaign Act of 1971 [2 U.S.C. § 441a(a)] is amended—

(1) by redesignating subsection (8) as subparagraph (8)(A);

(2) by adding at the end, the following new subparagraphs:

"(B) A gift, subscription, loan, advance or deposit of money or anything of value to a candidate shall be considered a contribution both by the original source of the contribution and by any intermediary or conduit if the intermediary or conduit (i) exercises any control or any direction over the making of the contribution; or (ii) solicits the contribution or arranges for the contribution to be made and directly or indirectly makes the candidate aware of such intermediary or conduit's role in soliciting or arranging the contribution for such candidate; or (iii) engages in any activities of the same kind which resulted in the intermediary or conduit reporting such activities to the Commission under subsection (A) prior to January 1, 1987.

"(C) For purposes of subsection (B), a contribution shall not be considered to be a contribution by an intermediary or conduit to the candidate if (i) the inter-intermediary or conduit has been retained by the candidate's committee for the purpose of fundraising and is reimbursed for expenses incurred in soliciting contributions; (ii) in the case of an individual, the candidate has expressly authorized the intermediary or conduit to engage in fundraising, or the individual occupies a significant position within the candidate's campaign organization; or (iii) in the case of a political committee, the intermediary or conduit is an authorized committee of the candidate."

"INDEPENDENT EXPENDITURES

"SEC. 6. (a) Section 301(17) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 431 (17)) is amended by adding the following:

"For purposes of this subsection, an expenditure shall not constitute an expenditure in coordination, consultation, or concert with a candidate and shall not constitute an 'independent expenditure' where,

"(A) there is any arrangement, coordination, or direction with respect to the expenditure between the candidate or the candidate's agent and the person making the expenditure;

"(B) in the same election cycle, the person making the expenditure (including any officer, director, employee or agent of such person) is or has been authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees; or is or has been an officer of the candidate's authorized committees, or is or has been receiving any form of compensation or reimbursement from the candidate, the candidate's authorized committees, or the candidate's agent;

"(C) the person making the expenditure (including any officer, director, employee or agent of such a person) has communicated with, advised, or counseled the candidate or the candidate's agents at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office;

"(D) the person making the expenditure retains the professional services of any individual or other person also providing those services to the candidate in connection with the candidate's pursuit of nomination for election, or election to Federal office, in the same election cycle, including any services relating to the candidate's decision to seek Federal office; or

"(E) the person making the expenditure (including any officer, director, employee, or agent of such a person) has communicated or consulted at any time during the same election cycle about the candidate's plans, projects, or needs relating to the candidate's pursuit of election to Federal office, with: (i) any officer, director, employee or agent of a party committee that has made or intends to make expenditures or contributions, pursuant to Section 315(a), (d) or (h) in connection with the candidate's campaign; or (ii) any person whose professional services have been retained by a political party committee that has made or intends to make expenditures or contributions pursuant to Section 315(a), (d) or (h) in connection with the candidate's campaign.;

"(F) the expenditure is based on information provided to the person making the expenditure directly or indirectly by the candidate or the candidate's agents about the candidate's plans, projects, or needs, provid-

ed that the candidate or the candidate's agents are aware that the other person has made or is planning to make expenditures expressly advocating the candidate's election; or

"(G) the expenditure is made by a person with the intention of seeking or obtaining any legislative benefit or consideration from the candidate by reason of the expenditure.

"INDEPENDENT EXPENDITURE BROADCAST DISCLOSURE

"SEC. 7. Section 318(a)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d(a)(3)) is amended by deleting the period and inserting the following:

"provided that, (a) whenever any person makes an independent expenditure through a broadcast communication on any television station, the broadcast communication shall include a statement clearly readable to the viewer that appears continuously during the entire length of such communication setting forth the name of such person and in the case of a political committee, the name of any connected or affiliated organization, and (b) whenever any person makes an independent expenditure through a newspaper, magazine, outdoor advertising facility direct mailing or other type of general public political advertising, the communication shall include, in addition to the other information required by this subsection, a clearly readable statement, setting forth in the case of a political committee, the name of any connected or affiliated organization and the name of the president or treasurer of such organization, and the following sentence: "The cost of presenting this communication is not subject to any campaign contribution committee limits."

"CONTRIBUTIONS BY FOREIGN NATIONALS

"SEC. 8. Section 319 of the Federal Election Campaign Act of 1971 (2 U.S.C. § 441e) is amended—

(1) in subsection (a) by inserting after "foreign national" the first place it appears the following: "including any separate segregated fund or nonparty, multicandidate political committee of a foreign national"; and

(2) in subsection (b) by adding before the semicolon at the end thereof the following: ", but shall include any partnership, association, corporation, or subsidiary corporation organized under or created by the laws of the United States, a State, or any other place subject to the jurisdiction of the United States if more than 50 percent of such entity is owned or controlled by a foreign principal".

"PERSONAL LOANS

"SEC. 9. Section 315a of the Federal Election Campaign Act of 1971 [2 U.S.C. § 441a(a)] is amended by adding at the end thereof the following paragraph:

"(9) For purposes of this section, no contributions received by a candidate or the candidate's authorized committees shall be used to repay any loan by the candidate to the candidate or to the candidate's authorized committees."

"SEVERABILITY

SEC. 10. If any provision of this Act or any amendment made by this Act, or the application of any such provision of this Act of any amendment made by this Act, or the application of any such provision to any person or circumstance is held invalid, the validity of any other such provision and the application of such provision to other persons and circumstances shall not be affected thereby.

"EFFECTIVE DATE

"SEC. 11. This Act and the amendments made by this Act shall become effective for any election held more than one year after the date of enactment of this Act.

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

SUMMARY OF THE BOREN-BYRD "SENATORIAL ELECTION CAMPAIGN ACT"

SPENDING LIMITS AND PUBLIC FINANCING FOR SENATE GENERAL ELECTIONS

The Act would establish a voluntary system of campaign spending limits for Senate general elections tied to partial public financing. Primary elections would not be covered. If a candidate elects to participate, the following provisions would apply:

A. Threshold

To be eligible for public financing, a candidate would first have to raise contributions from individuals which, in the aggregate, amount to $250,000 or 20% of the spending limit, whichever is less. Up to $250 of each individual contribution would count for threshold purposes and at least 80% of the contributions would be required to come from individuals residing in the candidate's state.

To be eligible to receive payments under the Act, a candidate would be required to certify to the FEC within 7 days after qualifying for the general election ballot in the candidate's state that he or she has raised contributions sufficient to satisfy the threshold.

B. Limitations

(1) *Limits on Personal Funds:* A participating candidate and his or her immediate family could contribute no more than $20,000 in personal funds to the candidate's general election campaign.

(2) *Limits on Overall Spending:* A participating candidate could spend in the general election no more than a total of $600,000 plus 25 cents multiplied by the voting age population of the candidate's state. This limit would be increased based on the CPI, similar to the spending limits in the presidential public financing system.

C. Benefits

(1) *Public funds:* The candidate of a major party who has met the qualifications would be eligible for public funds equal to the difference between the threshold amount and the campaign spending limit for the state. A participating candidate could not raise private contributions for the general election except to the extent they are necessary to make up any difference between the spending limit and the amount of public funds provided. The candidate of a minor party or an independent candidate who has met the qualifications would be eligible to receive matching payments of up to $250 for each individual contribution, subject to a limit of 50% of the overall spending limit. The contributions raised to meet the threshold requirement would not be matched.

(2) *Television costs*: A participating candidate would be entitled to receive the lowest unit rate costs for television advertisements, as presently provided by law. Non-participating candidates would no longer have this statutory benefit and individual stations could charge them regular commercial rates.

(3) *Independent expenditures*: If any individual or group makes independent expenditures of more than $25,000 in opposition to a participating candidate or in support of the participating candidate's opponent, the participating candidate would be eligible to receive additional public financing payments equal to the amounts being spent by the individual or group on independent expenditures, over and above $25,000.

(4) *Additional payments; suspension of spending limit*: If any non-participating candidate raises total contributions or makes total expenditures in excess of the spending limit for a participating candidate, participating candidates would be eligible for additional public financing payments. Each participating major party candidate would be eligible to receive an additional payment equal to 100% of the spending limit. Each participating minor party or independent candidate would be eligible to receive additional matching payments of 50% of the spending limit.

If a non-participating candidate raises total contributions or makes total expenditures for the general election in excess of double the spending limit, a participating candidate would be able to make additional expenditures and raise private contributions without regard to the restrictions otherwise established under the public financing system.

D. Source of public funding

The existing Presidential Election Campaign Fund would be increased by raising the dollar tax check-off from $1 to $2.

E. Effective date

The Act would be effective for any election held more than one year after the date of enactment of the Act.

AGGREGATE PAC LIMIT AND OTHER AMENDMENTS

Limit on PAC contributions

(1) *Aggregate limit for candidates*: All candidates would be subject to an overall limit on PAC contributions varying with the population of their state—with a low of $175,000 in small states and a cap of $750,000 in large states. This provision would be applicable to all candidates, regardless of whether they opt to participate in the spending limits and partial public financing system.

(2) *Individual PAC contribution limits*: The individual PAC contribution limit would be lowered from $5,000 to $3,000.

(3) *Aggregate limit for parties:* A separate $2 million limit per two-year election cycle would be established for the national political parties and for each of the congressional party campaign committees.

Bundling

This provision would close the bundling loophole in current law by requiring that contributions bundled or otherwise arranged by a PAC or other intermediary would count toward the intermediary's contribution limit, as well as the original contributor's limit.

Independent expenditures

This provision would further define when an independent expenditure has been coordinated with a candidate's campaign and is therefore required to be treated as a contribution and subject to the contribution limits of the Act.

In addition, televised advertisements financed by independent expenditures would be required to continuously display throughout the length of the advertisement the name of the individual, political committee, or organization that paid for it. Direct mailings would also have to clearly disclose who paid for them.

Foreign role in campaigns

This proposal would close the loophole in current law whereby foreign nationals are barred from making campaign contributions to federal candidates but foreign and U.S. subsidiaries are allowed to establish PACs which can make such contributions.

Loans

This provision would prohibit a candidate, or the candidate's authorized committee from repaying loans in excess of $20,000 made by the candidate to his campaign.

Senatorial Election Campaign Act Spending Limits

Alabama	1,326,000
Alaska	687,750
Arizona	1,178,000
Arkansas	1,028,250
California	5,481,250
Colorado	1,191,750
Connecticut	1,204,500
Delaware	716,250
Florida	2,807,500
Georgia	1,679,500
Hawaii	791,000
Idaho	770,250
Illinois	2,709,000
Indiana	1,598,250
Iowa	1,127,750
Kansas	1,046,250
Kentucky	1,275,750
Louisiana	1,381,500
Maine	815,000
Maryland	1,423,750
Massachusetts	1,714,500
Michigan	2,251,250
Minnesota	1,363,500
Mississippi	1,056,000
Missouri	1,525,500
Montana	748,000
Nebraska	889,500
Nevada	779,000
New Hampshire	786,250
New Jersey	2,025,000
New Mexico	850,500
New York	3,953,500
North Carolina	1,766,500
North Dakota	722,000
Ohio	2,567,750
Oklahoma	1,194,250
Oregon	1,094,000
Pennsylvania	2,844,000
Rhode Island	785,750
South Carolina	1,206,250
South Dakota	725,500
Tennessee	1,482,750
Texas	3,493,000
Utah	857,750
Vermont	698,750
Virginia	1,665,500
Washington	1,407,250
West Virginia	955,000
Wisconsin	1,472,750
Wyoming	687,250

Mr. BOREN. Mr. President, let me state again the pride I have in joining with the distinguished majority leader in offering this legislation. This is not a partisan matter. This is an American problem about which we are talking. We are talking about the integrity of this institution. We are talking about the integrity of the election process. How long will we wait, Mr. President? How many millions and millions of dollars will it take the average candidate spending in order to get elected before we realize that something has gone badly wrong with the present way in which we finance campaigns in this country?

Mr. President, my hope is we will not wait another year. The 100th Congress must face up to its responsibility to the American people in this area.

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

Mr. CHILES. Mr. President, I am pleased to join in introducing this legislation which takes aim at a critical issue facing our structure of Government: The influence of money on our political system.

The message of the 1986 congressional elections is the overwhelming importance of money to the electoral process. It has become the first, second, and third consideration of any candidate. Left unchecked, our representative system of Government is in danger.

This proposal we introduce today goes further than what Senator BOREN brought before the Senate last August and further than what the Senate endorsed by a 69-to-30 vote.

Our intention and hope is that this bill will be the vehicle for a serious reconsideration of the election laws this year.

Let me say to my colleagues, by the nature of the beast within all of us as politicians, each of us has given a lot of thought to the relationship between campaigns, money, how you get it, and how it affects the way you do your job.

We have just completed an election cycle. The trends are continuing. We are spending more money on campaigns. The role of PAC's and the "special interest" money they represent is increasing.

We are 2 years away from the next election. The time is right, the time is now, to address the changes needed.

I sense a growing consensus among the Members of this body that the trend toward more money in campaigns and bigger, richer, and more PAC's needs to be reversed. Just how to meet that goal is where the consensus breaks down.

But let us not forget why controlling and limiting PAC's is important. Let us not forget why reducing the amount of money spent in campaigns is important. It is not only what we as Senators privately know about how PAC's and special interest money are changing the relationship between ourselves and the individual constitutents who vote us their trust; it is also what the public is increasingly beginning to believe. It is what the public is increasingly beginning to perceive us to be.

A large part of the American public thinks this Congress is the best money can buy. That "special interests" prevail over the "public interest." Congress is running the risk of becoming rotten in the public's eye.

Mr. President, when I was first elected to the Senate in 1970, I had just come from walking the State of Florida. Our country was changing its views on its involvement in Vietnam. I heard a lot from folks on their loss of confidence in their leaders.

Shortly after I came here the country went through the Watergate crisis. Again, many people lost confidence in their leaders. A dominant theme in my years in the Congress has been the growing loss of confidence in public officials.

The ability of our constitutional form of government to provide for the common defense, promote the general welfare, and secure the blessing of liberty depends on the people's confidence in their leaders and their public institutions. I believe the decreasing number of voters in our electoral process is a symptom of this continuing loss of confidence. Too many people believe that the "special interest" PAC's and money count more than their individual votes.

Any thoughts about partisan or incumbent advantages which result of changing present laws will disappear if this body continues to ignore the need to reverse the erosion of public confidence in Congress. We need to act.

I want to join Senator BOREN, Senator BYRD, and others in inviting my colleagues to cosponsor this legislation. The Senate needs to commit itself to reforming the laws controlling how we get elected. The influence of PAC's should be curtailed. The amount of money in campaigns should be limited. The public already finances much of the Presidential elections.

I believe the partial public financing of Senate elections, with the right thresholds and limitations, is the way to change.

There are improvements that can be made to the package of changes contained in this bill. And I think the Senate will make improvements as we debate this legislation. But it is an important start. Through the approach of partial public financing we can limit the amount of money going to campaigns; we can limit the influence of PAC's and special interest money; we can control independent expenditures; and we can overcome constitutional barriers to these controls.

I think the time is here to take this step in restoring public confidence in our electoral process.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator BOREN, the majority leader Mr. BYRD, Senator CHILES, and others in sponsoring what I regard as the most important legislation of the 100th Congress—reform of campaign financing.

Make no mistake about it. The scandal over congressional campaign financing is even worse than the scandal over Iran. It is bad enough that political campaigns have become star wars contests waged on the tube instead of in person. It is even worse that candi-

dates themselves spend most of their waking hours hat in hand and telephone in ear, begging fat cats for fat contributions—and selling access, influence and yes, even votes in return.

Mark Twain once said that we have the "finest Congress money can buy"—and it's a disgrace to everything our democracy stands for.

This legislation will change all that. It is no secret that I had reservations about the Boren bill in the past Congress. Although it was a step in the right direction it did not contain the most important reform of all, the reform most worth fighting for—public financing of congressional elections.

This bill remedies that defect brilliantly, by adopting essentially the same provisions for Senate elections that already apply to Presidential elections—full public financing.

Under the leadership of Senator Russell Long, Congress first enacted public financing of Presidential general elections in 1966. After a bitter fight in 1967, the effective date was indefinitely postponed. But in 1971, Congress finally agreed that public financing for Presidential general elections was needed and should begin in 1976—and it has worked effectively ever since.

In 1973, in the wake of Watergate, the focus of reform turned again to Congress. That year, the Finance Committee reported—and the full Senate approved—a comprehensive election reform bill that expanded public financing to include Presidential primaries, and that also took the historic step of providing public financing for general elections to the Senate and House of Representatives.

But we could not get our Senate measure through the House of Representatives. The House rejected the bill out of hand, and returned it to the Senate, where further action was blocked by a filibuster as the session ended. In 1974, public financing was adopted for Presidential primaries, but the momentum for congressional reform had temporarily run out—and stayed out for more than a decade.

The rest is history—of the worst sort—the explosive growth of PAC's, the soaring cost of campaigns, Congress on the auction block, special interest money swamping the public interest. In every election cycle, the scandal deepens. The entire Congress is up to its ears in special interest crocodiles. The time has come to drain the swamp—and DAVID BOREN is just the Senator to do it.

We all know the traditional arguments that will be made against the use of public funds for financing political campaigns. But public funds are already being used at the present time. They are being used in the wide range of special interest amendments, the lucrative tax loopholes tucked into the Internal Revenue Code, and all the other nefarious payoffs that plague our system of private financing.

Public financing of elections is the wisest tax money any taxpayer will ever spend. The cost of this bill—$50 million a year—is the best investment in clean government any citizen can make. When we finally have an effective system for public financing, we will restore the integrity of our elections and make candidates truly accountable to the voters instead of the special interests. That is the challenge before us.

Senator BOREN and Common Cause are making a historic contribution to our democracy by undertaking this effort now. No one underestimates the difficulty of the task ahead, or the resistance of those in powerful public and private places who will stop at nothing to preserve the stranglehold of the status quo.

But I hope, in the weeks to come, as the wisdom of this idea is recognized, it will gather irresistible bipartisan and veto-proof support, so that by the time the current session of Congress ends, this great and overdue reform will finally be enacted into law, and our system of democracy will again be worthy of its name.

BOREN-BYRD CAMPAIGN FINANCE BILL

Mr. BYRD. Mr. President, this is a momentous day in American history—the convening of the 100th Congress. The Nation can take great pride in the fact that the system of government designed by the Founders in Philadelphia will soon mark its 200th anniversary. Much has changed in our Nation—and the world—since the Constitution was ratified and the first Congress was elected, but the dynamics of Government, the representative role of the legislature, and the fundamental importance of the citizens selecting their representatives via popular elections has not changed. Elections in which U.S. Senators and Representatives are chosen are, if anything, even more vital today to the preservation of our democratic system of government.

The sad truth, however, is that what we see today is the undue influence of money and those who have it and contribute it to congressional candidates—or, much more frequently, but virtually as troublesome, the impression or perception of such undue influence—in campaigns for election to the Senate or House and in the actions of those who have won election in such campaigns.

Unlike any number of other critical problems that face this Nation, this is not one the recognition of which, or the prescriptions for solution of which, break generally along party lines. This is not, in my view, a problem which is a Democratic problem or a Republican problem. It is a problem which confronts every candidate for the Senate or House. It is a situation which has a detrimental effect on the body politic regardless of location or political persuasion or ideology.

Today we face serious challenges to the integrity of representative democracy and the electoral process. They are the high cost of running for Congress, the excessive time it takes to raise funds, and the dangers of undue influence gained by special interests that contribute large sums of money. This campaign spending explosion is undermining public confidence in Congress and creates a sense that politics is only open to the affluent.

In 1971, and again in 1974, the Congress responded to public outcries over the campaign finance mess by enacting a sweeping reform of Presidential campaign financing procedures. While part of that legislation was stricken by the courts, the remaining parts have corrected some of the worst abuses in Presidential elections. While the public finance and disclosure provisions of the amended Federal Election Campaign Act are not perfect, it is fair to say they have made this part of our democracy more honest, and have permitted candidates to focus more on the election and less on courting wealthy contributors.

I believe we can do no less for congressional elections. We must face the diminishing appeal of public service that I believe largely is the result of the time demands and twisting of conscience that result from what I have termed the "congressional money chase." We must face the dilemma of low voter turnout which all evidence indicates results largely from the perception that only the wealthy and powerful—especially major campaign contributors—control our actions here.

I am proud to join the senior Senator from Oklahoma today in introducing legislation to confront these problems head-on. The legislation establishes spending limits for Senate campaigns, which are tied to a system of partial public financing—applying to general elections. Also, building on the measure introduced last year by Senators BOREN and Goldwater, which passed this body in an overwhelming bipartisan vote, this bill incorporates provisions limiting the role political action committees, or PAC's, will play in our congressional election.

These changes are overdue, but, as has been noted by those wiser than I, we cannot recreate history. What is in our hands is the ability to affect the future. There is no time like the present.

What, exactly, is the role of money in congressional election campaigns? During the course of the past 10 years, there has been an explosion in the cost of congressional campaigns. In 1986 the average amount spent on Senate campaigns was about $3 mil-

lion. Some Senate races cost well over $10 million apiece. Total receipts in Senate races from PAC's have nearly doubled since 1976.

Much attention has been focused on a handful of races in the recent past where unprecedented amounts of money were spent, but the costs in virtually all States have mushroomed. PAC spending has played a dramatic role in most cases. In the 1983-84 election cycle, PAC's alone contributed about $105 million to congressional candidates. While the data are incomplete for the 1986 campaigns, data for the first 18 months of the 2-year campaign cycle indicate that PAC contributions likely were fully one-third higher than in 1983-84. The number of registered PAC's has increased from 608 to 4,421 involved in the 1986 Federal election. Even more startling is the fact that the proportion of total campaign receipts coming from PAC's has risen from 12 percent in 1977-78 to over 26 percent in 1985-86. It is hard to speculate about where this spending explosion will end. What we know is that the expenditure of these funds, from these sources, in these amounts yields an increasingly distrustful and cynical electorate.

This increasing spiral of campaign spending does not apply exclusively to Democratic or Republican candidates; it applies to both parties. It does not matter who starts the spending race; once it has begun, all candidates must do their best to compete effectively in raising and spending campaign funds, or they likely will become losing candidates on election day.

Such a process makes wealthy contributors and special interests more influential and powerful and diverts Senators from important duties to hit the fundraising trail. For both incumbents and challengers, this means less time articulating and debating issues during campaigns.

We need to stop and think about the consequences for the Congress of our current campaign finance situation: First, the campaign never stops. The Founding Fathers established staggered terms of office with the intention of giving Senators a longer time perspective between elections. For much of our history, this meant that this Chamber was able to direct more of its energy to the job of legislating. However, we find that what once was only true of the House is now true of both Chambers: The campaign never stops. All responsible legislators are concerned with their constituents, work for the betterment of their States, and seek to build strong ties with leaders among their respective constituencies. This is not what I mean by "the constant campaign." What I am identifying is the need to begin raising funds 5 and 6 years before the next election, the retention of campaign professionals and media consultants—expensive consultants, usually—by Senators years before they next face election, and the elevation of image over substance. All of this takes money—greater and greater amounts of money—and time. To raise the money, Senators start hosting fundraisers years before they next will be in an election. They all too often become fundraisers first, and legislators second.

This is perverse, and we must not allow it to continue. The Senate should not be a place for part-time legislators and full-time fundraisers. The Senate should be and must become again a place where Senators devote their full attention to careful consideration of the Nation's most pressing problems, devising legislative solutions to those problems, and serving the needs of their constituents.

Yet, if the trend of excessive campaign spending is not stopped, we will find it even more difficult to conduct the essential work of this body.

It is becoming more and more widely known and accepted as truth that one cannot seek election to the U.S. House or Senate without the certainty of being able to raise millions of dollars to spend in a campaign. It also is well known that candidates often face a disturbing choice between mortgaging their own personal resources when the money supply gets tight or campaign demands exceed contributions or the projected campaign budget. This almost certainly already has resulted in otherwise well-qualified candidates choosing not to seek election. That is a trend I fear is growing, and may begin to grow even more rapidly if nothing is done to our financing system. It will be a tragedy if the entrance requirement for service in this great forum is not intelligence, integrity, ability, and public spiritedness, but rather the willingness and ability to play the deadly earnest game of fundraising, or personal wealth and the willingness to spend it or risk it in order to gain election.

And of vital importance, there is a growing sense among voters that "money talks," and is talking more and more loudly in Washington as time goes on. An esteemed elder statesman of the Republican Party, our former colleague Barry Goldwater, said it this way: "PAC money is destroying the election process. It is breaking down public confidence in free elections and it is ruining the character and quality of campaigns". What former Senator Goldwater said was directed specifically to PAC contributions, but his point applies also to the overall level of spending and to large contributions from other sources. What he was identifying was the strong sense, if not the reality, that campaign contributions result in undue and inequitable influence, pressure, and, yes, occasionally corruption. Already there are a growing number who believe that if Members must seek contributions from independent groups, they will be expected to place those interests above those of the general public and its well-being. Public confidence in our electoral process, our Congress, and its decisions is simply indispensable to maintenance of our democratic form of government but our system of campaign financing fast is eroding that confidence.

If elections no longer are perceived to be free and open, but rather up for sale—even if this is not the reality, then we risk losing democracy itself. Without public confidence we lose it all. With each election come new and newly disturbing reports of increasing numbers of voters who just sit it out—who stay at home and fail to vote. I assert that one big reason is that many of them believe that only those candidates with big bucks—or those who have close friends with big bucks—get elected. They cannot get themselves excited, or even concerned, about elections when they do not anticipate the election of anyone who would be motivated by concern for their point of view. This is a prescription for upheaval if we allow it to persist, much less to grow.

The bill that Senator BOREN and I are introducing today—with the welcome cosponsorship of a number of other Senators—is an attempt to confront this situation directly and effectively—to return the ability to Senators to concentrate on legislating and serving their constituents; to remove the perception that the Congress and its decisions are influenced by the highest bidder; and to return to a situation where campaigns are run on a reasonable budget and do not become races to see who can spend the most money the fastest.

The bill sets limits on contributions to their campaigns by Senate candidates and their families, and requires that contributions from candidates be direct rather than in the form of loans to the candidate by the candidate.

The bill sets voluntary limits on campaign spending for Senate candidates in general election campaigns in all States, based on each State's population—at the reasonable level of $600,000 plus 25 cents per person of voting age.

In exchange for acceptance of these limits, the bill provides some significant incentives.

The most important, of course, is partial public financing of general election campaigns. A major party candidate who raises 20 percent of his or her State's spending limit in contributions.

Counting only that part of any individual's or PAC's contribution that is $250 or less—will receive a payment from the Federal Government equal

to the other 80 percent of the States general election spending limit.

Another incentive is that only participating candidates—those who accept both the voluntary spending limits and public financing—would be eligible for preferential television advertising rates now assured by law to all candidates for the Senate.

If a participating candidates opponent breaches the State's spending ceiling, the participating candidate will receive the nonparticipant's public financing allocation as well. If the nonparticipant spends more than the combined total of those two amounts, the participating candidate can keep the public funds received to that point, and no longer will be subject to spending limits and so can seek, obtain, and spend private contributions under the other provisions of law.

If a participating candidate is the target of independent expenditures by an individual or group, the participating candidate can receive additional public financing equal to the amount by which the independent expenditures exceed $25,000.

The public campaign financing provided by the bill will be funded by doubling the amount of the existing Federal income tax checkoff—now limited to Presidential campaign financing—from $1 to $2 per return. This checkoff, completely voluntary, does not increase any taxpayer's tax. Instead, it offers each taxpayer the opportunity to directly indicate that he, she, or they wish the checkoff amount to be used to publicly fund Federal elections. This checkoff is expected to produce the anticipated $50 million a year our bill is expected to cost.

The bill incorporates several limits on PAC contributions and other campaign financing practices which were a part of the Boren-Goldwater PAC limitation bill passed overwhelmingly in the Senate last year, including:

An aggregate limit on the amount of funds any Senate candidate can accept from all PAC's, set according to a State's population.

A reduction in the amount any PAC may give to a candidate—from $5,000 to $3,000;

A provision closing the so-called bundling loophole by requiring that contributions bundled or otherwise arranged by a PAC or other intermediary would count toward the PAC or other intermediary's contribution limit.

The bill requires that any media advertisement directed toward a congressional campaign must contain a message stating who authorized and paid for the ad, and, in the case of every such television ad, must continuously display on the screen the name of the organization, PAC, or individual who paid for it.

The bill includes a new limit on the amount any political party entity could receive from all PAC's—set at $2 million per calendar year.

Current law prohibits campaign contributions to Federal candidates from foreign nationals—but a loophole permits the U.S. subsidiaries of foreign-owned companies to form PAC's to make such contributions. Our bill closes this loophole.

Finally, this bill, when enacted, will take effect on January 1, 1988, and will apply to the 1988 Senate elections.

It is my strong belief that the great majority of Senators—of both parties—know that the current system of campaign financing is damaging the Senate, hurts their ability to be the best Senator for this Nation and for the citizens of their respective States that they could be, strains their family life by consuming even more time than their official responsibilities demand, and destroys the democracy we all cherish by eroding public confidence in its integrity. If we do not face a problem of this magnitude and fix it, we have no one but ourselves to blame for the tragic results.

I have every confidence that the Senate has the will and has the intention to make the needed changes. I base my confidence on the overwhelming vote last year by which we passed the Boren-Goldwater provisions as amended. I base it on my conversations with Senators of both parties who are worried, consumed, and offended by the current system of campaign financing and tell me they want to do something about it. And I base it on my reading of poll after poll of the American people—all showing that Americans want a change to campaigns that spend reasonable amounts of money rather than the incredible sums being spent in more and more races every 2 years.

It is my belief that the problem is beyond dispute. It is my belief that the time for change is now. And it is my belief that the Senate can pass, and I hope will pass, such a bill this year.

I hope that the bill that has been introduced by Senator BOREN and me today will prove to be a sturdy starting point in this effort. I offer my highest commendation to the senior Senator from Oklahoma, who has been a tireless leader in the field of campaign finance reform, and who has chaired a Democratic conference working group on campaign finance reform that I appointed several months ago. I compliment him on his efforts to devise this legislation.

I intend to work vigorously, with him and with the other Senators who today have cosponsored this bill, to secure additional support. I believe that many other Members of both parties will join with us, and I pledge to work on this issue in an absolutely nonpartisan, bipartisan way—a pledge I fully believe every other cosponsor will make with me today.

I shall be working closely with the distinguished chairman of the Rules Committee, Mr. FORD, and the distinguished ranking member, Mr. HATFIELD, to arrange for thorough but expeditious consideration and action by their committee, on which I am proud to serve as a member. I shall depend on their broad and deep knowledge of these issues, and I solicit their assistance.

Now is the time, Mr. President, and this is the issue. I deeply, fervently hope that when the first session of the landmark 100th Congress comes to a close later this year, we can look back with pride to the enactment of an historic campaign finance reform bill that benefits this great institution, and, instills greater faith in the American people toward this institution in this 200th year of our Constitution. Ours is an unparalleled democratic form of government, a representative democracy, a government of the people, by the people, and for the people. We can do it. We must do it.

ORDER OF BUSINESS

Mr. BYRD. Mr. President, I have some unanimous-consent requests that I wish to propound and I have some additional resolutions that I wish to discuss with the distinguished Republican leader.

Following that, the Senate will go out for the day.

NONLEGISLATIVE PERIODS, CALENDAR YEAR 1987

Mr. BYRD. Mr. President, while I am awaiting the arrival of the distinguished Republican leader, I wish to state for the RECORD the nonlegislative periods during the calendar year 1987.

The Senate will not be in session on Wednesday, January 7; Thursday, January 8; and Friday, January 9. The Senate will reconvene on next Monday, January 12.

The Senate will not be in session on Monday, January 19.

In February, the Senate will not be in session on Monday, February 9; Tuesday, February 10; Wednesday, February 11; Thursday, February 12; and Friday, February 13. The Senate will reconvene on Monday, February 16.

The Senate will not be in session on Monday, April 13; Tuesday, April 14; Wednesday, April 15; Thursday, April 16; Friday, April 17; and Monday, April 20. The Senate will reconvene on Tuesday, April 21.

In May, the Senate will not be in session on Friday, May 22; Monday, May

25; and Tuesday, May 26. The Senate will reconvene on Wednesday, May 27.

In July, the Senate will not be in session on Thursday, July 2; Friday, July 3; and Monday, July 6. The Senate will reconvene on Tuesday, July 7.

The August recess, pursuant to law, section 198, title II U.S. Code, will begin on Saturday, August 8; in other words, at the close of business on Friday, August 7. That means close of business on Friday. So the recess will actually begin on Saturday, August 8. The Senate will reconvene on Wednesday, September 9.

ORDER OF BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that with respect to the several statements that I have made during the day, I may be permitted to revise and extend my remarks where those statements were not made in their entirety.

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

RESOLUTION DESIGNATING ROBERT B. DOVE AS PARLIAMENTARIAN EMERITUS

Mr. DOLE. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

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

The legislative clerk read as follows:

A Senate resolution (S. Res. 32) designating Robert B. Dove as a Parliamentarian Emeritus.

The PRESIDING OFFICER. The question is on the adoption of the resolution.

The resolution was adopted, as follows:

S. RES. 32

Resolved, That Robert B. Dove be, and he is hereby, designated as a Parliamentarian Emeritus of the United States Senate.

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

Mr. BYRD. I thank the distinguished Republican leader.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I have several unanimous-consent requests. I believe the distinguished Republican leader has copies of the requests. I shall take them in the order in which they appear, numbered 1 through 11.

AUTHORIZATION FOR ETHICS COMMITTEE TO MEET DURING THE SESSION OF THE SENATE

Mr. BYRD. Mr. President, I ask unanimous consent that for the duration of the 100th Congress, the Ethics Committee be authorized to meet during the session of the Senate.

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

AUTHORIZATION FOR SENATORS TO PRESENT BILLS AT THE DESK

Mr. BYRD. Mr. President, I ask unanimous consent that during the 100th Congress, Senators may be allowed to bring to the desk bills, joint resolutions, concurrent resolutions, and simple resolutions, for referral to appropriate committees.

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

DURATION OF ROLLCALL VOTES

Mr. BYRD. Mr. President, I ask unanimous consent that for the duration of the 100th Congress, there be a limitation of 15 minutes each upon any rollcall vote, with the warning signal to be sounded at the midway point, beginning at the last 7½ minutes, and when rollcall votes are of 10 minute duration, the warning signal be sounded at the beginning of the last 7½ minutes.

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

AUTHORIZATION FOR SECRETARY OF THE SENATE TO RECEIVE REPORTS AT THE DESK

Mr. BYRD. Mr. President, I ask unanimous consent that during the 100th Congress, it be in order for the Secretary of the Senate to receive reports at the desk when presented by a Senator at any time during the day of the session of the Senate.

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

TIME ALLOTTED TO THE MAJORITY AND MINORITY LEADERS

Mr. BYRD. Mr. President, I ask unanimous consent that the majority and minority leaders may daily have up to 10 minutes each on each calendar day following the prayer and the disposition of the reading of, or the approval of, the Journal.

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

AUTHORITY FOR PARLIAMENTARIAN OF THE HOUSE OF REPRESENTATIVES AND THREE ASSISTANTS TO HAVE THE PRIVILEGE OF THE SENATE FLOOR

Mr. BYRD. Mr. President, I ask unanimous consent that the Parliamentarian of the House of Representatives and his three assistants be given the privilege of the floor during the 100th Congress.

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

PRINTING OF CONFERENCE REPORTS AND STATEMENTS

Mr. BYRD. Mr. President, I ask unanimous consent that, notwithstanding the provisions of rule XXVIII, conference reports and statements accompanying them not be printed as Senate reports when such conference reports and statements have been printed as a House report, unless specific request is made in the Senate in each instance to have such a report printed.

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

AUTHORITY FOR COMMITTEE ON APPROPRIATIONS TO FILE CERTAIN DOCUMENTS DURING RECESSES OF THE SENATE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Appropriations be authorized during the 100th Congress to file reports during recesses of the Senate on appropriation bills, including joint resolutions, together with any accompanying notices of motions to suspend rule XVI, pursuant to rule V, for the purpose of offering certain amendments to such bills or joint resolutions, which proposed amendments shall be printed.

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

AUTHORITY FOR SECRETARY OF THE SENATE TO MAKE TECHNICAL AND CLERICAL CORRECTIONS

Mr. BYRD. Mr. President, I ask unanimous consent that, for the duration of the 100th Congress, the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossments of all Senate-passed bills and resolutions, Senate amendments to House bills and resolutions, Senate amendments to House amendments to Senate bills and resolutions, and Senate amendments to House amendments to Senate amendments to House bills or resolutions.

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

PAYMENT OF SEVERENCE PAY TO CERTAIN DISPLACED SENATE COMMITTEE EMPLOYEES

Mr. BYRD. Mr. President, on behalf of myself, Mr. DOLE, Mr. FORD, and Mr. STEVENS, I submit a resolution and ask for its immediate consideration.

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

The legislative clerk read as follows:

A resolution (S. Res. 33) to provide for the payment of severance pay to certain displaced Senate committee employees and to authorize payment for accumulated leave to certain terminated employees in offices of

Senators who have ceased to serve as Members of the Senate.

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

The resolution was agreed to, as follows:

S. RES. 33

Resolved, That (a) for purposes of this resolution:

(1) The term "committee" means a standing, select, joint, special committee, or commission of the Senate, whose funds are disbursed by the Secretary of the Senate.

(2) Except as otherwise specifically provided in this resolution, the terms "committee chairman" and "ranking minority member" mean the chairman and ranking minority member of a committee as of the beginning of the One Hundredth Congress.

(3) The term "eligible staff member" means an individual who—

(A) was a member of a staff of a committee, or subcommittee thereof on January 2, 1987, and

(B) during the calendar year 1986, was an employee of the Senate for at least one hundred and eighty-three days (whether or not his service was continuous).

(4) The term "displaced staff member" means an eligible staff member whose service as an employee of the Senate is terminated on or after January 2, 1987, solely and directly as a result of the reorganization of the staff of a committee caused by the transition to a Senate in which a majority of Senators are members of the Democratic Party, and who is certified as a displaced staff member by the committee chairman and ranking minority member of such committee.

(b)(1) The committee chairman and ranking minority member of each committee shall certify to the Committee on Rules and Administration the name of each displaced staff member of such committee before the later of—

(A) January 16, 1987, or

(B) the tenth day after the date on which the displaced staff member's service is terminated.

(2) A certification under this subsection shall be made no later than February 28, 1987.

(c) Under regulations prescribed by the Committee on Rules and Administration, and subject to the succeeding provisions of this resolution, each displaced staff member shall be entitled, upon application to the Secretary of the Senate and approval by the Committee on Rules and Administration, to be paid severance pay in one lump-sum payment in an amount equal to one month's basic pay.

(d) Severance pay under this resolution shall be paid from any available funds in the appropriation account entitled "Miscellaneous Items" within the contingent fund of the Senate.

(e) In the event of the death of a displaced staff member, any unpaid severance pay to which the displaced staff member is entitled shall be paid to the widow or widower or the displaced staff member or, if there is no widow or widower of such deceased displaced staff member, to the heirs at law or next of kin of such deceased displaced staff member.

(f) Severance pay paid under this resolution shall not be treated as compensation for purposes of any provision of title 5, United States Code, or of any other law relating to benefits accruing from employment by the United States, and the period of entitlement to such pay shall not be treated as a period of employment for purposes of any provision or law.

(g) For purposes of this resolution, the Office of the Secretary of the Senate and the Office of the Sergeant at Arms and Doorkeeper of the Senate, with respect to funds appropriated under the heading, "Salaries, Officers, and Employees", shall be considered a committee.

(h) For purposes of the preceding provisions of this resolution, the term "displaced staff member" also includes an eligible staff member (as defined in subsection (a)(3)) whose service as an employee of the Senate is terminated on or after January 2, 1987, as a result of reorganizations (or consolidations) of committees of the Senate or of the cessation of service by a Senator who on November 4, 1986, was serving as chairman or ranking minority member of a committee or a subcommittee thereof, and who is certified as a displaced staff member by the committee chairman and ranking minority member of such committee.

(i)(1) Subject to the succeeding provisions of this resolution, whenever the service of an individual who is an employee in a Senator's office or in the President pro tempore of the Senate's office is terminated because the Senator's service as a Member of the Senate ceases or the President pro tempore's service ceases (as the case may be), such individual shall be entitled to be paid in a lump sum for such accumulated leave, not in excess of thirty days, as the Senator in whose office he was employed shall certify to the Secretary of Senate to be due to such individual, or (in the case of an individual who is an employee in the President pro tempore's office) as the President pro tempore shall certify to the Secretary of the Senate to be due to such individual.

(2) No employee shall be entitled to a lump-sum payment under this subsection unless—

(A) he was an employee in a Senator's office or in the President pro tempore's office on or after November 1, 1986,

(B) his position in such office was terminated after such date and prior to January 6, 1987, and

(C) he was an employee of the Senate for at least one hundred and eighty-three days during calendar year 1986 (whether or not such service was continuous).

(3) The provisions of this subsection shall not apply to any individual who, at the time his service was terminated, was an employee in the office of a Senator who was appointed to fill an unexpired term.

(4) The amount payable to any individual under this subsection shall be paid from any available funds in the appropriation account entitled "Miscellaneous Items" within the contingent fund of the Senate.

(j) The amount of any payment to which an individual is entitled under this resolution shall be reduced (but not below zero) by an amount equal to the product of—

(1) the daily rate of basic pay of the individual on which such payment is based, multiplied by

(2) the number of days on which the individual is employed by the United States Government or the District of Columbia during the period beginning on the date of separation from service with respect to which the payment is being made and ending on the last day of the period for which the payment is being computed.

(k) Any payment under this resolution shall be made on the basis of the rate of basic pay of the individual on which such payment is based as of—

(1) November 1, 1986, or

(2) if such individual was not employed by the Senate on such date, on the first day preceding such date on which such individual was employed by the Senate.

(l)(1) Any application for a payment under this resolution shall be made before April 30, 1987.

(2) In the case of an employee of the Office of the Secretary of the Senate or of the Office of the Sergeant at Arms and Doorkeeper of the Senate who is separated from employment (and certified) after February 28, 1987, and before August 1, 1987, any application under this resolution shall be made before September 12, 1987.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was adopted.

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

The motion to lay on the table was agreed to.

LEGISLATIVE ASSISTANCE FOR SENATORS

Mr. BYRD. Mr. President, on behalf of myself, Mr. DOLE, Mr. FORD, and Mr. STEVENS, I send a resolution to the desk and ask for its immediate consideration.

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

The legislative clerk read as follows:

A resolution (S. Res. 34) relating to legislative assistance for Senators.

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

The resolution was agreed to, as follows:

Resolved, That subsection (b) of section 111 of the Legislative Branch Appropriation Act, 1978 (P.L. 95-94) shall not be effective during the 100th Congress.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

REAPPOINTMENT OF MICHAEL DAVIDSON AS SENATE LEGAL COUNSEL

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 95-521, reappoints Michael Davidson as Senate legal counsel, effective January 3, 1987, for a term to expire at the end of the 101st Congress.

REAPPOINTMENT OF MICHAEL DAVIDSON AS SENATE LEGAL COUNSEL

Mr. BYRD. Mr. President, on behalf of myself, and Mr. DOLE, I send a resolution to the desk and ask for its immediate consideration.

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

The legislative clerk read as follows:

A resolution (S. Res. 35) relating to the reappointment of Michael Davidson as Senate Legal Counsel.

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

The resolution was agreed to, as follows:

Resolved, That the reappointment of Michael Davidson to be Senate Legal Counsel made by the President pro tempore of the Senate this day is effective as of January 3, 1987, and the term of service of the appointee shall expire at the end of the One Hundredth First Congress.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

GRAMM-RUDMAN HAS FAILED; TIME TO MOVE TO PAY AS YOU GO

Mr. PROXMIRE. Mr. President, the administration claims that it has hit the $108 billion deficit bull's-eye with the 1988 budget proposal it has sent to the Congress. Distinguished Members of Congress hotly reject what the administration has done as blue smoke and mirrors. Why do Members of the Congress disagree with the administration? Congressional experts say the administration has savagely cut welfare programs, housing programs, education programs, nutrition programs. They charge that the administration reduced the deficit in part by proposing to sell valuable revenue-producing assets. The administration denied these charges. It claims it has acted responsibly to meet the requirements of the Gramm-Rudman law the Congress itself enacted. Some congressional leaders call for a tax increase. Some simply ask that Congress raise the Gramm-Rudman Federal deficit target of $108 billion for 1988 to something like $135 billion.

So who's right? Answer: they're both wrong, very wrong. Mr. President, a dispassionate observer would conclude that neither the Office of Management and Budget nor the complaining Members of Congress understood that this is not the first session of Congress of the United States. It is the 100th. Both OMB and congressional leaders seemed to have ignored history. They have learned nothing from it. Not even recent history. What would the administration and the Congress learn if they considered historical experience? They would learn that all administrations of both parties and all Congresses consistently and grossly underestimate deficits. But haven't those errors diminished in recent years with our supercomputer technology and our highs paid and intensely trained and expert staffs? No way. Consider the sorry record.

In the last 10 years, both the administration's highly respected OMB and Congress' equally esteemed CBO have consistently underestimated the upcoming deficit. Year after year, virtually without exception, it is the same story. These experts grossly overestimate revenues. They massively underestimate Federal spending. They end up with errors that are so grotesque they would be funny, if the consequences of these errors weren't so sad for our economy.

But hasn't the Gramm-Rudman Deficit Reduction Act made a difference? Has it? We have had a full year to test Gramm-Rudman. In the fiscal year that began on October 1, 1985, and ended on September 30, 1986, Gramm-Rudman was in full effect, sequestration and all. The administration came in with a budget that was hailed as taking the first big step toward deficit reduction. What happened? In the previous fiscal year 1985 the deficit had come in at about $210 billion. With Gramm-Rudman in effect, said OMB, we'll hammer that deficit down to $172 billion, right on target. And what was the reaction of the Congress? Congressional leaders said, sure you will; but Gramm-Rudman, they contended, made it easy. After all, $172 billion represented in their view an "easy" first year mark. So what happened? Did the deficit come in with the harsh discipline of Gramm-Rudman under $172 billion? No. At $172 billion? No. Did it come in even a dollar below the 1985 deficit level? No. What happened? In spite of all the so-called tough discipline of Gramm-Rudman, the deficit did not decrease at all. It increased. It broke all records for all time. It actually came in at $221 billion. How did this happen? What happened to the automatic sequestration that was supposed to require a proportionate cut in all nonexempt spending to force the deficit down to the target level? How could the "experts" miss by an astounding $50 billion? The answer is simple. As usual, the experts sharply overestimated the growth of the economy and therefore the revenues. They greatly underestimated Federal spending. Result: the Gramm-Rudman Deficit Reduction Act in its first year missed the target by $50 billion. It gave us a fat increase in the deficit. In fact, it presented the country with far and away its biggest deficit in history. Some deficit reduction act.

So is there any reason why Congress or the country should take the OMB seriously when they report to the Congress and the country that the President is recommending a budget that will be in deficit by $108 billion in 1988? Does any informed person in America believe Congress will do this? To do it means we reduce the Federal deficit by more than $100 billion over the next 2 years? Will we? Ha, ha, ha—and I might add ho, ho, ho. We won't. We are deceiving ourselves. We are deceiving the American people by pretending that we will.

Mr. President, there is one way and only one way to be sure we reduce the deficit. It is simple. It is effective. We simply refuse to raise the debt limit. Here's what we say. We say there will be no spending that is not paid for by a tax. None. We start now, this month. Not for 1988 spending but 1987 spending. We either cut spending—that's my preference—including spending we have already authorized and for which we have made appropriations, or, failing that, we raise taxes, at once. We can raise taxes by a prompt hike in everyone's withholding taxes.

If we don't do this, we are temporizing. We are kidding ourselves. We now know from our first-year experience that Gramm-Rudman does not work. What will work? No increase in the debt ceiling. No more borrowing. If we mean business, we'll do it.

EVEN DOT QUESTIONS THE EFFECT OF AIRLINE DEREGULATION

Mr. PRESSLER. Mr. President, the airline industry in the United States has been deregulated for over 8 years. While many herald the benefits of the unfettered competition the industry is currently enjoying, there are many of us who have been and remain concerned about the effect of deregulation on many of this Nation's air travelers.

I opposed airline deregulation when this legislation passed the Senate back in 1978. My concern was that service would be reduced and fares would increase in less populous, rural areas, like those in my home State of South Dakota. As I predicted, this has come to pass. It now costs more to fly 300 miles between South Dakota's two major cities than it does to fly 3,000 miles across the Nation. Service reductions at many of the smaller airports have also made air travel much less convenient for many rural residents.

The current wave of airline mergers, and the buying and selling of operating slots, will only serve to exacerbate these problems. A situation where only a handful of megacarriers control the industry could easily mean higher ticket prices. In addition, the outrageous prices of operating slots at several major airports will force carriers to focus their resources on the lucrative markets between major cities at the expense of service to less populated areas.

In the midst of these growing problems it is heartening to know that I

am not alone in my concern. In the November 6, 1986, edition of Travel Management Daily, edited and published by my good friend, Martin Deutsch, several DOT officials voiced their concern that perhaps the Department has not controlled the deregulatory process as well as it should have. These officials questioned whether DOT's recent merger approvals and the buy-sell rule were truly in the best interest of consumers. I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks. I hope that in the future the Department of Transportation will pay closer attention to the effect of deregulation before, rather than after, it makes its decisions.

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

AIRLINE DEREGULATION

Less than two years after CAB sunset, there is a growing undercurrent of concern among certain Transportation Dept. officials that their agency many have "botched" deregulation. In private interviews with tm, several officials confided that the current move toward oligopoly—in which a few airlines will dominate the industry, perhaps driving fares higher—has been aided by an agency that has either failed to act or has taken the wrong action. "The consumer was supposed to be the main benefactor with deregulation, but it isn't turning out that way," one official said. "In fact, where we're heading now is precisely where we were before: large airline interests helped by the government." Sources said there is some feeling at DOT that the agency failed in its handling of three major issues: computer reservations systems, the buying and selling of slots at congested airports and mergers. "We should have made an investigation into the CRS system, a real investigation, and then divested it from the major vendors," the official said. "That, combined with the buy-sell slot rule and all these mergers, has really given power to a few." The buy-sell rule, according to another official, "all but killed" new entry. "Everyone was in the buying mode, not in the selling mode, which drove prices way up," he said. "Pan Am paid close to $1 million to Texas Air for each slot; what new entrant can afford that?" Certain officials also fear early justifications for approving mergers may have been off-base. "After we approved United's purchase of Pan Am's Pacific Division, we felt somewhat obligated to approve other things," another official remarked, "and with that justification we allowed Northwest to buy its major competitor. Was that right?" The bottom line, he said, continues to be new entry. "Who in their right mind would start an airline now?" he asked. "Where would you put it?"

Starting November 15, PEOPLExpress Airlines' frequent flyers program will be merged with those of Eastern Airlines, Continental Airlines and New York Air, permitting members to earn mileage credit and claim awards on all four carriers.

Now that the Democrats have won control of the Senate, Democratic senators will meet in December to choose new committee and subcommittee chairmen. The outcome is unclear, but based on Senate rules and seniority, it appears that the airline industry may have a tough time ahead in Washington. Chances are that the new chairman of the Senate aviation subcommittee will be Sen. James Exon (D-Neb.), a staunch critic of deregulation who has charged that it has made the skies less safe and caused airlines to abandon many small communities in recent years. A member of Exon's staff told tm the senator will vigorously scrutinize the actions of the Federal Aviation Administration and the airlines. But others disagree, saying that Exon has not shown much interest in the aviation industry and that he will not be as aggresive as his House counterpart, Rep. Norman Mineta (D-Calif.). On the transportation appropriations subcommittee, which oversees the funding of the Dept. of Transportation, the FAA, Amtrak and airports, Sen. Frank Lautenberg (D-N.J.) will be the likely successor to Sen. Mark Andrews (D-N.D.), who lost re-election. Lautenberg has consistently criticized the FAA for not working harder to hire new air traffic controllers and last year he attempted to add language to a Senate spending bill that would allow the rehiring of controllers fired in 1981. He later supported a bipartisan bill to make the Dept. of Justice, not DOT, responsible for approving airline mergers. Both the Senate commerce appropriations subcommittee, which provides funding for the U.S. Travel and Tourism Administration, and the Senate tourism subcommittee could become the prizes of Sen. Daniel Inouye (D-Haw.) if he chooses. Another Democratic senator from Hawaii, Spark Matsunaga, who unsuccessfully pushed for a 100% deduction for business meals and entertainment, would take the number two spot on the Senate Finance Committee. Sen. Dale Bumpers (D-Ark.), who supports preservation of national parks, is in line to be chairman of the public lands subcommittee.

The 195-room Best Western Hotel at New Orleans Airport has become a Ramada Inn.

WHY DOES THE DEFENSE DEPARTMENT OVERLOOK WISCONSIN'S RESEARCH EXCELLENCE?

Mr. PROXMIRE. Mr. President, which State university in the United States spent more money on research in 1985—the latest year for which we have figures—than any other State university? Was it a California university or a New York university or a Texas university, or maybe, considering it was research, a Massachusetts university? No. None of the above. It was the University of Wisconsin at Madison, which devoted a huge $208.4 million to research in 1985.

The Midwest really stars in research. Second to Wisconsin, of all the State universities in the country, was the University of Minnesota. The University of Wisconsin spent about 20 percent more than Minnesota. But Minnesota came in a proud second. Fourth was Michigan University.

Now, Mr. President, here is another indication of the immense economic potential of the Midwest and particularly of Wisconsin. It is well known that New England, and especially Massachusetts, has enjoyed an enormous economic resurgence in recent years because of that region's excellence in high technology, driven by intense research at some of the Nation's most eminent educational institutions. But why not Wisconsin and the rest of the Midwest?

Here is another indication of how grievously the Defense Department, which depends so heavily on technological excellence, is overlooking Wisconsin and the Midwest. It is true that the Pentagon recognizes and has procured the fastest computer in the world—the Cray computer which is designed and produced at Chippewa Falls, WI, and Rice Lake, WI. But there has been too little understanding in Washington that our great Midwestern State universities and especially the University of Wisconsin have developed extraordinary competence in research. Think of it. For years, our State has been at the top, number one in technological research, and at the very bottom—that is, 50th of 50 States—in the proportion of defense contracts on a per capita basis. Now, you figure that one out!

THE BEST WAY TO PREVENT NUCLEAR WAR

Mr. PROXMIRE. Mr. President, the greatest unanimity of opinion on any major issue in the world today is this proposition: The great powers in the world would develop policies that would give mankind the best chance to prevent the catastrophe of a nuclear war. The only question is, How do we do it? To date, we have relied not primarily on arms control, but on a military buildup. And why not? Don't we in the free world have the big advantages? Think of it. On our side, we have the world's most advanced and productive economy. We have the world's most advanced and successful military technology. We have an alliance that is far ahead of the rival alliance both economically and technologically. We have a much greater capacity to build a vastly superior military force so that the adversary will not attack, and if it does attack, it will be defeated. Is that enough?

Before the nuclear age, the military advantages made realistic and solid common sense. Now we know that a nuclear war can never be won and must never be fought. So the nuclear age has brought us an entirely different situation. We are relying on a military strength that does, indeed, constitute part, and a critical part, of how we can best prevent nuclear war. But it is not enough. It is a military strength we can never use without insuring a devastation not only for our adversary but for ourselves. No matter how massive our advantage might become over the Soviet Union, we know the Soviets will always have the nuclear capability to retaliate against the United States with an absolutely

devastating nuclear attack or counterattack.

Consider the experience of recent history. We were 6 or 7 years ahead of the Soviet Union in developing the atomic bomb. But they developed their atomic bomb, too. We were 6 years ahead in developing the hydrogen bomb. But they begged, bought, borrowed and stole that, too. We were 5 or 6 years ahead in developing the multiindependently targeted re-entry MIRV'd missiles that carried a number of warheads that could be fired at different targets while in full flight but the Soviets developed those too. And so the nuclear arms race has gone. We lead. They follow. And quickly. Today, the two superpowers face each other armed with the ridiculous redundancy of 25,000 nuclear warheads each. Ten thousand of these nukes on each side are strategic intercontinental warheads. Fifteen thousand are tactical. Just 100 of the strategic warheads from each superpower that reached the adversary's cities would wipe out the adversary as an organized society, according to the National Academy of Science.

So the two superpowers and their respective alliances have reached a position of effective deadlock. If we can stabilize that deadlock, it could preserve superpower peace for many years to come. It has done just that for the past 40 years. This is nuclear deterrence. It is called by friends and foes alike mutually assured destruction of MAD. It is security based on the most basic and universal of human emotions—fear. It has one great advantage. It has worked. It works now. It will continue to work in the future, with one proviso.

Here is where arms control comes in. The nuclear arms race continues, as it has since 1945. So why do we need arms control? We need arms control to stabilize the deadlock that now prevents nuclear war. Without arms control, the technological arms race in labs in America and Russia and elsewhere will bring on even more devastating, smaller, cheaper nuclear weapons. Without arms control, those weapons will, as time goes on, find their way into the arsenal of scores of nations. Some time, some leader, somewhere, maybe in Central America, maybe in the Middle East, maybe in the Far East or southern Africa will use nuclear weapons. The other side will retaliate. That is one scenario. Here is another. Without arms control, somewhere, sometime, somewhere by sheer accident, a computer is much more likely to give off a false or misunderstood signal, "the attack is on." Retaliate or perish. It would be easy to dream up a score of other scenarios.

So what are the two great alternatives that face us? Alternative one is to forget arms control and rely on our great potential military advantages to "win" the arms race. Alternative two is to do three things: first, we negotiate a mutual, verifiable treaty to end nuclear weapons testing and in the process end the technological nuclear arms race. Second, we negotiate treaties to channel the offensive missiles of both superpowers into the least vulnerable, most stable mode—for example into mobile land, sea and air based deployment with single warhead missiles. Third, we abide by the Anti-Ballistic Missile Arms Control Treaty, which means ending the fabulously expensive and destabilizing star wars defense. That defense guarantees a continued all-out offensive nuclear weapons buildup by the other side to preserve its deterrent credibility.

In a world of nuclear weapons, there is no absolutely sure guarantee of safety. But a combination of arms control that ends the technological nuclear arms race being conducted in the world's great nuclear bomb laboratories, arms control that encourages a stable, virtually invulnerable nuclear deterrent and arms control that ends the star wars gambit, offers the most reasonable chance of continued human existence on this planet.

HOLLINGS INTERVIEWS ON THE IRAN-CONTRA AFFAIR

Mr. HOLLINGS. Mr. President, I wish to take this opportunity to set the record straight concerning a misunderstanding that occurred while the Senate stood in recess. I refer to a statement in early December by the then-chairman of the Intelligence Committee, Senator DURENBERGER, to the effect that I should resign from the committee because I had allegedly commented publicly on secret committee testimony.

On December 3, I appeared on the "Today" show, on national public radio, and before a press conference in the Capitol. On each occasion, I urged President Reagan to come forward with the full story about his involvement in the Iran-Contra affair. I made it scrupulously, even pedantically, clear that my opinions were based not on committee testimony but rather on common sense and elementary deduction. Indeed, at the time of my statements to the media, and to this day, I have never met Lieutenant Colonel North and no one has, of course, heard him testify on this matter.

In my Capitol press conference, I reiterated for emphasis more than 10 times that I was speaking not as a member of the Intelligence Committee but strictly as a Senator from South Carolina. Regrettably, this repeated caveat was not reported in the news accounts of my statements. As a result, Senator DURENBERGER, Senator THURMOND, newspaper columnist William F. Buckley, and others made misinformed criticisms of my remarks.

I specifically demanded from Senator DURENBERGER an explanation for his statement that I should resign from the Intelligence Committee for allegedly violating committee rules. He responded that he had made the comment in response to a hypothetical question from a reporter. Likewise, Mr. Buckley has communicated to me his dismay that news reports of my comments failed to make clear that those comments were not based on Intelligence Committee testimony.

Mr. President, to provide full documentation of this unfortunate misunderstanding, I ask unanimous consent that there be printed in the RECORD at the conclusion of my remarks the following documents:

First. Transcripts of my interviews with the media;

Second. My correspondence with Mr. Buckley, as well as his December 9 column from the New York Daily News;

Third. My own op-ed column from the December 14 New York Times;

Fourth. Senator THURMOND's December 5 press release regarding my statements, plus my responding press release of the same date; and

Fifth. Editorials from the "U.S. News & World Report."

Mr. President, in conclusion, let me observe that I began intelligence work as a member of the Hoover Commission task force investigating the CIA and all other intelligence agencies of the Federal Government in 1953 and 1954. Over the intervening 33 years, it has been my policy to strictly comply with the requirements of confidentiality, trust and secrecy. Indeed, during my 2 years on the Intelligence Committee, I have been one of the few Senators who steadfastly refuse to talk to the press about any committee proceedings—either immediately after committee hearings or at any other time.

This same policy will apply with equal force in the future: One, I will continue to speak my mind freely and frankly as a Senator from South Carolina. Two, I will never breach or in any manner compromise the secrets of the Intelligence Committee. As this incident has taught us, there is nothing mutually exclusive about these twin commitments.

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

[Transcript: Wednesday, Dec. 3, 1986]

NBC TODAY

A little bit of snow in extreme northeastern Minnesota before the day is over.

Not bad, but some fog down here in the Mid-Atlantic States and the Southeast, and again some scattered showers. Some flash flood watches out for northern New Jersey and parts of southeastern New York. Not because of more rain today, but the rain

that we've had, the run-off water. The streams are still rising.

Cooler air will be moving down to the Southeastern States. Florida will escape most of it. It's been 80 and 81—I mean 82 and 89 degrees. It'll be 79 in Miami today and a chance of scattered thundershowers. The West is best. We've not ignored the West, but most weather conditions in the Western States are so sensational, they're just good weather stories.

We don't even mention those because we have the problems in the East except another arctic blast invading the extreme Northern Plains and upper Mississippi. Temperature in Denver right now about 20, I believe, degrees. Here's what's happening in your world this morning.

(Local weather forecast)

SCOTT. John Connolly of Idaho Falls, Idaho is 100 years old today. Happy birthday.

7:09. Here's Jane.

HIT: 7:09:42

JANE PAULEY. Thank you, Willard. On Close-Up this morning, Congress looks for answers in the Iran-contra connection. President Reagan has directed his staff to co-operate fully with Congressional committees, but what questions will Congress be asking?

Joining us now from our Washington newsroom are South Carolina Democrat Ernest Hollings, a member of the Senate Select Intelligence Committee, and Illinois Republican Representative Bob Michel, House Majority Leader. Gentlemen, good morning to you. Congressman Michel, you yesterday said that you were persuaded by the President that he was telling the truth. What convinced you that he was?

Congressman ROBERT MICHEL. Well, when I look at my president eyeball to eyeball and he tells us flat-out in answer to questions that this is what he knows and this is what he doesn't know or didn't know, wasn't advised of, well, I've got to take him certainly at his word, and I believe him.

PAULEY. Senator Hollings, what about you?

Senator ERNEST HOLLINGS. I really think, and I say this in a bi-partisan fashion 'cause we're really interested in the institution of the presidency, we're interested in President Reagan. He restored the presidency in this country. The people trust him. I trust him. And I think now's the time for President Reagan to appoint himself to level with the American people.

This charade of all of this going on without any authority has just got to be satisfied, and the President has got to turn it around rather than win one for the Gipper. The Gipper's got to win one for the team and the country and say, "Look, they acted with my authority. I take the responsibility," and cut out all of this investigation. We'll have investigations going on around here for six months and get nowhere.

PAULEY. You trust him, and yet you don't think he's telling the truth so far?

Senator HOLLINGS. I don't think he's told the complete picture. No, I think he definitely knew from Poindexter and North what was going on. He approved the policy in January. He made a finding at that time on the Iranian sale, and all the cabinet members knew about it. They argued about it, but they approved it.

And the diversion of funds to the contras, he looked upon that in a sort of poetic justice fashion. He said, "Look, I'm screwing the Iranians on the amount of money and pleasing the Israelis on their policy. I'm freeing hostages, and I'm funding the contras." He thought it was a pretty good policy.

PAULEY. Well, look at today's headline. The headlines keep coming. The plot thickens. The Washington Post tells about that Swiss bank account, reporting that it also helped CIA money to be diverted for clandestine support of the Afghan rebels. Now, wouldn't that contradict what the Attorney General has said to the effect that the bank account was controlled by Central American interests?

Senator HOLLINGS. There'll be contradiction after contradiction, just like CIA Director Casey is going to change his story. There are going to be nothing but three or four months of changed stories, and it's all unnecessary. What happens is like Colonel North comes and takes the Fifth.

Now, if we grant him immunity, he's going to talk. I don't want to grant him immunity 'cause that's going to lead right on up to the top officials in this government. I don't want to catch them. I want them to catch themselves and give us a Merry Christmas in this country. This thing has bogged down into the darndest charade I ever heard of. Nothing could have happened of this sort without the President knowing it.

PAULEY. Congressman Michel, I'm going to give you the floor on that. There's been a lot said.

Congressman MICHEL. Well, obviously, I'm disappointed in the revelations of the kind of things that are coming to public view at this juncture. The Senator and I know of some of the things that have heretofore been undisclosed and probably ought to continue to remain so, but through any kind of investigation of this kind, you're going to have little bits and dribbles coming out bit by bit.

I regret that, but from the standpoint of the President himself, I don't think he's been all that well-served in his White House staff. Back in the old days, when we had a triumvirate of three, the divisions of responsibility, I think, worked much better than what it worked for the President in most recent times.

PAULEY. Didn't you give Chief of Staff Donald Regan your blessing yesterday?

Congressman MICHEL. I didn't give him my blessing. I just said maybe some of the criticism is undue, but this is a Presidential call. I think we have to when you're talking quite frankly with the President, we level with him, and then it's up to him to make some decisions. And I'm confident that as time moves along, there'll be other decisions the President will make that'll be in keeping with the will of the American people.

PAULEY. To paraphrase Andrea Mitchell's report, should the Chief of Staff, Regan, have "the class" to step aside?

Congressman MICHEL. Well, I guess if I were in a similar situation, I personally would. I would've felt that I had let the President down, but that's for those individuals to make. I'm not one of these scalphunters around. There's always room for people to look for some scapegoat or one thing or another.

PAULEY. Senator Hollings, you were shaking your head.

Senator HOLLINGS. Oh, no. If Don Regan resigned in the next ten minutes, we'd still be looking for the truth. And our Intelligence Committee and other committees will come, and they're going to go right all the way through, and they acted with the general authority of the President of the United States.

The cabinet members knew while they disputed it. The Secretary of Defense, the Secretary of State—they all knew about it. The Vice President knew about the sale of arms to Iran. This whole idea that nobody knew anything and you had two wild cards down there, Poindexter, and North . . . They're military men used to acting, on the one hand, on orders; on the other hand, very intimate.

As was reported this morning, North was just like a son to President Reagan, and while President Reagan might not know anything about the Education Department or the Energy Department, he knows about contras. He likes that policy and he was kept informed on that particular policy. I'm positive of that.

PAULEY. And I'm going to have to leave it at that, gentlemen. Senator Hollings, Congressman Michel. In a moment, we'll get some thoughts of two newspaper editors on all this. But first, this is Today on NBC.

[Transcript]

NATIONAL PUBLIC RADIO INTERVIEW ON WHITE HOUSE KNOWLEDGE OF IRANIAN/CONTRA ARMS CONNECTION

BOB EDWARDS. This is Morning Edition. I'm Bob Edwards. Profits from the secret arms sale to Iran reportedly were deposited into a Swiss bank account managed by the CIA. According to this morning's Washington Post, Congressional investigators have found that the money went into the same account that contained covert aid to the rebels fighting in Afghanistan. The Post reports that $250 million secretly approved by Congress was deposited into the account this year, as well as $250 million from Saudi Arabia. The report appears to contradict a statement made last week by Attorney General Edwin Meese. Meese said that money from the Iran deal was deposited in bank accounts which were under the control of representatives of the forces of Central America. Joining us now to discuss the disclosures about secret operations run by the National Security Council is Senator Ernest Hollings, D-SC. Senator Hollings is a member of the Senate Select Committee on Intelligence, which is investigating the matter. Senator, good morning.

HOLLINGS. Hello, Bob.

EDWARDS. Is it possible that some of the money for the Afghan rebels may have gone to the Contras?

HOLLINGS. Look, it could have. We haven't separated out the funds and of course I couldn't really discuss what's happened in the committee. I think the important thing at this particular moment is that this does not develop into a Watergate. At the moment, what we really need is for the President to appoint himself to level with the American people. This charade that all of them acted without authority is just that, a charade. And we all know it. And the truth of the matter is that we're getting into quicksand. The deeper we get in it'll be more difficult to get out. When Colonel North takes the fifth amendment, we could grant him immunity, and when we do we're going to catch the President. I'd rather the President sort of catch himself, so we won't have to take some extreme action later on and stretch this thing into next year. The President could come forward and say, "look, I like this policy. I wanted to fund the Iranians, for different reasons, and it didn't work. And Iranian money went to fund the Contras. There isn't any question about that. We look upon that as a viola-

tion, but I thought at the time it was Iranian money going, and I see now that was a little too clever. I made the mistake. I hate to admit it, but as far as I'm concerned I accept full responsibility. Everybody acted with my authority. And I'm going to give them executive privilege so we'd stop five or ten committees pawing around between now and next June, finding out whether or not it went to the Afghan rebels." Who knew, when did they know it? Did the Vice President know? What about the Attorney General? No, the Secretary of State disagreed. It's the big dog chasing its tail. If the President would come and level with the American people we could get on with the government, and have a Merry Christmas. People trust President Reagan, and they'll forgive him on this one. And if you fire Don Regan this morning we'd still have the same problem tomorrow, and that is that we haven't leveled with the American people that this was a policy that the President liked. That's what Washington can't get through it's thick head. The President was pleasing the Israelis, screwing the Iranians, funding the Contras and getting the hostages freed. He thought it was a heck of a good policy. Now, he violated the provisions of the Boland Act, but nobody is going to rack him up on that.

EDWARDS. This is starting to have repercussions for a number of other countries. According to the Post sources, Saudi Arabia also deposited money in that account for the Afghan rebels. Do you think the Saudi's have reason to fear some of their money might have gone to the Contras?

HOLLINGS. I don't think they've got any fear about it. I think they knew what was going on. We act like government starts just because we learn a bit in the news. All of this has been going on. Everybody knows the Afghan rebels have been getting some support from somewhere. It couldn't have come out of thin air. The fact is it might have come from them is nothing to get all excited about.

EDWARDS. What about the Meese statement last week that the money was under the control of representatives of the forces in Central America? Do you think when he made that statement he knew the details of the Iran arms sale?

HOLLINGS. I don't know. But I think that he knew generally—not the details—that's the whole thing, how they all get by. None of them really knew each little detail. Not even Colonel North could know each little detail. But they knew generally what was happening, and that the contras were getting the assistance. And they were all acting with Presidential authority. Colonel North is not any wild cannon, or loose cannon on the deck, nor is Poindexter. They're both military men, throughout their careers. They're used to taking orders and carrying out policies. That's what they were doing. We're acting like they didn't.

EDWARDS. How about the CIA director, William Casey?

HOLLINGS. He was carrying on too, and he's had to counter a statement he made last week. He said he didn't know anything about it, and now he comes forward yesterday and says, "Oh yes I did." These things will continue on and on and on. And what I'm trying to get to is: save not only President Reagan but the Presidency as an institution. We've got two more years in this particular term. No real grievous thing has happened. It's hurt us with our allies. It's hurt us with respect to the confidence the Congress has in its policies being carried out when we say don't use that money. But now even Congress has changed that policy, so this is much ado about all kinds of investigations over your own government that you can't stabilize the Presidency. I think the main problem is for us in the government to stabilize the Presidency itself.

EDWARDS. Senator, thank you very much.

TRANSCRIPT OF HOLLINGS PRESS CONFERENCE ON IRAN-CONTRA AFFAIR, DECEMBER 3, 1986

HOLLINGS. We're coming down into quicksand. If Colonel North takes the Fifth and we give him immunity, then we get into deeper quicksand and before long we catch the President. I prefer that he catch himself.

The fact of the matter is President Reagan has reestablished the presidency so to speak. The people of America trust the President. I trust him. With that store of goodwill, it ought to be used at this time to come and level with the American people and reestablish the presidency itself.

I think that's the great concern we have: to not put the government and the presidency through a six month wrangle of five-to-six different committees; we got a special commission; we've got an independent counsel or special prosecutor; we've got the FBI; we've got the Intelligence Committee; we'll get a joint committee. There's no way to avoid five-to-six-to-seven committees all pawing all over the government and everybody suggesting that everybody be fired. If all the above were fired in the next two minutes, we'd still have the problem of the authority. No one in this country believes that either Colonel North or Admiral Poindexter acted without authority. I'm absolutely convinced military men, as they are, acting under orders and acting on a program that the President was vitally interested in.

That's where Washington makes a mistake. Washington can't contemplate the President being informed. They generally have the impression that he's not well informed on the facets of government. Perhaps they are correct about the Department of Education or the Department of Energy, that he'd like to abolish, but when it comes to Contras, he's informed. He Likes Contras. he understands the problem there and he keeps well informed on that score.

On the other hand, this town can't understand this President with this particular policy. The fact of the matter is that they can't understand the government selling anything and making a profit—they don't know how to act around here. The truth of the matter is that in disposing these arms in Iran and making a profit he not only pleased Israel—conformed to their policy, they've been shipping arms for at least five years to Iran—he screwed the Iranians, freed the hostages, and he funded the Contras. The President said, "Look, I'm getting with it. I've got policy going here finally." Of course, it was wrong. He should not be dealing with the Iranians. And you can't go in two different directions: saying you can't pay ransom while I'm paying ransom. So, it was wrong; there is no doubt about that.

But there is nothing wrong with the President coming forward at this particular point and saying, "I acted out of the national security interests, compassion for the hostages, yes, I understood Iranian money—I thought of it as Iranian money, it was an overcharge, it was not government funds as the Boland Amendment contemplated it was Iranian money going directly to the Contras. If I could get the Iranians to support the Contras, that was a pretty good deal. I think now that was probably a little too clever. I made a mistake. I hate to admit it, but I am going to have to exact executive privilege for all connnected, because they all acted with my authority. I take the responsibility. Let's everybody have a Merry Christmas.

REPORTER. What did the President know and how did he know it?

HOLLINGS. Oh, you can spend six months doing that. I think he knew it all, generally speaking. You know that and I know that.

REPORTER. Senator Durenberger says that you violated the rules . . .

HOLLINGS. Senator Durenberger has not said that I violated any rules, because I never referred to anything in the Intelligence Committee.

REPORTER. He says, sir, that you violated the rules of the Committee and that he will ask you either to stay on the Committee and keep your mouth shut or leave the Committee.

HOLLINGS. I can't believe that. I haven't talked about anything in the Committee.

REPORTER. Does this mean you are just basing this on personal . . .

HOLLINGS. That's right, absolutely.

REPORTER. . . . nothing that you've heard in Intelligence?

HOLLINGS. No.

PHIL JONES. . . . nothing you have heard in the Committee?

HOLLINGS. No, I've read everything in the newspaper.

PHIL JONES. You are convinced right now . . .

HOLLINGS. I was not even there when Colonel North . . . when I refer to Colonel North, I have never seen Colonel North to my knowledge in my life.

PHIL JONES. Senator, you said here that you're going to . . . that before long we will catch the President.

HOLLINGS. That's right, we will. If a man comes up and he takes the Fifth Amendment and we grant him immunity, I would oppose that immunity. I would oppose that immunity because I don't want to go down that long path.

PHIL JONES. But you are convinced right now, based on what you have read and the other intelligence information you have that Ronald Reagan has broken the law?

HOLLINGS. No. I haven't based anything on the intelligence information. You're getting into Senator Durenberger, which I can't believe he said, because I haven't referred to anything in the Intelligence Committee. You folks have seen me each day in the stakeout there and I haven't given a conference at all on the Intelligence Committee. I'm not talking about breaking the law. I'm talking about the policy of reestablishing the presidency in this country and saving the government and the country itself at this particular point. There's no reason to develop a Watergate over a six month period with five investigative committees at least and possibly many more and going into now Afghanistan and going into other things. I don't think that serves the interests, the security interests or the domestic interests, of this country.

PHIL JONES. Before we leave Durenberger, you said that you can't believe that he had said this. Let me tell you, he did say—if you haven't been over there so far—he said, "When I get in there and I find Fritz Hollings, I'm going to tell him he ought to be a Member or get off, because he has broken the rules of the Committee."

HOLLINGS. I haven't broken any rule of the Committee. How could I have? What have I said about the Intelligence Committee?

REPORTER. The fact that you're saying this and you have sat in on the Committee hearings is it unfair for the public to think that you have heard something through the committee that bolsters what you're trying to tell us?

HOLLINGS. No, I just referred for example to Colonel North, who I didn't even see in the Committee. That's why I am making it absolutely clear. I've stated this in the Committee before we heard a witness.

REPORTER. You said we're going to catch the President. Catch him at what?

HOLLINGS. Catch him at having given the authority generally, having known about what happened.

MARTY TOLCHIN. Senator Hollings, you did hear Mr. McFarlane, and apparently nothing . . .

HOLLINGS. I hadn't confirmed that I've heard Mr. McFarlane or not.

MARTY TOLCHIN. Nothing that you have heard as a member of that Committee has dissuaded you from this account?

HOLLINGS. I wouldn't comment on anything that I heard in that Committee. I've been very careful about that. You know that.

REPORTER. What is it that might you think the President could say or should say that he hasn't said in four previous television appearances? What is he still waiting for?

HOLLINGS. That he assumes really the responsiblity, that they generally acted with his authority. No President, no individual in a government this size can know every little detail. But I'm confident that he must have known. Well, he signed, as we all know in the news, with respect to a finding in January for the Iranian sale. In the matter of monies thereby going to the Contras thereafter, I'm confident that he must have known about it. I can't see Colonel North acting on his own, never have believed that.

REPORTER. Senator, what do you think is ultimately going to happen and is it going to happen sooner rather than later? Are we inevitably headed for another type of Watergate situation?

HOLLINGS. Well, that's what I've said in my opening comment that I'm afraid that is exactly what we're going to do. Because you can go witness after witness after witness after leak after report. Many things that I have read in the newspaper I understand to be wrong, but I haven't changed my opinion. I've watched this thing from afar. I came back in town and I'm very well persuaded that we need the President to come right up on top of the table and level with the American people and that's the only way we're going to solve this problem.

REPORTER. Are you saying that Ronald Reagan has lied to the Nation at this point?

HOLLINGS. You keep asking me that and I'm not going to call the President a liar. What I'm saying is that the people have acted with his authority. It was a mistake. He should assume that responsibility. The more we investigate and the deeper we get into this with all of these committees, we're going to be on a diversion here of non-government and just headlines. We're going to be in your business for the next six months. And I think we all for the good of the country should get out of it.

PHIL JONES. Once the President has taken your advice and said "Yes, I gave them the authority one way or the other, they were acting on what I wanted done," then what do you propose: that all investigations stop?

HOLLINGS. No, they can continue with the independent prosecutor and the investigations, but I would certainly give him executive privilege. . . . Say, "They acted with my authority and just come to me if you want to know who did what. I did it." That's what the President's got to say and do.

PHIL JONES. Senator, should anything be done to the President?

HOLLINGS. No, I don't think anything should be done to the President. Everyone knows the policy. We've now confirmed the Contra aid policy. We'll continue to question dealing with the Iranians, but that's no grievous error. To do anything to the President? No, I don't suggest that. On the contrary, I'm trying to reestablish and bolster him.

REPORTER. Senator, you said that you didn't get this from the Intelligence Committee, but how do you know that the people under him acted with his authority?

HOLLINGS. I'm just like, I heard when I came back in town, Senator Dole, he said, "Only Ripley would believe that." And I think you folks are having a heyday trying to believe what you don't believe yourselves. You just keep writing it as if it were true and you don't believe it. And so you all are just going to have a good six months period going through and prove why you don't believe it. Why don't we just on top of the table . . . Nobody in this room believes that North acted without authority. Now I was not even there when North came, so I don't know what he did. But I saw reported in the news that he took the Fifth Amendment. And he took the Fifth Amendment not because he was afraid of lying, he was afraid of telling the truth. And that's my own idea.

REPORTER. Do you actually believe President Reagan after he has said repeatedly that he did not have any knowledge is going to say "I knew what was going on"? Do you expect a complete reversal from this man?

HOLLINGS. Oh, yes. He reversed on the hostage policy. He was saying all along, "Let's don't pay ransom." And he was berating our allies not to do it and at that same time he was doing it. That's not too much trouble. A little awkward for him, but he can do that. And he can say I made a mistake in good faith. He was acting in the security interest. He was acting for believable policy, as he believed it, and supportable policy, as he supports it. This isn't any Watergate. But if you are going to follow through and assume . . . All of you people are trying to get the headlines "So and So called So and So a Liar," "So and So Tried To Say Something Out of That Intelligence Committee." I have been absolutely clear not to say anything out of that Intelligence Committee and know it.

REPORTER. You mentioned several times the possibility of giving Colonel North immunity, is that being discussed in the Committee?

HOLLINGS. I wouldn't say what was being discussed or not being discussed. I say I wouldn't want to do it.

REPORTER. You would not want to do it?

HOLLINGS. No, I would not want to do it, because I know the inevitable result, because of my belief he acted with authority.

REPORTER. Senator, I don't understand what you think is going to happen once the President comes clean. Aren't these investigations going to continue?

HOLLINGS. Yes, but most of them, if he gives executive privilege, most of them come down to a manageable state and we can go on and get to work with the government. I can tell you that. He said in the original instance also he assumed responsibility. I remember him saying that. Now why doesn't he really assume that responsibility?

REPORTER. If the trail does lead to the President, why not give North the immunity so that he couldn't take the Fifth, and then you could follow the trail to the President?

HOLLINGS. I don't want to follow the trail to the President; that's the exact point of my appearance here today. I just don't think that's in the good interest of the country. He's obviously been acting with authority; that fellow's made talks all over the country. Everybody's known it. That's not in any Intelligence Committee information and I've been reading, just like you folks have, and he's been almost like reported in the morning paper a son to the President. And this is something he's conferred with regularly, I happen to believe that. And that hasn't been stated in the Intelligence Committee.

REPORTER. The President told the Republican leaders of Congress yesterday that he didn't know anything about the contra connection. Senator Dole was very specific about that. He said he absolutely didn't know anything about the contra connection.

HOLLINGS. I don't believe that, and Ripley doesn't believe it, and I don't believe Dole believes it.

REPORTER. The question I have now is do you have any specific information that leads you not to believe it, or is it just a general feeling.

HOLLINGS. Just circumstantial evidence, just knowing the parties and everything about it. Yes, that's all.

REPORTER. If the President does not do as you suggest he do, come clean in other words, then do you want to proceed down this trail that you think will eventually lead to the President, and if so, how best do you do that?

HOLLINGS. No, I don't want to proceed down the trail. I can see the trail. Don't mind doing it, but it's just going to take a lot of time and wasted effort and leaks and stories and headlines and then like I say it think it will develop perhaps into a Watergate. I'd like to avoid that.

REPORTER. Do you then follow, if the President does do as you suggest, to stop it there?

HOLLINGS. Oh no, I don't suggest we stop. We have a responsibility even if you appointed a joint committee in the next ten seconds, we in the Intelligence Committee have to look at the requirements there and how that was conducted with respect to being notified and those other particular provisions. So the Intelligence Committee will continue its hearings.

REPORTER. Senator, do you think that there should be a Joint Select Committee, or how do you think . . .

HOLLINGS. Oh yeah, I think Joint Committees, fire Regan or don't fire Regan, whatever ya'll want to do, suits me fine. I mean you all coming up, you know, like Sealtest ice cream with a new flavor, and the President just overreacts and does just what you folks want done, and you all think that solves the problem. You can appoint fifty committees, or one Joint Committee, or no committee, you're not going to solve this with the American people until you come clean, and they know he knew, and we know he knew, and that he generally acted with authority, and that's my feel about it.

MARTY TOLCHIN. Senator Hollings, are you telling us that as a member of the Intelligence Committee . . .

HOLLINGS. No, I'm not telling you as a member of the Intelligence Committee. I'm telling you as Senator Hollings from South Carolina. Right, all right.

MARTY TOLCHIN. Are you telling us that as a member of the Senate Intelligence Committee . . .

HOLLINGS. No, I'm not talking as a member of the Intelligence Committee. I'm not going to assume your question. I've been in the court and tried more cases than you have. Now.

MARTY TOLCHIN. . . . that this has played no role whatever . . .

HOLLINGS. No, not in anything I've said, I can tell you that. And members of the Intelligence Committee would know my particular feelings because I expressed this feeling at the very outset.

PHIL JONES. Senator, if you have been in court and tried more cases than Marty Tolchin of the New York Times, why do you then want to convict the President on circumstantial evidence?

HOLLINGS. I'm not trying to convict the President on circumstantial evidence; I'm trying to free the country from this morass.

REPORTER. Senator, there's been a lot said here this morning of what the President did or didn't lie. How would you state it, that he misstated the facts in the public interest?

HOLLINGS. Yeah, I think he probably overspoke the situation, and took the advice that look, if you just set aside Poindexter, and North, it'll go away. But that didn't fly, and the Commission didn't fly, and the independent counsel didn't fly, and the Joint Committee is not going to fly, is my point. You're going to have to come up and come clean on the whole thing and just generally say that this was an important matter and everyone knows of my interest in the contras, and I just can't see that happening in a National Security Council with these two top officials of that council and the President not know it.

REPORTER. Senator, you're saying that the President, it's up to him. He's got to come clean . . .

HOLLINGS. Yes, I think that's the only . . .

REPORTER. . . .and the Congress doesn't do anything?

HOLLINGS. No, let the Congress go merrily on its way, but I think we can get some other work done. I think yes, we'll have a responsibility, and we'll have to go into these committees, but it won't develop into one of these Watergate type hearings of a leak, and a story and a confirmation and a denial and a changed statement by Mr. Casey and a this and a that every day. To be asked about . . . now in Afghanistan when I woke up this morning.

REPORTER. So is it to the President to set the record straight?

HOLLINGS. Yeah, it's up to the President. Only the President can do that I believe.

REPORTER. President . . . is it conceivable to you that Ronald Reagan did not have knowledge and that Donald Regan did?

HOLLINGS. No, I don't think so. I think the way it works over there, that President Reagan would want to know about this, and I can't see Mr. Regan not telling him if he knew anything about it.

PYE CHAMBERLAYNE. Senator Hollings, does the President risk impeachment in your view if he does not follow your advice?

HOLLINGS. No, I don't think he'll ever risk impeachment, but we could get down to some kind of untoward conduct if we keep following this thing down its natural course because I think, in addition to the President, members of the Cabinet were fairly well briefed from time to time—I'm confident just over the system that they work under. And that's been stated publicly in the press. Now, yes, maybe one secretary agreed and another one disagreed, and everything else, but general knowledge and being apprised, everyone knew whether they agreed or disagreed.

STEVE ROBERTS. What I'm unclear about is if all these things happened, if everybody knew about it, if all these laws were broken, just by coming out and saying we made a mistake, is that going to absolve the President and all his Cabinet of any further blame, or do you feel things have to be done in the way of punishment or penalty, or how will we have to deal with it once they admit their mistake?

HOLLINGS. Steve, I'm not trying a criminal case, I'm trying a political case. And I'm saying for the good of the body politic, especially for the Presidency as an institution, the President would do well to come forth and just tell the truth on this thing, and say, "Well, I couldn't know and I didn't know, like I stated, everything in detail, but I'll have to agree that they acted with my authority."

REPORTER. Senator Hollings, the President's words on Monday were that he flat out did not know the details of this until Meese told him on the Monday after the weekend investigation. How could the President survive an absolute flip-flop on this by now saying what you want him to say, which is that he did know?

HOLLINGS. Well, I think he can survive the flip-flop if you call it that, and I think he should survive the flip-flop, and I think we all ought to have a Merry Christmas.

REPORTER. Senator, you say you've held these views since the very beginning . . .

HOLLINGS. Right.

REPORTER. And yet you didn't call a press conference . . .

HOLLINGS. No, I haven't called a press conference. I've studiously avoided ya'll from the Intelligence Committee.

REPORTER. What caused you to decide to do it today?

HOLLINGS. Well, my local press have been asking, and I wanted to come to them and I appreciate your attendance. I don't know who invited you, but I thank the Lord, you know. We're in the political business . . . but Chris Weston, Lee Bandy, and all the rest, and so I said, "Well, anybody else." It'd be easier because I'm trying to get home, I haven't been home in a long time.

PHIL JONES. With all due respect, I do not follow your logic. On one hand, you are saying the President's got to get this passing for the good of the nation . . .

HOLLINGS. Right.

PHIL JONES. On the other hand, you're saying that a Congressional investigation should go forward and . . .

HOLLINGS. Oh yeah, I don't want to appear here to stop the Congressional investigation. This is not an either . . . this is a very complicated world in Washington, Phil.

PHIL JONES. . . . it's not going to work. You've been around here for a long time. You know when the Congressional investigation continues . . .

HOLLINGS. Sure they do.

PHIL JONES. . . . the whole controversy is just going to continue to mount and mount.

HOLLINGS. Right.

PHIL JONES. Don't you?

HOLLINGS. No, I would think that if the President assumes the responsibility, which he said. Now, how's he flip-flop and say I don't assume the responsibility. There's another flip-flop. We don't worry about flip-flops. I think they acted with the authority of the President, and I don't think that's going to stop. And my intent is not to stop—Joint Committees, Intelligence Committees, commissions, and all the rest of the thing. But I think, if it's pretty well proved and understood from the President's own lips, that they generally acted with authority, then all the steam . . . we've approved the contra policy and everybody knows now. You've been reporting in the press, that this have been Israeli policy, to get arms to Iran, for over five years. So, there we are, and why the big hoopala?

The only reason is because the President puts us all in a box when he maintains that he didn't know anything about it, it's all news to him. I can't believe it's all news to him.

REPORTER. Senator, if laws were broken in the course of carrying out this policy, should the people who broke those laws be absolved of responsibility?

HOLLINGS. No, I think you've got the independent counsel or prosecutor . . .

REPORTER. . . . But you said we should invoke executive privilege. If he invokes executive privilege, that means that these people will not have to . . .

HOLLINGS. Could be, could be. The world won't end with that.

REPORTER. Senator, so for the sake of saving the Presidency, it would be worth letting these people off the hook if they broke the law.

HOLLINGS. We got the Harry Byrd amendment that says you should balance the budget. Lock up the Congress. We've violated that since 1980. Terrible fellows up here. Ya'll don't get riled up about that. You just don't like the contra policy. And none of us of course like the Iranian policy and the hostage policy. No one agrees with that one; the President made a bad mistake on that.

REPORTER. If laws were broken under the scenario you're describing, what's your penalty for the people who broke them?

HOLLINGS. Well, it depends on whether you can prove it.

REPORTER. And what if you can or cannot?

HOLLINGS. I don't know.

REPORTER. Senator Hollings, in the U.S. selling arms to Iran, are we backing the right party in that war? What kind of message are we sending to . . .

HOLLINGS. I don't know. That's what you folks up here call an oxymoron, an Iranian moderate. I couldn't find any.

REPORTER. What do you call it in South Carolina?

HOLLINGS. Thieves. All of them.

REPORTER. Senator Hollings, what you're saying is adds up to accusing the President of lying about the Iranian. . .

HOLLINGS. You keep on saying that. I'm not accusing him of lying.

REPORTER. Well, if you're not accusing him of lying, what are you really accusing him of doing?

HOLLINGS. I'm not accusing him of doing anything except not leveling with the American people. I think he should be more forthright and full on the entire matter with respect to these persons acting with authority. You all don't ask the question. I mean, he says the fellow's a hero; he doesn't think he's a criminal . . . Colonel North . . . that's what the President says. How can he think if he didn't know anything he was doing, he was a hero and everything else of that kind, and want him indicted. You ask him, does he want Colonel North locked up? I don't think he does.

PHIL JONES. How would you describe Colonel North?

HOLLINGS. I think he's generally a patriot. And I think he's a military gung-ho fellow, and I've been with those military gung-ho fellows, and one thing about them—they act with authority. I can't see him, over the last couple of years as you've reported, make some hundred talks. Every time a group would come to Washington, he'd give them the old pep talk about the aid to the contras, the aid to the contras—you all act like he never heard of contras before. You know it and I know it; he has been gung-ho leading the way soliciting Ross Perot and all of these other folks. Now when he comes, and do ya'll go along with the President not knowing anything about North and contras? Come on. You ought to read your own newspapers. Excuse me, that's right, you're on TV.

REPORTER. Senator, what about these calls for the removal of Don Regan. What's your sense of that?

HOLLINGS. I think Don Regan is a very capable fellow. I think he lacks the political touch. And obviously, the Republicans know him better. I don't know him that well. I respect him and I can't understand, and that's why the President doesn't just outright get rid of him. If he really thought he was a crook and criminal, and ought to be investigated by a commission and an FBI, and the next thing I saw on the TV was, yes, the chief of staff was being interrogated by the FBI or something like that. He doesn't really believe that otherwise he would have disposed of Mr. Regan. Mr. Regan was part and parcel of the policy and the authority and the President knew about it.

REPORTER. Has Don Regan helped the President or hurt the President over the last year, including the summit and including what's happening now with Iran?

HOLLINGS. I don't know, because I don't know who gave the advice on this idea, but, gee, ain't nobody here but us chickens, I never heard of this contra aid thing before. I mean, that's outrageous nonsense, you know that. For the President to act that way; I mean, he's a pretty good Hollywood actor but whoever told him to put on that one. Change that thing and level with the American people, that's what I'm saying.

REPORTER. But you're saying that the President doesn't have to fire Regan to clear the decks.

HOLLINGS. Well, I think if he fired him in the next ten minutes he'd still have the same problem. He's got to come himself and be more forthright with the American people.

REPORTER. Senator, do you have any thoughts about the Vice-President, what he knew?

HOLLINGS. No, I think as a member of the Cabinet and the Security Council, the National Security Council, I think he would be fairly well briefed on this. I don't know of my own knowledge, but I am confident he knew generally of the Iranian arms policy, whatever went on.

REPORTER. Senator, whatever happened to the principle of plausible deniability?

HOLLINGS. Yeah, that's one of the things that works on plausible deniability that's not working on this occasion. We use that in Intelligence. That's constant and that's where you get in trouble. That's where you get in trouble; you know, what a tangled web we weave when first we practice to deceive. And when you get into that situation where you say, "Look, I'm telling you, but remember, if this ever comes out, I never told you and you never knew anything about it." That happens from time to time in the Intelligence game, and I think maybe we might be caught up in that situation where everybody's trying to call him a liar, this that and everything else of that kind. He's got the trust of the American people, the President has, on December the second, or whatever date this is. But this will continue to be deteriorated and diminished and lost unless he levels with the American people, and that's the only solution.

These committees and getting rid of Regan and all are out of the whole cloth, this isn't the problem. The American people want the President to come clean on this score and back up his team on a policy that was questionable, perhaps a mistake. Let him say "I hate to admit it but this was a mistake. This was my policy; contras has now been approved by the Congress. So what. And I've gotten into enough trouble with my allies on this hostage, no ransom while I'm paying ransom. So I apologize for the whole thing, but at least we don't have to go through this." You can go ahead, have your meetings, but then this diffuses this whole thing. And he protects his crowd out there, and we've got a White House, and we've got a President, and we've got a government. Otherwise, we've just got one big grand investigation going on for the next five or six months in this country and I'd like to avoid it, and I think somebody ought to speak out about it. And you don't have to be on the Intelligence Committee to speak out about it.

PHIL JONES. Senator, you have said all of these people are trying to call him a liar about it. Who . . . why are they trying to call him a liar?

HOLLINGS. The people asking the questions, cause they put that in the question you see what I mean. I'm trying not to call him a liar.

REPORTER. Do you have to try?

HOLLINGS. I keep on trying, yeah. Thank you all very much.

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(Guests: H. Ross Perot, Founder, Electronic Data Systems; Representative Robert F. Michel (R., Ill.), House Minority Leader; Senator Ernest F. Hollings (D., S.C.), Member, Intelligence Committee; Howard H. Baker, Jr., Former Senate Majority Leader.)

(Interviewed by: David Brinkley—ABC News; Sam Donaldson—ABC News; George F. Will—ABC News Analyst.)

Mr. BRINKLEY. Coming next, H. Ross Perot, who founded Electronic Data Systems, and who arranged on his own the rescue of hostages in Iran, and who's been asked several times to put up some millions to bail out hostages. And, shortly, Senator Ernest Hollings of the Select Committee on Intelligence; and former Senator Howard Baker, and Representative Bob Michel. In a moment.

(Announcements.)

Mr. BRINKLEY. Mr. Perot in Irving, Texas, thank you very much for coming in today. Pleased to have you with us.

Mr. PEROT. Good to be with you.

Mr. BRINKLEY. Thank you. Here with us are George Will of ABC News, and Sam Donaldson, ABC News White House Correspondents. Now, Mr. Perot, as I understand it, representatives of the White House have come to you more than once and asked you to put up substantial amounts of money, millions, to be used to bail out hostages. Is that correct?

Mr. PEROT. That's right. It goes back to 1969; spans four presidents. Had someone ask me the other day, he said, why didn't they call you before 1969? I didn't have any money before 1969.

[Laughter.]

Mr. BRINKLEY. Well, question two: You put up the money because you wanted to help people in trouble. Now tell me, if an American can be seized, held for a time, and then turned in for a million or two of Ross Perot's money, none of us is safe. Isn't that true?

Mr. PEROT. Well, none of us are safe now. You have—as you all understand, terrorists have a message they want to send to the world. As long as they get massive media coverage, which they're certainly assured of getting, and properly should get anytime they seize an American, they have an opportunity to get their message over. My heart goes out to the poor devil who was picked off the streets; is bound and gagged in a closet, being tortured and beaten; and then when I get a call from the government and say, will you help us, I just feel a moral obligation to do it and make no apologies for having done it. I don't expect to get any more calls. But in the event that I do, I'll continue to help. And that's just the way I feel about it.

Mr. WILL. Mr. Perot, you have said that the reason the government does indeed call you is that the government has a policy against it not paying ransom. Now isn't that, however, a distinction without a difference, as our allies would be construing this? That if the government makes a quiet call to a private citizen and says, do this in our name and for our purposes and at this request, isn't it really paying ransom?

Mr. PEROT. Well, in the final analysis, if the money changes hands, you've paid ransom. The difference is, it's not taxpayer money; it's not government money; it's private funds. This is an old practice. It—it's an—you have to be creative and unconventional. Because we like to think in this country that everybody operates under our system of justice. The facts are, terrorists operate under no rules. So you have to use creative and unconventional means to try to deal with the problem. Every president feels tremendous compassion toward Americans who are held hostage. And everybody in the administration, no matters whose administration it might be, looks for creative ways to get those people released.

Mr. WILL. One of the questions about the creative and unconventional methods used, not just by this President but by the three others who've called upon you for help, is the extent to which they specifically directed this. Is it your impression that when Mr. North approached you, he was speaking, not just the President's clear wishes and desires for an outcome, but his—the President's tactical intentions as well?

Mr. PEROT. I assume that everything had been properly cleared, because I've worked with the National Security Council for so many years. My sense has always been, it's very well organized. Very well controlled. I've never met a loose cannon in the National Security Council. The people are very bright, very dedicated, very principled, and incredibly hard working people. So they're people you feel very comfortable dealing with. They've always been meticulous to a

fault in my dealings with them to the point that sometimes I felt the process was over controlled.

Mr. DONALDSON. But Mr. Perot, is it not a fact that Colonel North never said to you, the President has asked me to do this? Or: I have the President's permission or authority.

Mr. PEROT. No, he never said that. Neither did anyone else. And I would have felt it would have been improper, well, I'll have to have something in writing from the President before I can help you.

Mr. DONALDSON. All right, you say you would help the government ransom U.S. hostages. What about the business of money to the contra rebels in Nicaragua? You've made the point that you wouldn't help do that.

Mr. PEROT. No, I'm not—

Mr. DONALDSON. And yet you favor the contras, so why not?

Mr. PEROT. Well, I have—I've taken the hard position—now, the government's never approached me on that one, interestingly enough. Some of the private groups have come around to see me. And I said, look, if we're going to have a war in this country, Congress has to go make that decision, not private individuals. And there's a second problem, that it costs so much to wage a war, you're never going to be able to fund it by private individuals. But the primary problem is, that's a decision Congress must make. And that's not something we can do individually.

Mr. DONALDSON. Well, you know the President's in deep trouble right now. How does he get out of it?

Mr. PEROT. I think it's very simple. Get all the facts on the table. Now, it's human nature to want to look after yourself in a crisis. So you got all these people down the line that are being very self-protective, and understandably. My advice would be to get all of them in a room; for the President to look them in the eye and say, "Look, we've got a whole nation here. There are millions of people who depend upon us. I want everybody in this room to stop thinking about himself. I want you all to go home tonight. I want you to write down everything you did. Leave nothing out. I want you to stop worrying about what's going to happen to you and start worrying about what's going to happen to our country. We simply can't afford to spend months getting to the bottom of this. We have other things that are so much more important than this, but if you folks won't just come clean, every single one of you, we're going to have to go through process of special prosecutors, Congressional hearings, and so on and so forth, and distract this nation for months, and really hurt this country. So tomorrow morning——"

Mr. DONALDSON. But how do you know they can afford to come clean? How do you know if anyone writes it all down it won't show that there were great illegalities even by the highest administrator of the land?

Mr. PEROT. No, my sense is that if everybody put down everything on paper and handed it out publicly in the morning, we would all read it. And the severest critic would say, boy, were those dumb mistakes. Now, whoever made those dumb mistakes doesn't have any patent on dumb mistakes or bad judgment. We all make dumb mistakes and exercise bad judgment. But then it's over with. Now, I will bet a very substantial sum that whoever made the worst mistake did it with the best of intentions; just bad judgment. Now, American people can understand bad judgment because we all have bad judgment from time to time. But then we clean this thing out and get it over with. So I'd like to compress the process by having everybody do it. I believe that if you put the pressure on them, that if the right leadership put the pressure on them, if our leadership put the pressure on them, they'd do it.

Mr. BRINKLEY. Mr. Perot——

Mr. DONALDSON. But what if they broke the law and they'd have to go to jail for this bad judgment? I mean, do you expect them to write it down and then say, take me away?

Mr. PEROT. No, no. If that came up in the meeting, I'd say, well, fellas, if that's the way it is, that's the way it is. But look, you're here. Now I know enough about the people around the National Security Council to know that they're very highly principled people. And if they concluded that they had made such a serious mistake that they should be punished for it—and I doubt if that's true, frankly—but if they did, I believe they'd take the heat rather than see the country suffer. I think that's the way to get it over with.

Mr. WILL. The President says that Colonel North is an American hero. What's your impression of Colonel North?

Mr. PEROT. Well, I've met a lot of these guys. See, the first—my first day-to-day contact in the National Security Council was an Army Colonel named Alexander Haig. So I've dealt with a whole string of them, General Scowcroft, right on through, you name it. Colonel North is a very fine man. He's a very dedicated man. I have absolutely no reason to question his integrity or his principles. Now, let's assume that somebody up or down that chain made a series of mistakes. And I say, let's get them up on the table; get it over with; and go ahead and face the real problem that face this country. Interestingly enough, this is not one of the country's biggest problems. It's going to become a big problem, because it's an open sore.

Mr. BRINKLEY. Mr. Perot, thank you. Thank you very much for coming in today.

Mr. PEROT. Thank you. Good to be with you.

Mr. BRINKLEY. Pleasure to have you with us. Coming next, Senator Ernest Hollings. Democrat, South Carolina, of the Select Committee on Intelligence; and, shortly, former Senator Howard Baker and Representative Bob Michel. In a moment.

(Announcements.)

Mr. BRINKLEY. Senator Hollings, as the first guest on our first program a little over five years ago, back again, we're happy to have you.

Senator HOLLINGS. Thank you. I'm glad to be back home.

Mr. BRINKLEY. Thanks for coming in. Now, do I understand correctly that you say you have evidence that Mr. Reagan knew all about this all the time?

Senator HOLLINGS. No, I'm much like Ross Perot. I'm not talking as a member of the Intelligence Committee.

Mr. BRINKLEY. No, but just talk as a Senator from South Carolina.

Senator HOLLINGS. As a Senator from South Carolina, knowing that you've got five departments of governments—of the government involved, and at least five countries internationally, and you got 12 shipments and 5,000 tons to Iran, knowing that this is the principal policy and concern, namely, aid to the contras of this particular President, I can't see this occurring without some implied authority from the President. And I think the President's really made two mistakes. Number one, he hadn't confessed to the so-called implied authority; perhaps confessed is a bad word because there's nothing wrong. But I could well see him saying, I hope we can——

Mr. DONALDSON. Nothing wrong?

Senator HOLLINGS. No, look, I'm trying to get aid to the contras, and I can't convince the Congress of doing it. I hope somehow we can do it, and if you folks around can convince some of these countries. We find our State Department has been soliciting as well as North making talks and everything else, if some way aid can be gotten to the contras until I can change the Congress' mind, don't tell me anything about it. See, he's not lying about when he knew. The important question is not just what he knew and when did he know it, but what did he give and when did he give it. Because that's implied authority. That's the real question in this case.

Mr. BRINKLEY. Your assumption—it's an assumption, I gather.

Senator HOLLINGS. It's an assumption, definitely.

Mr. BRINKLEY. That based on all this evidence——

Senator HOLLINGS. That's right.

Mr. BRINKLEY [continuing]. All these people and countries involved, he must have known.

Senator HOLLINGS. He must have known indirectly. I mean, he can't see it occurring around him—and by the way it was a success up until October, and Congress had its mind—had its mind changed. And I'm convinced somebody must have intimated to the President that it is working. I mean, you see that countries have been solicited by the Assistant Secretary of State.

Mr. WILL. Now, it is your aim as a Senator and as a citizen to get this behind us you say and get on to something else.

Senator HOLLINGS. Right. I'm not trying to convict the President or catch the President. I'm sort of trying to catch a falling flag, like Dick Whelan said in his book. We ought to get this behind us. And as even Durenberger agreed on yesterday, the President is the only one who can help us do that.

Mr. WILL. And what is the quickest way to do that? There are several matters. They're technical terms, but we have to deal with them. One is the granting of immunity by the committees of Congress. Another is the President insisting on executive privilege. Are these apt to slow down, hasten; what's the right strategy?

Senator HOLLINGS. Well, I think the right strategy is, number one, come up front and say, look—and the President's moving in that direction; he said yesterday that he thought some mistakes had been made. That's quite a concession. Secondly, he's got to say, look, as I told the American people the truth. I didn't know about it until such-and-such a time. That's not too important. But I can understand now where those who acted in good faith for the security of the country and in pursuance of my policy of getting aid to the contras. It was a sort of implied authority. And quit treating them like criminals. When the President comes out on his principal and says, get the FBI. It's like the captain of "Love Boat" finding somebody on board ship making love and saying, "Oh, my heavens. Let's get the FBI. Let's get a commission. Let's get the Congress, a prosecutor." That's nonsense, and everybody knows it. These folks are all good

Americans. You can't tell me that the two military men in the White House, Admiral Poindexter and Colonel North, acted without any authority whatsoever.

Mr. WILL. On this question of implied authority, in the little hypothetical scenario you drew——

SENATOR HOLLINGS. Right.

Mr. WILL [continuing]. You had the President saying, "Don't tell me about it." Now, is that—not just speaking of this President, but this has—covert activity has been going on with all Presidents, certainly in the postwar period. Is it your understanding, as someone of vast experience in this town and experience on the Intelligence Committee, that the kind of thing gets said?

Senator HOLLINGS. Oh, yes. I take all of my experience—30 years ago when I served on the Hoover Commission, the Clark task force spending two years investigating all of the intelligence activities. That was under Allen Dulles and General Cabell. So I—look, I've been in this 30 years. And no one's ever interviewed me about intelligence, and no one ever will, what goes on. But yes, the answer is absolutely——

Mr. BRINKLEY. You mean in the closed committee, what goes on?

Senator HOLLINGS. Exactly. That's right. I never have abused any evidence whatsoever. But I know from my experience, the President first treated it as a crime. And he won't come up—and when I say, come clean and say, I know these men. And they're good men, and they're not criminals. On the one hand, he fires them. On the other hand, he gives them a farewell party and calls them heroes. Let's get with the program, and get with the truth.

Mr. DONALDSON. Well, I'm intrigued, if I understand you correctly, by your thesis that—under your scenario the President did nothing wrong. If I understand what you're saying, it is that the President would say something like, well, Congress has cut off the money.

Senator HOLLINGS. Right.

Mr. DONALDSON. And said, we ought not fund the contras. But I think it's important. I want you to go out and raise money and fund the contras. And you don't think the President has done anything wrong?

Senator HOLLINGS. No, I don't say, I want you to go out and raise money. I said, if there is anyway that money can be gotten to these contras, I'd be the happiest man in Washington. There's no doubt in mind. Now, this——

Mr. DONALDSON. So what is the President's responsibility, then——

Senator HOLLINGS. Wait a minute, Sam. This is not criminality. This is policy. Arms to Iran is not a crime; it's policy. You know, ransom for hostages is a matter of politics.

Mr. DONALDSON. You're talking about the skimming of the cash for the contras?

Senator HOLLINGS. And aid to the contras is not a crime. It's a limitation on spending; yes, he went against that. But Congress has limited itself regularly with respect to the Harry Byrd amendment, that you shall not spend more money than what you take in. We've been violating that ourselves for the past——

(Laughter.)

Senator HOLLINGS. So don't worry about that.

Mr. DONALDSON. So when the Boland Amendment said this government would do nothing directly or indirectly to overthrow the government of Nicaragua——

Senator HOLLINGS. That's right.

Mr. DONALDSON [continuing]. Having you people go out and raise money to fund the contras to overthrow the government of Nicaragua is not a crime in your book?

Senator HOLLINGS. Not a crime, but that's an offense against the Congressional wishes. And I think the American people see it. I don't think we approve of that.

Mr. DONALDSON. Well, what Congressional law should the President obey if he may pick and choose?

Senator HOLLINGS. Well, where's the felony? Where's the misdemeanor? What are you going to do? I don't think it serves the country well to catch the President even if you could catch him. Because it is policy and not criminal activity involved. But over the six months, treating like——

Mr. DONALDSON. You don't mean that, do you, Senator?

Senator HOLLINGS. Yessirree.

Mr. DONALDSON. You mean that the president of the United States, let's forget Ronald Reagan; you're talking about the presidency now——

Senator HOLLINGS. Presidency of the United States.

Mr. DONALDSON [continuing]. Can do anything he wants to do——

Senator HOLLINGS. No.

Mr. DONALDSON [continuing]. And it's not good for the country to catch him?

Senator HOLLINGS. No, he's not doing anything he wants to do. He's been following for five years aid to contra policy. He got through humanitarian aid, but he hasn't got through the military aid. Now, he's gotten through military aid, and even the Congress approves that particular policy.

Mr. DONALDSON. Well, may I ask you——

Mr. BRINKLEY. I have one quick question.

Senator HOLLINGS. Yes, sir?

Mr. BRINKLEY. Then our time is up. Do you think Donald Regan should go? There are those who do.

Senator HOLLINGS. I don't think that helps it one way or the other. I don't know. The President has to determine that. But if Don Regan—that's all politics. Get rid of him in two minutes. You've still got the same problem. The American people know North, they know Poindexter, they know the Secretary of State and everybody else was acting, the Defense Department with all these shipments of arms through there. What are you going to do, find them all criminals? They were all following policy, not criminality.

Mr. WILL. Do we need a special prosecutor for all the Senators and Congressmen who violated the Byrd Amendment?

Senator HOLLINGS. Yeah, let's get one for that.

Mr. BRINKLEY. Senator, thank you.

Senator HOLLINGS. Thank you very much.

Mr. BRINKLEY. Thanks very much for coming.

Senator HOLLINGS. Yes, sir.

Mr. BRINKLEY. We look forward to seeing you again. Coming next, former Senator and former Senate majority leader, Howard Baker; and the Republican leader in the House now and in the next Congress, Bob Michel of Illinois. In a moment.

(Announcements.)

Mr. BRINKLEY. Senator Baker, Congressman Michel, thanks very much for coming in. Happy to have you with us. Now, there was a crowd on the sidewalk in front of the White House yesterday, I think it was, carrying signs, protesting about Iran. The signs were waved at drivers coming down Pennsylvania Avenue, and they said, "Honk if you think they're lying." Now, if you were driving by, would you honk?

Mr. BAKER. No, I wouldn't honk. But I tell you what, I sure would tell the President, if I had the chance, that this thing is festering and going to get out of control just for that sort of reaction unless we get all these circumstances out and published as soon as possible. I think he's in grave danger, not because of the substance necessarily, but because of the technique and the timing.

Mr. BRINKLEY. Mr. Michel, would you honk?

Representative MICHEL. Of course not. Because I've talked to the President personally about it. He's looked me straight on in the eye, and said: This is the extent of what I've known. And I think we've all been taken through the steps on that. And I have the fullest confidence in the President that that's exactly how he feels. And I think those of us who know him quite well and his method of operation, it's very plausible for us. Now, it may not be for the general public out there, because we know people are a little bit more attentive to detail. Some may be candidates currently today who would be——

Mr. WILL. Say some more about that, why it is—what you know about the President's way of behaving makes this more——

Representative MICHEL. Well, we all know that he is one for delegating a great deal of authority, and probably not devoting himself to a number of the details. And I'm thinking in terms of Howard Baker having served in the legislature, or Bob Dole or Jack Kemp or whomever. You know, we'd probably get much more detail if they were elected president to the legislative process and some of the details, rather than thinking always in terms of the overall view. And I think part of that, then, when it comes to this thing, when there are so many things involved and down to finite details, that it's quite plausible that the President, on the real key area there where he should have made a decision or absolutely said, no, at this juncture, was really not there to say it.

Mr. WILL. Senator Baker, you say this is apt to get out of control. Now, you served on the Watergate committee. How do you keep it—both sides, from it getting out of control? I'm specifically thinking, should, in order to facilitate this process, should immunity be granted by the Congressional committees? And how far should the President stand by executive privilege, not just thinking of this case but the general integrity of the Presidency?

Mr. BAKER. Well, I think the overall and fundamental question of the integrity of the Presidency is the survival of the Presidency, and we just simply can't have another Watergate, and another destroyed administration. So I think the President needs to jettison any thought of executive privilege, and not be in opposition, as I don't believe he will be, to a grant of Congressional use immunity. I think he simply must get the facts out and do it promptly and be ahead of the committee and head of the special prosecutor and be in the lead in disclosing those facts to the public.

Mr. WILL. If you were President, how do you do that? I mean, we just heard Mr. Perot say, send everyone home and tell them to come back at 9:00 with their blue books full of the details. Is that how you'd do it?

Mr. BAKER. Yes, that's pretty much the way you'd do it. I think that, you know, a President is in a unique position as commander in chief as well as President. And I guess in my mind's eye, what I would have done is, summon up everyone into the Oval Office, as Perot said, and I'd said, look, you know, you have really put me in a bad spot.

I didn't know about this and you're about to destroy me. Now what did you do?

Mr. WILL. The President went out and gave a speech, his first speech on this subject, in which he said, all the arms could have fit in one cargo plane. Now all speeches the President gives are vetted through a large interagency process. Isn't it obvious that someone had to read that who knew that was false?

Mr. BAKER. I think it's obvious.

Mr. WILL. Now, how do you find that guy?

Mr. BAKER. You've just got to do it that way. And you may not find the facts. But the President—the President has to make the effort.

Mr. DONALDSON. Mr. Michel—go ahead if you——

Representative MICHEL. Well, I've said before, you know, that the President hasn't been well served in that staff operation. And it's up to him at this particular juncture, you know, to say, well, yes, I've made mistakes and they have made mistakes. And we can now make a fresh start, possibly.

Mr. WILL. Didn't someone allow—

Representative MICHEL. It's still his call ultimately.

Mr. WILL. Didn't someone allow, knowingly allow, the President to go out and say something they knew was false?

Representative MICHEL. Well, it's quite obvious.

Mr. DONALDSON. Well, we've been talking about people below the President. But really, this President is going to be saved or not on what the President knew, the famous Baker question, when did he know it. And there's precedent—President Gerald Ford, when questions about his pardon of Richard Nixon came up, came up to Capitol Hill and testified before the House Judiciary Committee. Would it be a good idea if President Reagan comes up and talks to these select committees when they get formed?

Representative MICHEL. Well, I don't know. That's a judgment call. He'd probably even by willing, if you just asked him point blank maybe to do that. I'm not altogether sure I'd want to subject my President to that kind of thing. But he has said that anything the committees would like to have, we're going to certainly come forward with it. I tell you, I see the striking contrast to Watergate. There's no bunker mentality at the White House, as far as I'm concerned, from the Presidency, as there was, I think, at the time of the Nixon affair. And that is different. And I don't think we ought to just——

Mr. DONALDSON. You ought to come down the press room sometimes, Mr. Michel. You might change your view of that.

Representative MICHEL. Well, I've been down there. And you folks are very probing.

Mr. DONALDSON. Well, Senator Baker, what about you? Do you think the President should make his testimony available in some way?

Mr. BAKER. I don't think so, really. You know, that's a bridge he'll have to cross if the circumstances warrant it. But I tell you what I really do think. I think that the President—the President needs to make sure that he is getting all the facts. I think your earlier question about people not—even now giving all the information is terribly relevant and terribly frightening. And I think this President has to make it clear that he's just mad as he can be that somebody, and maybe several people, are putting his whole administration and his lifetime record in public service in jeopardy.

Mr. WILL. Is he angry——

Mr. BRINKLEY. To protect their own necks.

Mr. WILL. Is he angry?

Mr. BAKER. I don't know.

Representative MICHEL. Howard and I have talked about that a little bit, because frankly, I've made some comment to the effect that both those critical mornings, I think, Monday and Tuesday, when we had some real let-your-hair-down meetings with the President, I think both mornings he kind of began with a little Irish story, you know. The general feeling, I don't feel as, him coming into the room as Howard, I think, would have probably felt, by golly now, I was let down, or this was wrong, and we're going to correct this baby. That wasn't his mental attitude.

Mr. DONALDSON. He hasn't said anything was wrong. He said mistakes were made in the execution of his policy which, again yesterday, he defended as being right and proper. Hasn't his anger been directed at his critics, the press, the sharks in the water and all of that?

Representative MICHEL. Well, I think at one moment the President maybe said something about the press that might have been uncharacteristic for him, frankly, from the point——

Mr. DONALDSON. Mr. Michel, let me ask you about the Secretary of State George Shultz apparently did in soliciting money from the Sultan of Brunei in order to fund the contras. Was that a proper action?

Representative MICHEL. Well, I know there's the letter of the law and the spirit of the law. But I think we've all—those of us who supported actions for the contras certainly made no mistake. If ever I was out on the public stump some place would say, well, if there's something available from private sources that is not in contravention of the law specifically with Federal funds, why, maybe some of that ought to be done to bridge the gap.

Mr. DONALDSON. So you think it was a proper action, is that it?

Representative MICHEL. Well, I don't have any real serious criticism of it myself.

Mr. BRINKLEY. Congressman Michel, Senator Baker, thank you.

[From the Daily News, Dec. 9, 1986]

COMMON SENSE SAYS LITTLE

(By William F. Buckley)

Sen. Fritz Hollings may know, by the time these words appear, the gravity of what he has done, but he ought not to underestimate it. The words that flashed out on radio and television, after a day's extended hearings with Vice Adm. John Poindexter and with former NSC adviser Robert McFarlane, were that the President of the United States "knew it all."

It wasn't until the following day that the press could report a slight amplification: Sen. Hollings was reporting not on the basis of what he had heard but on what was "common sense."

The reprimand by the chairman, Sen. David Durenberger, was fast and very sharp. The chairman rebuked his colleague in sharp tones: "Tell him he ought to be a member of the committee or get off because he has broken the ground rules of the committee."

But the damage was done.

Because there isn't very much of a dramatic nature that hangs on the proceedings save the answer to the question: Did President Reagan lie to the American people? Those who know Mr. Reagan are prepared to stake their own credibility on Mr. Reagan's truthfulness in his assertion of ignorance of the Iranian money that went to Nicaragua. All the rest—the arms sent to Iran, the independence of the NSC, the ignorance of the chief of staff—are complaints that have to do with judgment and with tables of organization.

To repair the latter, a respected three-man team has been convened to make recommendations. To acquit himself of the former, President Reagan will need to suffer to the extent that public opinion consolidates around the conclusion that his search for Iranian moderates was misconceived.

But on the matter of Mr. Reagan and the public, there is no compromising.

Sen. Hollings said that common sense was the basis of his conclusion in the matter of President Reagan. Well, common sense can hardly be defined by studying Sen. Hollings' activity. Coming out of a room surrounded by electronic devices to foreclose against penetration by outsiders, Mr. Hollings promptly advertised his conclusion the effect of which was to anticipate the judgment of the investigating body. And what makes it all especially perplexing is that the thing we are exploring is a departure from common sense.

Surely common sense would suggest that a President was informed of a transaction arguably illegal and in any event scandalous. But Mr. Reagan has made exactly that point, namely that the secret operation was kept even from him.

So Sen. Hollings on the one hand says that which is obvious—that common sense would suppose the President would know about so egregious a covert operation—and on the other hand Sen. Hollings urges the conviction that that which is common sense obviously is what prevailed. He is saying something that, stretched out on a syllogistic frame, would read something like: Proposition A: Three-quarters of the U.S. Pacific Fleet was at Pearl Harbor on Dec. 7, 1941. Proposition B: It would not be common sense for the commander in chief to put three-quarters of the U.S. fleet in Pearl Harbor at a time an enemy might attack. Therefore, the Japanese could not have attacked Pearl Harbor on Dec. 7.

Mr. Hollings has violated Senate committee rules, congressional etiquette and the ground rules of ethical behavior. It doesn't make common sense for him to have done such a thing.

U.S. SENATE,

Washington, DC, December 16, 1986.

WILLIAM F. BUCKLEY, Jr.,
Editor, National Review,
New York, NY.

DEAR MR. BUCKLEY: Your attack on me in the December 9 New York Daily News and elsewhere recalls Oscar Wilde's dictum on public debate. "If you can't answer a man's arguments, all is not lost. You can still call him vile names." You ignore the substance of my indictment of the President, opting to defend Mr. Reagan by blaming the media and impugning the character of his critics. This, of course, is the Pat "Stonewall" Buchanan school of presidential defense. It failed miserably 12 years ago, and it won't work this time around either.

Specifically, you accuse me of violating "Senate committee rules, congressional etiquette and the ground rules of ethical behavior." How does it violate either etiquette or ethics for an elected public official to give voice to what (according to every poll I've seen) the majority of Americans believe, i.e., that the President has yet to come forward with the full truth about his knowl-

edge of and involvement in the Irangate affair?

Interestingly enough, you and I are in fundamental agreement on the logic of Mr. Reagan's involvement. I concur completely with your statement that "Surely common sense would suggest that a President was informed of a transaction arguably illegal and in any event scandalous." From that point, however, we part company. You blithely embrace the President's plea of innocence by virtue of ignorance. I, as a former trial attorney, have retained a skeptical attitude and have urged a complete airing of the facts. Indeed, memories of Gulf of Tonkin and Watergate are too fresh to permit any other approach.

Furthermore, I categorically reject—and personally resent—your claim that I have violated committee rules by speaking my mind on the subject of Irangate. There is no comprehensive gag order restraining Intelligence Committee members, and, as you well know, Sen. DURENBERGER and others have become fixtures on the evening news and Sunday talk shows.

However, I would point out that during my two years on the Committee, I have been one of several Senators who steadfastly refuse to talk to the press about Committee proceedings—either immediately after Committee hearings or at any other time. I began intelligence work as a member of the Hoover Commission task force investigating the CIA and all other intelligence agencies of the federal government in 1953 and 1954. Over the intervening 33 years, I have never leaked or otherwise compromised classified information.

Ask your journalistic colleagues here on Capitol Hill. You will not find a single instance of my discussing Intelligence Committee proceedings or information with a member of the media. I have made it scrupulously, even pedantically, clear that my opinions regarding the President's involvement in the contra connection are based not on Committee testimony but rather on common sense and elementary deduction. In any case, I would remind you that Intelligence Committee testimony in recent days has mostly consisted of repetitions of "On advice of counsel, I respectfully plead the Fifth"—hardly anyone's idea of riveting or edifying fare.

Let me also point out several other inaccuracies in your rather slapdash column: You write that my statement to the effect that the President "knew it all" "flashed out on radio and television after a day's extended hearings with Vice Adm. John Poindexter and with former NSC adviser Robert McFarlane." First, there was nothing "extended" about the Poindexter hearing; he pleaded the Fifth several times, then promptly retreated. Second, the news reports resulted from my interview on the TODAY show and NPR on December 3. Poindexter and McFarlane didn't testify until December 4.

Senator Durenberger's "rebuke" was an emotional outburst in response to an exaggerated hypothetical question. Soon after his statement, I asked him what rule or ethics or reason would cause him to react so strongly. He replied that he had made the comment in response to a hypothetical question from a reporter.

I have not been playing this national tragedy for personal publicity or gain. Indeed, I have declined more than a dozen invitations to appear on talk shows like your own. I did appear, finally, on the Brinkley show on December 7, and it is obvious from the record that I wasn't "advertising" (to use your word). I simply stated that I wasn't going to go along with this charade of silence regarding the emperor's lack of clothes.

You hardly need be a member of the Intelligence Committee to realize that President Reagan created an environment in which aid to the contras—by hook or by crook—was a top priority. The vital question is not so much "What did he know and when did he know it" as "What did he give and when did he give it"—authority, that is.

The President's authority was either explicit or implied. Either way, no one can persuade me that Adm. Poindexter and company were buccaneers operating on their own. They were doing the President's bidding.

For the President, now, to shout "Police!," "Get the FBI," "Appoint a commission," and so on, is absurdly disingenuous. It's like the captain of the Love Boat expressing surprise and outrage that people are falling in love aboard his ship. It just won't wash. And that conclusion, Mr. Buckley, is just a matter of common sense.

Sincerely,

ERNEST B. HOLLINGS.

NATIONAL REVIEW;
New York, NY, December 29, 1986.

Hon. ERNEST HOLLINGS,
Senate Office Building,
Washington, DC.

DEAR FRITZ: Just got back from a week's vacation and saw your fustian communication. I am sorry about that rather extraordinary anomaly, namely that the fuss was about a broadcast you made the day before you heard testimony. That was not made clear in the two newspapers in Chicago I read the day I wrote the piece you object to, nor was it even hinted at that the rebuke by Senator Durenberger had to do with a hypothetical point. What it boils down to, it seems to me, is that the public conceive of you as a judge in a tribunal and for that reason expect judicious declarations from you. It amuses me that you resent this, because in a way I do too, having for years thought your candor one of your greatest charms. I'd be disappointed if Barry Goldwater ever became a judge—it would rob me of much of the fun in life. But I am not here to counsel you on how to do your duties. My counsel is only made publicly.

With cordial personal regards,

WM. F. BUCKLEY, Jr.

[From the New York Times, Dec. 14, 1986]

COME CLEAN, MR. PRESIDENT

(By Ernest F. Hollings)

WASHINGTON.—Like a grade B Hollywood remake, the arms-for-hostages deal is rapidly degenerating into President Reagan's Watergate. It recalls the adage that historical phenomena always happen twice—the first time as tragedy, the second time as farce.

The trouble is, nobody is laughing anymore. What started as a grade B remake has now evolved into a first class scandal. However, this crisis need not destroy the Administration.

Since taking office in 1981, Mr. Reagan has restored the Presidency to authority and pre-eminence. The American people have genuine affection for the President. They trust him. To maintain that high standing, Mr. Reagan must, as he himself has said, "fully inform" the nation about the environment he created in which this escapade was hatched.

No, I am not talking about cashiering Donald Regan or reining in the National Security Council. Those actions are necessary, but they fail to tackle the core problem: the mortal blow that has been dealt to the President's credibility and standing.

When all is said and done, Mr. Reagan is the "who" in all the hoopla surrounding this crisis. And the fact is that the vast majority of the American people do not believe the President is telling the full truth about his knowledge and involvement. As with Watergate 12 years ago, what hurts most is not the violation of laws but the wanton betrayal of trust.

The President's plea of ignorance stands on two increasingly wobbly legs. The first is the shield of "plausible deniability" for the President—the standard ingredient of any illegal covert operation. Unfortunately, as Senator Bob Dole has observed, not even Ripley of "Believe It or Not" could believe that Lieut. Col. Oliver L. North and Vice Adm. John M. Poindexter—schooled in obedience and loyal to the chain of command—acted without higher authority, indeed, without the highest authority.

The second line of the President's defense is the widespread impression that he is laid back and poorly informed about even the most important activities of his Administration. True, he may be indifferent to 95 percent of his Administration's initiatives, but he has engaged passionately in the remaining 5 percent. And at the top of that personal Reagan agenda are the contras and the Beirut hostages. It is inconceivable that Admiral Poindexter's daily briefings with Mr. Reagan would not include detailed updates on the President's pet project: assisting the contras.

The truth will out. The only question is whether it will be volunteered or extracted. The President has retreated to his bunker. Colonel North and Admiral Poindexter, two fine officers, have dutifully fallen on their swords by taking the Fifth Amendment to protect their Commander in Chief. But the rest of the White House is leaking like a colander.

Lesson No. 1 of freshman politics is that when you have damaging information that inevitably is going to come to light, you take the initiative and reveal it yourself with the appropriate "spin." Ignoring this dictum, the President has opted to let the truth leak out in a slow drip—a Chinese water torture is eroding his popularity and power.

Mr. Reagan can and must halt the slide. He cannot acknowledge "full responsibility" and call in the Federal Bureau of Investigation and special counsel to catch the criminal while at the same time giving farewell parties to the accused and calling them national heroes. He must lay bare the unvarnished facts about his Administration's dealings with Iran and the contras. This will prevent the paralysis of our Government and allow Mr. Reagan to move decisively to reconstitute and restore his Presidency. Who doubts that Congress and the American people would respond positively to such a decisive act of candor?

STATEMENT BY SENATOR STROM THURMOND REGARDING REMARKS MADE BY SENATOR ERNEST F. HOLLINGS ABOUT PRESIDENT REAGAN, DECEMBER 5, 1986

I was shocked and amazed by statements made earlier this week by my Democratic colleague, Senator Hollings, which strongly insinuate that the President has not been truthful about the details of the Iranian arms deal, and specifically about the diversion of funds to the Nicaraguan Contras.

After learning of Senator Hollings' statements, I contacted the Chairman of the Select Committee on Intelligence, Senator Durenberger, to determine if the Committee had reached that particular conclusion, and he informed me that it had not.

Furthermore, he told me there has not been any evidence thus far in the Intelligence Committee hearings to suggest that the President has not told the truth or had any involvement with or knowledge of the diversion of funds to the Contras.

In addition, he expressed his concern—and that of some of his colleagues on the Committee—about the basic unfairness and the inappropriate nature of the charge raised by my fellow South Carolina Senator.

Indeed, Senator Durenberger said he was so surprised by these remarks that he took the extraordinary step—one I cannot recall happening in my tenure here—of publicly suggesting that Senator Hollings consider withdrawing from the Intelligence Committee's review of this matter because his objectivity may have been compromised.

While I have always had high regard for Senator Hollings and a good working relationship with him, I simply could not allow his statements to go unchallenged. Frankly, I believe his statements have called into question his objectivity in this matter, but I think the issue of his continued participation in the Iran arms inquiry is something that is best resolved by himself and Senator Durenberger.

In addition, I am dismayed and deeply concerned, not only about what Senator Hollings has said, but the general circus atmosphere which has surrounded this entire episode.

In the 32 years I have served in the Senate, I have seen and been involved in special investigations of all kinds: independent counsels; Watergate; Billygate; Koreagate; Briefing Book-Gate; Vesco; Abscam; and a host of others. All of them had one similarity: Anyone willing to make outrageous statements before getting all of the facts was guaranteed time on the evening news.

The Iranian arms incident is no exception.

I did not come here to blindly defend the President of the United States. However, I think it is important to take into consideration the character and reputation of the person involved. In this case, we are talking about a man who has twice been elected president by overwhelming margins; one of the most popular presidents in this Nation's history; a man with a long and unblemished public service career; and an individual I know to have always been honest and forthright with the American people.

At the very least, and I mean the very least, President Reagan is entitled to a judgment based on the facts, not on innuendo or assumption.

As members of Congress—and this is especially true for those individuals participating in this investigation—we owe something very important to the American people who are watching our handling of this incident. We owe them a professional approach to our work. All of us want a full and complete accounting of what has transpired. Our inquiry, and the probe by the independent counsel, should be broad enough to involve all relevant facts and individuals.

However, our citizens do not want to see us run roughshod over peoples' rights in a zealous pursuit of headlines and political gamesmanship.

HOLLINGS RESPONDS TO THURMOND'S ATTEMPT TO DISCREDIT HIS VIEWS REGARDING IRANIAN ARMS DEAL

CHARLESTON, S.C.—Statement of Senator Ernest F. Hollings, D-S.C.:

"I am pleased to see in today's Washington Post that Senator David Durenberger, Chairman of the Senate Select Committee on Intelligence, agrees with my assessment of the current situation. He is quoted as saying, 'The country needs to put this behind it as soon as possible. The president is in the best position to do that at this point and time.' This is exactly what I stated in my news conference two days ago.

"My interest is to help the president and help the country. I stated in my news conference that President Reagan had the trust of the American people. He has my trust.

"The news media has constantly tried to have me call the president a liar. What I have said is that the president has not fully informed the American people.

"The bottom line is: did Vice Admiral John Poindexter and Lieutenant Colonel Oliver North act with presidential authority? I remain convinced that they had the authority, either directly or indirectly. No two people working in the White House on a Contra policy involving five departments of government and five or more countries would dare this without implied authority. The American people know this.

"On Wednesday, my views, time and again, were emphasized as those of a United States Senator from South Carolina, not as a member of the Intelligence Committee. I have never intimated any information about the work or testimony from the Intelligence Committee.

"I am only sorry to see my senior colleague, Senator Thurmond, in his zeal to discredit me, talk about evidence before the Intelligence Committee that was told to him by Chairman Durenberger. They are the ones violating the rules, but they do not seem to realize it."

[From U.S. News & World Report, Dec. 22, 1986]

THE INFORMER AND THE INFORMED

To cushion his fall on the way down, Ivan Boesky sold out the very people who helped him on the way up. He carried a secret wiretap on his person and his phone to entrap other insider traders and mitigate his own punishment. Wall Street and beyond condemns him for the lawbreaking; yet it loathes him for leading the authorities to other lawbreakers. The paradox lies in our simultaneous respect for law and revulsion at betrayal. Even before Judas Iscariot, the informer was universally despised.

Why then do we place people like Vice Adm. John Poindexter and Lt. Col. Oliver North in the position essentially of asking them to inform on others and to inform on themselves? The answer given is that it is in the national interest to resolve the current crisis over arms sales to Iran and the *contras* by having these officials reveal what they knew—but it is in the national interest also to get to the bottom of insider trading and stamp it out. The distaste for Boesky, it may be said arises from the spectacle of a man trying to save his own skin. Are Admiral Poindexter and Colonel North not simply doing the same thing when they take the Fifth Amendment on the ground that they do not want to incriminate themselves? No. The parallel is false. They may, for a start, be trying to save other people's skins. Secondly, self-interest is secondary here.

These men have been placed in an unfair position. For the first time in history, an active-duty admiral has taken the Fifth before a congressional committee. The nation is especially moved by the moral agony of Colonel North, who wants the truth to come out but is temporarily its self-interested obstructor.

Poindexter and North have devoted their entire careers to the service of the country. Their actions, unlike Boesky's, were undertaken not for personal gain but for public interest—or at least their perception of it. It is not only that they did what they believed was best for the country but clearly what they believed their Commander in Chief also chose to be in the national interest.

Even if Chief of Staff Donald Regan or President Reagan did not directly authorize the diversion of funds to the *contras*, who can doubt that this was clearly what they both wished? When Henry II asked, "Who will rid me of this troublesome priest?" it was not so much a question as an order.

So, in one form or another, the basic responsibility lies with the President and his chief of staff. It is not Poindexter and North who should be in the public glare. The President and his chief of staff should have said early on that they themselves took full responsibility for all the actions of their subordinates, known and unknown, and accepted all the consequences. Whatever was done was in the name of their policy. The spectacle of subordinate staff in the dock is demeaning to the office of President. The issue is essentially political, not criminal. If there has been violation of the law, it is violation of laws that really do not have sanctions. It's a technical violation that is fairly frequent. For example, the Congress has violated its own Gramm-Rudman law that also has no sanctions. The violation here is also only momentarily a violation of congressional will: Soon after the Swiss-bank funds were diverted, Congress itself voted $100 million for the *contras*. And there is substantial precedent for presidential initiative. Who can forget the lend-lease policy of President Roosevelt to help England that technically skirted the legal requirements and the will of Congress? Who will forget Jefferson's purchase of Louisiana, contrary to American law? The policies that lie at the root of the current crisis where those of establishing ties to Iran by arms sales and helping the *contras*. Such policies may have been unwise but were essentially part of normal political controversy.

What has become the central issue is the unwillingness of the President to accept full political responsibility, to acknowledge his mistakes and to recognize that to restore public confidence he must make wholesale changes to his staff beginning with Donald Regan. The moment may very well have passed when the President could have stayed out front on this issue and not suffered the political damage. Now, every day of confusion, denial and leak is a day of sad subtraction from a Presidency of significant achievement.

WELCOME TO SENATOR BREAUX

Mr. JOHNSTON. Mr. President, it is with great pleasure that I welcome to this Chamber my new colleague from Louisiana, JOHN BREAUX.

JOHN's election to the Senate in November followed a long and difficult

campaign, against tremendous odds. But, most importantly, it was always a positive, respectable campaign. His victory should tell us a great deal, not just about JOHN BREAUX's qualifications as a U.S. Senator, but about his high regard for the political process

Elected to the House of Representatives in 1972 and, until recently, serving as dean of the Louisiana delegation, JOHN has proven himself to be an outstanding legislator. I have no doubt that each of you will come to appreciate his skills and talents as I have through the close personal and professional relationship we have shared over the years.

I know that my State of Louisiana and the Nation will benefit greatly by JOHN's service here in the Senate. I am delighted to welcome him as a friend and colleague and look forward to working with him in the years ahead.

Mr. WARNER. Mr. President, on December 10, 1986, a distinguished colleague was honored at the Department of Defense in one of the most impressive and moving ceremonies I have ever witnessed.

I am referring to the Armed Forces salute to Senator Barry Goldwater on the eve of his retirement from this great body.

Senator Goldwater served the American people faithfully and well for over five decades—three of these as a U.S. Senator.

His wise counsel and unparalleled common sense benefited virtually every Member now serving in the Senate.

His record of selfless dedication to the common good—to America—reflects the very best that this Nation has to offer.

He was a friend, a truly gentle man, and a patriot.

I ask unanimous consent that the ceremony transcript be printed in the RECORD.

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

ARMED FORCES SALUTE TO SENATOR BARRY M. GOLDWATER

PRESENTATION OF THE DEPARTMENT OF DEFENSE MEDAL FOR DISTINGUISHED PUBLIC SERVICE

To Barry M. Goldwater in recognition of thirty years of exemplary service to the American people and the security of the United States of America.

Beginning with the Eighty-Third Congress in 1953 and extending to the One Hundredth Congress in 1987, Senator Goldwater's exceptional leadership as an active member of the United States Senate, including the Chairmanship of the Senate Committee on Armed Services and oversight of its Subcommittees, has been instrumental in preserving the national security of the United States. Through his dedicated efforts for a strong national defense and his tempered and prudent stewardship of materiel and fiscal resources, the United States has maintained a strong and effective deterrent force. He has consistently worked to facilitate Congressional approval of Defense programs that are critical to the long term security of the United States, while simultaneously ensuring that approved programs have contributed maximum deterrent capability for the resources invested.

In his service under seven Presidents, he has always placed his determination for a strong America above partisan political considerations. His distinguished contributions are in the highest tradition of service to the Nation and deserve the lasting gratitude of all its citizens.

As a tribute to his outstanding accomplishments, and on behalf of the men and women—both military and civilian—of the Department of Defense, it is with great pleasure that I present Senator Barry Morris Goldwater the Department of Defense Medal for Distinguished Public Service.

CASPAR W. WEINBERGER,
Secretary of Defense.

PRESENTATION OF THE ARMY DECORATION OF DISTINGUISHED CIVILIAN SERVICE AWARD

Senator Barry M. Goldwater is awarded the decoration for distinguished civilian service.

Citation: The honorable Barry M. Goldwater is cited for his dedicated service both as a member and chairman of the Senate Armed Services Committee and his extraordinary contributions to the accomplishments of the United States Army. During his stewardship as chairman, Senator Goldwater played a significant role in the revitalization and modernization of the Army, and as a result today's Army is better able to carry out its mission than ever before. A strong supporter of conventional forces, he has advocated many of the Army's vital programs including enhancements for Army aviation, and communications, particularly mobile subscriber equipment, defensive chemical measures and binary chemicals, and the Bradley fighting vehicle. His support of the Army personnel programs and the enhancement of reserve components has placed the future of the Army on the path of continued improvement and excellence. Finally, as a watchdog on pricing of contracts and a key supporter of multiyear contracts, he has helped to ensure that the Nation received the most possible for its defense dollars. Senator Goldwater has established himself as a true American patriot. His support of the United States Army and selfless service to the Nation stand as a worthy example for all Americans to emulate.

JOHN O. MARSH. JR.,
Secretary of the Army.

PRESENTATION OF THE NAVY DISTINGUISHED PUBLIC SERVICE AWARD

In appreciation of Distinguished Public Service to the Department of the Navy The Secretary of the Navy takes pleasure in presenting the distinguished public service award to Senator Barry M. Goldwater for services set forth in the following citation: For outstanding service and achievement in a position of great responsibility to the United States Government. Serving as a member of Congress for over thirty-five years, Senator Goldwater was an unswerving proponent of a strong Navy and national defense. His personal dedication, strong commitment to excellence, and visionary leadership were instrumental in the rebuilding of the Navy into a modern naval force capable of protecting U.S. interests around the world. As Chairman of the Senate Armed Forces Committee, his professionalism and leadership were inspiring to military and civilian alike, fostering a spirit of cooperation at all levels of Armed Services. His astute knowledge of maritime and national security affairs earned him a reputation in world, national defense, and Navy forums. The nation owes a debt of gratitude to Senator Goldwater. Senator Goldwater's singular distinctive accomplishments and strong leadership will influence military strategy and readiness well into the century.

JOHN F. LEHMAN, Jr.,
Secretary of the Navy.

PRESENTATION OF THE AIR FORCE DECORATION FOR EXCEPTIONAL CIVILIAN SERVICE AWARD

Department of the Air Force presents the decoration for exceptional civilian service to Senator Barry M. Goldwater.

Citation: In recognition of thirty years of distinguished service in the United States Senate during which he was an ardent supporter of the United States Air Force from its inception to the present day. Senator Goldwater's support and direction of major weapon systems from the B-36 bomber through the B-1 bomber and the F-100 fighter to the F-16 fighter have ensured the ongoing modernization of the Air Force. His visionary accomplishments have charted the course for the growth of the United States Air Force from infancy to space. Senator Goldwater has been a staunch supporter of people programs resulting in the highest quality personnel in the United States Air Force. For these accomplishments he has earned the gratitude, respect, and admiration of every individual who has served in the United States Air Force.

E.C. ALDRIDGE, Jr.,
Secretary of the Air Force

REMARKS BY ADM. WILLIAM J. CROWE, JR. CHAIRMAN, JOINT CHIEFS OF STAFF

Chairman Goldwater, ladies and gentlemen, it is a great pleasure to welcome you to these ceremonies as we pay tribute to a man who has been one of this nation's most prominent citizens and leaders for more than three decades, Senator Barry Goldwater. Every American owes this strong advocate for national defense a great debt of gratitude. In turn, Mr. Chairman, we in the Pentagon—and I speak for all the U.S. military when I say that—feel privileged to have this opportunity to show our appreciation today, as you prepare for what some have called "retirement", but I suspect it will be a rather active retirement.

Not long ago, a report in the local media quoted Senator Goldwater to the effect that the new DoD reorganization law bearing his name is, in his words, "The only thing I ever did that was worth a damn." Now, I certainly don't want to quarrel with the Senator here, but I would like to grasp this opportunity to present a different viewpoint. Even aside from any judgments that history may render concerning that legislation, I would argue that Barry Goldwater's legacy to this nation is much larger, much broader, and much deeper than that particular assessment admits.

Especially for those who have devoted their professional lives to the cause of national defense, two dimensions of his career in Washington stand out with particular clarity. The first is the role he played in the resurrection of the American spirit after our experience in Vietnam and the debates and doubts of the 1970s. Many of you remember those rather depressing times well: in some

quarters, our armed services were ridiculed—and even reviled; public cynicism about leadership and about the process of national governance was widespread; the country's international vision was clouded, and its defenses fell into disrepair.

Through all of that turmoil and confusion, Barry Goldwater stood on high ground as a standard-bearer for patriotism, national service, and for dedication. He kept the faith of our founders, and with clear-eyed focus on national purposes and needs, he marked the place for his fellow Americans to return to after years of disillusionment, disappointment, and strategic wandering. The restoration of strength and stature this nation has achieved in the 1980s rests, ultimately, on that solid foundation. Indeed, it could not have been achieved—and cannot be maintained—without it.

I would suggest that Senator Goldwater's second large-scale contribution has to do with his continuing example of selfless, straightshooting service to his country in the best Arizona example. First and always, his animating concern has been a concept of the national interest, not something smaller. His career has provided an abiding lesson for all citizens, for all those who aspire to civic leadership, and especially for Americans who now wear the uniform of our armed forces in times that are better and safer largely because of his efforts.

A quarter century ago, just as he was rising to national prominence, Barry Goldwater did something that is now the rage in Washington—he wrote a book. Its title featured a significant word, "conscience"—that has always been important to him, although we don't see it so much in writings these days. Twenty years later, he wrote another book entitled, "With No Apologies". It is an inspiring testament to Barry Goldwater—and to this country—that a man who came to Washington dedicated to abiding principles, and who never shrank from any contest, from any battle, can now leave justifiably confident of his fidelity to those core values. So much for the cynics, carpers, and hangers-back.

As we go forward in the effort to enhance this Republic's defenses, I know that we will continue to hear from Barry Goldwater. He will always prod us to do better. And, just as importantly, we can be sure that he will keep the need for national strength in the forefront of the public mind that has tended—all too often in our history—to overlook that inescapable fact of international life.

I would submit that keeping America strong is doing the right thing, and that has certainly been one of the premises of Barry Goldwater's life. I am confident that he will continue to be in the vanguard of that effort in retirement just as he has been in the vanguard of that effort as an Airman, as a Senator, and as Chairman of the Senate Armed Services Committee.

With that, and before we give the Senator himself a chance to make some typically modest denials of these accolades, I am very pleased to turn the microphone to a man who has led the massive turnaround of our military fortunes which Barry Goldwater has helped make possible, our Secretary of Defense, Mr. Caspar Weinberger.

REMARKS BY THE HONORABLE CASPAR W. WEINBERGER, SECRETARY OF DEFENSE

Secretary Weinberger, Secretary Harrington and distinguished members of the Senate and the House, it is a very great honor for me to be a part of this ceremony today and to share with you a few thoughts on one or two other aspects of Senator Goldwater's career that complement and supplement the very fine but not in any way flattering estimate that Admiral Crowe has just given.

One thing we've always known about Senator Goldwater is where he stands. Although he and I have never really disagreed on anything, and I think back today to a time about 22 years ago when I had the great privilege of introducing him again at a somewhat smaller and less colorful gathering in San Francisco. The same things that I said at that time were perfectly applicable now because he has never changed and he has been unswerving in his devotion to the ideals that so appealed to me then.

He's been blunt, he's been straight forward and he's very far from shallow, he is very deep. These are probably the very best ways to describe him—that deep honesty, that bluntness and that straight forwardness. All too often, I've found, and I know he has, that politics breeds a blandness or an aversion to holding your ground on an issue. It's easier that way—if you get back into the middle where everybody is. That's never been the Senator's problem nor his way. We've needed men like him in the Senate, and in the country, and we've been very fortunate to have had him.

Few public figures of our time have such a reputation for persistent and painstaking dedication to the common good. I really have to say today that extremism in praise of Barry Goldwater is no vice because it is true. Barry Goldwater has the reputation of being a prophet—a hard thing to sustain and he's done it over all of these years.

When he entered the Senate, and when he entered the national arena from the Senate in the 1960s, his ideas were said to be extreme because at that time everyone knew that government spending was the only way to cure poverty and everyone knew that government regulation was the only way to control the marketplace and everyone knew that local governments were not qualified to run their own affairs—everyone that is except Barry Goldwater and a very few others—one of whom happens to be the President of the United States.

What Barry Goldwater taught us in the early 60s is now common opinion. He has had that enormously gratifying thing happen, he's lived to see the prophesies come true and the opinions he espoused now held as part of a common knowledge.

The unorthodox opinions of the conscience of American conservatism have now taken root and they're embraced by all except the most unreconstructed liberal. We've all learned from the Senator, indeed America has been his classroom now for over 30 years. There are a few slow learners out there, of course, but they're far outnumbered by those who have been touched by the consistently perceptive and vigorously argued ideas of Barry Goldwater.

I think there are three lessons that stand out among the many he has taught us. They certainly stand out for me. First, do not get involved in wars you do not intend to win. Secondly, government regulation of our lives easily and quickly becomes the regimentation of freedom. And third, despite all her faults and shortcomings, it is perfectly all right to love America.

The Senator recognized far earlier than most the great potential damage to democracies that engage in drawn-out conflicts in which there is no prospect of victory. Barry Goldwater was right about the war in Vietnam. We began by questioning that war—we ended by questioning ourselves.

Clear goals and a means to achieve those goals must guide the use of force by this nation. Our big problem was that we didn't listen well enough to the Senator. Long before it was popular, Barry Goldwater was telling us that the best way to build a strong economy was simply to leave people alone. Let the entrepreneur experiment, let the free thinker innovate, let the risk taker take a chance. And if government would only allow the natural American spirit of enterprise the room to breathe, the economic engine of freedom would know no bounds.

For many years the self-doubts that were spawned by the events of the late 1960s, as Adm. Crowe has said, drove patriotism out of our homes and replaced it with nihilistic whinings. All we really had to do was to listen and to learn from Senator Goldwater. Yes, America could make mistakes, but even our errors stem from our desire to do good. If we search the volumes of world history, we'll discover that this great sprawling republic of ours is the freest, and the most prosperous and the strongest nation that the world has ever known.

Barry Goldwater knew this when so many wished to doubt. Barry Goldwater knew it when so many turned their backs on America. The debt that we owe to him, I think, cannot be measured in the legislation he has written, or in the speeches he's given, or even in the lessons he's taught. Rather, we owe him thanks for simply telling us the truth as he saw it; for being the kind of person we would wish our children and our grandchildren to be—honest, wise and patriotic in the finest sense of the term.

Ladies and gentlemen, I have had many privileges and honors since I took this post, none exceeds the one I feel now as I present to you, Senator Barry Goldwater.

REMARKS BY THE HONORABLE BARRY M. GOLDWATER, UNITED STATES SENATOR

Secretary Weinberger, Admiral Crowe, distinguished leaders of the Armed Services, my friends from the House and Senate and my staff, my brothers in uniform, you know this is one of those days that I should have listened to my mother and stayed in bed. Because you stand up here and listen to all these nice things said about you and you don't know what the hell to say. I will say to the Admiral, however, that when that piece of legislation was passed we didn't expect to come over here today and find it all accomplished. And you wonder what I am going to be doing in the years ahead, I will be sort of like that bulldog in the Marines. I will be watching you, and if you get out of line a little bit here and there, we will try and do something to help you out.

As I stand here today, I think back over 60 years when I first put on a uniform in a military school and had the rare privilege of having as an instructor a Major later to become General Sandy Patch, who taught me about the honor of wearing the uniform, and being forever prideful of it. And I have never forgotten it.

I might remind all of you and all my colleagues in the Congress that when we stand up and place our hand on the Bible, raise the other hand, the oath we take is to defend the Constitution of the United States against all enemies foreign and domestic. I have often reminded my friends that that does not mean the Constitution of Arizona or the Constitution of Nebraska or

the Constitution or any other state or any other country. It means our Constitution.

The document that made it possible to establish a government to protect those freedoms that were given to us, or recognized as a gift by God in the Declaration of Independence. That is the primary duty of every man who serves in the Congress. It is not what he can do for his state or his back yard, it is what he can do about his own country. And I maintain through years of experience, years of association with men that I can see sitting around here for whom I have the greatest respect, that the way to stay at peace in this world is to have a force so competent, so skilled and so strong that no other country or combination of countries will ever dare do anything to upset us.

I am proud to stand here today in the presence of the Secretaries, the commanding Admirals and Generals in front of all you gentlemen in uniform, and say that never in my life have I known such a high quality of enlisted men and officers as we have now. And I think I can promise you under the new Congress with the leadership that you will have in the Senate, and I hope in the House, a continuation of the efforts to keep you strong and to keep you modern.

I love those damned things but they ought to quit for a while (aircraft overhead).

I don't know. . . . You know long before they built that nasty place over there, this used to be the landing strip, and the first time that I ever landed in Washington I landed here. But they make a lot of noise.

I don't know if I can ever say thank you for this; I'll go to bed tonight thinking, God Almighty, why didn't you say this or say that, and I will go home and dream about it, tell lies to my grandchildren about it. But it is the most memorable day of my life, and to all of you that are responsible for it—starting with Cappy, my old friend who damned near beat me in California—that would have been a blessing.

I just want to say thank you from the bottom of my heart, and to assure you that when you remember the words of George Washington, that all Americans owe service, that you will live that thought, with that thought in your life forever. Not necessarily service in uniform, but I think of the old Biblical instruction, "Do unto others as you would have them do unto you." And that is what you are doing. You are helping to keep this America strong and safe, and we owe you our thanks and in return we want to do our own service. I thank you and I salute you.

JOE C. MORRIS ASSUMES CHAIRMANSHIP OF U.S. LEAGUE OF SAVINGS INSTITUTIONS

Mr. DOLE. Mr. President, I rise today to invite my colleagues to join me in congratulating Joe C. Morris of Emporia, KS, on the occasion of his assuming the chairmanship of the U.S. League of Savings Institutions at their 94th annual convention held in San Francisco last November. The U.S. League, with more than 3,400 savings and loan associations and savings banks as members, is the primary trade organization serving the $1.1 trillion savings institutions business.

Joe Morris is chairman of Western Financial Corp. and president of its sole subsidiary, Columbia Savings Association of Emporia, a federally chartered institution with 15 offices and assets of $475 million. During his 14 years as chief executive officer of Columbia Savings Association in Emporia, Joe has been deeply involved in savings institutions matters at both the State and national levels. He has served in numerous capacities with the U.S. League, including that of vice chairman, and has served the Kansas League of Savings Institutions as its chairman as well as a director.

Despite his active business schedule, Joe Morris has always found time to serve his community. He has served two terms on the Emporia Board of Education and is a member of a special presidential advisory committee at Emporia State University. In addition, he has served as director of Emporia Enterprises, a group formed to encourage industrial development and foster economic growth.

Joe Morris is an honors graduate of Kansas University, where he received the Alpha Kappa Psi scholarship key for being the highest ranking senior in the university's school of business. In 1981, the Kansas Kiwanis Foundation honored Joe, his wife, Susan, and their three sons as Kansas Family of the Year.

We Kansans are proud of Joe Morris and his long list of accomplishments, Mr. President, and we wish him every success during his 1-year term as chairman of the U.S. League of Savings Institutions.

THE TAX TREATMENT OF STUDENT LOAN INTEREST

Mr. KERRY. Mr. President, one of the most significant accomplishments of the 99th Congress was the enactment of a sweeping tax reform measure, H.R. 3838. I supported that measure, Mr. President, along with a majority of my colleagues from both sides of the aisle, because the tax bill represented genuine reform. The bill closed unfair loopholes, eliminated tax shelters and other mechanisms which were distorting investment patterns and encouraging tax avoidance, and most importantly, Mr. President, the tax bill reduced the burden of taxation on ordinary working Americans, including some 6 million of the working poor who will be eliminated from the tax rolls entirely.

But no tax bill has ever been perfect, and H.R. 3838 was no exception. I, along with many of my colleagues, cited a number of objections to various parts of the bill last year. As I stated during the debate on final passage of the bill last September:

> One change that I believe is both unfair and unwise is the elimination of the tax deductible treatment of interest on student loans. This change is applied retroactively. Changing the rules of the game in mid-play is never fair, but it is particularly contemptuous when the victims are recent graduates with small incomes and substantial expenses and have come from poor and working-class families without the means to finance higher education without loans.
>
> What makes this change unwise as well as unfair is that it will add sharply to the cost of higher education and deny many gifted and able students the opportunity to achieve their potential and make their greatest contributions to our society.

Mr. President, it is urgent that we immediately address this problem during 1987, the first transition year to the new Tax Code.

In considering the tax treatment student loans, and the increased burden on borrowers these changes will mean, we should consider carefully the findings of a report released last week by the Joint Economic Committee. It noted that during the past decade there has been a quintupling of annual student loan volume, and that real indebtedness levels, after adjusting for inflation, are significantly higher than they were 10 or 15 years ago. A 1984 study of the cumulative debt of seniors at 22 private 4-year colleges and universities found that 43 percent of the students were graduating with over $7,500 in loans. A full 6 percent of the seniors were leaving school with debts exceeding $12,500.

Of even greater concern is the finding that student loans have evolved from the former role as a convenience for the middle class, and "are now used by many students from lower income families as well."

The report notes that these higher loan levels raise a number of questions about the impact on individual well-being. A student graduating with $10,000 in debt and a job paying $18,000 a year will have loan payments of nearly 8 percent of pretax income in the first year. When we consider the growing cost of housing, and of other expenses associated with getting started in life, it becomes very clear why some educators have asked what the long-term effect of student borrowing will be on career choices, and even more fundamental decisions about marriage, family size and so on.

Is it fair or wise for the Congress of the United States to make this situation worse by retroactively increasing the real cost of loan repayment by eliminating interest deductions? I believe that clearly, it is not.

In my mind, there is no question about whether we should amend the recent tax reform bill to allow the continued deduction of student loan interest; there are however, some serious questions about the fairest and most cost-effective way for us to do so.

If, for example, we were to allow any student borrower to deduct any and all interest on educational loans, we would create a clear incentive for more affluent students to pay cash for consumer goods, automobiles, and the like—and to borrow money to pay for

school. This would not only undermine the provisions in tax reform which disallow the deduction for consumer interest; it would also put an added strain on the capital resources available for student loan financing. Clearly, we have to explore all available options for limiting student loan interest deductions to those students who borrow out of necessity.

Mr. President, I am committed to working with the Finance Committee and any of my colleagues who share my concern with this problem to find an equitable solution. I am currently discussing this issue with educators, student financial aid analysts, tax specialists and others. In the next several weeks I plan to propose legislation to address this problem.

SELECT COMMITTEE RESOLUTION

Mr. KERRY. Mr. President, I want to express my strong support for the resolution offered by the distinguished majority leader which would create a select committee to investigate any potential wrong-doing associated with the sale of arms to Iran and the diversion of profits from those sales to the Contras.

It is regrettable that the Senate is compelled to create such a committee in an effort to get at the truth in this matter. But it is essential that we do so if we are to exercise those responsibilities conferred upon us by the Constitution we are all sworn to uphold. We are not dealing just with the issue of possible wrong-doing on the part of present or former officials of this Government. We are dealing with the most fundamental underpinning of our great democracy—that of the rule of law.

Earlier today, during the swearing in ceremonies held for 34 of our colleagues, I was reminded of the unique responsibilities demanded of each and every one of us in this body. In our oath of office, we pledge ourselves to defend the Constitution of this great Nation from enemies foreign and domestic.

There has been considerable concern expressed that, by launching this investigation, we may be crippling yet another President—that it is the office of the Presidency itself which is at stake. I share that concern. But our paramount responsibility—or allegiance if you will—is to the Constitution representing the people—not to the President. That is what is unique about our particular form of democracy.

Our Founding Fathers enshrined, within the Constitution of the United States, the separation of powers among the three branches of our Government. In so doing, an intricate system of checks and balances between and among the three branches was also carefully crafted.

As Mr. Justice Brandeis reminded us in his dissenting opinion in Myers against United States in 1926:

> The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency, but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

Mr. President, we are creating a select committee because there occurred a very serious breakdown in the foreign policy decisionmaking processes of our Government. What is even worse, is that the accountability in our system, that our Founding Fathers were so intent on constructing, has now been jeopardized. We are not dealing with just a foreign policy disaster. We are dealing with issues which are at the core of our democratic system. The focus of the select committee should be as broad as possible. By so doing, the Senate will be heeding the warning of that distinguished Justice, Felix Frankfurter, who in a concurring opinion in the 1952 case of Youngstown Co. against Sawyer observed:

> The experience through which the world has passed in our own day has made vivid the realization that the framers of our Constitution were not inexperienced doctrinaires. These longheaded statesmen had no illusion that our people enjoyed biological or psychological or sociological immunities from the hazards of concentrated power . . . The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most distinterested assertion of authority.

In conclusion, Mr. President, it is our constitutional obligation that we are being called upon to carry out. This is not an investigation into wrongdoing. This is an exercise to reinforce, once again, that we are a nation of laws and not of men—that we are a nation committed to the spirit and intent of that document so carefuly written by our Founding Fathers and which, this year, we will celebrate its 200th anniversary. And as we launch this inquiry, I submit that far from weakening a President or the Office of the Presidency, we will be strengthening our constitutional democracy in the manner envisioned by our Founding Fathers.

ACID RAIN: A NATIONAL PROBLEM

Mr. KERRY. Mr. President, for years, those of us from the Northeast section of the country have been talking about the damage that acid rain has done to our lakes and streams, our forests, our historical structures and the health of our citizens. But perhaps a key point has been missed in explaining the problem. A United Press International wire story in yesterday's Washington Post demonstrates that acid rain is starting to also hit our centers of commerce and our local economies all across this Nation. It is now clear that it is not just the fish and wildlife or the forests of our Northeast States, but the economic strength in places as far away as the State of Florida. When we begin to address this issue in this session, we will have to consider all of these important factors and then enact a strong Acid Rain Control Program.

I ask unanimous consent that the article from Monday's Washington Post be included in the RECORD at this time.

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

[From the Washington Post, Jan. 5, 1987]

FLORIDA PORT LOSES BMW'S BUSINESS OVER ACID RAIN

JACKSONVILLE, Jan. 4.—BMW has stopped shipping its luxury cars through the Port of Jacksonville because acid rain ruined the cars' paint, and other foreign auto makers are considering similar action because of pollution at the port, it was reported today.

Twenty foreign auto makers send about 565,000 cars a year to the United States through Jacksonville, according to the port authority.

BMW of North America Inc. halted its shipments after a summer shower Aug. 8 left the paint on 2,000 high-priced cars pocked and scarred. The acid rain shower, the worst of 11 recorded last year at the port, dissolved the paint on some cars down to the metal.

Other foreign auto makers have threatened to pull out because of the pollution, The Orlando Sentinel said, and the city has established a committee to meet the problem.

Acid rain is formed when sulfur dioxide, usually from industrial emissions, mixes with water droplets in the atmosphere to produce corrosive precipitation.

The Select Committee on Port Related Emissions was given a Jan. 13 deadline to determine the source of the pollution and develop a preliminary solution that "we can go to the importers with," committee Chairman Robert J. Gray said.

Gray said steamship emissions may be to blame, but that has not been proved. The city cited one steamship company and a paper manufacturer, but both firms have contested the actions, which call for a maximum fine of $500.

ROUTINE MORNING BUSINESS

REPORT ON CERTAIN BUDGET RESCISSIONS AND DEFERRALS—MESSAGE FROM THE PRESIDENT—PM-1

The PRESIDING OFFICER laid before the Senate a message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30,

1975, was referred jointly to the Committee on Appropriations, the Committee on Armed Services, the Committee on the Budget, the Committee on Commerce, Science, and Transportation, and the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, including Section 1014, I herewith report seven new deferrals of budget authority totaling $5,017,441,000 and four revised deferrals of budget authority now totaling $5,131,425,194.

The deferrals affect accounts in Funds Appropriated to the President, and the Departments of Defense-Military, Health and Human Services, and Transportation.

The details of these deferrals are contained in the attached report.

RONALD REAGAN.

THE WHITE HOUSE, *December 15, 1986.*

BUDGET RESCISSIONS AND DEFERRALS—MESSAGE FROM THE PRESIDENT—PM-2

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Agriculture, Nutrition, and Forestry, the Committee on Appropriations, the Committee on the Budget, the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, the Committee on Finance, the Committee on Foreign Relations, the Committee on Governmental Affairs, the Committee on the Judiciary, the Committee on Labor and Human Resources, and the Committee on Veterans' Affairs:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, including Section 1014, I herewith report 73 new rescission proposals totaling $5,839,301,314, three new deferrals of budget authority totaling $28,716,462, and three revised deferrals of budget authority now totaling $34,850,024.

The rescissions affect programs in the Departments of Agriculture, Commerce, Defense-Military, Defense-Civil, Education, Energy, Interior, Justice, Labor, and Treasury, the Environmental Protection Agency, the National Aeronautics and Space Administration, the Veterans Administration, the Appalachian Regional Commission, the National Endowment for the Humanities, and the Selective Service System.

The deferrals affect programs in the Departments of Defense-Civil, Energy, Interior, and State.

The details of these rescission proposals and deferrals are contained in the attached report.

RONALD REAGAN.

THE WHITE HOUSE, *January 5, 1987.*

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that he had approved and signed the following bills and joint resolutions:

October 16, 1986:

S. 426. An act to amend the Federal Power Act to provide for more protection to electric consumers.

S. 2062. An act to designate the Federal Building and United States Courthouse to be constructed and located in Newark, New Jersey, as the "Martin Luther King, Jr. Federal Building and United States Courthouse".

S. 2069. An act to make certain amendments to the Job Training Partnership Act.

S. 2788. An act to designate the Federal building located in San Diego, California, as the "Jacob Weinberger Federal Building".

S. 2884. An act to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor.

S.J. Res. 280. Joint resolution designating the month of November 1986 as "National Alzheimer's Disease Month".

S.J. Res. 385. Joint resolution to designate October 23, 1986, as "National Hungarian Freedom Fighters Day".

S.J. Res. 395. Joint resolution to designate the period October 1, 1986, through September 30, 1987, as "National Institutes of Health Centennial Year".

On October 17, 1986:

S. 1965. An act to reauthorize and revise the Higher Education Act of 1965, and for other purposes.

On October 20, 1986:

S. 816. An act to establish the Pine Ridge National Recreation Area and Soldier Creek Wilderness in the State of Nebraska, and for other purposes.

On October 21, 1986:

S. 2048. An act to encourage international efforts to designate the shipwreck of the R.M.S. Titanic as an international maritime memorial and to provide for reasonable research, exploration, and, if appropriate, salvage activities with respect to the shipwreck.

On October 22, 1986:

S. 1124. An act to amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes.

S. 2266. An act to establish a ski area permit system on national forest lands, and for other purposes.

S.J. Res. 169. Joint resolution to commemorate the bicentennial anniversary of the first patent and the first copyright laws.

S.J. Res. 299. Joint resolution to designate the week of December 7, 1986, through December 13, 1986, as "National Alopecia Areata Awareness Week".

S.J. Res. 304. Joint resolution to designate the week of November 16, 1986, through November 22, 1986, as "National Arts Week".

S.J. Res. 306. Joint resolution to designate the week beginning November 23, 1986, as "National Adoption Week".

S.J. Res. 311. Joint resolution designating the week beginning November 9, 1986, as "National Women Veterans Recognition Week".

S.J. Res. 396. Joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week".

On October 24, 1986:

S. 1917. An act to promote immunization and oral rehydration in developing countries, to promote democracy in Haiti, to protect tropical and biological diversity in developing countries, to authorize increased funding for the Child Survival Fund and international narcotics control assistance, and for other purposes.

On October 27, 1986:

S. 197. An act for the relief of Elga Bouilliant-Linet.

S. 1082. An act granting the consent of Congress to the Arkansas-Mississippi Great River Bridge Construction Compact.

S. 1352. To enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes.

S. 1562. An act to amend title 31, United States Code, with respect to the fraudulent use of public property or money.

S. 1895. An act for the relief of Marlboro County General Hospital Charity, of Bennettsville, South Carolina.

S. 2129. An act to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes.

S. 2320. An act to amend an act to add certain lands on the Island of Hawaii to Hawaii Volcanoes National Park, and for other purposes.

S. 2370. An act to authorize the Francis Scott Key Park Foundation, Inc. to erect a memorial in the District of Columbia.

S. 2506. An act to establish a Great Basin National Park in the State of Nevada, and for other purposes.

S. 2750. An act to establish a property tax fund for the Houlton Band of Maliseet Indians in furtherance of the Maine Indians Claims Settlement Act of 1980, and for other purposes.

S. 2914. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act.

S.J. Res. 232. Joint resolution to designate October 6, 1986, through October 10, 1986, as "National Social Studies Week".

S.J. Res. 308. Joint resolution to designate March 25, 1987, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".

S.J. Res. 322. Joint resolution to designate December 7, 1986, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor.

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week".

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week".

S.J. Res. 392. Joint resolution to designate the month of December 1986, as "Made in America Month".

S.J. Res. 407. Joint resolution designating November 12, 1986, as "Salute to School Volunteers Day".

S.J. Res. 410. Joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week".

S.J. Res. 414. Joint resolution to designate March 16, 1987, as "Freedom of Information Day".

S.J. Res. 418. Joint resolution to designate February 4, 1987, as "National Women in Sports Day".

S.J. Res. 422. Joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

October 28, 1986:

S. 209. An act to amend section 3718 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States.

S. 475. An act to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred.

S.J. Res. 367. Joint resolution to designate October 23, 1986, as "National Kidney Program Day".

November 3, 1986:

S. 2948. An act to authorize the President to promote posthumously the late Lieutenant Colonel Ellison S. Onizuka to the grade of Colonel.

November 6, 1986:

S. 386. An act to confirm a conveyance of certain real property by the Southern Pacific Transportation Company to Ernest Pritchett and his wife, Dianna Pritchett, and for other purposes.

S. 511. An act to change the name of the Loxahatchee National Wildlife Refuge, Florida, to the Arthur R. Marshall Loxahatchee National Wildlife Refuge.

S. 1200. An act to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes.

S. 1230. An act to amend the patent laws implementing the Patent Cooperation Treaty.

S. 1311. An act to authorize the Board of Regents of the Smithsonian Institution to construct the Charles McC. Mathias, Jr. Laboratory for Environmental Research in Edgewater, Maryland, and to designate the United States Courthouse and Customhouse in Louisville, Kentucky, as the "Gene Snyder United States Courthouse and Customhouse."

S. 2852. An act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes.

S. 2864. An act to provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes.

S.J. Res. 43. Joint resolution authorizing establishment of a memorial to honor the American Armored Force.

S.J. Res. 268. Joint resolution providing for reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution.

S.J. Res. 336. Joint resolution to express the sense of Congress on recognition of the contributions of the seven Challenger astronauts by supporting establishment of a Childen's Challenge Center for Space Science.

S.J. Res. 427. Joint resolution reaffirming our friendship and sympathy with the people of El Salvador following the devastating earthquake of October 10, 1986.

November 7, 1986:

S. 332. An act for the relief of Ramzi Sallomy and Marie Sallomy.

S. 565. An act to provide for the transfer of certain lands in the State of Arizona, and for other purposes.

S. 2245. An act to authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities.

S. 2250. An act to strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts.

S. 2351. An act to revise the boundaries of Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes.

S. 2452. An act to provide for the naming or renaming of certain buildings of the United States Postal Service.

S. 2534. An act to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, South Carolina, and for other purposes.

November 10, 1986:

S. 485. An act to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation.

S. 740. An act 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.

S. 1236. An act to amend title 18 of the United States Code and other laws to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, and for other purposes.

S. 1374. An act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island.

S. 2000. An act to clarify the exemptive authority of the Securities and Exchange Commission.

S. 2648. An act to improve the public health through the prevention of injuries.

November 14, 1986:

S. 991. An act to amend certain provisions of the law regarding the fisheries of the United States, and for other purposes.

S. 1744. An act to require States to develop, establish, and implement State comprehensive mental health plans.

S. 2638. An act to authorize appropriations for fiscal year 1987 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to improve the defense acquisition process, and for other purposes.

MESSAGES FROM THE HOUSE

At 5:11 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 1. Concurrent resolution providing for a Joint Session of Congress to receive a message from the President on the State of the Union; and

H. Con. Res. 2. Concurrent resolution providing for a conditional adjournment of the House from January 8 to January 20, 1987.

The message also announced that the House has agreed to the following resolution:

H. Res. 2. Resolution notifying the Senate of the election of the Speaker of the House of Representatives and the Clerk of the House of Representatives; and

H. Res. 3. Resolution notifying the Senate of the appointment of a committee on the part of the House to join with a like committee from the Senate to notify the President that a quorum of each House is assembled.

At 7:20 p.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its clerks, announced that the House has agreed to the following concurrent resolution:

S. Con. Res. 1. Concurrent resolution providing for an adjournment of the Senate and the House of Representatives.

MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 2. Concurrent resolution providing for a conditional adjournment of the House from January 8 to January 20, 1987; to the Committee on Appropriations.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1. A communication from the Assistant Secretary of Health and Human Services (Health) and the Assistant Secretary of Agriculture (Science and Education), transmitting jointly, pursuant to law, the fourth progress report on the Human Nutrition Research and Information Management System; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2. A communication from the Assistant Secretary of Defense (Comptroller), transmitting, pursuant to law, a report on the transfer of certain DOD funds; to the Committee on Appropriations.

EC-3. A communication from the Secretary of Defense, transmitting, pursuant to law, a report on a violation of law involving the overobligation of funds in excess of approved appropriations; to the Committee on Appropriations.

EC-4. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, notice of the intention of the Department of the Air Force to exercise the provision of law providing for the exclusion of the clause concerning examination of records by the Comptroller General, to the Committee on Armed Services.

EC-5. A communication from the Deputy Assistant Secretary of the Air Force (Logistics and Communications), transmittting, pursuant to law, a report on the conversion of the grounds maintenance function at Offutt Air Force Base, Nebraska, to performance by contract; to the Committee on Armed Services.

EC-6. A communication from the Acting Director of the Selective Service System, transmitting, pursuant to law, the semiannual report of the Selective Service System

for April 1, 1986 through December 30, 1986; to the Committee on Armed Services.

EC-7. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the annual report on the Rental Rehabilitation Program for fiscal year 1986; to the Committee on Banking, Housing, and Urban Affairs.

EC-8. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report under the Motor Carrier Safety Act regarding safety-related devices; to the Committee on Commerce, Science, and Transportation.

EC-9. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report under the Alaska National Interest Lands Conservation Act for fiscal year 1986; to the Committee on Energy and Natural Resources.

EC-10. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Export Controls—Assessment of Commerce Report on Extending Controls for South Africa"; to the Committee on Banking, Housing, and Urban Affairs.

EC-11. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report of a study entitled "The Domestic Mining and Processing Industries"; to the Committee on Energy and Natural Resources.

EC-12. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the "Long Range Research Agenda for 1987-1991"; to the Committee on Environment and Public Works.

EC-13. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report on Waste Minimization; to the Committee on Environment and Public Works.

EC-14. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the experience of the Department in implementing the Medicare Hospice Benefit; to the Committee on Finance.

EC-15. A communication from the Secretary of Labor, transmitting, pursuant to law, a report on the Expenditure and Need for Worker Adjustment Assistance Training Funds under the Trade Act of 1974; to the Committee on Finance.

EC-16. A communication from the Administrator of the Agency for International Development, transmitting, pursuant to law, a report on the Agency's Use of Private and Voluntary Organizations, Cooperatives, and the Private Sector; to the Committee on Foreign Relations.

EC-17. A communication from the Assistant Secretary of the Treasury (Legislative Affairs), transmitting, pursuant to law, a report on the impact of IMF-supported economic adjustment programs implemented during 1985 on the provision of basic human needs in program countries; to the Committee on Foreign Relations.

EC-18. A communication from the Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, travel advisories recently issued by the Department for Chile and Suriname; to the Committee on Foreign Relations.

EC-19. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to October 31, 1986; to the Committee on Foreign Relations.

EC-20. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to October 21, 1986; to the Committee on Foreign Relations.

EC-21. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Review of the D.C. Energy Office's Operation and Programs Pursuant to D.C. Law 3-132"; to the Committee on Governmental Affairs.

EC-22. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports issued by the General Accounting Office in September 1986; to the Committee on Governmental Affairs.

EC-23. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-217, adopted by the Council on October 7, 1986; to the Committee on Governmental Affairs.

EC-24. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Review of Public Law 96-122 on the Method of Computation Used to Determine Survivor Benefits for Police and Firefighters"; to the Committee on Governmental Affairs.

EC-25. A communication from the Secretary of the Postal Rate Commission, transmitting, pursuant to law, notice of the filing of a proposed increase of maximum size limits for carrier route third-class mail; to the Committee on Governmental Affairs.

EC-26. A communication from the Vice President of the Farm Credit Services (Personnel and Benefits), transmitting, pursuant to law, the Twelfth District Farm Credit Retirement and Thrift Plan for Plan Year 1985; to the Committee on Governmental Affairs.

EC-27. A communication from the Special Counsel of the Merit Systems Protection Board, transmitting, pursuant to law, the report of the Scretary of the Navy on the investigation into allegations of mismanagement, gross waste of funds, and danger to public safety in the construction of an electrical power substation at Moffett Field, California; to the Committee on Governmental Affairs.

EC-28. A communication from the Deputy Assistant Secretary of Agriculture (Natural Resources and Environment), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-29. A communication from the Special Counsel of the Merit Systems Protection Board, transmitting, pursuant to law, a report of the Secretary of Agriculture setting forth findings and conclusions of the Secretary's investigation into allegations of falsification of travel reimbursement claims and leave records; to the Committee on Governmental Affairs.

EC-30. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the fiscal year 1984 Compensation Report; to the Committee on Governmental Affairs.

EC-31. A communication from the Deputy Director of the Office of Workers' Compensation Programs, Department of Labor transmitting, pursuant to law, notice of a proposed computer matching program; to the Committee on Governmental Affairs.

EC-32. A communication from the Vice President of the Farm Credit Banks of Springfield (Human Resources), transmitting, pursuant to law, the annual report for the Farm Credit Banks of Springfield Retirement Plan for plan Year April 1, 1985 through March 31, 1986; to the Committee on Governmental Affairs.

EC-33. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report on actions taken to recruit and train Indians to quality them for positions subject to Indian preference for fiscal year 1985; to the Select Committee on Indian Affairs.

EC-34. A communication from the Adjutant General of the Military Order of the Purple Heart, transmitting, pursuant to law, the annual audit report of the Order for the year ended June 30, 1986; to the Committee on the Judiciary.

EC-35. A communication from the National Treasurer of the American Gold Star Mothers, Inc., transmitting, pursuant to law, the annual audit report of American Gold Star Mothers, Inc. for the year ended June 30, 1986; to the Committee on the Judiciary.

EC-36. A communication from the Executive Secretary, Office of the Secretary of Defense, transmitting, pursuant to law, a report on Department of Defense procurement from small and other business firms for October 1985 through July 1986; to the Committee on Small Business.

EC-37. A communication from the Vice President of Farm Credit Services (Human Resources), transmitting, pursuant to law, the annual report of the Retirement Plan for Employees of the Associations and Banks of the Ninth Farm Credit District for the plan year ended February 28, 1986; to the Committee on Agriculture, Nutrition, and Forestry.

EC-38. A communication from the Assistant Secretary of Agriculture (Economics), transmitting, pursuant to law, a report entitled "Embargoes, Surplus Disposal, and U.S. Agriculture"; to the Committee on Agriculture, Nutrition, and Forestry.

EC-39. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the President's first special message for fiscal year 1987; pursuant to the order of January 30, 1975, referred jointly to the Committee on the Budget, the Committee on Appropriations, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Foreign Relations, the Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Labor and Human Resources, the Committee on Judiciary, the Committee on Commerce, Science, and Transportation, the Committee on Finance, and the Committee on Environment and Public Works.

EC-40. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report on the source of the $100 million for the democratic resistence forces in Nicaragua; to the Committee on Appropriations.

EC-41. A communication from the Secretary of Defense, transmitting, pursuant to law, a report on violations of law resulting from overobligation of authorized apportionments of appropriations; to the Committee on Appropriations.

EC-42. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on budget recissions and deferrals

dated November 1, 1986; pursuant to the order of January 30, 1975, referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-43. A communication from the Fiscal Assistant Secretary of Treasury, transmitting, pursuant to law, a report on the actual amount of revenues deposited in the Panama Canal Commission Fund during fiscal year 1986; to the Committee on Armed Services.

EC-44. A communication from the Chairman of the Joint Chiefs of Staff, transmitting, pursuant to law, an unclassified and a classified report containing his assessment of the military implications of the United States decision to no longer comply with existing strategic offensive arms limitation agreements; to the Committee on Armed Services.

EC-45. A communication from the Assistant Secretary of Defense (Comptroller), transmitting, pursuant to law, selected acquisition reports and SAR summary tables for the quarter ended September 30, 1986; to the Committee on Armed Services.

EC-46. A communication from the Principal Deputy Assistant Secretary of Army (Installations and Logistics), transmitting, pursuant to law, a report on the conversion of the commissary shelf stocking function at Fort Bliss, Texas, to performance under contract; to the Committee on Armed Services.

EC-47. A communication from the President of the United States, transmitting, pursuant to law, a report on his decision to continue in effect the national emergency with respect to Iran; to the Committee on Banking, Housing, and Urban Affairs

EC-48. A communication from the President of the United States, transmitting, pursuant to law, a report on his decision to continue in effect the national emergency with respect to Nicaragua; to the Committee on Banking, Housing, and Urban Affairs.

EC-49. A communication from the Chairman of the Federal Deposit Insurance Corporation, transmitting, pursuant to law, the fourth annual report on activities under title II of the Garn-St Germain Depository Institutions Act; to the Committee on Banking, Housing, and Urban Affairs.

EC-50. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Financial Audit—Senate Beauty Shop's Financial Statements for 1986 and 1985"; to the Committee on Rules and Administration.

EC-51. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report on Export Administration for fiscal year 1985; to the Committee on Banking, Housing, and Urban Affairs.

EC-52. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, the budget request of the Board for fiscal year 1987; to the Committee on Commerce, Science, and Transportation.

EC-53. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report on the administration of the Marine Mammal Protection Act for calendar year 1985; to the Committee on Commerce, Science, and Transportation.

EC-54. A communication from the Administrator of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the semiannual report on the effectiveness of the Civil Aviation Security Program for the period January 1 through June 30, 1986; to the Committee on Commerce, Science, and Transportation.

EC-55. A communication from the Secretary of Energy, transmitting, pursuant to law, the annual report on the Automotive Technology Development Program for fiscal year 1986; to the Committee on Energy and Natural Resources.

EC-56. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report of the Office of Surface Mining Reclamation and Enforcement; to the Committee on Energy and Natural Resources.

EC-57. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report on the nondisclosure of safeguards information by the Nuclear Regulatory Commission for the quarter ended September 30, 1986; to the Committee on Environment and Public Works.

EC-58. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report on Ocean Pollution Monitoring and Research for fiscal year 1984; to the Committee on Environment and Public Works.

EC-59. A communication from the Fiscal Assistant Secretary of the Treasury, transmitting, pursuant to law, the final monthly Treasury Statement of Receipts and Outlays of the U.S. Government for fiscal year 1986; to the Committee on Finance.

EC-60. A communication from the Commissioner of the United States Section, International Joint Commission, United States and Canada, transmitting, pursuant to law, a description of the Commission, its boards, and its activities during calendar year 1985; to the Committee on Foreign Relations.

EC-61. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period to November 14, 1986; to the Committee on Foreign Relations.

EC-62. A communication from the Acting Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report on certain defense articles, services, and training provided to Honduras; to the Committee on Foreign Relations.

EC-63. A communication from the Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, a report on actions taken by the democratic resistance in Nicaragua receiving assistance under the Act making appropriations for military contruction for the Department of Defense for the fiscal year ending September 31, 1987; to the Committee on Foreign Relations.

EC-64. A communication from the Attorney General of the United States, transmitting, pursuant to law, the annual report on the administration of the Foreign Agents Registration Act during calendar year 1985; to the Committee on Foreign Relations.

EC-65. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-66. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-225 adopted by the Council of October 7, 1986; to the Committee on Governmental Affairs.

EC-67. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-224 adopted by the Council of October 21, 1986; to the Committee on Governmental Affairs.

EC-68. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-223 adopted by the Council of October 21, 1986; to the Committee on Governmental Affairs.

EC-69. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-222 adopted by the Council on October 7, 1986; to the Committee on Governmental Affairs.

EC-70. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-221 adopted by the Council on October 7, 1966; to the Committee on Governmental Affairs.

EC-71. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-218 adopted by the Council on October 7, 1986; to the Committee on Governmental Affairs.

EC-72. A communication from the Special Counsel, Merit Systems Protection Board, transmitting, pursuant to law, a report on the investigation of the Administrator of Veterans' Affairs into allegations officials of a violation of law and regulations and endangering public health by the Veterans' Administration Medical Facility, Fresno, California; to the Committee on Governmental Affairs.

EC-73. A communication from the Executive Secretary of the Federal Reserve Employee Benefits System, transmitting, pursuant to law, the annual report on the Retirement Plan for Employees of the Federal Reserve System for the plan year ending December 31, 1985; to the Committee on Governmental Affairs.

EC-74. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-227 adopted by the Council on October 7, 1986; to the Committee on Governmental Affairs.

EC-75. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-220 adopted by the Council on October 7, 1986; to the Committee on Governmental Affairs.

EC-76. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-219 adopted by the Council on October 7, 1986; to the Committee on Governmental Affairs.

EC-77. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Review of the District of Columbia General Hospital Commission Advisory Board"; to the Committee on Governmental Affairs.

EC-78. A communication from the Assistant Secretary of the Treasury (Management), transmitting, pursuant to law, notice of proposed changes to an existing Privacy Act system of records; to the Committee on Governmental Affairs.

EC-79. A communication from the Assistant Secretary of the Interior (Indian Affairs), transmitting, pursuant to law, a proposed plan for the use and distribution of Leech Lake Band of Chippewa Indians judg-

ment funds; to the Select Committee on Indian Affairs.

EC-80. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the ninth annual report pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976; to the Committee on the Judiciary.

EC-81. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the first biennial report entitled "Smoking and Health, A National Status Report"; to the Committee on Labor and Human Resources.

EC-82. A communication from the Assistant Secretary of Defense (Force Management and Personnel), transmitting, pursuant to law, a report on the audit of the American Red Cross, Combined Statement of Public Support, Revenues, and Expenses, and Changes in Net Assets; and Combined Statement of Functional Expenses for the Year Ended June 30, 1986; to the Committee on Labor and Human Resources.

EC-83. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for Student Assistance General Provisions; to the Committee on Labor and Human Resources.

EC-84. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; to the Committee on Labor and Human Resources.

EC-85. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for the Guaranteed Student Loan and PLUS Programs; to the Committee on Labor and Human Resources.

EC-86. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report on the initial commodity and country allocation tables showing current programming plans for food assistance under Public Law 480 for fiscal year 1987; to the Committee on Agriculture, Nutrition, and Forestry.

EC-87. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the annual report on the Nation's agricultural research and education (extension and teaching) activities for 1985; to the Committee on Agriculture, Nutrition, and Forestry.

EC-88. A communication from the Architect of the Capitol, transmitting, pursuant to law, a report of all expenditures during the period April 1, 1986 through September 30, 1986, from moneys appropriated to the Architect of the Capitol; to the Committee on Appropriations.

EC-89. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Strategic Defense Initiative Program: Expert's Views on DOD's Organizational Options and Plans for SDI Technical Support"; to the Committee on Armed Services.

EC-90. A communication from the Assistant Secretary of the Army (Installations and Logistics), transmitting, pursuant to law, notice of the recent discovery and emergency disposal of a suspected chemical bomblet at Dugway Proving Ground, Utah; to the Committee on Armed Services.

EC-91. A communication from the Principal Deputy Assistant Secretary of Defense (Comptroller), transmitting, pursuant to law, a report of the value of property, supplies, and commodities provided by the Berlin Magistrate for the quarter July 1, 1986, through September 30, 1986; to the Committee on Armed Services.

EC-92. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, notice of the intention of the Strategic Defense Initiative Organization intends to exercise the provision of law for exclusion of the clause concerning examination of records by the Comptroller General; to the Committee on Armed Services.

EC-93. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Financial Audit: Solar Energy Conservation Bank's Financial Statements for 1981 Through 1985"; to the Committee on Banking, Housing, and Urban Affairs.

EC-94. A communication from the Chairman of the Interstate Commerce Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1985; to the Committee on Commerce, Science, and Transportation.

EC-95. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report on the Department's administration of the Marine Mammal Protection Act for the year ended March 31, 1986; to the Committee on Commerce, Science, and Transportation.

EC-96. A communication from the Secretary of Transportation, transmitting, pursuant to law, the annual report on the relative cost of shipbuilding in the various coastal districts of the United States for 1985; to the Committee on Commerce, Science, and Transportation.

EC-97. A communication from the Secretary of Energy, transmitting, pursuant to law, the sixth annual report on financing, supply, and installation activities of public utilities in connection to the Residential Conservation Service Program, dated November 1986; to the Committee on Energy and Natural Resources.

EC-98. A communication from the Secretary of Energy, transmitting, pursuant to law, the quarterly report on the strategic petroleum reserve for the quarter July 1 through September 30, 1986; to the Committee on Energy and Natural Resources.

EC-99. A communication from the General Counsel of the Department of Energy, transmitting, pursuant to law, notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-100. A communication from the Director of the Office of Civilian Radioactive Waste Management, Department of Energy, transmitting, pursuant to law, the fourth annual report entitled "Implementation Plan for Deployment of Federal Interim Storage Facilities for Commercial Spent Fuel"; to the Committee on Environment and Public Works.

EC-101. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report on small quantity generators of hazardous waste, dated September 1986; to the Committee on Environment and Public Works.

EC-102. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on the "Transportation and Environmental Studies of the I-395/I-95 Express Land High Occupancy Vehicle Facility"; to the Committee on Environment and Public Works.

EC-103. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Alternative Methods of Reimbursement for Home Health Services under Federal Program"; to the Committee on Finance.

EC-104. A communication from the Acting Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, the fifth 90 day report on the Camerena investigation, the investigations of the disappearance of United States citizens in the State of Jalisco, Mexico, and the general safety of the United States tourists in Mexico; to the Committee on Foreign Relations.

EC-105. A communication from the President of the United States, transmitting, pursuant to law, a report on occurrences with respect to the emergency in Iran since May 23, 1986; to the Committee on Foreign Relations.

EC-106. A communication from the Acting Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, travel advisories recently issued by the Department of State for China, Cyprus, Honduras, Papua New Guinea, Syria, Tanzania, and Turkey which have security implications for Americans traveling or residing in those countries; to the Committee on Foreign Relations.

EC-107. A communication from the Acting Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, a report on illegal or otherwise improper payments to two military officers of El Salvador; to the Committee on Foreign Relations.

EC-108. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty period prior to November 25, 1986; to the Committee on Foreign Relations.

EC-109. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Review of Department of Housing and Community's Property Management Administrations System of Maintenance, Practices, and Financial Controls: FY 1983-FY 1985"; to the Committee on Governmental Affairs.

EC-110. A communication from the Administrator of General Services, transmitting, pursuant to law, the semiannual report of the Inspector General, General Services Administration for the period ending September 30, 1986; to the Committee on Governmental Affairs.

EC-111. A communication from the Inspector General, Department of Health and Human Resources, transmitting, pursuant to law, the semiannual report of the Office of Inspector General for the period ending September 30, 1986; to the Committee on Governmental Affairs.

EC-112. A communication from the Special Counsel, Merit Systems Protection Board, transmitting, pursuant to law, a report on the Secretary's investigation into allegations of the theft of government property at the U.S. Naval Construction Batallion Center, Port Hueneme, California; to the Committee on Governmental Affairs.

EC-113. A communication from the Secretary of Labor, transmitting, pursuant to law, the semiannual report of the Inspector General, Department of Labor, for the period ending September 30, 1986; to the Committee on Governmental Affairs.

EC-114. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursu-

ant to law, the semiannual report of the Office of Inspector General, NASA, for the period ending September 30, 1986; to the Committee on Governmental Affairs.

EC-115. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Agriculture, for the period ending September 30, 1986; to the Committee on Governmental Affairs.

EC-116. A communication from the Secretary of Education, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Education, for the period ending September 30, 1986; to the Committee on Governmental Affairs.

EC-117. A communication from the General Manager of the Tennessee Valley Authority, transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-118. A communication from the Inspector General, Department of Energy, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Energy, for the period ended September 30, 1986; to the Committee on Governmental Affairs.

EC-119. A communication from the Assistant Director of the National Science Foundation (Administration), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-120. A communication from the Administrator of Veterans' Affairs, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Veterans' Administration, for the period ended September 30, 1986; to the Committee on Governmental Affairs.

EC-121. A communication from the Chairman of the Board of Governors of the United States Postal Service, transmitting, pursuant to law, a report on the Civil Misrepresentation Activities of the Postal Service for the period April 1 through September 30, 1986; to the Committee on Governmental Affairs.

EC-122. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-123. A communication from the Deputy Assistant to the President (Management and Administration), transmitting, pursuant to law, a report on personnel employed in the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Office of Policy Development (Domestic Policy Staff), and the Office of Administration; to the Committee on Governmental Affairs.

EC-124. A communication from the Inspector General, General Services Administration, transmitting, pursuant to law, the semiannual report of the Inspector General, GSA, for the period ended September 30, 1986; to the Committee on Governmental Affairs.

EC-125. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, a report on three new Privacy Act systems of records; to the Committee on Governmental Affairs.

EC-126. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports issued by the General Accounting Office during October 1986; to the Committee on Governmental Affairs.

EC-127. A communication from the Acting Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, the annual report on the Foreign Service Retirement and Disability System for the plan year ended September 30, 1985; to the Committee on Governmental Affairs.

EC-128. A communication from the Administrator of General Services, transmitting, pursuant to law, a report covering the disposal of surplus Federal real property for historic monument and correctional facility purposes for fiscal year 1986; to the Committee on Governmental Affairs.

EC-129. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Financial Audit—Gorgas Memorial Institute's Financial Statements for 1985 and 1984"; to the Committee on Governmental Affairs.

EC-130. A communication from the Chairman of the Board of Directors, Future Farmers of America, transmitting, pursuant to law, a report of the audit of the accounts of the Future Farmers of America for the period ending August 31, 1986; to the Committee on the Judiciary.

EC-131. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for the Student Assistance General Provisions; to the Committee on Labor and Human Resources.

EC-132. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations and final selection criteria for the Student Assistance General Provisions; to the Committee on Labor and Human Resources.

EC-133. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for the Student Assistance General Provisions and Pell Grant Program; to the Committee on Labor and Human Resources.

EC-134. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations for the Student Incentive Grant Program; to the Committee on Labor and Human Resources.

EC-135. A communication from the Secretary of Labor, transmitting, pursuant to law, the annual report on the Administration of the Black Lung Benefits Program for calendar year 1985; to the Committee on Labor and Human Resources.

EC-136. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a copy of the report to the President entitled "Catastrophic Illness Expenses"; to the Committee on Labor and Human Resources.

EC-137. A communication from the Chairman of the National Mediation Board, transmitting, pursuant to law, a copy of the award in the labor-management dispute between the Maine Central Railroad Company, the Portland Terminal Company and the Brotherhood of Maintenance of Way Employees; to the Committee on Labor and Human Resources.

EC-138. A communication from the Executive Secretary, Office of the Secretary of Defense, transmitting, pursuant to law, a report on Department of Defense procurement from small and other business firms for October 1985 through August 1986; to the Committee on Small Business.

EC-139. A communication from the Administrator of Veterans' Affairs, transmitting, pursuant to law, a report on the extent to which activities at VA health care facilities have been performed by contractors; to the Committee on Veterans' Affairs.

EC-140. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, the stockpile report to the Congress for the period October 1985 through March 1986; to the Committee on Armed Services.

EC-141. A communication from the Secretary of the Interior, transmitting, pursuant to law, a copy of an application from the United Water Conservation District, Ventura County, California, for a loan under the Small Reclamation Projects Act; to the Committee on Energy and Natural Resources.

EC-142. A communication from the United States Trade Representative, transmitting, pursuant to law, the annual report on the operation of the International Coffee Agreement for coffee year 1985/86; to the Committee on Finance.

EC-143. A communication from the Acting Under Secretary of Agriculture (Small Community and Rural Development), transmitting, pursuant to law, a report on a revised Privacy Act system of records; to the Committee on Governmental Affairs.

EC-144. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Housing and Urban Development, for the period ended September 30, 1986; to the Committee on Governmental Affairs.

EC-145. A communication from the Office of the Secretary of Defense, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Defense, for the period ended September 30, 1986; to the Committee on Governmental Affairs.

EC-146. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Environmental Protection Agency, for the period ended September 30, 1986; to the Committee on Governmental Affairs.

EC-147. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a Soil Conservation Service plan for the Lower Des Plaines Tributaries, Illinois; to the Committee on Agriculture, Nutrition, and Forestry.

EC-148. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on budget rescissions and deferrals dated December 1, 1986; pursuant to the order of January 30, 1975, referred jointly to the Committe on Appropriations and the Committee on the Budget.

EC-149. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report for a supplemental estimate of appropriation for the Board for International Broadcasting; to the Committee on Appropriations.

EC-150. A communication from the Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, a report on the conversion of certain functions to performance by contract; to the Committee on Armed Services.

EC-151. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "DOD Schools—Funding and Operating Alternatives for Education of Dependents"; to the Committee on Armed Services.

EC-152. A communication from the Deputy Assistant Secretary of the Air Force (Logistics and Communications), transmitting, pursuant to law, a report on the decision to convert the protective coating function at Tinker Air Force Base, Oklahoma to performance by contract; to the Committee on Armed Services.

EC-153. A communication from the Assistant Secretary of Defense (Comptroller), transmitting, pursuant to law, a listing of contract award dates for the period January 1, 1987 to February 28, 1987; to the Committee on Armed Services.

EC-154. A communication from the Deputy Assistant Secretary of the Air Force (Logistics and Communications), transmitting, pursuant to law, a report on the decision to convert the telephone switchboard function at Luke Air Force Base, Arizona to performance by contract; to the Committee on Armed Services.

EC-155. A communication from the Secretary of the Interstate Commerce Commission, transmitting, pursuant to law, notice of the extension of time for a determination in Cheney Line and Cement Co. v. Seaboard Syst. R., Inc.; to the Committee on Commerce, Science, and Transportation.

EC-156. A communication from the Chairman of the Interstate Commerce Commission, transmitting, pursuant to law, a report on Customer Pickup of Food and Grocery Products; to the Committee on Commerce, Science, and Transportation.

EC-157. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, a copy of the Board's letter to OMB regarding the cost of the 3 percent raise for fiscal years 1987 and 1988; to the Committee on Commerce, Science, and Transportation.

EC-158. A communication from the Secretary of the Interior, transmitting, pursuant to law, the sixth annual progress report under the Alaska National Interest Lands Conservation Act for fiscal year 1986; to the Committee on Energy and Natural Resources.

EC-159. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Financial Audit—Trans-Alaska Pipeline Liability Fund's Financial Statements for 1985"; to the Committee on Energy and Natural Resources.

EC-160. A communication from the Secretary of the Interior as Chairman of the Migratory Bird Conservation Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1986; to the Committee on Environment and Public Works.

EC-161. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the annual report on the State and Local Fiscal Assistance Trust Fund in fiscal year 1986; to the Committee on Finance.

EC-162. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to December 12, 1986; to the Committee on Foreign Relations.

EC-163. A communication from the Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, a copy of the certification to authorize military assistance to Guatemala; to the Committee on Foreign Relations.

EC-164. A communication from the Secretary of State, transmitting, pursuant to law, a certification for the purpose of providing military assistance and sales to Guatemala; to the Committee on Foreign Relations.

EC-165. A communication from the Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, travel advisories recently issued for El Salvador and Kuwait; to the Committee on Foreign Relations.

EC-166. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports issued by the General Accounting Office for November 1986; to the Committee on Governmental Affairs.

EC-167. A communication from the Acting Under Secretary of Agriculture (Small Community and Rural Development), transmitting, pursuant to law, a report on proposed changes to a Privacy Act system of records; to the Committee on Governmental Affairs.

EC-168. A communication from the Secretary of the Postal Rate Commission transmitting, pursuant to law, a report on hearings scheduled relative to a parcel post rate complaint; to the Committee on Governmental Affairs.

EC-169. A communication from the Secretary of Transportation transmitting, pursuant to law, the semiannual report of the Inspector General for the period ended September 30, 1986; to the Committee on Governmental Affairs.

EC-170. A communication from the District of Columbia. auditor transmitting, pursuant to law, a report entitled "Follow-up Review of Lottery Board Security Personnel"; to the Committee on Governmental Affairs.

EC-171. A communication from the Secretary of Education transmitting, pursuant to law, a report on surplus real property disposed of to educational institutions; to the Committee on Governmental Affairs.

EC-172. A communication from the Chief Justice of the United States transmitting, pursuant to law, a report on the proceedings of the Judicial Conference of the United States; to the Committee on the Judiciary.

EC-173. A communication from the Secretary of Education transmitting, pursuant to law, a report on the American Indian Vocational Rehabilitation Program; to the Committee on Labor and Human Resources.

EC-174. A communication from the Secretary of Education transmitting, pursuant to law, notice of final priority for planning grants for the National Center for Research in Vocational Education; to the Committee on Labor and Human Resources.

EC-175. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, the 1986 Surgeon General's report on the health consequences of smoking; to the Committee on Labor and Human Resources.

EC-176. A communication from the Secretary of Education transmitting, pursuant to law, notice of final funding priority for research and demonstration projects in research training; to the Committee on Labor and Human Resources.

EC-177. A communication from the Administrator of NASA transmitting, pursuant to law, the annual report of NASA on the performance of its industrial applications centers and their interaction with small business; to the Committee on Small Business.

EC-178. A communication from the Administrator of the Veterans Administration transmitting, pursuant to law, a report on the Sharing of Medical Resources Program; to the Committee on Veterans Affairs.

EC-179. A communication from the Chairman of the National Transportation Safety Board transmitting, pursuant to law, the 1985 annual report of the board; to the Committee on Commerce, Science, and Transportation.

EC-180. A communication from the Secretary of Energy transmitting, pursuant to law, a report on the Alaska Federal-Civilian Energy Efficiency Swap Act of 1980; to the Committee on Energy and Natural Resources.

EC-181. A communication from the Secretary of the Interior transmitting, pursuant to law, a report on an application for a loan by the county of San Bernardino, CA for a proposed Day Creek project; to the Committee on Energy and Natural Resources.

EC-182. A communication from the Assistant Secretary of State transmitting, pursuant to law, a determination to authorize continuation of certain assistance to Haiti; to the Committee on Foreign Relations.

EC-183. A communication from the Assistant Secretary of State transmitting, pursuant to law, a report on travel advisories issued for Nigeria, Pakistan, and Surinam relative to security and health; to the Committee on Foreign Relations.

EC-184. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the copies of international agreements, other than treaties, entered onto by the United States within the 60 days previous to December 30, 1986; to the Committee on Foreign Relations.

EC-185. A communication from the Executive Director of the Navajo and Hopi Indian Relocation Commission transmitting, pursuant to law, a report on the accounting systems in use by the Commission during fiscal year 1986; to the Committee on Governmental Affairs.

EC-186. A communication from the Chairman of the Commodity Futures Trading Commission transmitting, pursuant to law, an evaluation of the system of internal accounting and administrative control of the Commission for 1986; to the Committee on Governmental Affairs.

EC-187. A communication from the Chairman of the Farm Credit Administration transmitting, pursuant to law, an evaluation of the system of internal accounting and administrative control of the FCA for 1986; to the Committee on Governmental Affairs.

EC-188. A communication from the Director of the Federal Emergency Management Agency transmitting, pursuant to law, a report on changes in certain Privacy Act systems of records; to the Committee on Governmental Affairs.

EC-189. A communication from the Chairman of the Nuclear Regulatory commission transmitting, pursuant to law, a report on the Commission's system of internal accounting and administrative control for 1986; to the Committee on Governmental Affairs.

EC-190. A communication from the Acting Administrator of the Small Business Administration transmitting, pursuant to law, a report on the system of internal accounting and administrative control of the

SBA of 1986; to the Committee on Governmental Affairs.

EC-191. A communication from the Chairman of the Federal Communications Commission transmitting, pursuant to law, a report on the system of internal controls of the FCC during 1986; to the Committee on Governmental Affairs.

EC-192. A communication from the Secretary of Agriculture transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-193. A communication from the Secretary of Commerce transmitting, pursuant to law, a report on the activities of the Inspector General for April-September 1986; to the Committee on Governmental Affairs.

EC-194. A communication from the Chairman of the Consumer Product Safety Commission transmitting, pursuant to law, a report on the Commission's system of internal accounting and administrative control for 1986; to the Committee on Governmental Affairs.

EC-195. A communication from the Secretary of the Interior transmitting, pursuant to law, a report on the Department's system of internal accounting and administrative control for 1986; to the Committee on Governmental Affairs.

EC-196. A communication from the Inspector General of the Department of Agriculture transmitting, pursuant to law, his report for April-September 1986; to the Committee on Governmental Affairs.

EC-197. A communication from the Secretary of Housing and Urban Development transmitting, pursuant to law, a report on the Department's system of internal accounting and administrative control for 1986; to the Committee on Governmental Affairs.

EC-198. A communication from the Chairman of the International Trade Commission transmitting, pursuant to law, a report on the Commission's system of internal accounting and administrative control for 1986; to the Committee on Governmental Affairs.

EC-199. A communication from the District of Columbia auditor transmitting, pursuant to law, a report entitled "Review of Contract With Pitts Motor Hotel for Homeless Shelter"; to the Committee on Governmental Affairs.

EC-200. A communication from the Assistant Secretary of Transportation transmitting, pursuant to law, a report on the new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-201. A communication from the Chairman of the Securities and Exchange Commission transmitting, pursuant to law, a report on the Commission's system of internal accounting and administrative control for 1986; to the Committee on Governmental Affairs.

EC-202. A communication from the Acting Administrator of the Office of Juvenile Justice and Delinquency Prevention, Department of Justice, transmitting, pursuant to law, a report on Federal juvenile justice and delinquency prevention programs, 1986; to the Committee on the Judiciary.

EC-203. A communication from the President of the United States transmitting, pursuant to law, the Budget of the U.S. Government, 1988, together with recommendations for executive, legislative, and judicial salaries; jointly, pursuant to the order of January 30, 1975, to the Committee on Appropriations, the Committee on the Budget, and the Committee on Governmental Affairs.

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. BYRD (for Mr. BURDICK (for himself, Mr. CHAFEE, Mr. MITCHELL, Mr. STAFFORD, Mr. BYRD, Mr. MOYNIHAN, Mr. ADAMS, Mr. ARMSTRONG, Mr. BAUCUS, Mr. BENTSEN, Mr. BIDEN, Mr. BINGAMAN, Mr. BOREN, Mr. BRADLEY, Mr. BUMPERS, Mr. CHILES, Mr. COHEN, Mr. CONRAD, Mr. CRANSTON, Mr. D'AMATO, Mr. DANFORTH, Mr. DASCHLE, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. DURENBERGER, Mr. EVANS, Mr. EXON, Mr. FORD, Mr. FOWLER, Mr. GLENN, Mr. GORE, Mr. GRAHAM, Mr. HARKIN, Mr. HEINZ, Mr. HOLLINGS, Mr. HUMPHREY, Mr. INOUYE, Mr. KASTEN, Mr. KERRY, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LUGAR, Mr. MCCONNELL, Mr. MELCHER, Mr. METZENBAUM, Ms. MIKULSKI, Mr. NUNN, Mr. PACKWOOD, Mr. PELL, Mr. PRESSLER, Mr. PROXMIRE, Mr. PRYOR, Mr. REID, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. ROTH, Mr. RUDMAN, Mr. SANFORD, Mr. SARBANES, Mr. SASSER, Mr. SIMON, Mr. SPECTER, Mr. SYMMS, Mr. THURMOND, Mr. TRIBLE, Mr. WARNER, Mr. WEICKER, Mr. WILSON, Mr. WIRTH, and Mr. ZORINSKY)):

S. 1. A bill to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

By Mr. BOREN (for himself, Mr. BYRD, Mr. CHILES, Mr. KENNEDY, Mr. STENNIS, and Mr. SANFORD):

S. 2. A bill to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees, and for other purposes; to the Committee on Rules and Administration.

By Mr. CRANSTON (for himself, Mr. GLENN, Mr. METZENBAUM, and Mr. KERRY):

S. 3. A bill to amend title II of the Social Security Act to provide that the combined earnings of a husband and wife during the period of their marriage shall be divided equally and shared between them for benefit purposes, so as to recognize the economic contribution of each spouse to the marriage and ensure that each spouse will have Social Security protection in his or her own right; to the Committee on Finance.

By Mr. CRANSTON (for himself, Mr. RIEGLE, Mr. DODD, and Mr. KENNEDY):

S. 4. A bill to provide assistance and coordination in the provision of childcare services for children living in homes with working parents, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. CRANSTON (for himself and Mr. BURDICK):

S. 5. A bill to require the executive branch to enforce applicable equal employment opportunity laws and directives so as to promote pay equity by eliminating wage-setting practices which discriminate on the basis of sex, race, ethnicity, age, or disability, and result in discriminatory wage differentials; to the Committee on Governmental Affairs.

By Mr. CRANSTON (for himself, Mr. MATSUNAGA, Mr. DECONCINI, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. GRAHAM, and Mr. LAUTENBERG):

S. 6. A bill to amend title 38, United States Code, to improve various aspects of Veterans' Administration health-care progams, to provide certain new categories of persons with eligibility for readjustment counseling from the Veterans' Administration, and to postpone the transition period for the Vet Center Program, to authorize the establishment of a pilot program for the furnishing of noninstitutional care to certain veterans, and to increase the per diem rates paid to States for providing care to veterans in State homes; and to prohibit the excessing of certain Veterans' Administration properties; and to promote greater emphasis of affiliated health-professional training institutions on geriatric training and research, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. CRANSTON:

S. 7. A bill to provide for the protection of the public lands in the California desert; to the Committee on Energy and Natural Resources.

S. 8. A bill to provide Federal financial assistance to facilitate the establishment of alliances between educational agencies and the private sector to increase the use of resources of the private and nonprofit sectors in the provision of elementary and secondary education, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. CRANSTON (for himself, Mr. MATSUNAGA, Mr. DECONCINI, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. GRAHAM, and Mr. LAUTENBERG):

S. 9. A bill to amend title 38, United States Code, to increase the rates of disability compensation and dependency and indemnity compensation for veterans and survivors; to provide additional eligibility for certain educational or rehabilitation assistance to veterans and other eligible individuals with drug or alcohol abuse disabilities; to increase the maximum amount of a home loan which is guaranteed by the Veterans' Administration; to improve housing, automobile, and burial assistance programs for service-disabled veterans; and to extend and establish certain exemptions from sequestration for certain veterans' benefits; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. CRANSTON (for himself, Mr. KENNEDY, and Mr. GORE):

S. 10. A bill to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. CRANSTON (for himself, Mr. SIMPSON, Mr. MATSUNAGA, Mr. DECONCINI, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. STAFFORD, Mr. KENNEDY, Mr. COHEN, Mr. CHILES, Mr. DURENBERGER, Mr. GORE, Mr. PRESSLER, Mr. SASSER, Mr. HEINZ, Mr. KERRY, Mr. WILSON, Mr. SIMON, Mr. LEAHY, Mr. LEVIN, Mr. SARBANES, Mr. RIEGLE, Mr. MELCHER, Mr. JOHNSTON, Mr. BURDICK, and Mr. BINGAMAN):

S. 11. A bill to amend title 38, United States Code, to establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; to apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the Veterans' Ad-

ministration; to provide for judicial review of certain final decisions of the Administrator of Veterans' Affairs; to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by the Veterans' Administration; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. CRANSTON (for himself, Mr. MURKOWSKI, Mr. MATSUNAGA, Mr. DECONCINI, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. GRAHAM, and Mr. COHEN):

S. 12. A bill to amend title 38, United States Code, to remove the expiration date for eligibility for the educational assistance programs for veterans of the All-Volunteer Force; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. CRANSTON (for himself and Mr. WILSON):

S. 13. A bill to amend the Export Administration Act of 1979 to require the establishment and operation of the western regional export licensing office; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BYRD (for Mr. BIDEN (for himself, Mr. ROCKEFELLER, Mr. KERRY, and Mr. BUMPERS)):

S. 14. A bill to amend the Energy Reorganization Act of 1974 to create an independent Nuclear Safety Board; to the Committee on Environment and Public Works.

By Mr. BYRD (for Mr. BIDEN):

S. 15. A bill to provide the framework necessary to pursue a coordinated and effective national and international narcotics control policy; to the Committee on Governmental Affairs.

S. 16. A bill to facilitate United States compliance with certain numerical limitations governing strategic nuclear weapons; to the Committee on Armed Services.

By Mr. D'AMATO:

S. 17. A bill to provide additional funding for comprehensive drug law enforcement, prevention, and treatment; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S. 18. A bill to repeal the Balanced Budget and Emergency Deficit Control Act of 1985; to the Committee on the Budget and the Committee on Governmental Affairs, jointly pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other has thirty days of continuous session to report or be discharged.

S. 19. A bill to amend the Elementary and Secondary Education Act of 1965 to provide grants to State and local educational agencies for dropout prevention programs; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself, Mr. BURDICK, Mr. MITCHELL, Mr. BAUCUS, and Mr. LAUTENBERG):

S. 20. A bill to provide for the protection of ground water through State standards, planning, and protection programs; to the Committee on Environment and Public Works.

By Mr. MOYNIHAN:

S. 21. A bill entitled the "Service Sector Data Collection Act of 1987"; to the Committee on Commerce, Science, and Transportation.

By Mr. PROXMIRE:

S. 22. A bill to amend the Communications Act of 1934 in order to recognize, strengthen, and further the objectives of the first amendment in relationship to radio and television broadcasting stations; to the Committee on Commerce, Science and Transportation.

By Mr. ROTH (for himself, Mr. MOYNIHAN, Mr. HEINZ, and Mr. BRADLEY):

S. 23. A bill to make changes in the Trade Adjustment Assistance Program; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 24. A bill to amend title II of the Social Security Act to waive, for 5 years, the 24-month waiting period for Medicare eligibility on the basis of a disability in the case of individuals with acquired immune deficiency syndrome (AIDS), to require the Secretary of Health and Human Services to make grants to State and local governments for the establishment of programs to test blood to detect the presence of antibodies to the human T-cell lymphotrophic virus and to make grants to eligible State and local governments to support projects for education and information dissemination concerning acquired immune deficiency syndrome, and for other purposes; to the Committee on Finance.

S. 25. A bill to amend chapter 44 of title 18, United States Code, to prohibit the manufacture, transfer, or importation of .25 caliber and .32 caliber ammunition; to the Committee on the Judiciary.

S. 26. A bill to extend authorization of the Federal Crime Insurance Program under the National Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

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

S. 27. A bill to establish the American Conservation Corps, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MOYNIHAN:

S. 28. A bill to limit the grounds and improve the process for excluding aliens from the United States; to the Committee on the Judiciary.

S. 29. A bill to authorize the procurement and installation of cryptographic equipment at satellite communications facilities within the United States, and for other purposes; to the Committee on Armed Services.

S. 30. A bill entitled the "Exchange Rate Adjustment Act of 1987"; to the Committee on Banking, Housing, and Urban Affairs.

S. 31. A bill entitled the "Increased Market Access Promotion Act of 1987"; to the Committee on Finance.

S. 32. A bill to establish a National Commission on Deficit Reduction; to the Committee on Governmental Affairs.

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

S. 33. A bill entitled the "Social Security Trust Funds Management Act of 1987"; to the Committee on Finance.

S. 34. A bill to establish an independent agency, governed by a bipartisan board, to administer the old-age, survivors, and disability insurance program under title II of the Social Security Act, the supplemental security income program under title XVI of such Act, and the medicare program under title XVIII of such Act, and for other purposes; to the Committee on Finance.

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

S. 35. A bill to charter the National Academy of Social Insurance; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S. 36. A bill to amend the Food Stamp Act of 1977 with respect to third party payments for certain temporary housing; to the Committee on Agriculture, Nutrition, and Forestry.

S. 37. A bill to amend part A of title IV of the Social Security Act to reduce the need for emergency assistance payments to provide temporary housing for destitute families and homeless AFDC families, and the expense of such payments, by authorizing grants to States for the construction or rehabilitation of permanent housing that such families can afford with their regular AFDC payments; to the Committee on Finance.

S. 38. A bill to increase the authorization of appropriation for the Magnet School Program for fiscal year 1987 to meet the growing needs of existing Magnet School Programs, and for the etablishment of new Magnet School Programs; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself, Mr. HEINZ, Mr. BOREN, Mr. PRYOR, Mr. MATSUNAGA, and Mr. RIEGLE):

S. 39. A bill to amend the Internal Revenue Code of 1986 to make the exclusion from gross income of amounts paid for employee educational assistance permanent; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 40. A bill to amend section 1 of the Atomic Energy Act of 1954, as amended, to clarify that no nuclear plant should operate without assurance from the Federal Government's experts on emergency preparedness that the public health and safety can and will be protected; to the Committee on Environment and Public Works.

By Mr. ROTH:

S. 41. A bill to establish a Commission on More Effective Government, with the declared objective of improving the quality of government in the United States and of restoring public confidence in government at all levels; to the Committee on Governmental Affairs.

S. 42. A bill to amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MOYNIHAN:

S. 43. A bill to require that the positions of Director and Deputy Director of Central Intelligence be filled by career intelligence officers; to the Select Committee on Intelligence.

S. 44. A bill to amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident arising out of activities of Nuclear Regulatory Commission licensees or undertaken pursuant to the Nuclear Waste Policy Act of 1982 involving nuclear materials, and to reduce the likelihood of such an accident; to the Committee on Environment and Public Works.

By Mr. PROXMIRE (for himself and Mr. GARN) (by request):

S. 45. A bill relating to recapitalization of FSLIC; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MOYNIHAN:

S. 46. A bill to disapprove of the President's proposed rescissions of the Community Development Block Program and the Urban Development Action Grant Program, and to require that funds withheld under the authority of the rescission requests be released immediately upon enactment; to the Committee on Appropriations.

S. 47. A bill to establish a grant program for the purpose of creating additional prison facilities or expanding existing facilities to alleviate the overcrowding resulting from the increase in drug crime convictions; to the Committee on Governmental Affairs.

S. 48. A bill to establish a demonstration program in New York City to offer voluntary departure from the United States to certain aliens arrested for narcotics-related offenses; to the Committee on the Judiciary.

S. 49. A bill to amend section 203 of the Federal Property and Administrative Services Act of 1949 to establish as a priority the conveyance of surplus Federal property for use as correctional facilities to alleviate the shortage of prison space resulting from the increase in drug crime convictions; to the Committee on Governmental Affairs.

S. 50. A bill to amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns, to change certain contribution limits for elections, and for other purposes; to the Committee on Rules and Administration.

By Mr. HATCH (for himself, Mr. STAFFORD, Mr. KENNEDY, Mr. GLENN, Mr. MATSUNAGA, and Mr. LUGAR):

S. 51. A bill to prohibit smoking in public conveyances; to the Committee on Commerce, Science, and Transportation.

By Mr. PRESSLER (for himself, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. DOMENICI, Mr. NICKLES, Mr. WARNER, Mr. MURKOWSKI, Mr. DIXON, Mr. SIMON, and Mr. BENTSEN):

S. 52. A bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program; to the Committee on Energy and Natural Resources.

By Mr. PRESSLER (for himself and Mr. DASCHLE):

S. 53. A bill to provide for improvements to the Mount Rushmore Memorial; to the Committee on Energy and Natural Resources.

By Mr. PRESSLER:

S. 54. A bill to make foreign nationals ineligible for certain agricultural program loans, payments, or benefits, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 55. A bill to authorize the Lyman Jones and West River rural water development projects; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 56. A bill to establish the El Malpais National Monument, the Masau Trail, and the Grants National Conservation Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BOREN:

S. 57. A bill to provide interest rate on agricultural loans; to provide for the repayment of certain Federal Financing Bank loans; and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DANFORTH (for himself, Mr. BAUCUS, Mr. WALLOP, Mr. BOREN, Mr. DURENBERGER, Mr. MITCHELL, Mr. WILSON, Mr. DECONCINI, Mr. KERRY, Mr. CRANSTON, Mr. BINGAMAN, Mr. RIEGLE, and Mr. SYMMS):

S. 58. A bill to amend the Internal Revenue Code of 1986 to make the credit for increasing research activities permanent and to increase the amount of such credit; to the Committee on Finance.

By Mr. HECHT (for himself and Mr. REID):

S. 59. A bill entitled the "National Forests and Public Lands of Nevada Enhancement Act of 1987"; to the Committee on Energy and Natural Resources.

By Mr. GARN (by request):

S. 60. A bill to entitled the "Financial Services Competitive Enhancement Act of 1987"; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. INOUYE:

S. 61. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary stores and post and base exchanges; to the Committee on Armed Services.

By Mr. STEVENS (for himself, Mr. MURKOWSKI, and Mr. DANFORTH):

S. 62. A bill to improve efforts to monitor, assess, and to reduce the adverse impact of driftnets; to the Committee on Commerce, Science, and Transportation.

By Mr. STEVENS:

S. 63. A bill to establish a National Commission on Acquired Immune Deficiency Syndrome; to the Committee on Governmental Affairs.

By Mr. CHILES:

S. 64. A bill to amend the Agricultural Adjustment Act to permit marketing orders to provide for paid advertising for Florida-grown strawberries; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HECHT (for himself, Mr. REID, Mr. SYMMS, Mr. NICKLES, Mr. GRAMM, Mr. MCCLURE, Mr. WALLOP, Mr. GRASSLEY, Mr. HATCH, Mr. COCHRAN, Mr. MELCHER, and Mr. WILSON):

S. 65. A bill entitled the "Highway Speed Modification Act of 1987"; to the Committee on Commerce, Science, and Transportation.

By Mr. BUMPERS:

S. 66. A bill to provide for competitive leasing for onshore oil and gas; to the Committee on Energy and Natural Resources.

By Mr. BUMPERS (for himself and Mr. ROTH):

S. 67. A bill to amend the Tax Reform Act of 1986 by repealing a certain transition rule; to the Committee on Finance.

By Mr. TRIBLE:

S. 68. A bill to require the District of Columbia to reimburse Fairfax County, and Prince William County, for costs incurred in relation to the Lorton Prison; to the Committee on Governmental Affairs.

By Mr. TRIBLE (for himself and Mr. WARNER):

S. 69. A bill to amend the Internal Revenue Code of 1986 to repeal the basis recovery rule for pension plans; to the Committee on Finance.

By Mr. TRIBLE (for himself and Mr. D'AMATO):

S. 70. A bill to provide for the imposition of the death penalty for certain continuing criminal enterprise drug offenses; to the Committee on the Judiciary.

Mr. MATSUNAGA (for himself, Mr. CRANSTON, and Mr. WILSON):

S. 71. A bill to authorize the establishment of a Peace Garden on a site to be selected by the Secretary of the Interior; to the Committee on Energy and Natural Resources.

By Mr. GRAMM:

S. 72. A bill to amend the Social Security Act to assist employers in determining the authenticity of Social Security cards, to curtail the use, availability, and production of falsified Social Security cards, and for other purposes; to the Committee on Finance.

S. 73. A bill to provide preferential treatment on imported products assembled or processed from articles grown, produced, or manufactured in the United States; to the Committee on Finance.

By Mr. GRAMM (for himself, Mr. PRYOR, Mr. ZORINSKY, Mr. SYMMS, and Mr. NUNN):

S. 74. A bill to amend the Internal Revenue Code of 1986 to allow a charitable contribution deduction for certain amounts paid to or for the benefit of an institution of higher education; to the Committee on Finance.

By Mr. GRAMM (for himself, Mr. RUDMAN, and Mr. HOLLINGS):

S. 75. A bill to revise the procedures set forth in the Balanced Budget and Emergency Deficit Control Act of 1985; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977.

By Mr. DOLE (by request):

S. 76. A bill to amend the Federal Water Pollution Control Act to provide for the renewal of the quality for the Nation's waters, and for other purposes.

By Mr. METZENBAUM (for himself, Mr. GLENN, Mr. RIEGLE, Mr. LEVIN, Mr. DIXON, and Mr. SIMON):

S. 77. A bill to amend the act of August 18, 1941, with respect to the preparation of cost and benefit feasibility assessments regarding certain emergency flood control projects; to the Committee on Environment and Public Works.

By Mr. METZENBAUM (for himself, Mr. GLENN, Ms. MIKULSKI, and Mr. SARBANES):

S. 78. A bill to amend the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. METZENBAUM (for himself, and Mr. STAFFORD):

S. 79. A bill to notify workers who are at risk of occupational disease in order to establish a system for identifying and preventing illness and death of such workers, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. METZENBAUM:

S. 80. A bill to repeal the McCarran-Ferguson Act, and for other purposes; to the Committee on the Judiciary.

S. 81. A bill to amend the Older Americans Act of 1965 to establish the Alzheimer's Disease and related dementias home and community based services block grant; to the Committee on Labor and Human Resources.

By Mr. STAFFORD (for himself, Mr. SYMMS, Mr. CHAFEE, Mr. DURENBERGER, and Mr. SIMPSON):

S. 82. A bill to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes; to the Committee on Environment and Public Works.

By Mr. JOHNSTON (for himself, Mr. EVANS, Mr. METZENBAUM, Mr. FORD, Mr. WIRTH, Mr. MATSUNAGA, Mr. PRYOR, Mr. MELCHER, Mr. BUMPERS, Mr. KERRY, Mr. SPECTER, Mr. LEVIN, Mr. SARBANES, Mr. BURDICK, Mr. HEINZ, Mr. D'AMATO, Mr. WARNER, Mr. GORE, Mr. HARKIN, Mr. PROXMIRE, Mr. COCHRAN, Mr. KENNEDY, Mr. BENTSEN, Mr. KASTEN, Mr. WEICKER, Mr. ADAMS, Mr. QUAYLE, and Mr. BIDEN):

S. 83. A bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances; to the Committee on Energy and Natural Resources.

By Mr. JOHNSTON (for himself, Mr. BUMPERS, Mr. WIRTH, and Mr. BINGAMAN):

S. 84. A bill to amend the Land and Water Conservation Fund Act of 1965; to the Committee on Energy and Natural Resources.

By Mr. JOHNSTON (for himself, Mr. BINGAMAN, Mr. BREAUX, and Mr. DOMENICI):

S. 85. A bill to amend the Powerplant and Industrial Fuel Use Act of 1978 to repeal the end use constraints on natural gas, and to amend the Natural Gas Policy Act of 1978 to repeal the incremental pricing requirements; to the Committee on Energy and Natural Resources.

By Mr. GLENN:

S. 86. A bill to amend section 1105(c) of title 31, United States Code, to limit the amount of any increase in the public debt limit that the President may recommend for a fiscal year; to the Committee on Governmental Affairs.

S. 87. A bill to suspend for 2 years the duty on 1-(3-Sulfopropyl) pyridinium hydroxide; to the Committee on Finance.

S. 88. A bill to amend the tariff schedules of the United States to extend the suspension of duties on umbrella frames; to the Committee on Finance.

S. 89. A bill to amend the tariff schedules of the United States to correct the classification of certain pigments; to the Committee on Finance.

By Mr. CHILES (for himself and Mr. GRAHAM):

S. 90. A bill to establish the Big Cypress National Preserve addition in the State of Florida, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S. 91. A bill to amend title 38, United States Code, to modify the qualifications required for appointment to the positions of Chief Medical Director, Deputy Chief Medical Director, and Associate Deputy Chief Medical Director of the Veterans' Administration; to the Committee on Veterans' Affairs.

S. 92. A bill to amend title 38, United States Code, to provide that the Administrator of Veterans' Affairs may furnish outpatient dental services and treatment for nonservice-connected disability to any war veteran who has a service-connected disability of 50 percent or more; to the Committee on Veterans' Affairs.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 93. A bill to provide that services furnished by a clinical psychologist in a rural health clinic need not be provided under the direct supervision of a physician in order to qualify for coverage under Medicare and Medicaid; to the Committee on Finance.

S. 94. A bill to amend titles XVIII and XIX of the Social Security Act to provide that pediatric nurse practitioner or pediatric clinical nurse specialist services are covered under part B of Medicare and are a mandatory benefit under Medicaid; to the Committee on Finance.

By Mr. KERRY:

S. 95. A bill to amend the Clean Air Act to control certain sources of sulfur dioxide and oxides of nitrogen to reduce acid deposition, and for other purposes; to the Committee on Environment and Public Works.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 96. A bill to amend titles XVIII and XIX of the Social Security Act to provide that psychiatric nurse practitioner or psychiatric clinical nurse specialist services are covered under part B of Medicare and are a mandatory benefit under Medicaid, and for other purposes; to the Committee on Finance.

S. 97. A bill to amend title XVIII of the Social Security Act to provide that psychologist services furnished by, or under arrangements made by, a hospice program are covered under Medicare; to the Committee on Finance.

S. 98. A bill to amend the Internal Revenue Code of 1986 to provide a credit for the purchase of child restraint systems used in motor vehicles; to the Committee on Finance.

By Mr. INOUYE:

S. 99. A bill to allow the Internal Revenue Code of 1986 to be applied and administered as if the 3-year basis recovery rule applicable to employees' annuities had not been repealed; to the Committee on Finance.

By Mr. D'AMATO:

S. 100. A bill to establish an Office of Inspector General in the Nuclear Regulatory Commission, and for other purposes; to the Committee on Environment and Public Works.

By Mr. INOUYE:

S. 101. A bill to amend titles XVIII and XIX of the Social Security Act to provide that a nurse practitioner or clinical nurse specialist may, in collaboration with a physician, certify or recertify the need for certain services, to provide for coverage of certain items and services furnished by a nurse practitioner or clinical nurse specialist, and for other purposes; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 102. A bill to amend the Job Training Partnership Act to include American Samoans in the Native American Employment and Training Programs; to the Committee on Labor and Human Resources.

S. 103. A bill to establish the position of Associate Director for Special Populations in the National Institute on Alcohol Abuse and Alcoholism and in the National Institute on Drug Abuse; to the Committee on Labor and Human Resources.

By Mr. INOUYE:

S. 104. A bill to recognize the organization known as the National Academies of Practice; to the Committee on the Judiciary.

S. 105. A bill to amend title 38, United States Code, to provide for the payment of incentive special pay to Veterans' Administration psychologists who obtain certain board certification in a professional specialty; to the Committee on Veterans' Affairs.

S. 106. A bill to amend title 10, United States Code, to provide that the Chief of the Army Nurse Corps be appointed in the regular grade of brigadier general; to the Committee on Armed Services.

S. 107. A bill for the relief of June Feldman; to the Committee on Governmental Affairs.

S. 108. A bill for the relief of Walter Chang; to the Committee on the Judiciary.

S. 109. A bill to permit the naturalization of certain Filipino war veterans; to the Committee on the Judiciary.

S. 110. A bill for the relief of Ms. Loida Queja Caberto; to the Committee on the Judiciary.

S. 111. A bill for the relief of Marivic Neri and Miyoshi Neri; to the Committee on the Judiciary.

S. 112. A bill for the relief of Pauline M. Lucas; to the Committee on the Judiciary.

S. 113. A bill for the relief of Fisi'itetefa P. Ma'ake; to the Committee on the Judiciary.

S. 114. A bill for the relief of Mr. Faalili Afele, Mrs. Liugalua Afele, and Ms. Siliolo Afele; to the Committee on the Judiciary.

S. 115. A bill for the relief of Marlene Sabina Lajola; to the Committee on the Judiciary.

S. 116. A bill for the relief of Mr. Fu Chuan Lee and Ms. Shon Ning Lee; to the Committee on the Judiciary.

S. 117. A bill for the relief of Mrs. Wo Chih-Chu Liao and sons, Chung-Chi, Feng-Yi, and Chi-Hung; to the Committee on the Judiciary.

S. 118. A bill for the relief of Jose U. Miranda, Violete Amore Miranda, and Michael Joseph Miranda; to the Committee on the Judiciary.

S. 119. A bill for the relief of Susan Rebola Cardenas; to the Committee on the Judiciary.

S. 120. A bill for the relief of Ms. Kinisimere Fonua Suschnigg; sons, Georg Cagilaba Suschnigg and Dariush Anthony Suschnigg; to the Committee on the Judiciary.

S. 121. A bill for the relief of Mrs. Araceli Gushiken; to the Committee on the Judiciary.

S. 122. A bill for the relief of Arron P.K. Yung; to the Committee on the Judiciary.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 123. A bill to amend title XVIII of the Social Security Act to provide that psychologist services are covered under part B of Medicare; to the Committee on Finance.

S. 124. A bill to amend title XVIII of the Social Security Act to provide that certified nurse-midwife services are covered under part B of Medicare; to the Committee on Finance.

By Mr. MELCHER:

S. 125. A bill to provide for the improvement of the operations of the Foreign Agricultural Service; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 126. A bill to amend titles XVIII and XIX of the Social Security Act to provide that gerontological nurse practitioner or gerontological clinical nurse specialist services are covered under part B of Medicare and are mandatory benefit under Medicaid, and for other purposes; to the Committee on Finance.

S. 127. A bill to amend title XVIII of the Social Security Act to provide that services furnished by a clinical social worker are covered under part B of Medicare when furnished by health maintenance organization to a member of that organization; to the Committee on Finance.

By Mr. INOUYE:

S. 128. A bill to amend title 10, United States Code, to authorize former members of the Armed Forces who are totally disabled as the result of a service-connected disability to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

By Mr. INOUYE (for himself, Mr. DECONCINI, Mr. MATSUNAGA, Mr. KENNEDY, and Mr. MURKOWSKI):

S. 129. A bill to authorize and amend the Indian Health Care Improvement Act, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. INOUYE:

S. 130. A bill to require that imports of fresh ginger root meet all the requirements imposed on domestic fresh ginger root; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 131. A bill to amend title XVIII of the Social Security Act to clarify that payment may be made under part A for diagnostic or therapeutic services furnished by a psychologist under an arrangement with a hospital to an inpatient of such hospital who is entitled to benefits under such part; to the Committee on Finance.

By Mr. INOUYE:

S. 132. A bill to permit individuals who received National Health Service Corps scholarships to perform obligated service in such units of the Department of Defense as the Secretaries of Defense and Health and Human Services may determine by agreement; to the Committee on Labor and Human Resources.

S. 133. A bill to require the Secretary of Health and Human Services to establish a scholarship program to enable professional nurses to obtain advanced degrees in professions related to the practice of nursing; to the Committee on Labor and Human Resources.

S. 134. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect to be conducted by a clinical social worker; to the Committee on the Judiciary.

S. 135. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect to be conducted by a psychiatric nurse practitioner or a clinical nurse specialist; to the Committee on the Judiciary.

By Mr. INOUYE (for himself, Mr. DECONCINI and Mr. MATSUNAGA):

S. 136. A bill to improve the health status of Native Hawaiians, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. INOUYE:

S. 137. A bill to direct the Secretary of the Army to determine the validity of the claims of certain Filipinos that they perform military service on behalf of the United States during World War II; to the Committee on Armed Services.

By Mr. INOUYE (for himself and Mr. BOREN):

S. 138. A bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to permit distribution of certain State-inspected meat and poultry products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 139. A bill to direct the Secretary of Transportation to approve modifications of certain interstate highway transfer concept plans; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 140. A bill to amend title XVIII of the Social Security Act to provide that psychologist services are covered under part B of Medicare; to the Committee on Finance.

By Mr. INOUYE:

S. 141. A bill to authorize reduced postage rates for certain mail matter sent to Members of Congress; to the Committee on Governmental Affairs.

By Mr. INOUYE (for himself, Mr. DECONCINI, Mr. MATSUNAGA, and Mr. MURKOWSKI):

S. 142, A bill to amend the Native American Programs Act of 1974 to authorize appropriations for fiscal years 1987 through 1991; to the Select Committee on Indian Affairs.

By Mr. INOUYE (for himself and Mr. DECONCINI):

S. 143. A bill to establish a temporary program under which parenteral diacetylmorphine will be made available through qualified pharmacies for the relief of intractable pain due to cancer; to the Committee on Labor and Human Resources.

By Mr. INOUYE:

S. 144. A bill to amend the District of Columbia Code to provide for the service of psychiatic nurse practitioners and psychiatric nurse clinical specialists on the District of Columbia Commission on Mental Health; to the Committee on Governmental Affairs.

S. 145. A bill to increase the role of the Secretary of Transportation in administering section 901 of the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

S. 146. A bill to further the development and maintenance of and adequate and well-balanced American merchant marine by requiring that certain mail of the United States be carried on vessels of United States registry; to the Committee on Commerce, Science, and Transportation.

S. 147. A bill to revise the laws regarding the transportation of Government cargoes in United States-flag vessels; to the Committee on Commerce, Science, and Transportation.

S. 148. A bill to amend the Shipping Act, 1916, to provide for jurisdiction over common carriers by water engaging in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States; to the Committee on Commerce, Science, annd Transportation.

S. 149. A bill to provide for the service of clinical social workers on the District of Columbia Commission on Mental Health; to the Committee on Governmental Affairs.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 150. A bill to provide financial assistance to community colleges and to Kamehameha Schools/Bishop Estate for demonstration grants designed to address the special needs of gifted and talented elementary and secondary school students who are Indian or Native Hawaiian, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. INOUYE:

S. 151. A bill to permit educational institutions with graduate programs in clinical social work to apply for grants and contracts to provide educational assistance to individuals from disadvantaged backgrounds; to the Committee on Labor and Human Resources.

S. 152. A bill to clarify that graduate programs in clinical psychology are health professions schools for purposes of title VII of the Public Health Service Act; to the Committee on Labor and Human Resources.

S. 153. A bill to specify that health maintenance organizations may provide the services of clinical social workers; to the Committee on Labor and Human Resources.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 154. A bill to authorize the Secretary of Health and Human Services to make grants for the planning, development, establishment and operation of poison control centers; to the Committee on Labor and Human Resources.

By Mr. INOUYE:

S. 155. A bill to limit the costs resulting from acts of negligence in health care and to improve the level of health care services in the United States, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 156. A bill to amend chapter 89 of title 5, United States Code, to provide authority for the direct payment or reimbursement to qualified clinical social workers to clarify certain provisions of such chapter with respect to coordination with State and local law, and for other purposes; to the Committee on Governmental Affairs.

S. 157. A bill to amend Native American Programs Act of 1974 to authorize the provision of financial assistance to agencies serving Native American Pacific Islanders (including American Samoan Natives); to the Select Committee on Indian Affairs.

By Mr. INOUYE:

S. 158. A bill to authorize the sale of certain fish in the State of Hawaii; to the Committee on Commerce, Science, and Transportation.

S. 159. A bill to amend title 10, United States Code, to authorize the appointment of health care professionals to the positions of the Surgeon General of the Army, the Surgeon General of the Navy, and the Surgeon General of the Air Force; to the Committee on Armed Services.

S. 160. A bill to amend titles 10 and 37, United States Code, to provide for constructive service credit for speciality nurses and to provide for incentive pay for speciality nurses assigned to remote locations within the Department of Defense; to the Committee on Armed Services.

S. 161. A bill to provide for the review of certain authority in certificates issued under the Federal Aviation Act of 1958, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 162. A bill to amend title 37, United States Code, to provide for special pay for psychologists in the commissioned corps of the Public Health Service; to the Committee on Governmental Affairs.

S. 163. A bill to provide that a student enrolled in a graduate program in psychology shall be eligible for student loans under the health professions student loan program; to the Committee on Labor and Human Resources.

S. 164. A bill to transfer the National Institute of Mental Health to the National Institutes of Health; to the Committee on Labor and Human Resources.

S. 165. A bill to amend title 37, United States Code, to authorize special pay for certain officers of the Armed Forces who obtain certain professional board certifications as psychologists; to the Committee on Armed Services.

S. 166. A bill to amend section 1086 of title 10, United States Code, to provide for payment under the CHAMPUS Program of certain health care expenses incurred by certain members and former members of the uniformed services and their dependents to the extent that such expenses are not payable under Medicare, and for other purposes; to the Committee on Armed Services.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 167. A bill to amend chapter 89 of title 5, United States Code, to provide authority for the direct payment or reimbursement to nurse midwives, nurse practitioners, and nurses, to clarify certain provisions of such chapter with respect to coordination with

State and local law, and for other purposes; to the Committee on Governmental Affairs.

S. 168. A bill to amend titles XVIII and XIX of the Social Security Act to provide that clinical social worker services are covered under part B of Medicare and are a mandatory benefit under Medicaid, and for other purposes; to the Committee on Finance.

By Mr. RIEGLE:

S. 169. A bill to provide Federal grants to States for programs to identify and aid individuals who have been exposed to the drug diethylstilbestrol [DES]; to the Committee on Labor and Human Resources.

S. 170. A bill to amend title II of the Social Security Act to repeal the separate definition of disability presently applicable to widows and widowers, and to provide in turn that the months of a widow's or widower's entitlement to SSI benefits on the basis of disability may be used in establishing his or her entitlement to medicare benefits on that basis; to the Committee on Finance.

S. 171. A bill to amend title II of the Social Security Act to extend the benefits of the delayed retirement credit to surviving spouses and surviving divorced spouses who work and whose widow's or widower's insurance benefits are higher than their old-age insurance benefits; to the Committee on Finance.

S. 172. A bill to amend title II of the Social Security Act to extend the benefits of the delayed retirement credit to surviving spouses and surviving divorced spouses who work and whose widow's or widower's insurance benefits are higher than their old-age insurance benefits; to the Committee on Finance.

S. 173. A bill to amend title II of the Social Security Act to provide that upon the death of one member of a married couple the surviving spouse or surviving divorced spouse shall automatically inherit the deceased spouse's earnings credits to the extent that such credits were earned during the period of their marriage; to the Committee on Finance.

S. 174. A bill to amend title II of the Social Security Act to provide that the combined earnings of a husband and wife during the period of their marriage shall be divided equally and shared between them for benefit purposes if they become divorced and either of them so elects; to the Committee on Finance.

S. 175. A bill to amend title II of the Social Security Act to provide that an individual's "years of coverage" for purposes of computing the special minimum benefit may include up to 10 additional years—not otherwise includible for that purpose—in which such individual had a child age 6 or under in his or her care; to the Committee on Finance.

S. 176. A bill to amend title XVIII of the Social Security Act to waive the late enrollment penalty under Medicare part B for any disabled individual who was covered under his own or his spouse's private employment-related health insurance; to the Committee on Finance.

S. 177. A bill to provide for a system of cost sharing for health care and uncompensated care, and for other purposes; to the Committee on Finance.

By Mr. RIEGLE (for himself and Mr. CRANSTON):

S. 178. A bill to amend the Social Security Act to provide for improved procedures with respect to disability determinations and continuing disability reviews and to modify the program for providing rehabilitation services determined under such act to be under a disability, and for other purposes; to the Committee on Finance.

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

S. 179. A bill to amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns; to the Committee on Rules and Administration.

By Mr. RIEGLE:

S. 180. A bill to establish a Department of International Trade and Industry as an executive department of the Government of the United States, and for other purposes; to the Committee on Governmental Affairs.

S. 181. A bill entitled the "Public Safety Officers' Death Benefits Amendments of 1987"; to the Committee on the Judiciary.

S. 182. A bill to amend title 3, United States Code, and the Uniform Time Act of 1966 to establish a single poll closing time in the continental United States for Presidential general elections; to the Committee on Rules and Administration.

S. 183. A bill to provide for a program for the provision of child care services in public housing projects; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DODD (for himself and Mr. WEICKER):

S. 184. A bill to provide economic assistance to the Central American democracies, and for other purposes; to the Committee on Foreign Relations.

By Mr. BURDICK (for himself, Mr. MOYNIHAN, Mr. BENTSEN, Mr. BAUCUS, Mr. LAUTENBERG, Mr. BREAUX, Ms. MIKULSKI, Mr. REID, Mr. STAFFORD, Mr. SYMMS, Mr. WILSON, and Mr. CHAFEE):

S. 185. A bill to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes; to the Committee on Environment and Public Works.

By Mr. RIEGLE:

S. 186. A bill to establish a national trade information policy, the Council on Trade Information, the U.S. Trade Data Bank, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MELCHER:

S. 187. A bill to provide for the protection of Native American rights for the remains of their dead and sacred artifacts, and for the creation of Native American cultural museums; to the Select Committee on Indian Affairs.

By Mr. WEICKER (for himself and Mr. DODD):

S. 188. A bill to amend title 28, United States Code, to provide for the appointment of one additional district judge for the District of Connecticut; to the Committee on the Judiciary.

By Mr. HEINZ:

S. 189. A bill to provide for the temporary suspension of the duty on crosslinked polyvinylbenzyltrimethylammonium chloride (cholestyramine resin USP); to the Committee on Finance.

S. 190. A bill to provide temporary suspension of the duty on mixtures of maneb, zineb, mancozeb, metiram, stabilizer, and application adjuvants; to the Committee on Finance.

S. 191. A bill to provide for the temporary suspension of the duty on mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) and application adjuvants; to the Committee on Finance.

S. 192. A bill relating to the tariff classification of slabs of iron or steel; to the Committee on Finance.

S. 193. A bill to provide for the temporary suspension of the duty on methylene blue which is used as a process stabilizer in the manufacture of organic chemicals; to the Committee on Finance.

S. 194. A bill to suspend the tariff on 1,5 naphthalene diisocyanate; to the Committee on Finance.

S. 195. A bill to provide for the temporary suspension of the duty on mixtures of 2,4,-dinitro-6-octyl phenyl crotonate, 2,6-dinitro-4-octyl phenyl crotonate and nitrooctyl phenols (dinocap), and on mixtures of dinocap with application adjuvants; to the Committee on Finance.

S. 196. A bill to provide for the temporary suspension of the duty on mixtures of mancozeb, dinocap, stabilizer and application adjuvants; to the Committee on Finance.

S. 197. A bill to extend through June 30, 1990, the suspension of import duties on synthetic rutile; to the Committee on Finance.

S. 198. A bill to extend for 3 years the existing duty-free treatment of certain needlecraft display models, and for other purposes; to the Committee on Finance.

S. 199. A bill to provide duty-free treatment for dicofol until Janaury 1, 1991, after the existing duty reduction for the chemical expires on September 30, 1985; to the Committee on Finance.

By Mr. NICKLES (for himself, Mr. DOLE, Mr. GRAMM, Mr. DOMENICI, Mr. WALLOP, Mr. HECHT, Mr. BUMPERS, and Mr. SYMMS):

S. 200. A bill to amend the Internal Revenue Code of 1954 to repeal the windfall profit tax on crude oil; to the Committee on Finance.

By Mr. HEINZ:

S. 201. A bill to temporarily exempt the duty on single-headed latch needles and hosiery knitting needles; to the Committee on Finance.

S. 202. A bill to extend for 5 years the existing temporary duty-free treatment of hosiery knitting machines, and double-headed latch needles; to the Committee on Finance.

S. 203. A bill to extend the existing temporary duty-free treatment for certain wools not finer than 46s; to the Committee on Finance.

S. 204. A bill to provide for the temporary suspension of the duty on 3-amino-3-methyl-1-butyne; to the Committee on Finance.

S. 205. A bill to amend the Tariff Schedules of the United States to change the tariff classification of silicone materials; to the Committee on Finance.

S. 206. A bill to amend the Tariff Schedules of the United States to change the tariff classification of certain work gloves; to the Committee on Finance.

By Mr. GORE:

S. 207. A bill to provide for partial public financing of general elections for candidates in campaigns for the U.S. Senate, and for other purposes; to the Committee on Rules and Administration.

S. 208. A bill to prohibit reprisal actions against officers and employees of Federal Government contractors for disclosing certain information to a Federal Government agency; to the Committee on Governmental Affairs.

S. 209. A bill to provide that Bell operating companies may provide information services and manufacture telecommunications equipment, subject to regulation by the Federal Communications Commission; to the Committee on Commerce, Science, and Transportation.

By Mr. KENNEDY (for himself and Mr. MELCHER):

S. 210. A bill to amend the Public Health Service Act to provide catastrophic health insurance coverage for elderly and disabled Americans; to the Committee on Labor and Human Resources.

By Mr. SYMMS:

S. 211. 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. HELMS:

S. 212. A bill to help prevent rape and other sexual violence by prohibiting dial-a-porn operations; to the Committee on Commerce, Science, and Transportation.

S. 213. A bill to restore the right of voluntary prayer in public schools and to promote the separation of powers; to the Committee on the Judiciary.

By Mr. SYMMS (for himself and Mr. MCCLURE):

S. 214. A bill to direct the Federal Energy Regulatory Commission to issue an order with respect to Docket No. EL-85-38-000; to the Committee on Energy and Natural Resources.

By Mr. SASSER:

S. 215. A bill to amend chapter 13 of title 18 of the United States Code; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself, Mr. CRANSTON, and Mr. MATSUNAGA):

S. 216. A bill to amend title 38, United States Code, to increase the per diem rates paid to States for providing care to veterans in State homes; to the Committee on Veterans' Affairs.

By Mr. PRESSLER:

S. 217. A bill to reform the tort law doctrine of joint and several liability; to the Committee on the Judiciary.

By Mr. HEINZ:

S. 218. A bill to amend the Federal Financing Bank Act of 1973 to establish a Federal Credit Program Revolving Fund under the direction of the Secretary of the Treasury with overall authority for Federal credit activity, including borrowing and credit management; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SASSER:

S. 219. A bill to amend the Trade Act of 1974 to reform the procedures for relief from injury caused by import competition and unfair trade practices; to the Committee on Finance.

By Mr. SYMMS (for himself, Mr. NICKLES, and Mr. MCCLURE):

S. 220. A bill to require the voice and vote of the United States in opposition to assistance by international financial institutions for the production of commodities or minerals in surplus, and for other purposes; to the Committee on Foreign Relations.

By Mr. RIEGLE:

S. 221. A bill to establish within the Department of Agriculture an Office of Emergency Aid for Farm Families to provide grants to States for emergency services to farm families, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 222. A bill to strengthen the program for grants to States for dependent care programs, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. GORE:

S. 223. A bill to establish the Food and Drug Administration by law, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. D'AMATO:

S. 224. A bill to amend and extend programs under the Urban Mass Transportation Act of 1964; to the Committee on Banking, Housing, and Urban Affairs.

S. 225. A bill to amend title II of the Social Security Act to protect the benefit levels of individuals becoming eligible for benefits in or after 1979 by eliminating the disparity (resulting from changes made in 1977 in the benefit computation formula) between those levels and the benefit levels of persons who become eligible for benefits before 1979; to the Committee on Finance.

S. 226. A bill to promote the safety of children receiving day care services by establishing a national program for the licensing of child day care providers, establishing a clearinghouse for information with respect to criminal records of employees of day care centers, and establishing a hotline for reporting of abuse of children receiving day care services, and for other purposes; to the Committee on Finance.

S. 227. A bill to amend the Securities Exchange Act of 1934 to impose additional restraints on corporate tender offers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

S. 228. A bill to amend title 10, United States Code, to permit members of the Armed Forces, under certain circumstances, to wear items of religious apparel while in uniform; to the Committee on Armed Services.

S. 229. A bill to provide for adherence with the MacBride Principles by United States persons doing business in Northern Ireland; to the Committee on Finance.

S. 230. A bill to amend the Securities Exchange Act of 1934 with respect to the use of nonpublic information; to the Committee on Banking, Housing, and Urban Affairs.

S. 231. A bill to amend the Securities Exchange Act of 1934 with respect to the use of nonpublic information; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WILSON:

S. 232. A bill to permit placement of a privately funded statue of Haym Salomon in the Capitol Building or on the Capitol Grounds and to erect a privately funded monument to Haym Salomon on Federal land in the District of Columbia; to the Committee on Rules and Administration.

By Mr. BOREN (for himself and Mr. BINGAMAN):

S. 233. A bill to amend the Internal Revenue Code of 1986 to encourage increased production of domestic crude oil, and for other purposes; to the Committee on Finance.

By Mr. CRANSTON:

S. 234. A bill to increase the amount of capital available to financial institutions and other agricultural lenders for loans to farmers by providing a secondary market for farm mortgages through the establishment of a federally chartered corporation, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. WILSON (for himself and Mr. CRANSTON):

S. 235. A bill to amend the Clean Air Act to provide that the Administrator of the Environmental Protection Agency shall have authority to regulate air pollution on and over the Outer Continental Shelf; to the Committee on Environment and Public Works.

By Mr. DOLE (for himself, Mr. COCHRAN, Mr. HELMS, Mr. BOSCHWITZ, Mr. LUGAR, Mr. WILSON, and Mr. MCCONNELL):

S. 236. A bill to amend the National School Lunch Act to improve the administration for the commodity distribution program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. THURMOND (for himself, Mr. METZENBAUM, and Mr. SPECTER):

S. 237. A bill to amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the U.S. Government from attempting to influence the U.S. Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes; to the Committee on the Judiciary.

By Mr. THURMOND:

S. 238. A bill to amend section 534 of title 28, United States Code, to allow railroad police and private university or college police access to Federal Government criminal identification records; to the Committee on the Judiciary.

S. 239. A bill to establish an Intercircuit Panel, and for other purposes; to the Committee on the Judiciary.

By Mr. MURKOWSKI:

S. 240. A bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to the Committee on Veterans' Affairs.

By Mr. D'AMATO:

S. 241. A bill to amend the Truth in Lending Act; to the Committee on Banking, Housing, and Urban Affairs.

S. 242. A bill to amend the Truth in Lending Act to impose a ceiling on credit card interest rates; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DIXON (for himself, Mr. GLENN, Mr. DANFORTH, and Mr. KENNEDY):

S. 243. A bill to amend United States Housing Act of 1937 to permit tenant management of public housing; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DIXON:

S. 244. A bill to amend the Federal Deposit Insurance Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BENTSEN (for himself and Mr. BURDICK):

S. 245. A bill to provide for the reimbursement of States for advance construction of highways; to the Committee on Environment and Public Works.

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 246. A bill to provide for a Veterans' Administration outpatient satellite clinic in central or southern Jersey; to the Committee on Veterans' Affairs.

By Mr. CRANSTON:

S. 247. A bill to designate the Kern River as a national wild and scenic river; to the Committee on Energy and Natural Resources.

By Mr. LAUTENBERG (for himself, Mr. MOYNIHAN, Mr. GRASSLEY, Mr. SIMON, Mr. WILSON, Mr. SPECTER, and Mr. BRADLEY):

S. 248. A bill to amend title 10, United States Code, to permit members of the Armed Forces to wear, under certain circumstances, items of apparel not part of the official uniform; to the Committee on Armed Services.

By Mr. DODD (for himself and Mr. SPECTER):

S. 249. A bill to grant employees parental and temporary medical leave under certain circumstances, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HUMPHREY (for himself, Mr. ROTH, Mr. SYMMS, Mr. ZORINSKY, and Mr. HELMS):

S. 250. A bill to prevent fraud and abuse in HUD programs; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 251. A bill to designate certain segments of the Maurice, the Manantico, and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

By Mr. DECONCINI (for himself and Mr. MCCAIN):

S. 252. A bill to establish a San Pedro Riparian National Conservation Area; to the Committee on Energy and Natural Resources.

S. 253. A bill to convey Forest Service land to Flagstaff, AZ; to the Committee on Energy and Natural Resources.

By Mr. DIXON:

S. 254. A bill to provide a one-time amnesty from criminal and civil tax penalties and 50 percent of the interest penalty owed for certain taxpayers who pay previous underpayments of Federal tax during the amnesty period, to amend the Internal Revenue Code of 1954 to increase by 50 percent all criminal and civil tax penalties, and for other purposes; to the Committee on Finance.

By Mr. BOREN (for himself and Mr. BINGAMAN):

S. 255. A bill to repeal the windfall profit tax on domestic crude oil; to the Committee on Finance.

By Mr. DIXON:

S. 256. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to require expeditious consideration by the Congress of a proposal by the President to rescind all or part of any item of budget authority if the proposal is transmitted to the Congress on the same day on which the President approves the bill or joint resolution providing such budget authority; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee has 30 days of continuous session to report or be discharged.

By Mr. DIXON (for himself, Mr. PROXMIRE, Mr. GRASSLEY, Mr. LEVIN, and Mr. RIEGLE):

S. 257. A bill to correct imbalances in certain States in the Federal tax to Federal benefit ratio by reallocating the distribution of Federal spending, and for other purposes; to the Committee on Governmental Affairs.

By Mr. D'AMATO:

S. 258. A bill to amend and extend laws relating to housing and community development; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CHILES:

S. 259. A bill to create a Department of Trade, to promote economic growth and trade expansion, to open foreign markets, to enhance the competitiveness of U.S. firms, and for other purposes; to the Committee on Governmental Affairs.

By Mr. THURMOND (for himself, Mr. CHILES, Mr. HATCH, Mr. TRIBLE, Mr. D'AMATO, Mr. HELMS, Mr. WILSON, Mr. GRASSLEY, and Mr. DECONCINI):

S. 260. A bill to reform procedures for collateral review of criminal judgments, and for other purposes; to the Committee on the Judiciary.

By Mr. MATSUNAGA (for himself, Mr. CRANSTON, and Mr. WILSON):

S. 261. A bill to authorize the establishment of a Peace Garden on a site to be selected by the Secretary of the Interior; to the Committee on Energy and Natural Resources.

By Mr. FORD:

S. 262. A bill for the relief of land grantors in Henderson, Union, and Webster Counties, to the United States, and their heirs; to the Committee on the Judiciary.

By Mr. HUMPHREY:

S. 263. A bill to amend the Tennessee Valley Authority Act; to the Committee on Environment and Public Works.

By Mr. HUMPHREY (for himself, Mr. PROXMIRE, Mr. ARMSTRONG, Mr. HELMS, Mr. GARN, and Mr. GRAMM):

S. 264. A bill to amend the Internal Revenue Code of 1986 to deny status as a tax-exempt organization, and as charitable contribution recipient, for organizations which perform, finance, or provide facilities for abortions; to the Committee on Finance.

By Mr. HUMPHREY (for himself, Mr. ROTH, Mr. SYMMS, and Mr. ZORINSKY):

S. 265: A bill to require executive agencies of the Federal Government to contract with private sector sources for the performance of commercial activities; to the Committee on Governmental Affairs.

By Mr. HUMPHREY (for himself, Mr. GRAMM, Mr. ZORINSKY, Mr. SYMMS, and Mr. HELMS):

S. 266. A bill to amend the Service Contract Act to reform the administration of such act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HUMPHREY (for himself, Mr. GRASSLEY, Mr. HECHT, Mr. GRAMM, Mr. NICKLES, Mr. HELMS, and Mr. SYMMS):

S. 267. A bill to limit the uses of funds under the Legal Services Corporation Act to provide legal assistance with respect to any proceeding or litigation which relates to abortion; to the Committee on Labor and Human Resources.

By Mr. HUMPHREY:

S. 268. A bill to amend title 5, United States Code, to provide child adoption benefits for Federal Government employees; to the Committee on Governmental Affairs.

S. 269. A bill to amend title 10, United States Code, to provide child adoption benefits for members of the Armed Forces; to the Committee on Armed Services.

S. 270 A bill to provide a transition period for the full implementation of the nonrecurring adoption expenses reimbursement program; to the Committee on Finance.

S. 271. A bill to amend section 1001 of the Public Health Service Act to permit family planning projects to offer adoption services; to the Committee on Labor and Human Resources.

By Mr. HUMPHREY (for himself and Mr. HELMS):

S. 272. A bill to require certain individuals who perform abortions to obtain informed consent; to the Committee on Labor and Human Resources.

S. 273. A bill to require certain individuals who perform abortions to obtain informed consent; to the Committee on Labor and Human Resources.

S. 274. A bill to restrict the use of Federal funds available to the Bureau of Prisons to perform abortions; to the Committee on the Judiciary.

By Mr. WILSON (for himself and Mr. CRANSTON):

S. 275. A bill to amend the Wild and Scenic Rivers Act; to the Committee on Energy and Natural Resources.

By Mr. NICKLES:

S. 276. A bill to amend the Internal Revenue Code of 1954 to impose a fee on the importation of crude oil or refined petroleum products; to the Committee on Finance.

By Mr. THURMOND (for himself, Mr. HATCH, Mr. TRIBLE, Mr. D'AMATO, Mr. HELMS, Mr. WILSON, Mr. SPECTER, Mr. DECONCINI, and Mr. GRASSLEY):

S. 277. A bill to establish constitutional procedures for the Imposition of the sentence of death, and for other purposes; to the Committee on the Judiciary.

By Mr. THURMOND (for himself, Mr. HATCH, Mr. TRIBLE, Mr. HELMS, Mr. WILSON, Mr. DECONCINI, and Mr. ZORINSKY):

S. 278. A bill to amend title 18 to limit the application of the exclusionary rule; to the Committee on the Judiciary.

By Mr. DECONCINI (for himself, Mr. CRANSTON, Mr. MATSUNAGA, Mr. MITCHELL, Mr. ROCKEFELLER, and Mr. LAUTENBERG):

S. 279. A bill to amend title 38, United States Code, to postpone the transition period for the Veterans' Administration Vet Center program and to delay the due date of certain reports related thereto; and to delay the due date of a report on post-traumatic disorder among Vietnam-era veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. SPECTER (for himself and Mr. DODD):

S. 280. A bill to provide, through greater targeting, coordination, and structuring of services, assistance to strengthen severely economically disadvantaged individuals and families by providing greater opportunities for employment preparation which can assist in promoting family economic stability; to the Committee on Labor and Human Resources.

S. 281. A bill to amend part A of title IV of the Social Security Act to promote the transition of severely economically disadvantaged individuals to unsubsidized employment; to the Committee on Finance.

By Mr. RIEGLE:

S. 282. A bill to amend the Internal Revenue Code of 1986 to permit individuals to receive tax-free distributions from an individual retirement account or annuity to purchase their first home, and for other purposes; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 283. A bill to require the General Accounting Office to conduct a study of the benefits and costs of modifying coverage under the medicare program to include different levels of extended care; to the Committee on Governmental Affairs.

By Mr. KENNEDY (for himself, Mr. COHEN, Mr. BYRD, Mr. PACKWOOD, Mr. ADAMS, Mr. BAUCUS, Mr. BIDEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BURDICK, Mr. CHAFEE, Mr. CRANSTON, Mr. DANFORTH, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DURENBERGER, Mr. EVANS, Mr. GLENN, Mr. HARKIN, Mr. HEINZ, Mr. HOLLINGS, Mr. INOUYE, Mr. JOHNSTON, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr.

LEVIN, Mr. MATSUNAGA, Mr. METZENBAUM, Ms. MIKULSKI, Mr. MITCHELL, Mr. MOYNIHAN, Mr. PELL, Mr. PROXMIRE, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, Mr. STAFFORD, Mr. WEICKER, and Mr. WIRTH):

S.J. Res. 1. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men; to the Committee on the Judiciary.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S.J. Res. 2. Joint resolution to proclaim the month of March 1987 as National Social Work Month; to the Committee on the Judiciary.

By Mr. DOLE:

S.J. Res. 3. Joint resolution proposing an amendment to the Constitution relating to a Federal budget and tax limitation; to the Committee on the Judiciary.

By Mr. GRAMM:

S.J. Res. 4. Joint resolution proposing an amendment to the Constitution relating to Federal budget procedures; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself and Mr. RIEGLE):

S.J. Res. 5. Joint resolution designating June 14, 1987, as "Baltic Freedom Day"; to the Committee on the Judiciary.

By Mr. DIXON:

S.J. Res. 6. Joint resolution proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations; to the Committee on the Judiciary.

By Mr. THURMOND (for himself, Mr. HATCH, Mr. NICKLES, Mr. GRAMM, Mr. MCCONNELL, and Mr. HELMS):

S.J. Res. 7. Joint resolution proposing an amendment to the Constitution of the United States relating to voluntary school prayer; to the Committee on the Judiciary.

By Mr. HEFLIN:

S.J. Res. 8. Joint resolution proposing an amendment to the Constitution altering Federal budget procedures; to the Committee on the Judiciary.

By Mr. SARBANES (for himself, Mr. GLENN, Mr. GORE, Ms. MIKULSKI, Mr. TRIBLE, and Mr. WARNER):

S.J. Res. 9. Joint resolution to designate the week of March 1, 1987, through March 7, 1987, as "Federal Employees Recognition Week"; to the Committee on the Judiciary.

By Mr. THURMOND (for himself, Mr. NICKLES, Mr. MCCAIN, Mr. KASTEN, Mr. HECHT, Mr. ARMSTRONG, Mr. PROXMIRE, Mr. SIMPSON, Mr. HELMS, Mr. HUMPHREY, Mrs. KASSEBAUM, Mr. GRASSLEY, and Mr. WALLOP):

S.J. Res. 10. Joint resolution disapproving the recommendations of the President relating to rates of certain officers and employees of the Federal Government; to the Committee on Governmental Affairs.

By Mr. THURMOND (for himself, Mr. HATCH, Mr. SIMON, Mr. SIMPSON, Mr. GRASSLEY, Mr. JOHNSTON, Mr. SPECTER, Mr. MCCONNELL, Mr. HUMPHREY, Mr. GRAMM, Mr. D'AMATO, Mr. COCHRAN, Mr. LUGAR, Mr. KASTEN, Mr. QUAYLE, Mr. HELMS, Mr. ZORINSKY, Mr. NICKLES, and Mr. BOREN):

S.J. Res. 11. Joint resolution proposing an amendment to the Constitution relating to Federal balanced budget; to the Committee on the Judiciary.

By Mr. CRANSTON:

S.J. Res. 12. Joint resolution to establish a national policy for the taking of predatory or scavenging mammals and birds on public lands, and for other purposes; to the Committee on Environment and Public Works.

By Mr. SYMMS:

S.J. Res. 13. Joint resolution proposing an amendment to the Constitution of the United States with respect to the English language; to the Committee on the Judiciary.

By Mr. HELMS:

S.J. Res. 14. Joint resolution to designate the third week of June of each year as "National Dairy Goat Awareness Week"; to the Committee on the Judiciary.

By Mr. PRESSLER:

S.J. Res. 15. Joint resolution designating the month of November 1987 as "National Alzheimer's Disease Month"; to the Committee on the Judiciary.

By Mr. RIEGLE:

S.J. Res. 16. Joint resolution to designate the period commencing on April 5, 1987, and ending on April 11, 1987, as "World Health Week", and to designate April 7, 1987, as "World Health Day"; to the Committee on the Judiciary.

S.J. Res. 17. Joint resolution to designate the period commencing on April 19, 1987, and ending on April 25, 1987, as "National DES Awareness Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD:

S. Res. 1. Resolution informing the President of the United States that a quorum of each House is assembled; considered and agreed to.

S. Res. 2. Resolution informing the House of Representatives that a quorum of the Senate is assembled; considered and agreed to.

By Mr. BYRD (for himself and Mr. THURMOND):

S. Res. 3. Resolution to elect John C. Stennis, a Senator from the State of Mississippi, to be President pro tempore of the Senate of the United States; considered and agreed to.

By Mr. BYRD:

S. Res. 4. Resolution notifying the President of the United States of the election of a President pro tempore; considered and agreed to.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 5. Resolution congratulating John C. Stennis, a Senator from the State of Mississippi, on his election as President pro tempore of the United States Senate; considered and agreed to.

By Mr. BYRD:

S. Res. 6. Resolution notifying the House of Representatives of the election of a President pro tempore of the Senate; considered and agreed to.

S. Res. 7. Resolution electing Walter J. Stewart as Secretary of the Senate; considered and agreed to.

S. Res. 8. Resolution notifying the President of the United States of the election of a Secretary of the Senate; considered and agreed to.

S. Res. 9. Resolution notifying the House of Representatives of the election of a Secretary of the Senate; considered and agreed to.

By Mr. BYRD (for himself, Mr. INOUYE, and Mr. MATSUNAGA):

S. Res. 10. Resolution electing Henry Kuualoha Giugni as the Sergeant-at-Arms and Doorkeeper of the Senate; considered and agreed to.

By Mr. BYRD:

S. Res. 11. Resolution electing David J. Pratt as Secretary for the Majority of the Senate; considered and agreed to.

By Mr. DOLE:

S. Res. 12. Resolution electing Howard Greene as Secretary for the Minority of the Senate; considered and agreed to.

By Mr. BYRD:

S. Res. 13. Resolution fixing the hour of daily meeting of the Senate; considered and agreed to.

S. Res. 14. Resolution to amend paragraph 2 and 3 of Rule XXV; considered and agreed to.

S. Res. 15. Resolution to amend paragraph 4 Rule XXV of the Standing Rules of the Senate; considered and agreed to.

By Mr. DOLE:

S. Res. 16. Resolution to amend paragraph 4 of Rule XXV of the Standing Rules of the Senate; considered and agreed to.

By Mr. BYRD:

S. Res. 17. Resolution making majority party appointments to Senate committees for the 100th Congress; considered and agreed to.

By Mr. DOLE:

S. Res. 18. Resolution making minority party appointments to Senate committees for the 100th Congress; considered and agreed to.

By Mr. BYRD:

S. Res. 19. Resolution making majority party appointments to Senate committees in paragraph 3(a), (b), and (c) of Rule XXV; considered and agreed to.

By Mr. DOLE:

S. Res. 20. Resolution making minority party appointments to Senate committees for the 100th Congress and designating ranking members of such committees; considered and agreed to.

By Mr. BYRD (for himself, Mr. DOLE, Mr. GLENN, Mr. BOND, and Mr. SANFORD):

S. Res. 21. Resolution expressing the Senate's gratitude for the President's excellent health and best wishes for his speedy recovery; considered and agreed to.

By Mr. BYRD (for himself, Mr. SARBANES, Ms. MIKULSKI, and Mr. DOLE):

S. Res. 22. Resolution commending the community of Chase, Maryland for its assistance to the rescue workers and the survivors of the Amtrak train accident of January 4, 1987; considered and agreed to.

By Mr. BYRD (for himself, Mr. DOLE, and Mr. INOUYE):

S. Res. 23. Resolution establishing a select committee of the Senate to conduct an investigation and study of activities by the National Security Council and other agencies of the United States Government with respect to the direct or indirect sale, shipment, or other provision of arms to Iran and the use of the proceeds from any such transaction to provide assistance to any faction or insurgency in Nicaragua or in any other foreign country, or to further any other purpose, and related matters; submitted and read.

By Mr. BYRD:

S. Res. 24. Resolution to provide that substitute amendments be considered as first degree amendments under cloture; submitted and read.

S. Res. 25. Resolution to establish a procedure in order to overturn the Chair on ques-

tions of germaneness under cloture; submitted and read.

S. Res. 26. Resolution to limit legislative amendments to general appropriations bills; submitted and read.

S. Res. 27. Resolution to provide for germaneness or relevancy of amendments; submitted and read.

S. Res. 28. Resolution to waive reading of amendments under cloture; submitted and read.

S. Res. 29. Resolution to provide for electronic voting in the Senate; submitted and read.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 30. Resolution to reauthorize and redesignate the Senate Arms Control Observer Group; considered and agreed to.

By Mr. BYRD (for himself, Mr. DOLE, Mr. HUMPHREY, Mr. MOYNIHAN, Mr. BURDICK, Mr. KASTEN, Mr. METZENBAUM, Mr. TRIBLE, Mr. THURMOND, Mr. HELMS, Mr. ROCKEFELLER, Mr. BENTSEN, Mr. ZORINSKY, and Mr. HECHT):

S. Res. 31. Resolution expressing the sense of the Senate with respect to the situation in Afghanistan; considered and agreed to.

By Mr. DOLE:

S. Res. 32. Resolution designating Robert B. Dove as a Parliamentarian Emeritus; considered and agreed to.

By Mr. BYRD (for himself, Mr. DOLE, Mr. FORD, and Mr. STEVENS):

S. Res. 33. Resolution to provide for the payment of severance pay to certain displaced Senate committee employees and to authorize payment for accumulated leave to certain terminated employees in offices of Senators who have ceased to serve as Members of the Senate; considered and agreed to.

S. Res. 34. Resolution relating to legislative assistance for Senators; considered and agreed to.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 35. Resolution relating to the reappointment of Michael Davidson as Senate Legal Counsel; considered and agreed to.

By Mr. INOUYE:

S. Res. 36. Resolution to refer S. 108 entitled "A bill for the relief of Walter Chang" to the Chief Judge of the United States Claims Court for a report thereon; to the Committee on the Judiciary.

By Mr. GLENN:

S. Res. 37. Resolution expressing the sense of the Senate that the President should encourage foreign governments to ratify, accept, or approve the Convention on the Physical Protection of Nuclear Materials; to the Committee on Foreign Relations.

By Mr. MOYNIHAN:

S. Res. 38. Resolution establishing a Special Committee on Families, Youth, and Children; to the Committee on Rules and Administration.

By Mr. DODD (for himself and Mr. SPECTER):

S. Res. 39. Resolution establishing a Special Committee on Young Americans and Families; to the Committee on Rules and Administration.

By Mr. BYRD:

S. Res. 40. Resolution to provide for electronic voting in the Senate; to the Committee on Rules and Administration.

S. Res. 41. Resolution to provide for germaneness or relevancy of amendments; to the Committee on Rules and Administration.

S. Res. 42. Resolution to limit legislative amendments to general appropriations bills; to the Committee on Rules and Administration.

S. Res. 43. Resolution to establish a procedure in order to overturn the Chair on questions of germaneness under cloture; to the Committee on Rules and Administration.

S. Res. 44. Resolution to provide that substitute amendments be considered as first degree amendments under cloture; to the Committee on Rules and Administration.

S. Res. 45. Resolution to waive reading of amendments under cloture; to the Committee on Rules and Administration.

By Mr. DOLE (for himself, Mr. WALLOP, Mr. GRASSLEY, Mr. QUAYLE, Mr. ROTH, Mr. DURENBERGER, Mr. KASTEN, Mr. SYMMS, Mr. RUDMAN, Mr. HATCH, Mr. TRIBLE, Mr. BOND, Mr. GRAMM, Mr. HECHT, Mr. ARMSTRONG, Mr. WILSON, Mr. STEVENS, Mr. D'AMATO, Mr. THURMOND, Mr. SIMPSON, Mr. NICKLES, Mr. COCHRAN, Mr. DOMENICI, and Mrs. KASSEBAUM):

S. Res. 46. Resolution expressing the sense of the Senate regarding tax rates; to the Committee on Finance.

By Mr. FORD:

S. Res. 47. Resolution referring S. 262 to the Chief Commissioner of the United States Court of Claims; to the Committee on the Judiciary.

By Mr. THURMOND:

S. Res. 48. Resolution proposing a Senate Rule with respect to the impeachment of convicted felons; to the Committee on Rules and Administration.

By Mr. MOYNIHAN:

S. Res. 49. Resolution to establish a Commission on Senate Operations and Fiscal Procedures to make recommendations for improving the budget process; to the Committee on Rules and Administration.

S. Res. 50. Resolution in support of Canadian-American Comprehensive Trade Negotiations; to the Committee on Finance.

S. Res. 51. Resolution in support of Japanese-American "MOSS" Auto Parts Negotiations; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. DODD and Mr. DIXON):

S. Res. 52. Resolution to express the sense of the Senate regarding the Urban Development Action Grant Program; to the Committee on Appropriations.

S. Res. 53. Resolution to express the sense of the Senate regarding the Community Development Block Grant Program; to the Committee on Appropriations.

By Mr. BYRD:

S. Con. Res. 1. Concurrent resolution providing for an adjournment of the Senate and the House of Representatives; considered and agreed to.

By Mr. PRESSLER:

S. Con. Res. 2. Concurrent resolution expressing the sense of the Congress regarding the need for the negotiaiton of an international agricultural conservation reserve treaty; to the Committee on Foreign Relations.

By Mr. MOYNIHAN:

S. Con. Res. 3. Concurrent resolution to encourage the Congress to ensure that sufficient funds are provided under title I of the Elementary and Secondary Education Act of 1965, as modified by chapter 1 of the Education Consolidation and Improvement Act of 1981, to meet the needs of all eligible educationally disadvantaged students; to the Committee on Labor and Human Resources.

S. Con. Res. 4. Concurrent resolution relating to tax-exempt 501(c)(3) bonds; to the Committee on Finance.

By Mr. GORE:

S. Con. Res. 5. Concurrent resolution to request the President to take appropriate actions toward the establishment of a cooperative international research program with respect to the greenhouse effect; to the Committee on Foreign Relations.

By Mr. HUMPHREY:

S. Con. Res. 6. Concurrent resolution expressing the sense of the Congress with respect to the denial of health insurance coverage for disabled adopted children; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRANSTON (for himself, Mr. GLENN, Mr. METZENBAUM and Mr. KERRY):

S. 3. A bill to amend title II of the Social Security Act to provide that the combined earnings of a husband and wife during the period of their marriage shall be divided equally and shared between them for benefit purposes, so as to recongnize the economic contribution of each spouse to the marriage and ensure that each spouse will have Social Security protection in his of her own right; to the Committee on Finance.

SOCIAL SECURITY EQUITY ACT

Mr. CRANSTON. Mr. President, I am pleased to introduce S. 3, the proposed "Social Security Equity Act of 1987," which is identical to legislation I introduced in the past three Congresses—S. 3 in the 98th and 99th Congresses, and S. 3034 in the 97th Congress. This measure would incorporate the concept of "earning sharing" into the Social Security system. I am joined in sponsoring this legislation by the distinguished Senator from Ohio [Mr. GLENN], who served in the past several Congresses as the ranking minority member of the Senate Special Committee on Aging as well as the Senator from Ohio [Mr. METZENBAUM], and the Senator from Massachusetts [Mr. KERRY].

S. 3 is similar to earnings-sharing legislation which has been introduced in the House in past Congresses by Representative MARY ROSE OAKAR, who has served as the chair of that body's Select Committee on Aging's Task Force on Social Security and Women. Representative OAKAR has been a tremendous leader in the effort to reform the Social Security system in a manner that would adequately and equitably deal with the needs of older women. It is a great pleasure to continue to work closely with Representative OAKAR on this legislation, as well as on pay-equity legislation, S. 5, which I am also introducing today.

Mr. President, the basic concept underlying earnings sharing is relatively simple: marriage for Social Security purposes should be and would be re-

garded as a partnership. In order to compute benefits, all of the earnings of a married couple would be combined and divided equally between the spouses upon retirement or divorce. Each member of the couple would then have established for him or her an individual Social Security account. Earnings acquired before or after a marriage would go into this individual account along with whatever share each member acquired during marriage.

Mr. President, to understand the need for reform, it is necessary to understand the conditions of poverty and dependency which face millions of older women in our society and how the present system of determining Social Security benefits contributes to these and other problems.

OLD AGE AND POVERTY

Poverty in this country among elderly individuals is principally a problem afflicting women. Although women constitute about 60 percent of the aged population in 1984, they account for more than 71 percent of the elderly poor. In 1984, more than 2.3 million older women had incomes below the poverty line. The poverty rate of elderly women was 15 percent in 1984, compared to the 9-percent rate for older men. For unmarried elderly women—the poverty rate has exceeded 25 percent.

A 1984 report issued by the Women's Research and Education Institute [WREI] of the Congressional Caucus for Women's Issues, "Older Women: The Economics of Aging," succinctly summarizes the data which explain, in part, the reasons for this disproportionate representation of women among the elderly poor.

ELDERLY WOMEN LIKELY TO BE DEPENDENT ON SOCIAL SECURITY

First, Mr. President, women are far more likely than men to be almost totally dependent upon Social Security for income in their old age. Since Social Security was never intended to meet all of the financial needs of a retiree, Social Security alone seldom provides more than a marginal standard of income.

According to the WREI, report, in 1982, only 19 percent or less than 1 in 5 older women had any income from pensions and/or annuities, and only 13 percent of the unmarried elderly women received private pensions in contrast to 33 percent of married couples and 24 percent of unmarried men. Typically, these private pension benefits were low, especially those received by women who retired after years of working at low paying jobs or by women who, as surviving spouses, received reduced benefits from their deceased husband's pension plans.

Interest from assets, such as savings, provide only a minor source of income for many elderly persons, particularly for unmarried elderly women. In 1982, for example, the median income received by elderly persons from all assets amounted to only $1,540.

The importance of Social Security to elderly women is demonstrated by the fact that, according to the 1982 data, nearly three quarters of all unmarried women are dependent on Social Security for at least half of their total income. For almost 40 percent of them, is represents 90 percent or more of their total income. For 1.7 million of these women, Social Security represented 100 percent of their income. In contrast, only 17 percent of married couples and only 27 percent of unmarried males relied upon Social Security for 90 percent or more of their income.

As I will discuss in a moment, this dependence upon Social Security as the major source of their income by elderly women—especially elderly women living alone—when combined with the generally lower Social Security benefits received by these women is a key factor in the disproportionate representation of these women in the poverty population.

ELDERLY WOMEN LIKELY TO LIVE ALONE

Second, Mr. President, elderly women are far more likely than elderly men to be living alone in their old age. Only 40 percent of elderly women live with their husbands, about 20 percent live with other people—mostly family members—and more than 40 percent live alone. Among women over age 75, the percentage living with a husband drops to less than one-fourth and the percentage living alone increases to nearly one-half. These statistics and the likelihood that a woman will be alone in old age arise from higher male mortality rates coupled with the tendency of men to marry younger women. An elderly man is far more likely to be living with a wife: 7 of every 10 men aged 75 and older is living with a spouse while nearly 7 of every 10 women is a widow. Even at the younger ages, the difference in marital status is striking. Of those between age 65 and 74, almost 40 percent of the women are widowed compared to less than 10 percent of the males. Remarriage rates for these men are vastly higher than for women. As I indicated earlier, those elderly women living alone are far more likely to be poor than elderly women living with a spouse.

WOMEN'S SOCIAL SECURITY BENEFITS LIKELY TO BE LOWER

Third, although so many elderly women living alone depend upon Social Security as their principal and sometimes only source of income, their benefits are dramatically lower than the average benefits received by men. In 1982, nearly 4.5 million women were receiving Social Security benefits as widows based upon age—rather than because of disability or the presence of dependent children. Their benefits averaged $379 per month which, if it were the only or primary source of income wasn't very much in 1982. Another 3 million beneficiaries were wives of retired workers receiving a dependent spouse average monthly benefit of $213. In the event that these wives become widows, their monthly benefit would double to $416. The picture for divorced wives was even bleaker. Their benefits averaged $177 a month. For retired workers, the average benefit for women in 1982 was $335; for men, $438. More recent data show little change in these disparities. In 1985, the average benefit for retired female workers was $399; for men, $521.

ELDERLY WOMEN PREDOMINATE IN NEAR-POVERTY STATUS

Finally, although the disproportionate poverty status of elderly women frequently has drawn the most attention because of its staggering nature, the situation is equally grim for millions of elderly women just above the poverty line—which was $4,770 for individuals 65 and over in 1983. As of 1983, older women had a median personal income of $5,599 compared to the median income of $9,766 for older men. When the median income figures are broken down to show income distributions, an even more grim picture emerges. Forty-five percent of these women, or nearly 1 in every 2 had incomes of less than $5,000 in 1983; less than 1 in 5 men fell into this category. The 1984 statistics show a similar pattern. The 1984 median income for elderly women was $6,020—about 58 percent of that for elderly men—$10,450.

Mr. President, in every income category—whether it is private pensions, asset income, or Social Security—older women have dramatically fewer resources and less income in old age than do men. There are, of course, many factors which contribute to the economic hardships that face women in their retirement years. A lifetime of wage discrimination and pay inequities contribute enormously to these problems in old age—and there is a real need to do something further about eliminating those factors. That is the goal of the proposed "Pay Equity Act of 1987," S. 5, which I am also introducing today. But there is little question that a major contributing factor lies in the failure of the present Social Security benefit structure to take into account the changing roles and needs of American women.

HISTORICAL PERSPECTIVE

Mr. President, much of the problem lies in the fact that the Social Security System was developed in an era when the role of women in our society was far different from what it is today. In the 1930's when the Social Security Program was created, the typical American family consisted of a man who was a full-time worker and his wife who was a full-time, lifelong

homemaker. The labor force participation of married women was less than 17 percent and fewer than 1 in 12 marriages ended in divorce. The Social Security benefit structure was thus established on the concept of a lifelong couple with one wage earner and a dependent spouse.

The situation has dramatically changed over the past 50 years and the "typical" family of the thirties and forties—even the fifties and sixties—is not the "typical" family of today. Women have become a major part of America's work force, enriching the world of work with their contributions and productivity, despite continuing wage discrimination and employment barriers. The percentage of married women in the work force exceeds 50 percent, and it has been estimated that 90 percent of all women spend some portion of their lives in the work force, many of them moving in and out of the roles of wage earners and homemakers as the needs of their families change. It is no longer true that women are likely to be either lifelong homemakers or lifelong wage earners; these roles are combined and interchanged throughout a lifetime.

Similarly, we must recognize, like it or not, that the status of marriage has changed dramatically over the past 50 years. Today, 1 of 3 marriages ends in divorce.

Mr. President, despite these massive changes in our society, the Social Security System has continued to operate on the basis of a philosophy designed for an era when most women did not work and when most women were part of a lifelong marriage. Consequently, the current system works well only for that very small number of women whose family and work patterns have not changed from the 1930's and 1940's. For the vast majority of women and families that no longer fit into that pattern, the system fails to provide either adequately or equitably for their needs.

CURRENT BENEFIT STRUCTURE

Under the current system, a woman can receive benefits as a covered worker based upon her own earnings record or she can receive benefits as a dependent wife, widow, or ex-wife of a covered worker, but she cannot receive both benefits. If she is entitled to both a worker's benefit and a dependent spouse's benefit, she receives only the higher of the two benefits and loses the other.

DEPENDENT SPOUSE BENEFIT

A dependent spouse benefit is equal to 50 percent of the benefit of the working spouse. Because many women have gaps in their work history due to absences from the workplace for childcare responsibilities and generally have much lower earnings records, many find that their benefits as a dependent spouse are greater then the benefits they would be entitled to receive on the basis of their own work history. Thus, many married women who enter the work force and make contributions to the Social Security System find that their years of work and contributions make little or no difference in their benefit levels. They are no better off than if they had never worked and never paid into the Social Security System.

DIVORCED OR WIDOWED SPOUSE BENEFITS

Mr. President, the inequities of the current system can be even more acute for those women who have been full-time homemakers and are displaced from that role either by divorce or the death of a spouse. After years of work as a homemaker in a marriage, a divorced woman may find herself without any work record of her own and eligible for Social Security benefits only as a dependent spouse. Although she may be of retirement age, she cannot receive any Social Security benefits unless the marriage lasted 10 years. Until enactment of the 1983 Social Security Amendments, she could not receive benefits until her former spouse reached age 62 and if he elected to continue working, she would receive no benefits at all until he retired or died. Fortunately, that particular inequity was corrected in the 1983 legislation, allowing these women of retirement age with at least a 10-year marriage to receive benefits regardless of whether the former spouse continued working.

However, the benefits received by a divorced spouse are likely to be woefully inadequate. The level of the dependent spouse benefit—50 percent of the primary benefit—was geared toward the notion of women whose marriages do not end in divorce and who will be able to rely upon a combination of their husband's 100-percent benefits and the additional 50-percent spouse benefit—in other words, 150 percent of the primary benefit. The spouse benefit by itself may well be insufficient to live on alone.

A widow is equally vulnerable under the present system. Unless she has been able to establish a sufficient Social Security account in her own name, she will be dependent upon the work and earnings record of her deceased spouse. Unable to build up sufficient credits in her own account and unable to add his credits to her account to the extent of her earnings after his death, she is likely to be left with a benefit level that condemns her to entering retirement in poverty.

ONE-WAGE EARNER VERSUS TWO-WAGE EARNER FAMILIES

The current system also discriminates against intact families with two-wage earners as contrasted with one-wage earner families. Under the benefit calculation formula, a two-earner couple is likely to receive less benefits at retirement than a one-earner couple with exactly the same lifetime earnings. Thus, one family with average monthly earnings of $1,000 and one-wage earner can ultimately receive higher benefits from Social Security than another family with the exact same average earnings but with two wage earners contributing to the total family income. This occurs because of the dependent spouse benefit and because of the formula which is used to calculate benefits.

The 1979 HHS report, "Social Security and the Changing Roles of Men and Women," (page 32) described this problem as follows:

> Since spouse's benefits are not payable to two-earner couples—unless one spouse has low average indexed monthly earnings [AIME]—a two-earner couple generally receives lower total benefits than a one-earner couple with the same total AIME. Benefits for two-earner couples with the same AIME can also vary dependent on the proportion of the total AIME earned by each spouse within the couple.
>
> For example, a one-earner couple each age 62 in 1980 with AIME of $1,000 would have a benefit of $648—a worker's benefit of $432 plus a spouse benefit of $216. If each spouse had one-half of the earnings, the benefit would be $544. Each would receive a worker's benefit of $272.

The HHS report also observed that, as in the case of couples, the survivor of a two-earner couple generally gets a lower benefit than the survivor of a one-earner couple with the same total AIME. For example, the report noted, at AIME of $1,000, the aged survivor's benefit is $432 if only one spouse was a paid worker and only $272—$160 less—if each spouse had AIME of $500—the same total earnings of $1,000.

As I noted earlier, this results from the interplay of the dependent spouse benefit and the weighted benefit formula.

DISABILITY PROTECTION

Finally, a woman who spends years working in the home has no disability protection under Social Security for herself or her dependents even though her disability could cause grave economic hardships for her family. Even if she has recently returned to the work force and is currently earning Social Security credits, she may not yet have met the insured status requirements for disability benefits if she becomes disabled soon after she reenters the work force.

MARRIAGE ALSO AN ECONOMIC PARTNERSHIP

Mr. President, it is time that we begin the task of revising the Social Security System to recognize and reflect the changing roles and responsibilities of both men and women in our society and provide for a more equitable recognition of their contributions to a family unit.

Marriage, insofar as economics are concerned, should be viewed as an interdependent partnership in which each spouse makes a contribution—either in the paid work force or as a

homemaker or in some combination of roles—and both ought to accrue Social Security protection equally.

The view of female dependency which is a foundation of the present Social Security System belongs to a bygone era. Women today are achieving the status of equal partnership with men in every facet of our society. The Social Security System needs to be updated to reflect that partnership.

EARNINGS SHARING—A CONCEPT FOR TODAY'S MARRIAGE PARTNERSHIP

Mr. President, as I indicated at the outset, S. 3 would incorporate the concept of "earnings sharing" into the Social Security System. Marriage for Social Security purposes would be regarded as an economic partnership. In order to compute benefits, all of the earnings of a married couple would be combined and divided equally between the spouses upon retirement or divorce. Each partner would have established for him or her an individual Social Security account. Earnings acquired before or after a marriage would go into this individual account along with whatever share each partner acquired during marriage. The concept of dependency would be replaced by the concept of equality.

Although this is a major change from the current Social Security System of benefit accrual, it is a principle which is now applied in virtually every jurisdiction with respect to other assets acquired during a marriage. Upon the termination of a marriage, these other assets are generally divided equally between the husband and wife. It is similar to the concept of "community property" which has long existed in States like California. Interests in other pension programs are now generally considered part of the assets acquired during the marriage and are considered in the division of property between the couple upon the termination of the marriage. The same would be true if we incorporate the "earnings sharing" concept into the Social Security System. I think it is interesting to note, in this regard, that recently enacted Federal legislation has allowed these principles be to applied to military and civil service pensions.

There have, of course, been numerous proposals made to deal with the inequities and inadequacies of the current system. The "earnings-sharing" concept, however, has numerous advantages. It would eliminate the current discrimination against two-wage earner families. It would no longer be possible for them to receive less benefits than one-earner families with identical earnings records. It would recognize the value of the contribution of a homemaker and accord her a Social Security account in her own right. If divorce or death of a spouse should occur—and for a woman age 65 or older, the chances are very high that she will confront one of these situations—a woman could build upon the separate account created for her during her years of marriage, rather than be forced to start from scratch in establishing a Social Security account.

Likewise, credits from earnings she receives prior to marriage will be able to be added to her account accrued during marriage. The same, of course, would be true for the husband. Women who enter and leave the work force to fill the necessary child-rearing roles would no longer be unfairly penalized by gaps in their Social Security coverage.

Mr. President, earnings sharing has repeatedly been identified as the most direct and equitable approach to dealing with the variety of different problems facing women under the current system. Although various interim and single-purpose measures have been proposed, the attractiveness of the earnings-sharing approach is that it would help to resolve many of these problems.

VARIATIONS WITHIN THE EARNINGS-SHARING CONCEPT

Obviously, however, a proposal such as earnings sharing which calls for a major restructuring of the Social Security benefit system involves many complex and important questions. No one has seriously proposed a "pure" earnings-sharing model. Such a model would be far too harsh on many individuals. Thus, every earnings-sharing model which has been put forward has represented a modified earnings-sharing concept. For example, the legislation that Representative OAKAR and I have introduced provides for 100-percent inheritance of a couple's combined benefits—up to the ceiling for the applicable years—for the surviving spouse.

Other proposals advanced—for example, the model contained in the 1979 report "Social Security and the Changing Roles of Men and Women"—have proposed variations such as an 80-percent inheritance provision. Virtually all models include provisions to address the need to provide adequate protection for dependent children of deceased workers and special provisions to deal with disabled workers.

COST IMPLICATIONS

There is widespread agreement that the earnings-sharing concept itself would not entail any additional costs for the Social Security System. Indeed, a pure earnings-sharing model would probably result in substantial cost savings. Most of the modified earnings-sharing proposals which have been developed would be cost neutral. They would simply reallocate benefits on a more equitable basis. However, it is also generally recognized that a transition from the current system to a new system would entail certain transitional costs designed to protect various categories of beneficiaries from being unduly hurt during the transition period. What those costs would be depend in part upon how these transitional provisions are designed and the length of time for such a transition.

TRANSITION PERIOD

There are major decisions which must be made with respect to a transition period. Changes of this dimension and scope must be phased in over time so that individuals can make appropriate plans for their retirement years. The 1979 HHS report represented two models for a transition period. Representative OAKAR's legislation in past Congresses included the first model, which provides for a grandfathering of current benefits or benefits established under the earnings-sharing concept, whichever is greater until the year 2011. The other model proposed in the HHS report, providing for a lengthy delay in the effective date, is the one included in S. 3.

The Social Security changes proposed in S. 3 would not take effect with respect to any one over the age of 50 in 1988. Those under 50 would begin having Social Security accounts established and computed under this proposal henceforth. Because no one under age 50 could reach the minimum retirement age of 62 before 2000, no one under age 50 in 1988 would actually begin receiving benefits under this system until 2000 at the earliest. Different transition provisions are provided for individuals who might become eligible for Social Security disability benefits during this phase in. In no case, however, would a person who became disabled during this period ever receive less benefits as long as the disability continued than they would be entitled to under the old system.

Mr. President, each of the transition proposals presented in the HHS 1979 report are thus represented in the earnings-sharing measures which have been introduced in the Congress. I suspect, however, that a preferable approach lies somewhere in between the first option, the grandfathering of current benefits for a long period of time, and the second option, delaying the effective date of the new system. The complete grandfathering approach, although attractive from a beneficiaries perspective, would entail significant additional costs.

Conversely, although the second option of delaying the effective date would not have any additional cost implications, it would mean that none of the benefits of the new system would be realized by those women over age 50 who are rapidly approaching retirement. The need to develop a satisfactory transition mechanism was a major motivating factor behind my offering an amendment to the 1983

Social Security legislation directing HHS to prepare and submit to Congress a report on implementation of various models of earnings sharing in Social Security, including appropriate transition mechanisms.

1983 REPORT AMENDMENT

Mr. President, because of the need for substantial indepth analysis of the modifications that would be needed in any earnings-sharing proposal and the necessity of providing for an adequate transition process, when the 1983 Social Security legislation was before the Senate, I offered an amendment, which was enacted as section 344 of Public Law 98-21, to require the Department of Health and Human Services to submit to the Congress a report on implementation of earnings sharing. At the time that I offered this amendment, I explicitly stated that the mandated report should not be viewed as a study of the problems facing women under the Social Security System, but rather it should be focused upon how an earnings-sharing concept could be implemented. At the time I offered the amendment (March 16, 1983, CONGRESSIONAL RECORD, daily ed. S3045), I stated:

I want to stress that this amendment does not call for another study. We did that in 1977. The 1977 social security amendments called for HHS to study the problems facing women under the social security system. The report developed as a result of the 1977 amendments presented the earnings-sharing model as one of two possible comprehensive approaches for dealing with these problems. * * * What needs to be done now is to work out and test the details on how a specific earnings-sharing model can be implemented, and determine what type of transition provisions are needed and what modifications in the basic earnings-sharing concept are necessary in order to provide adequate protection for various categories of beneficiaries.

I should note also that the distinguished minority leader, the Senator from Kansas [Mr. DOLE], who was then chairman of the Senate Finance Committee and the floor manager of the Social Security bill, also made it clear in his statement accepting my amendment that he, too, recognized that the amendment was not—I stress not—calling for another study of the problems facing women in Social Security, but was focused upon advancing the concept of earnings sharing beyond the study stage. The amendment as enacted called for the Department to submit its report to Congress by July 1, 1984.

Unfortunately, Mr. President, the Department failed to submit the statutorily mandated report on the date it was due. Moreover, the report which was finally submitted in January 1985 was disappointing in a number of respects.

Despite the clear legislative mandate to provide an implementation report and analysis, HHS insisted on conducting a survey of the views of interested organizations on the problems facing women under the Social Security System. Representative OAKAR and I, as well as a number of interested organizations, objected strenuously to this diversion of time and resources from the statutorily mandated task given to HHS. This survey cost the Federal taxpayers some $157,000 and basically provided no new insights into the issue. Some 100 pages of the final report are devoted to reviewing the results of the survey.

More importantly, Mr. President, the HHS report was disappointing in that HHS failed to design an earnings-sharing model or implementation plan. Instead of developing proposals and recommendations as was called for by the legislation, much of the report was devoted to critiquing existing earnings-sharing proposals—including an analysis of a so-called generic or pure earnings-sharing model. Since no one has seriously proposed that a pure earnings-sharing model be adopted, this analysis did little to advance the discussion of the earnings-sharing concept.

Consistently, the HHS report stressed the problems associated with implementation of earnings-sharing concepts and minimized or ignored the positive outcomes. For example, where its own statistics showed that nearly 54 percent of the elderly divorced women would get increased benefits under a modified earnings-sharing model, HHS described the outcomes as resulting in "some" divorced women getting increased benefits under this plan. In short, the HHS report betrays a pervasive negative approach to earnings sharing with little effort to identify constructive methods of dealing with the problems that transition to such a model would require.

CONGRESSIONAL BUDGET OFFICE REPORT

Mr. President, the 1983 amendment also provided for the Congressional Budget Office [CBO] to submit to Congress a report on the methodology, recommendations, and analyses used in the HHS report. CBO was not asked to provide recommendations itself, but simply to examine the HHS report. Nevertheless, there is little question that the CBO report has contributed significantly more to the understanding of the earnings-sharing concept than the HHS report.

First, the CBO report provides a neutral, unbiased, and concise description of earnings sharing and the benefits and disadvantages of attempting to implement this concept. Second, the CBO report placed some of the "loss" and "win" results in a more realistic perspective. For example, whereas the HHS report appeared almost to strain to suggest that significant numbers of Social Security recipients would not be benefited by earnings sharing, the CBO report concluded that the measure used by HHS to define "winners" and "losers" under earnings sharing—a 1-percent increase or decrease in benefits—was too small a range to be meaningful in long-range projections. The CBO report pointed out that since there will be substantial real benefit growth regardless of whether or not an earnings-sharing model is adopted, even a 5-percent "loss," relative to current law, would still result in substantial increases in basic benefits. In general, CBO noted that the earnings-sharing model would provide the greatest help to low-benefit recipients—those women most likely to be in the greatest need of assistance. This latter fact is buried deep inside the HHS report.

TECHNICAL COMMITTEE REPORT

Mr. President, in addition to the work done by HHS and CBO, for the past several years, a number of organizations and individuals interested in the earnings-sharing concept have been developing an earnings-sharing proposal for Social Security. Supported by a variety of funding sources, this group, called the Technical Committee for Social Security Reform for Women, has painstakenly worked through and developed both a modified earnings-sharing model and transition plan. Microsimulations done by the Urban Institute, with support from the House Select Committee on Aging, have shown that the Technical Committee's model would not only provide greater equity, but would assure significantly higher benefits for those classes of women who receive the lowest benefits under current law.

Mr. President, it is my understanding that in the next few months the Technical Committee will complete its report and proposal for a Social Security earnings-sharing model. I am confident that once that report is released the debate around Social Security earnings sharing will be significantly advanced.

CONCLUSION

Mr. President, as I indicated earlier, earnings sharing in Social Security would represent a major reform which obviously cannot be implemented overnight. But such an effort must begin now so that future generations of women will be adequately and equitably treated under the Social Security System. Social Security is vital to the security and well-being of millions of Americans—current retirees and disabled persons and future ones. This country has a major obligation to protect the system. But equally important is the obligation to make sure that the system remains responsive to the changing needs and roles within our population.

Over the years, the Social Security System has grown and responded to

the changing needs in many ways, such as by the addition of disability coverage and the enactment of the Medicare Program. Earnings sharing is a concept that is part of that process of growth and responsiveness.

Mr. President, I ask unanimous consent that the full text of S. 3 be printed at this point in the RECORD.

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

S. 3

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 "Social Security Equity Act of 1987".

SEC. 2. SHARING OF EARNINGS BY MARRIED COUPLES.

(a) IN GENERAL.—Title II of the Social Security Act is amended by adding at the end the following new section:

"SHARING OF EARNINGS BY MARRIED COUPLES

"SEC. 234. (a)(1) For purposes of determining the eligibility of an individual and the spouse of such individual for old-age and disability benefits and the amount of such benefits to which each is or may become separately entitled, the combined earnings of such individual and such spouse shall, to the extent that such earnings are attributable to the marriage period of such individual and such spouse (as determined under paragraph (2)), be divided equally between them and shared in accordance with this section.

"(2)(A) Except as provided in subparagraph (B), for purposes of this section, the term 'marriage period' means the period—

"(i) beginning with the first day of the calendar year in which the marriage of an individual and the spouse of such individual occurs, and

"(ii) ending with the last day of the calendar year preceding the earliest calendar year in which such individual or such spouse dies, they are divorced, or one of them files application for old-age or disability insurance benefits.

"(B)(i) No marrige period shall begin for any individual and the spouse of such individual if their marriage occurs after such individual or such spouse has filed an application for old-age insurance benefits.

"(ii) No marriage period shall include a period for which such individual or such spouse is entitled to disability insurance benefits or the waiting period (as defined in section 223(c)(2)) with respect to such benefits.

"(iii) A marriage period shall include the 'earliest calendar year' referred to in clause (ii) of subparagraph (A) for purposes of recomputations for that year under section 215(f)(2), in any case where an individual or the spouse of such individual dies or they are divorced, unless the survivor (where one of them dies) or either of them (where they are divorced) is remarried later in the same year.

"(b)(1) Except to the extent otherwise provided in subsections (c), (d), and (e), an individual and the spouse of such individual shall each be credited for all of the purposes of this title with wages and self-employment income, for each calendar year for which either of them is credited with any wages and self-employment income without regard to this section during their marriage period, in an amount equal to—

"(A) 50 percent of the combined total of the wages and self-employment income otherwise credited to both of them for that year if (at the close of the month for which the benefit determinations involved are being made) they are both still living, or

"(B) 100 percent of such combined total, up to but not exceeding the maximum amount that may be counted for that year without exceeding the ceiling imposed for that year under section 215(e), if (at the close of such month) one of them has died.

"(2) Nothing in this section shall affect the crediting of wages and self-employment income to any individual for any calendar year not included in a marriage period of such individual; but to the extent that wages and self-employment income are credited pursuant to this section the other provisions of this title specifying the manner in which wages and self-employment income are to be credited shall (to the extent inconsistent with this section) not apply.

"(3) Except where the context requires otherwise, for purposes of this section, the term 'spouse' includes a divorced spouse, a surviving spouse, and a surviving divorced spouse.

"(c) Subsections (a) and (b) shall not apply with respect to the crediting of wages and self-employment income for any calendar year, in the case of any individual and the spouse of such individual, if—

"(1) as a result of the application of such subsections with respect to that year such individual or such spouse would cease to be a fully insured individual (as defined in section 314(a)); or

"(2) such individual or such spouse is applying for disability insurance benefits (or for the establishment of a period of disability) and as a result of the application of such subsections with respect to that year would cease to be insured for such benefits under section 223(c)(1) (or for such a period under section 216(i)(3)).

"(d) Subsections (a) and (b) shall not apply for purposes of determining the amount of the benefit payable to any individual for any month if—

"(1) the total amount of the wages and self-employment income credited to such individual for a marriage period, as determined without regard to this section, is higher than the total amount of the wages and self-employment income credited to such individual's spouse for that period, as so determined; and

"(2) such individual's spouse (taking subsections (a) and (b) into account) has not filed application for old-age or disability insurance benefits by the close of such month.

"(e) Notwithstanding any of the preceding provisions of this section—

"(1) benefits payable under subsection (d) or (h) of section 202 on the basis of the wages and self-employment income of any individual, and benefits payable under subsection (b), (c), (e), (f), or (g) of such section 202 (on the basis of such wages and self-employment income) to any person other than a spouse who has shared in or been credited with a part of such individual's earnings under subsections (a) and (b) of this section, shall be determined as though this section had not been enacted if—

"(A) the application of this section has changed such individual's primary insurance amount from what it would otherwise have been; and

"(B) the crediting of wages and self-employment income to such individual and the spouse of such individual without regard to this section would increase the amount of such benefits; and

"(2) in the application of section 203(a) (relating to maximum family benefits) with respect to benefits payable on the basis of the wages and self-employment income of any individual, where all or any part of the wages and self-employment income of such individual and the spouse of such individual was credited to them in accordance with this section, the primary insurance amount of such individual (and the crediting of such wages and self-employment income) shall be determined in accordance with this section but the benefits payable to any other person on the basis of the wages and self-employment income of such individual shall be determined without regard to this section.

"(f) Notwithstanding any other provision of this title, no wife's, husband's, widow's, or widower's insurance benefit shall be paid to any individual for any month under subsection (b), (c), (e), or (f) of section 202, and no individual shall be entitled to any such benefit, unless—

"(1) the period of such individual's marriage (to the spouse or former spouse on the basis of whose wages and self-employment income such benefit is payable) ended before the effective date of this section;

"(2) such individual is under the age of 62 (and is otherwise entitled to such benefit);

"(3) such benefit is payable without regard to age and solely by reason of such individual's having a child in his or her care; or

"(4) the application of this section to such individual is prevented by subsection (c) or (d), (or by clause (i) or (ii) of subsection (a)(2)(B)).

"(g) For purposes of subsections (a)(2) and (d), an individual's application for old-age or disability insurance benefits shall be deemed to have been filed on the first day of the first month for which (by reason of the operation of section 202(j) or 223(b)) such individual is entitled to such benefits.".

(b) CONFORMING CHANGES.—

(1) Section 202(b)(1) of the Social Security Act is amended by striking out "The wife" and inserting in lieu thereof "To the extent permitted by section 234(g), the wife".

(2) Section 202(c)(1) of such Act is amended by striking out "The husband" and inserting in lieu thereof "To the extent permitted by section 234(g), the husband".

(3) Section 202(e)(1) of such Act is amended by striking out "The widow" and inserting in lieu thereof "To the extent permitted by section 234(g), the widow".

(4) Section 202(f)(1) of such Act is amended by striking out "The widower" and inserting in lieu thereof "To the extent permitted by section 234(g), the widower".

(5) Section 205(c)(5) of such Act is amended—

(A) by striking out "or" at the end of subclause (I);

(B) by striking out the period at the end of subclause (J) and inserting in lieu thereof a semicolon and "or"; and

(C) by adding at the end the following new subclause:

"(K) to reflect any changes in the crediting of wages and self-employment income which may be necessitated by section 234.".

(6) Section 215(b) of such Act is amended by adding at the end the following new paragraph:

"(5) The determination of the wages and self-employment income to be credited to an individual under this subsection shall in all cases be made after the application of section 234.".

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall apply only to wages and self-employment income payable after December 31, 1988, to an individual who has not attained age 50 on or before such date, and only if—

(1) the spouse of such individual has not attained age 50 on or before such date; and

(2)(A) in the case of a benefit based upon the attainment by the wage earner of age 62, such individual and such spouse attain age 62;

(B) in the case of a benefit based upon the death of the wage earner, such death occurs after December 31, 1988, and the individual claiming such benefit attains age 62; and

(C) in the case of a benefit described in subparagraph (A) or (B) with respect to a divorced individual and spouse, the divorce occurs after December 31, 2001.

(b) BENEFITS BASED ON DISABILITY.—In the case of a disability insurance benefit, and a widow's or widower's insurance benefit based upon disability—

(1) if an individual is entitled to such benefit before Janaury 1, 1989, the provisions of this Act shall not apply—

(A) for the period for which such individual continues to be entitled to such benefit, and

(B) in the case of an individual who continues to be entitled to such benefit until age 62, for the period such individual is entitled to an old-age insurance benefit;

(2) if—

(A) an individual becomes entitled to such benefit after December 31, 1988, and before January 1, 2001; and

(B) the total benefits payable to all individuals on the basis of the wages and self-employment income of the individual upon whose disability such entitlement is based (determined without regard to the provisions of this Act) exceeds the total of benefits payable to all individuals on the basis of the wages and self-employment income of the individual upon whose disability such entitlement is based, and to the spouse of such individual, under the provisions of this Act.

the provisions of this Act shall not apply for the period during which the conditions of subparagraph (B) continue to be met and during which such individual (i) continues to be eligible for such benefit, or (ii) in the case of such an individual who continued to be eligible for such benefit until age 62, is entitled to an old-age insurance benefit.

By Mr. CRANSTON (for himself, Mr. RIEGLE, Mr. DODD, and Mr. KENNEDY):

S. 4. A bill to provide assistance and coordination in the provision of child care services for children living in homes with working parents, and for other purposes; to the Committee on Labor and Human Resources.

CHILD CARE ASSISTANCE ACT OF 1987

Mr. CRANSTON. Mr. President, I am pleased to introduce S. 4, the proposed Child Care Assistance Act of 1987. This measure is based upon the legislation I first introduced in 1979 as S. 4, and have reintroduced in the past several Congresses. This legislation arose out of the recommendations and testimony presented during an extensive series of hearings which I chaired in 1977, 1978, and 1979 while I served as the chairman of the Subcommittee on Child and Human Development of the Labor and Human Resources Committee. It has been shaped by consultations over the past several years with numerous organizations and individuals concerned about the need to provide adequate, affordable child care services to the millions of American families who need and desire such services in order for one or both parents to remain in or enter the labor force. The changes in the bill in each successive Congress represent continuous refinements of the initial proposal. The basic framework and purpose remain the same—to increase assistance to working families in need of child care services and to help assure that children in child care receive appropriate care and services.

I am pleased to be joined in introducing this measure by the distinguished Senator from Michigan [Mr. RIEGLE], who served with me on the Child and Human Development Subcommittee when this legislation was being developed and was an original cosponsor of S. 4 when it was first introduced in 1979, as well as the distinguished Senator from Connecticut [Mr. DODD], who served as the ranking minority member of the subcommittee of the Labor and Human Resources Committee which was the successor to the Child and Human Development Subcommittee and will serve as chairman of that subcommittee in the 100th Congress as well as serving as the cochairman of the Senate children's caucus, and the Senator from Massachusetts [Mr. KENNEDY], the new chairman of the Labor and Human Resources Committee, who has also been a strong supporter and cosponsor of this legislation in the past.

Mr. President, as I will discuss in a few moments, there are other child care initiatives which I will also be pursuing in the 100th Congress. Reintroduction of S. 4 on the first day of the 100th Congress is intended to make clear our continuing commitment to a comprehensive approach to dealing with a wide array of needs in the area of child care.

Mr. President, I am pleased to report that a companion bill to S. 4 will be introduced in the House of Representatives by my good friend and colleague from California, Representative EDWARD ROYBAL, who also introduced the companions to S. 4 in the House in the 96th, 97th, 98th, and 99th Congresses, H.R. 1211, H.R. 573, H.R. 1741, and H.R. 894, respectively. ED ROYBAL has a longstanding and deep commitment to the issue of child care, and I am delighted to continue working with him to develop sound and realistic proposals to meet the growing need for American families for high quality, yet affordable, child care.

BACKGROUND

Mr. President, during my prior three terms in the Senate, I have been deeply involved with issues relating to child care services for working parents. The lack of adequate child care is one of the most serious problems facing millions of families, and it serves as a major impediment to the attainment of economic security for countless numbers of women, children, and families.

As the chairman of the Child and Human Development Subcommittee, I chaired a series of hearings, both in Washington and in my own State of California, which focused upon the enormous and growing need for decent, affordable child care services for the millions of young children whose parents are in the work force.

During the past year, I held an extensive series of community forums throughout the State of California focused upon the child care crisis in my own State. At these community forums, I had the opportunity to meet with and hear the concerns of hundreds of Californians regarding the inadequacy of child care services.

Mr. President, it is not an exaggeration to say that what was once a major problem is now a major crisis. During the past 6 years under the Reagan administration, the Nation's inadequate supply of child care has deteriorated even further. At the same time that the Federal Government has reduced its funding for existing child care programs, the number of mothers of young children entering the labor force has continued to grow.

When I first began work on S. 4 in 1977, an estimated 50.7 percent of the mothers of children under age 18 and 40.9 percent of the mothers of children under age 6 were in the work force. By 1984, those numbers had increased to 65 percent and 52 percent, respectively. These figures translate to more than 9 million children under 6 and almost 15 million children between 6 and 13 whose mothers are employed. The 1985 figures reported by the Department of Labor showed that almost half—46.8 percent—of the mothers of children under age 1 and nearly two-thirds—65 percent—of those with children under the age of 3 were in the work force. The 1986 figures which will be released soon are expected to show a continued increase.

Indeed, it has been projected that by the year 1990 there will be 11.5 million children under the age of 6 and 17.2 million children between the ages of 6 and 13 whose mothers will be working. That represents an increase of almost 5 million children from the 24 million children under age 13 with mothers in the work force in 1984. A report just released by the Children's Defense Fund projects that if current trends continue, 34.4 million children over 6

will have a mother in the work force by 1995 and 14.6 million children under 6.

The data also indicate a wide disparity between the number of children with employed mothers and the number of available child care slots. The Department of Health and Human Services, in its last comprehensive reports issued in 1980 and 1981, has indicated that there were some 900,000 center-based and 5.2 million family day care places available. That's less than 1 place in 3 for the then 22 million under-age-13 children who had employed mothers. Reports from communities throughout the country show the situation has gotten worse, not better.

WHERE ARE THE CHILDREN AND WHAT IS HAPPENING TO THEM

What is happening to the two-thirds of the children for whom there were no slots?

We don't really know. We do know from census reports that almost 20 percent of the children between the ages of 6 and 13 whose mothers are working full time "take care of themselves" after school until a parent returns home. That means that millions of children, many as young as 6 years of age, are left for periods up to 4 hours a day in empty homes or in school yards or on the streets.

The census figures are also probably on the low side since in many States leaving a child of tender years alone without adult supervision can be considered child neglect, and many parents are reluctant to admit they leave their children alone. The Children's Defense Fund has estimated that as many as 6 to 7 million children under the age of 13 are probably left to fend for themselves for a large part of their day.

During the hearings on S. 4 held in the 95th and 96th Congresses, we heard parents from all over the country testify about the inadequacy of existing resources, the lengthy waiting lists, and the dismal alternatives faced by families. We heard of children being sent to live with relatives in other States because their parents could not find adequate, affordable child care. The large gap between the number of available child care places and the number of children needing care translated into very real and moving stories told by witness after witness. Similar hearings were held in 1984 by the House Select Committee on Children, Youth, and Families. The findings from those hearings are remarkably similar to those we arrived at during our Senate hearings.

The House committee, in its report issued in September of 1984, said of the problem:

Waiting lists for family day care homes and centers for infants and after-school programs for school-aged children are commonplace. Child care for children who are ill or disabled is extremely limited, as is care for abused and neglected children, and for children of teen parents. Even preschool care, the most widely available of all child care, is inadequate in many communities.

Indeed, the problem has grown larger, not diminished.

One of the most tragic recent reports on the consequences of lack of adequate child care services involves the death of two young boys 2 months ago in Florida. These two Miami brothers—3 and 4 years of age—were left alone while their mother was at work. The makeshift child care arrangements utilized while the boys were on a waiting list for admission to a subsidized child care program had fallen through. The boys, left alone, crawled into a clothes dryer and closed the door which automatically activated the heat cycle. The two had been on the waiting list for over a year along with some 6,000 Dade County youngsters. Twenty-four thousand childern were on waiting lists statewide.

Mr. President, the Florida tragedy could have occurred in any number of communities throughout this country.

CHILD CARE DRASTICALLY CUT

As the number of children needing care has continued to escalate, resources for child care have been slashed. The Social Security Act title XX program, the major source of direct financial assistance to child care programs was reduced by 20 percent in fiscal year 1982 from $3.1 to $2.4 billion and the $200 million earmark for child care was eliminated. Child care is one of a number of social services these funds can be spent on. The estimates were at that time that some 150,000 families would lose their child care assistance under title XX as a result of those first-year Reagan cuts. Those projections have been substantiated by reports on how child care programs in various States have actually been hurt by the funding cutbacks.

The National Women's Law Center, in a report issued in April 1982, documented some of the impact. It found, for example, that in Alabama the number of title XX subsidized day care slots were reduced from 11,000 to 8,500. In Michigan, an almost 25-percent reduction in the number of children being served in child care programs was reported. In Massachusetts, eligibility for title XX was lowered to include only persons with income no greater than 70 percent of the State's median income. Arkansas and Illinois were reported to have imposed new, higher fee requirements, pushing many low-income families out of the program.

Mr. President, the Children's Defense Fund [CDF] completed a national survey on the impact of the Federal title XX cuts on State child care programs between 1981 and 1983. That report, entitled "Children and Federal Child Care Cuts," presents a devastating picture of what has happened to what was at best a dismally inadequate support system. CDF surveyed every State to gather information from State officials responsible for the child care programs funded under title XX. The report found that—

Thirty-two States were providing title XX child care to fewer children in 1983 than in 1981;

The total combined Federal and State spending for title XX child care dropped by 14 percent between 1981 and 1983;

Ten States tightened eligibility criterion so that fewer low-income working families were eligible for title XX child care;

Twenty States made it more difficult for low-income mothers in training programs to become eligible for title XX child care;

Nineteen States increased fees for services or imposed minimum fees that made it harder for low-income working families to afford title XX child care, forcing many families to move their children to less desirable child care arrangements;

Forty-two States made changes that threaten to lower the quality of title XX child care services;

Twenty-four States reduced funds for training child care workers;

Thirty-three States lowered their child care standards; and

Thirty-two States cut back on the number of child-care staff.

The CDF report concluded that there is no reason to believe that the many children who lost title XX child care were picked up by other programs. Indeed, one 1983 survey in New York State indicated that many children who lost title XX subsidies are staying home alone. That study estimated that at least one-sixth of the children affected by the funding cuts are regularly left unsupervised.

Mr. President, between May and July 1984, CDF did a followup survey of State officials responsible for the child-care programs funded under title XX. That report, entitled "Child Care: The States' Response—A Survey of State Child Care Policies, 1983-1984," found, at best, minor improvements in limited areas of child care since the first report was released, and concluded that the majority of States, although not having made further reductions, had not yet begun to restore the damage done in 1981. CDF found that 25 States were still spending less for child care in 1984 than they did in 1981, despite the increased need and inflation, and that 27 were serving fewer children under the title XX program in 1984 than they did in 1981.

Last month, the Children's Defense Fund released a further update entitled, "State Child Care Fact Book,

1986." This 1986 report on child care found that States' overall title XX social services block grant expenditures for child care in fiscal year 1986 were approximately 12 percent less than in 1981 when inflation is factored in. Although a number of States increased funding for child-care programs between 1985 and 1986, when child-care budgets are adjusted for inflation, the majority are spending less today than they did 5 years ago before the Reagan cutbacks. CDF found that in fiscal year 1986, 23 States were providing fewer children with child-care assistance through the title XX program than they did in 1981. Between fiscal year 1985 and fiscal year 1986, 11 States reduced the number of children served by their title XX-funded child-care programs.

CDF's 1986 report on child care did note that a handful of States have made some efforts to create new child-care initiatives. These new efforts, although praiseworthy, were described as far too small or too fragmented to lead toward a sensible pattern of services for working families or access to affordable child care for low-income families in the States involved.

Mr. President, the CDF report also noted that although Congress did restore some funds to title XX following the huge cut in 1981, the fiscal year 1987 funding level of $2.7 billion remains $200 million below the fiscal year 1981 level of $2.9. In real terms, adjusted for inflation, Federal funding for title XX is now only 72 percent of the 1981 level and 52 percent of the 1977 level. Given the enormous increase in the need for child-care assistance for low-income families, the decrease in support for these services is simply irrational and inexplicable as a matter of public policy.

CALIFORNIA CHILD CARE NEEDS

Mr. President, as I indicated at the outset, during the past year, I conducted an extensive series of community meetings about the child care crisis in California. I held 11 of these meetings specifically focused on child care issues. The number of people attending ranged from 75 to 100 to several hundred at some of these forums. Parents, child care providers, community workers, business and civic leaders, and just concerned citizens participated in these meetings.

Mr. President, California has long been recognized as a leader in the area of child care. Indeed, after World War II, when the federally funded child care programs established under the Lanham Act were shut down throughout the Nation, the State of California took over the funding of the California programs, thereby establishing a long history and tradition of support for child care in California.

Both the public and private sectors in California have contributed to building child care resources. California enjoys a unique and extensive system of child care resource and referral agencies, providing in each of the State's 58 counties a central source of information on existing child care services and resources and technical assistance to help develop new services.

Yet, by every measure, child care needs are not being met in my State. In many areas and for many children and families, the lack of child care services constitutes a crisis which threatens economic survival.

A year ago, the California Assembly Office of Research published a comprehensive report detailing the need for child care in California. That report, entitled "Caring for Tomorrow: A Local Government Guide to Child Care," estimated that 1.6 million California children needed care outside of the home while their parents work. By 1995, it was projected that 200,000 more children would need care. Yet, the current resources fall well below the existing need.

There are 6,600 licensed child care centers in California with a capacity for 330,000 children and 33,400 licensed family day care homes with a capacity of 198,000. Some 72,000 children are served in State subsidized programs. The supply and the demand simply do not match. In two areas, infant care and extended child care for schoolage children, the problems are particularly acute. The assembly research office estimated that more than 600,000 schoolage children in California go to empty homes each day after school.

Mr. President, in the numerous community meetings I held throughout the State, I learned about how these figures translated to dire shortages at the local level.

In Los Angeles, the United Way in May of 1986, published a report on the shortage of care for school-aged children, "Schools' Out in Los Angeles County: An Inventory Report." It found 239,000 kindergarten through sixth grade children in need of supervised care before and after school. Yet, Los Angeles County had only 46,621 spaces—licensed and unlicensed—for schoolaged children.

In Ventura County, the United Way issued a similar report in March of 1986, "Ventura County Child Care Report." It found a "widening gap between the need for child care and existing services." Noting that the shortage of child care and the increasing cost affects families across all income lines, the report highlighted the fact that Federal Government cutbacks had particularly eroded the availability of services for low-income children while the need was steadily increasing. In Ventura County, the average child care cost for a single mother with one child consumed approximately 18 percent of the family budget. This cost concurs with national statistics which indicate that child care has become the third largest expense in the average America family budget, following shelter and food costs.

The report also found that existing child-care centers in Ventura County had 1,500 children on waiting lists. In one city, Oxnard, there were 58 licensed spaces to serve the more than 6,300 infants residing in the city.

Mr. President, in Alameda County a child care action committee reported some 71,000 children needing care with only 27,288 licensed spaces available. The current shortage of child care in this community was described as "quickly approaching crisis levels."

In Sonoma County, a report prepared by the Community Child Care Council found that there were approximately 10,000 child-care spaces in child-care centers and family day care homes for almost 13,000 children needing care. As a result, one out of every five children requiring care were unable to find it. By 1990, the number of children in Sonoma County is projected to increase by more than 6,000, with an ever-increasing demand for child care services.

The Sonoma report also focused upon the escalating cost of child care for those families who could find it. The typical Sonoma family with one preschooler was spending at least $1 out of every $10 earned on child-care expenses. For families earning less than the county's mean income of $28,000, the percentage was higher.

Finally, Mr. President, a report on child care needs by the Orange County Commission on the Status of Women estimated that some 147,000 children under the age of 14 in that county would need child care by 1988. Yet, based upon existing spaces, the commission projected that over 13,000 infants, 10,000 preschoolers, and 80,000 school-age children would be unserved. The Orange County report estimated that working parents would expend between 18 to 49 percent of their yearly income on child-care services. For low-income families, assistance in meeting these costs was extremely limited. There were almost 6,000 low-income children on waiting lists for less than 1,800 subsidized child-care spaces—a ratio of more than 3 children waiting for every subsidized space available.

Mr. President, I could continue to cite the statistics in the various California communities, but the picture is clear. Even in a State like California which has a well-established commitment to child care, the need for services vastly exceeds the resources available. The withdrawal of Federal assistance in the past 6 years has accelerated a crisis already growing.

FEMINIZATION OF POVERTY

Mr. President, as serious as the problems are in the supply of safe, affordable child care today, there is simply no question that the need will grow in the decade ahead.

It is equally important to understand that these mothers are in the work force for one major reason: economic necessity. Two-thirds of the women in the work force are either sole providers or have husbands who earn less than $15,000. In 1983, 25 percent of the married women in the work force had husbands earning less than $10,000; 50 percent under $20,000 and nearly 80 percent less than $30,000. The earnings of these women play a critical role in the economic well-being of their families. For the one in six American families headed by a woman, of course, her earnings are a matter of simple survival.

Mr. President, although adequate child care is a matter which ought to concern every member of our society—male and female alike—there is little question that the lack of adequate child care has a major and profound impact upon the economic well-being of millions of women and children in this country. Increasingly, our Nation has been experiencing what has been graphically described as "the feminization of poverty." Although the number of families living in poverty has remained relatively constant over the past decade, the composition of those families has dramatically changed. The number of poor families headed by a male dropped from 3.2 to 2.6 million between 1969 and 1978, while the number headed by women increased from 1.8 million to 2.7 million. Families with female heads have a poverty rate six times that of male-headed families, and almost one-third of all female-headed families live below the poverty line.

Lack of affordable child care is a major factor in keeping these women and their children in poverty. The U.S. Commission on Civil Rights has published two important reports focusing on the factors that limit economic opportunities for women. The first report, "Women: Still in Poverty," published in July 1979, identified the lack of adequate child care as one of the key obstacles to low-income women getting out of poverty. The Commission noted:

> In the absence of safe affordable child care, women who would raise their families out of poverty must remain outside the labor force, or when compelled to work, place their children in circumstances detrimental to their wholesome growth.

The second report, "Child Care and Equal Opportunity for Women," published in July 1981, examined in even greater detail the extent to which lack of adequate child-care services restricts women, particularly in terms of employment opportunities.

Here is what this report found:

First, substantial numbers of women are prevented from taking paid work because of the unavailability or inadequacy of child care. The Commission noted that a number of studies suggest that approximately one of every five or six unemployed women is unemployed because she is unable to make satisfactory child-care arrangements.

Second, the unavailability of adequate child care limits employment opportunities for many women—either in terms of their hours of employment or their inability to seek or accept job promotions or acquire the training necessary for advancement.

Finally, lack of child care or inadequate child care can have a detrimental effect upon job performance. A UAW representative told the Civil Rights Commission that stress was a significant factor in industrial accidents and that worry about inadequate child care was cited as the single greatest cause of stress by a number of female assembly line workers participating at a 1978 conference on occupational health and working women. One of the key reasons a number of employers have recently become interested in helping their employees find or secure adequate child-care services is because of the recognition that lack of such care has a detrimental effect upon employee performance.

Mr. President, it is clear that the unavailability of adequate child care restricts, very substantially, the employment opportunities of working mothers and does so in a variety of ways. Adequate child care must be a cornerstone of any effort to provide equal opportunities in the work force to American women. Without such assistance, attainment of economic security will remain an elusive goal for millions and millions of women and their families.

THE WIDENING GAP IN FEDERAL ASSISTANCE

Mr. President, it is important, I believe, to focus for a moment on what appears to be a widening gap in Federal assistance for child-care services between families at different ends of the income spectrum.

On the one hand, as I have described, the little support which was once available to low-income families through title XX has been substantially reduced. At the time, Federal assistance for child-care expenses incurred by moderate and upper income families has been steadily increasing. Today, the largest source of Federal support for child-care costs—now estimated to be over $2 billion—is provided under this IRS child-care tax credit.

I cosponsored and supported the 1981 expansion of the child-care tax credit because I shared the view that increases in the credit were long overdue. Those changes, enacted as part of the 1981 tax bill, Public Law 97-34, increased the maximum amount of credit which could be claimed and included provisions giving more benefits to families on the lower end of the income scale. However, the measure which was approved by the Senate and which I strongly supported included provisions which would have made the credit refundable, thus allowing benefits to go to those low-income working families whose taxable income is too low to be affected by a nonrefundable tax credit. Unfortunately, however, the House conferees refused to accept the Senate refundability provisions from the benefits of the largest source of Federal support for child-care expenses.

Mr. President, in 1979, almost 80 percent of the benefits under the child-care tax credit went to families with annual incomes over $15,000. In 1982, 70 percent went to families with incomes over $20,000. Even had we succeeded in 1981 in targeting a greater proportion of the credit to lower income families, using the Tax Code as a primary vehicle for providing Federal financial assistance in meeting child-care expenses of working parents has major limitations in terms of helping those in greatest need of assistance. Even the Senate refundability provision would not have adequately resolved many of the problems faced by these families. Tax adjustments the following April do little to help families with limited cash resources to meet the weekly and monthly child-care fees that absorb major portions of their incomes.

With the new tax reform law, even fewer low-income families will receive child-care assistance through the tax credit since most will have no tax liability to apply the credit against. Although I was pleased that the final tax reform legislation continued the child-care tax credit, I fully recognize its limitations in reaching many of the families most in need of assistance in meeting child-care needs.

And, finally, a tax credit, regardless of who utilizes it, does little to increase the supply of adequate child care—a continuing, pervasive problem.

Thus, although bringing about a reasonable and fair child-care tax credit is an important part of an overall program to help working families meet their child-care needs, it cannot be the sole source of support. We need to find ways to help those families who are falling through the cracks, and that is what S. 4 is designed to do.

PURPOSES OF S. 4

Mr. President, the purpose of the proposed Child-Care Assistance Act of 1987 is to promote the availability and diversity of quality child-care services for all children and families who need such services by providing assistance to the States to expand the existing

supply of child-care services, improve the quality of and coordination among child-care programs, and generally foster increased coordination of programs at the local, State, and Federal levels. Grants would be available to States, under the terms specified in the bill, to carry out these activities and to make additional resources available to help families find and meet the costs of child care. The bill would also create mechanisms to facilitate an assessment of the extent of the need for child-care services throughout the Nation, both an initial assessment within the next few years and continuing assessments periodically thereafter.

Additionally, and fundamentally, the bill is aimed at strengthening the functioning of families by seeking to assure that parents are not forced by lack of available programs or financial resources to place a child in an undesirable care facility or arrangement.

SUMMARY OF S. 4, THE PROPOSED CHILD CARE ASSISTANCE ACT OF 1987

Mr. President, for the benefit of my colleagues, I will describe the provisions of our bill.

Section 1 would establish the short title of the bill as the "Child-Care Assistance Act of 1987."

Section 2 would set forth the findings and purposes of the act. The findings pertain to the extent of the need for child-care services. The purposes of the act are to provide assistance to the States in improving the quality of and coordination among child-care services; to provide mechanisms for assessing the extent of the need for child-care services in the Nation; to promote at all governmental levels coordination of child-care programs and other services for children and their families; to promote the availability and diversity of quality child-care services for all children and families who need such services; to provide assistance to families whose financial resources are insufficient to pay the full cost of necessary child-care services; and to strengthen the functioning of families by seeking to assure that parents are not forced by lack of available programs or of financial resources to place a child in an undesirable care facility or arrangement.

Section 3 would direct that nothing in the act be construed to authorize any public agency or private organization or any individual associated therewith to interfere with, or to intervene in, any child-rearing decision of parents. The purpose of this legislation is to help parents who need financial or other assistance to secure the child care they want for their children—and not to diminish or interfere with the rights of parents.

Section 4 would provide for State participation under the act through the submission to the Secretary of Health and Human Services of a State plan providing for the specification of a State agency to be responsible for administration and oversight of a State plan designed to meet the need for child-care services within the State for preschool children and school-age children of working parents, with special attention to meeting the need for services of migrant children, disabled children, children with limited English-language proficiency, and other groups of children having special needs. The term "preschool" is used broadly to encompass children under the age of 6, including infants.

This State plan would provide the basic framework within each State for assessing child-care needs and for developing a plan for meeting those needs. Each State would have substantial flexibility to design the plan to meet its own particular needs within the parameters set by the act. The State agency specified under the plan would also be responsible for coordinating, to the maximum extent feasible, the provision of services under the act with other child-care programs and services assisted under other State or Federal laws and with other appropriate services, including health, nutrition, and social services, available to such children under other Federal and State programs.

In response to suggestions made by several witnesses at our 1979 hearings, section 4(a)(1) specifies that the State agency designated to administer the program should be an "appropriate" agency with the capacity to carry out programs. Such an agency should have an appropriate mission in terms of the welfare of children.

Section 4(a)(3)(A)(i) would provide that funds be distributed within the State, in accordance with the plan developed, to child-care providers that are licensed or are otherwise in compliance with State law and meet the quality standards developed by the Secretary for all child-care programs receiving Federal funds under the act. Various witnesses at our hearings during the 95th and 96th Congresses pointed out that in some States procedures other than licensing are used to regulate child-care providers. For example, in certain States, registration programs are used for some family day-care providers. This is still the case. The legislation provides that programs and providers that are in compliance with applicable State laws are eligible for participation. All providers, however, would also be subject to the second requirement—in section 4(a)(3)(A)(ii)—of meeting the quality standards applicable to programs funded under the act.

Section 4(a)(3)(b) would require States to distribute the funds by grants to or contracts with eligible child-care providers or, on a demonstration project basis, through alternative payment mechanisms. This limitation of alternative payment mechanisms to only demonstration projects is in response to the concerns expressed by some witnesses that some restrictions should be placed upon alternative payment mechanism approaches until thorough evaluations of their effectiveness have been completed. At the same time, other witnesses expressed support for the notion of developing innovative types of programs that would further enhance parental choices.

Various alternative payment programs have been developed in several States. For example, in California, alternative payment programs were created under the State's 1978 alternative child-care legislation, commonly referred to as the AB-3059 Program. Nineteen programs were established under this legislation. These programs act primarily as administrative mechanisms to pay for subsidized child care for eligible families; they do not generally provide child care directly. Payments are made either to the child-care providers under a vendor program or to the parents themselves under a voucher program. In a number of cases, the vendor/voucher program operate as part of an information and referral program. Assessment of these programs has been very favorable. Similar types of programs have also been established in Florida. The Community Coordinated Child Care for Central Florida Program is an example of a very effective alternative payment program.

However, in both California and Florida, these alternative payment programs are operated in conjunction with other services and safeguards to ensure that quality child care is provided. These approaches might not be feasible in other States, particularly where an inadequate supply of child care exists or where adequate safeguards are not in place to protect against misuse. Thus, the provisions limit utilization of alternative payment mechanisms to demonstration projects established under guidelines issued by the Secretary. These guidelines would be focused upon ensuring the quality of care and safeguards as well as that evaluations are made of the effectiveness of these programs.

Section 4 would also provide that a State could choose, in the development of its plan for expenditures of the funds under the act, to transfer a portion of funds to an umbrella-type organization—either public or private nonprofit—to distribute funds to child-care providers within a particular community. For example, a State might pass funds through to a city or county or a local nonprofit entity rather than deal itself directly with child-care providers.

Section 4(a)(3)(C)(i) would provide that priority for receipt of funds be

given to child-care providers that provide priority for services for children on the basis of child and family need, taking into account factors such as family income, family size, and the special needs of children from households with a single parent, with particular emphasis on the provision of child-care services to families where lack of child care is or would be a barrier to the continuation or commencement of employment. Under this provision, the need of a child for continuity of care, for example, could be a factor in determining priority for services. As part of the overall focus of S. 4 upon meeting employment-related child-care needs, emphasis is placed upon services to families where lack of such services would be an obstacle to continued employment or attainment of employment.

Section 4(a)(3)(C)(ii) would provide that priority in the distribution of funds within a State be given to child-care providers that, to the maximum extent feasible, provide for an economic mix of children enrolled in the program. This provision, coupled with a requirement in section 4(a)(5) for the establishment of a sliding fee scale, based upon the services provided and family income adjusted for family size, is designed to promote programs which encourage an economic mix as well as to avoid the problems that occur presently when a family loses its assistance if a parent gets a raise or promotion. During our earlier hearings, we heard witnesses describe how parents were dropped from programs when their incomes rose slightly. A sliding fee scale which provides for an increase in family contributions as income rises is a far preferable approach.

Section 4(4)(a) would give the State agency the responsibility of making sure that funds will be distributed, to the maximum extent feasible, to a variety of child-care providers, including but not limited to child-care centers and family-day-care providers. In other words, parental choice should not be limited to a particular type of care. A diversity of providers is a key factor in promoting real parental choices.

Section 4(a)(4)(B) would give a priority in the distribution of funds to community-based programs which provide meaningful opportunities for parental involvement. The issue of whether only nonprofit providers should be eligible for receipt of public funds has been a difficult issue which has often divided the child-care community. On the one hand, some argue that allowing proprietary child-care programs to receive funds to provide services to eligible families would invite substantial problems. On the other hand, many argue that limiting participation, for example, only to nonprofit or public agencies, would restrict parental choice. Indeed, proprietary child-care programs now are major providers of child care in this country. Excluding them from participation would substantially limit the freedom of a parent to choose the particular program that the parent feels is best for his or her child. On balance, such an exclusion would undermine the fundamental philosophy underlying S. 4—that we should be assisting parents in securing child-care services and increasing their choices, not limiting them to a particular program. The most effective ways of ensuring that all providers—nonprofit and public as well as proprietary—provide quality care for children is to establish uniform standards applicable to all programs which seek such funds and to make reliable information about competing programs available to inquiring parents.

At the same time, I recognize the concerns expressed by those who fear that syndicated profitmaking programs may seek to dominate the program. Our modification of section 4 to provide a priority for funding of community-based programs—which could include local proprietary entities—with meaningful opportunities for parental involvement is designed to target limited funds toward those programs most likely to involve parents actively in the actual operation of the program, while still allowing other programs the opportunity to participate.

Section 4(a)(6) would further provide that the State's plan include provisions for the establishment of procedures for data collection to show how the child-care needs of the State are being met by programs assisted under the act, and the degree of unmet child-care needs within the State.

Section 4(a)(7) would specifically provide that the State plan must include a provision for the establishment, or support by grants to or contracts with public or private nonprofit entities, of resource-and-referral services. These provisions have been expanded to stress the fact that these programs not only help parents in locating child care, but also that they perform a host of other functions ranging from technical assistance and training services for existing child-care providers to needs-assessment information for potential child-care providers. These provisions for resource-and-referral programs, or information-and-referral as they are sometimes called, are a particularly important part of S. 4. I am proud to say that California has been a national leader in the establishment of and support for resource-and-referral programs. These programs have overwhelmingly demonstrated their effectiveness in dealing with a number of problems in the child-care area.

Mr. President, we did make some progress during the 98th and 99th Congresses with regard to Federal support for resource-and-referral programs with the enactment of section 109 of Public Law 98-558, the Human Services Reauthorization Act. Section 109 authorized the establishment of a grant program to the States for planning and development of dependent care programs. The authorization of appropriations for this program was extended in 1986 through fiscal year 1990. Congress appropriated $5 million in fiscal year 1986 and $5 million in fiscal year 1987 to fund the Dependent Care Block Grant Program.

Although child care resource-and-referral programs as well as school-aged child-care programs are eligible for grants under the 1984 law, funds are limited to startup or planning costs and cannot be used to provide for ongoing operating expenses. In contrast, S. 4 would provide for grants to support the actual operation of these types of programs.

Provisions are also included in sections 4(a) (8), (9), (10), and (11) of S. 4 to require the State plan to provide for the training of child-care personnel, for the development and implementation of State licensing or regulation of child-care providers, for the establishment of procedures for meaningful parental involvement in State and local planning, and for the monitoring and evaluation of programs and services provided under the act, and to require certain assurances that funds received under the act will be used to supplement, and not supplant, existing Federal funds used for the support of child-care services and related programs. For each fiscal year, the State would be limited to using no more than 10 percent of its funding for administration of the program.

Section 4(b) would provide, as part of the State plan requirements, for the establishment of a State advisory panel on child care. At least one-third of the members of the panel would be parents of children who are receiving or have recently received child-care services of the types supported under the act. Another one-third would be representatives of different types of child-care providers and individuals who are professionals in the field of child development or related fields.

The State advisory panel would be responsible for advising the State agency on the preparation and administration of the State plan, for reviewing and evaluating child-care programs and services provided under the act and other provisions of law, and would be authorized to prepare and submit, through the State agency, recommendations to the Secretary. Sufficient funds would be required to be made available under the State plan for the State advisory panel to carry out its

functions, to obtain the services of such professional, technical, and clerical personnel as necessary, and to pay the reasonable expenses—as determined in accordance with guidelines prescribed by the Secretary—of the State panel members while carrying out their duties.

Section 4(c) would require the Secretary to approve any State plan which meets the requirements set forth in the act, and provide that the Secretary may not disapprove any State plan, except after reasonable notice, an opportunity to correct deficiencies in the plan, and notice of an opportunity for a hearing on the grounds for the disapproval.

Section 4(d) would provide that the specified State agency be required to provide the Secretary with a concise report on an annual basis describing activities, results, and performance of the State agency in meeting the objectives of the State plan and the purposes of the act.

Section 5 relates to the national administration of the act. The Secretary would be directed to designate an identifiable administrative unit within HHS and an individual within that administrative unit to be responsible for carrying out the provisions of the act, for coordinating other activities within HHS relating to child care, and for seeking to coordinate pertinent HHS child-care-related activities with those types of activities carried out by or under other Federal departments and agencies. The Secretary would also be directed to make available to such unit such staff and resources as are necessary for it to carry out effectively its functions under the act.

Section 5 also would provide for the establishment of a National Advisory Panel on Child Care Needs and Services, of which not less than one-third of the members must be parents of children who are receiving or have recently received child-care services of the type supported under the act and not less than one-third must be representatives of child-care providers, including representatives of different types of child-care programs and individuals who are professionals in the field of child development and related fields. One-third of the members serving on the National Advisory Panel would be required to be individuals who are serving on, or have served on, a State advisory panel established under the act.

The National Advisory Panel would be made responsible for reviewing Federal policies with respect to child-care services and advising the Secretary with resepct to the standards developed for programs receiving assistance under the act.

Section 5 further would require that the Secretary, after consulting with the National Advisory Panel, and not later than 12 months after the date of enactment of the act, prepare proposed standards to be applied to programs receiving assistance under the act and such other HHS-funded child-care programs as the Secretary may specify. The proposed standards would cover factors having a demonstrated impact on the quality of child care, including, but not limited to, such factors as group size and composition in terms of the number of teachers and the number and ages of children, the qualifications of the child-care providers, and the physical environment, parental involvement, and necessary support services—including but not limited to health, nutrition, and social services—for child-care programs. These standards would be published in the Federal Register for public comment and distributed to each State advisory panel and State agency designated or established under the act.

Mr. President, extensive work has already gone into the development of standards for federally supported child-care programs, and it is anticipated that the panel would utilize these materials.

Section 6 would provide authority to the Secretary to make direct grants to or contracts with public and private organizations for the support of innovative child-care demonstration projects in such areas as night time care and care for sick children, migrant children, disabled children, children with limited English-language proficiency, or other special needs populations. Projects funded under this section would have to have an evaluation component, and the Secretary would be required, not later than 6 months after the date of enactment, to establish regulations to carry out these provisions.

Section 7 would provide that States receiving assistance under the act shall submit to the Secretary every 2 years a report outlining the current status of child-care licensing or regulation within the State, the deficiencies, if any, in the existing licensing or regulating program, a plan by the State to expand its licensing or regulating program, and the types of assistance the State requires in order to make improvements in its licensing or regulating program. The Secretary would be authorized to make grants to States for the purpose of developing, improving, or implementing child-care licensing or regulating programs. Also, the Secretary, after consulting with the National Advisory Panel, would be mandated to develop a Model State Licensing or Regulating of Child Care Providers Act, to be used by the States as a guide to improving licensing or regulating of child-care providers, and to publish it in the Federal Register not later than 18 months after the date of enactment.

Again, in each of the provisions the word "regulation" or "regulating" has been added in recognition of the fact that some States may use other terms or systems for certain types of child care.

Section 8 would authorize the Secretary to make grants to, and enter into, contracts with institutions of higher education, State and local public agencies, and private organizations to provide training programs for child-care providers and employees. The Secretary would also be authorized to provide technical assistance to the States in planning, developing, and coordinating of child-care services, in developing, expanding, and implementing of State licensing or regulating of child-care programs, and in developing and conducting of teacher or child-care-provider training programs.

Section 9 would provide for an allotment of 1 percent of the total sums appropriated to be made available to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The remainder of the sums appropriated would be allocated among the States based, with even weight, upon, first, each State's relative proportion of children living in homes where both parents are employed or seeking employment or where the child resides with only one parent and that parent is employed or seeking employment and, second, the State's relative proportion of children who reside in households having incomes which are equal to or less than one-half of the median income of the United States for families of the same size. Section 9 also would provide for reallotment of any State's allotment which is not utilized.

Section 10 would provide for the Secretary to make payments to each State having a plan approved under section 4 in the amount allotted under section 9, and provide that payments under the act may be made in installments, in advance, or by way of reimbursement, with necessary adjustment on account of overpayments or underpayments.

Section 11 would authorize the Secretary, after reasonable notice and opportunity for hearing, to withhold payments to any State where there has been a substantial failure to comply with any provision or any requirement set forth in the State's plan or with any applicable provision of the act. In the case of noncompliance by a particular program or project, further payments would be authorized to be limited to programs or projects under the State plan, or portions thereof, that are not affected by such noncompliance.

Section 12 would require the Secretary to carry out reviews and evaluations of the programs and activities carried out under the act and conduct

studies on child-care needs for the purpose of providing information aimed at achieving the following purposes: enabling the Congress and the executive branch to seek to reach agreement upon specific, realistic objectives and expectations for programs and activities carried out under the act; assuring that programs and activities established and carried out under the act at the Federal, State, and local levels are likely to achieve progress toward such objectives and expectations; obtaining sufficient data to measure progress under the act and making those data available to the Congress and the executive branch; and enabling Congress and the executive branch to better understand the child-care needs of the Nation and how best to meet those needs in a cost-effective fashion. In carrying out these functions, the Secretary would be directed to consult with appropriate committees of the Congress and members of the executive branch, to examine representative samples of actual programs, to identify or develop cost-effective programs, and to determine how the results of such reviews and evaluations can best be disseminated and utilitized to achieve the purposes described. Also, the Secretary would be directed to prepare and transmit to the President and the Congress every 2 years on or before March 1 a concise report of activities and progress under the act.

Mr. President, the evaluation and oversight provisions of this bill were originally developed in close consultation with the General Accounting Office. In 1978, the Comptroller General released a report with respect to improving congressional oversight efforts. That report outlined a process for planning and carrying out congressional oversight programs. GAO staff provided great assistance to us in designing and drafting these provisions, and I am deeply appreciative of their efforts to assist us in building effective monitoring mechanisms into our legislative efforts.

Section 13 would set forth definitions of the various terms utilized in the act. A "child" would be defined as any individual who has not attained the age of 15 except that, with respect to eligibility for services, the definition of "child" may include a disabled individual who has not yet attained the age of 18. A "parent" would be defined to include any natural parent, foster parent, or legal guardian with whom the child resides.

Section 14 would authorize appropriations to carry out the provisions of the act of $200 million for fiscal year 1988 and such sums as may be necessary for each of the 4 succeeding fiscal years. Of the sums appropriated for any fiscal year, 75 percent would be earmarked for grants under section 4, relating to grants for carrying out the State plan; 5 percent for making grants under section 6, relating to demonstration projects; 5 percent for making grants under section 7, relating to licensing or regulating assistance; 5 percent for making grants or contracts under section 8(a), relating to training programs; and 10 percent for carrying out sections 5, 8(b), and 12, relating to national administration—including the reasonable expenses of the National Advisory Panel on Child Care Needs and Services—and training and technical assistance.

Mr. President, the level of authorization of appropriations for the first year—$200 million—represents the amount which had been available prior to fiscal year 1982 at the 100-percent Federal-funding mechanism for child-care services provided under title XX. It would thus represent simply a restoration of funding which was lost as a result of the Reagan administration's budget reductions. In subsequent years, apropriations would presumably be increased at reasonable rates consistent with the availability of Federal resources and national needs.

Mr. President, let me stress that this bill is not intended to meet the entire need for assistance in the child-care area. Rather, S. 4 would simply provide the framework for a modest and measured increase in support for those families with the greatest needs. In addition, built into the legislation are provisions for the collection of data to assess the extent to which additional funds are needed. Increases in future appropriations would be related to the evaluation of this information and assessments of effectiveness of the expenditures of the funds already appropriated.

Section 14 also would provide that no funds would be authorized to be appropriated for any fiscal year unless funds appropriated for the preceding fiscal year to carry out part A of title V of the Economic Opportunity Act of 1964, relating to the Head Start Program, are at least equal to the funds appropriated for that program for fiscal year 1987—approximately $1 billion.

OTHER INITIATIVES IN THE 99TH CONGRESS

Mr. President, as we move forward in our efforts to develop a comprehensive framework for child-care services along the lines envisioned in S. 4, there are certain other steps that can and should be taken to make child-care services more readily available and affordable.

Mr. President, during the 99th Congress, I joined with a number of other Senators, including the Senator from Massachusetts [Mr. KENNEDY], the Senator from Connecticut [Mr. DODD], the Senator from Michigan [Mr. RIEGLE], the Senator from Arizona [Mr. DECONCINI], and the former Senator from Colorado [Mr. Hart], in introducing a series of smaller child-care initiatives—many of which are covered in a broader fashion in the comprehensive approach of S. 4. These separate initiatives were introduced as S. 803 through S. 810 on March 28, 1985. Many of the provisions of the bills introduced in the Senate were also included in legislation subsequently introduced as H.R. 2867 in the House of Representatives on June 25, 1985, by my colleague from California, Representative GEORGE MILLER.

During the last Congress, progress was made on a number of these measures. For example, S. 804, introduced by the Senator from Connecticut [Mr. DODD] to provide scholarship assistance to low-income child-care providers was incorporated into the Head Start reauthorization and enacted as part of Public Law 99-425. The 1986 Higher Education Act, Public Law 99-498, contained provisions relating to child-care services for low-income students similar to those included in S. 809, introduced by the Senator from Massachusetts [Mr. KENNEDY]. S. 806, introduced by the Senator from Michigan [Mr. RIEGLE], contained the extension of the authorization of appropriations for the Dependent Care Block Grant Program also enacted in Public Law 99-425. Finally, provisions of my own legislation, S. 810, the proposed Child Care Standards Improvement Act, were adopted by the Senate on December 10, 1985, as part of the fiscal year 1986 continuing resolution. Unfortunately, we were unable to persuade the House conferees to retain these provisions in the final fiscal year 1986 continuing resolution.

Mr. President, I intend to reintroduce S. 810 in the 100th Congress, and I know that a number of the child-care bills introduced along with S. 810 will also be reintroduced. Although I believe that the comprehensive framework provided in legislation like S. 4 would ultimately be preferable to a segmented approach, I am prepared to do whatever I can to see that some progress—however limited—is made in addressing the child-care needs of millions of American families.

NEW ALLIANCE FOR BETTER CHILD CARE

Mr. President, I want to share with my colleagues some information on a new effort to build a consensus around child-care needs.

Last summer, I contacted a number of national organizations, ranging from child advocacy groups to senior citizens organizations to veterans and religious groups about the need to join together to address the child-care crisis. It was my view, and it continues to be my view, that the time has come for a broad range of diverse groups to develop a consensus and plan of action to move the issue of child care to the top of the national agenda. The re-

sponse I received was overwhelmingly positive.

Since that time, a number of these groups have been meeting to discuss child-care needs and to develop a plan of action to address those needs. Tentatively called the Alliance for Better Child Care, this effort promises to bring together the energy and resources needed to make solving the child-care crisis a national priority. I look forward to working with the organizations and individuals involved in this important effort.

CONCLUSION

Mr. President, I believe that the proposed Child-Care Assistance Act of 1987, S. 4, addresses an important—and ever-growing—need in this country for a comprehensive, coordinated approach to child care. There is simply no question that the demand and need for child care will continue to grow. If we take steps today to design an efficient and cost-effective mechanism for meeting those needs, the ultimate savings will far outweigh the short-term expenditure.

Indeed, child care itself is both a short-term and a long-term investment in the future. Short-term expenditures may be almost immediately offset by increased tax revenues derived from parent earnings and reductions in governmental subsistence and other expenditures necessitated by the effects of lack of adequate child-care arrangements. Some longer term social costs, such as juvenile vandalism, delinquency, and child abuse and neglect, may also be reduced by prudent and cost-effective investments in child care today.

Mr. President, I am deeply grateful to the many individuals and organizations that have provided their insights, guidance, and encouragement in the development and formulation of this legislation. I very much hope that the introduction again of S. 4 will move us closer to enacting meaningful child-care legislation, legislation sorely needed and so long awaited. I look forward to working with my colleagues and interested individuals and organizations toward that end.

Mr. President, I ask unanimous consent that the text of S. 4 be printed in the RECORD.

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

S. 4

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-Care Assistance Act of 1987".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the number of children living in homes where both parents work or where children are living with a single parent who works has increased dramatically over the last decade;

(2) the number of licensed or regulated child-care openings is far short of the number required for children in need of child-care services;

(3) existing child-care programs are frequently filled to capacity and often have long waiting lists for admission;

(4) the lack of available child-care services results in many children being left—some all day—without adequate supervision;

(5) the rise in school vandalism, juvenile alcoholism, and serious juvenile crimes has been accompanied by an increase in the number of school-age children with working parents and without resources for after-school supervision;

(6) many parents are unable to afford adequate child-care services and do not receive any financial assistance for such services through any established program;

(7) the years from birth to age six are especially important in the development of a child and the care children receive during this period is critical to the developmental process;

(8) making adequate child-care services and alternatives available for working parents and parents seeking employment or to develop employment skills promotes and strengthens the well-being of families and the national economy; and

(9) there is a lack of coordination among existing child-care programs receiving Federal and State assistance and among such programs and other programs providing services to children and their families, and an absence of a coordinated administration of child-care programs and services at the Federal level.

(b) Recognizing that the parent is and must continue to be the primary influence in the life of the child and that the parent must have ultimate responsibility for decisions on how the child will be raised, it is the purpose of this Act—

(1) to provide assistance to States in improving the quality of and coordination among child-care programs and to provide additional resources for child-care services;

(2) to provide mechanisms for assessing the extent of the need for child-care services in the Nation;

(3) to promote coordination at all governmental levels of child-care programs and other services for children and their families;

(4) to promote the availability and diversity of quality child-care services for all children and families who need such services;

(5) to provide assistance to families whose financial resources are not sufficient for them to pay the full costs of necessary child-care services; and

(6) to strengthen the functioning of families by seeking to ensure that parents are not forced by lack of available programs or financial resources to place a child in an unsafe, unhealthy, or otherwise undesirable care facility or arrangement.

PROTECTION OF PARENTAL RIGHTS

SEC. 3. Nothing in this Act shall be construed to authorize any public agency or private organization or any individual associated therewith to interfere with, or to intervene in, any child-rearing decision of parents.

STATE ACTIVITIES

SEC. 4. (a) Any State desiring to participate in a program authorized by this Act shall submit to the Secretary a plan, not less often than biennially, in such detail and form as the Secretary deems necessary. Each such plan shall—

(1) specify an appropriate State agency (with the capacity to administer the programs and services authorized under this Act and to coordinate with other State and local agencies involved in the provision of services to children) to be designated or created as the State agency to act either directly or through arrangements with other State or local public agencies, as the State agency responsible for the administration and oversight of the plan submitted under this subsection (hereinafter in this Act referred to as the "State agency");

(2) provide that the specified State agency will—

(A) make an assessment of child-care needs in the State and an assessment of the effectiveness of programs and services funded under this Act and other provisions of law in meeting such needs;

(B) develop a plan designed to meet the need for child-care services within the State for preschool children and school-age children, with special attention to meeting the need for services of migrant children, disabled children, children with limited English-language proficiency, and other groups of children having special needs;

(C) coordinate, to the maximum extent feasible, the provision of services under this Act with other child-care programs and services funded under any State or other Federal law, and with other appropriate services, including social, health, mental health, and nutrition services, available to such children under other Federal and State programs; and

(D) prepare the reports required under subsection (d);

(3) provide that—

(A) funds under this Act will be distributed within the State in accordance with the plan submitted to the Secretary under this section and will be used for services provided only by child-care providers which—

(i) are licensed in the State or have applied for a renewal of such license and are determined by the State to be likely to be approved for renewal or, if not required to be licensed under applicable State law, have otherwise met the requirements of State law; and

(ii) meet the standards prescribed under section 5(c);

(B) funds will be distributed to eligible child-care providers by contract or grant either directly or, as provided in the State plan, through grants to or contracts with public or private nonprofit agencies for distribution to eligible child-care providers within a designated geographic area, or distributed through alternative payment demonstration projects under such terms as the Secretary prescribes for demonstration projects; and

(C) priority will be given to child-care providers in the State that provide assurances that—

(i) priority for services will be given to children on the basis of child and family need, taking into account such factors as family income, family size, and the special needs of children from households with a single parent, with particular emphasis on the provision of child-care services to families where lack of child care is or would be a barrier to the continuation or commencement of employment; and

(ii) each such child-care program will, to the maximum extent feasible, provide for an economic mix of children enrolled;

(4) provide that—

(A) funds will be distributed, to the maximum extent feasible, to a variety of child-

care providers in each community, including but not limited to, child-care centers and family day-care providers; and

(B) priority will be given in the distribution of funds to community-based programs providing meaningful opportunities for parental involvement;

(5) provide for the establishment of sliding fee schedules based upon the services provided and family income adjusted for family size for children receiving services assisted under this Act;

(6) provide for the establishment of procedures for data collection and evaluation designed to show (in a manner not inconsistent with guidelines established by the Secretary)—

(A) how the child-care needs of the State are being met by programs funded under this Act including information as to the numbers of children being assisted, type of child care and child-care provider, numbers of programs and child-care providers, care givers, and support personnel utilized, and such other information as the Secretary considers necessary to explain how funds provided under this Act are being utilized;

(B) the degree to which child-care needs are not being met by programs funded under this Act or other programs;

(C) the extent to which the availability of child care has been increased, including but not limited to, numbers of licensed or regulated child-care openings, the extent to which existing child-care programs are filled, and the numbers and average time associated with waiting lists for admission to such programs; and

(D) how the purposes of the Act and the objectives of the State set forth in its State plan are being met;

(7) provide, by grants to or contracts with public or private nonprofit agencies, for the support or establishment of resource-and-referral services to assist in identifying existing child-care services, in providing information and referral to interested parents, and in providing information and technical assistance to existing and potential child-care providers and others concerned with the availability of child care;

(8) provide, by grant or contract, for the support of training programs for child-care personnel;

(9) establish procedures for the development and implementation of State licensing or regulating of child-care providers in accordance with the criteria prescribed pursuant to section 7(a);

(10) establish procedures for meaningful parental involvement in State and local planning, monitoring, and evaluation of child-care programs and services in the State;

(11) provide assurances that funds provided under this Act will be used to supplement, and not supplant, existing Federal funds used for the support of child-care services and related programs;

(12) provide, for each fiscal year, that the State will use for administration of the State plan for such fiscal year an amount not to exceed 10 percent of the funds distributed to such State, except that in the case of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the State will use for administrative costs an amount not to exceed 5 percent of the funds distributed to such State;

(13) provide for the establishment of a State Advisory Panel in accordance with subsection (b) and specify the amount of funds to be allocated to such panel; and

(14) provide for the establishment of reasonable opportunities to be heard for any parent, child-care provider, or child-care program which has been adversely affected or aggrieved by a decision of the State agency or any program funded under this Act.

(b)(1) The State Advisory Panel on Child Care established by the State shall be composed of not less than fifteen members—

(A) of which not less than one-third shall be parents of children who are receiving or have recently received child-care services of the type funded under this Act; and

(B) of which not less than one-third shall be representatives of child-care providers and care givers within the State, including representatives of different types of child-care programs (such as public, private, private nonprofit, center-based, and family day-care programs) and individuals who are professionals in the field of child development.

(2) The State Advisory Panel shall—

(A) advise the State on the preparation, and policy matters arising in the administration, of the State plan submitted under subsection (a);

(B) review and submit comments to the State agency on the State plan; and

(C) review and evaluate child-care programs and services funded under this Act and other provisions of law in the State and the progress of such programs and services in meeting the objectives of the State plan and the purposes of this Act and make recommendations, as appropriate, on the development of State standards and policies relating to child-care programs and the provision of child-care services,

and may prepare and, through the State agency, submit to the Secretary such recommendations and evaluations, together with such additional comments as that State agency considers appropriate.

(3) Each State Advisory Panel shall meet within thirty days after the beginning of each fiscal year and establish the time, place, and manner of its future meetings, except that such panel shall have not less than two public meetings each year at which the public is given an opportunity to express views concerning the administration and operation of the State plan.

(4) Each State Advisory Panel shall be authorized to obtain the services of such professional, technical, and clerical personnel and to contract for such other services as may be necessary to enable the panel to carry out its functions under this Act. Members of the State Advisory Panel, while serving on the business of the Panel, shall be reimbursed, in accordance with standards prescribed by the Secretary, for reasonable travel, subsistence, and other necessary expenses incurred by them in carrying out their duties as members of the State Advisory Panel. The Secretary shall ensure that funds sufficient for the purpose of this paragraph are made available to each panel from funds available for the administration of the State plan.

(c) The Secretary shall approve any State plan, and any modification thereof, if (after approval of the first such plan) the State agency has complied with the provisions of subsection (d) and if such plan complies with the provisions of subsections (a) and (b), and the Secretary shall not disapprove any State plan except after reasonable notice, an opportunity to correct deficiencies in the plan, and notice of an opportunity for a hearing.

(d) For the purpose of providing information to the Secretary and the Congress to aid in their understanding of the implementation and effectiveness of programs under this Act, the State agency, not later than December 1 of each year, shall prepare and submit to the Secretary, a concise report describing activities, results, and performance in the State in meeting the objectives of the State plan and the purposes of this Act. The report submitted under this subsection shall contain the results of the data collection, reviews, and evaluations carried out pursuant to subsections (a)(6) and (b)(2)(C).

NATIONAL ADMINISTRATION

SEC. 5. (a)(1) The Secretary shall designate an identifiable administrative unit and an individual in charge of such unit within the Department of Health and Human Services to carry out the provisions of this Act, to coordinate all activities of the Department relating to child care, and to seek to coordinate such activities with the pertinent activities of other Federal agencies.

(2) The Secretary shall make available to such unit such staff and resources as are necessary to enable it to carry out effectively its functions under this Act.

(b)(1) Within six months after the date of the enactment of this Act, the Secretary shall establish within the Office of the Secretary a National Advisory Panel on Child Care Needs and Services which shall be composed of not less than fifteen members—

(A) of which not less than one-third shall be parents of children who are receiving or have recently received child-care services of the type funded under this Act, and

(B) of which not less than one-third shall be representatives of child-care providers, including representatives of different types of child-care programs (such as public, private, private nonprofit, center-based, and family day-care programs) and individuals who are professionals in the field of child development and related fields.

Not less than one-third of the members serving on the National Advisory Panel shall be individuals who are serving on, or have served on, a State Advisory Panel established by a State under section 4(b).

(2) The National Advisory Panel shall review Federal policies with respect to child-care services and make recommendations to and advise the Secretary with respect to the standards developed by the Secretary pursuant to subsection (c) and may submit to the President and to the Congress such comments as it considers appropriate with respect to the reports of the Secretary submitted under section 12.

(3) The Secretary shall make available to the National Advisory Panel such personnel and technical assistance as are necessary to carry out effectively its functions under this section.

(4) Members of the National Advisory Panel who are not regular full-time employees of the United States shall, while attending meetings and conferences of the National Advisory Panel or otherwise engaged in the business of the Panel (including traveltime), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service for GS-18 in section 5332 of title 5, United States Code; and, while so serving on the business of the Panel away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United

States Code, for persons employed intermittently in the Government service.

(c)(1) After consultation with the National Advisory Panel, and not later than twelve months after the date of the enactment of this Act, the Secretary shall prepare and develop proposed standards to be applied to programs funded under this Act and such other child-care programs funded by the Department of Health and Human Services as the Secretary may specify. The standards developed pursuant to this subsection shall cover factors having a demonstrated impact on the quality of child care including, but not limited to—

(A) group size and composition in terms of the number of teachers and the number and age of children;

(B) the qualifications of the child-care provider;

(C) the physical environment;

(D) parental involvement; and

(E) necessary support services including but not limited to health, nutrition, and social services.

(2) After distribution for comment to each State agency and State Advisory Panel established under section 4(a)(13) and 4(b), the Secretary shall publish the proposed standards in the Federal Register.

(3) After taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1) of subsection (c), but in no event later than one hundred and twenty days after the Secretary publishes proposed standards under paragraph (2), the Secretary shall publish in the Federal Register final standards to be applied to programs funded under this Act and such other child-care programs funded by the Department of Health and Human Services as the Secretary may specify.

(4) Until such time as the final standards have been adopted, programs funded under this Act shall comply with the requirements imposed upon child-care programs funded through payments made under title XX of the Social Security Act.

DEMONSTRATION PROJECTS

SEC. 6. (a) The Secretary is authorized to make grants to and enter into contracts with public agencies and private organizations to support innovative child-care demonstration projects, including projects providing nighttime care or care for sick children, migrant children, children with limited English-language proficiency, disabled children, or other special needs populations. No grant may be made under this section unless adequate funds are included in such grant to evaluate and report to the Secretary on the effectiveness of the approach of the program in meeting the child-care needs of the families being served.

(b) No grant may be made under this section unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary considers necessary. Not later than six months after the date of the enactment of this Act, the Secretary shall prescribe regulations to carry out the provisions of this section.

LICENSING IMPROVEMENT GRANTS

SEC. 7. (a) Each State receiving funds under this Act shall prepare a report to be submitted to the Secretary outlining the current status of child-care licensing or regulation within the State, deficiencies, if any, in the existing licensing or regulating program (including an assessment of the adequacy of staff to carry out effectively the State program), the plan of the State for expanding its licensing program to cover all types of child-care providers (except where children are being cared for in their own homes, by a relative, or on a less than full-time basis in a noncommercial, neighborhood setting, such as a cooperative play group or occasional child-care arrangements), and the types and amounts of assistance the State requires to make improvements in such licensing or regulating program. Each such State shall submit its report under this subsection not later than twelve months after it first receives a payment under section 10. The report submitted under this subsection shall include, separately, information with respect to center-based programs and family day-care programs.

(b) The Secretary is authorized to make grants to States submitting a report under subsection (a) for the purpose of developing, improving, or implementing its child-care licensing or regulating program. No grant may be made under this section unless the State submits an application to the Secretary therefor at such time, in such manner, and containing or accompanied by such information as the Secretary considers necessary.

(c) After consultation with the National Advisory Panel on Child Care Needs and Services and with the cooperation of the National Conference of Uniform Commissioners of State Laws, the Secretary shall develop a Model State Licensing or Regulating of Child Care Providers Act to be used by the States as a guide to improving licensing or regulating of child-care providers. Not later than eighteen months after the date of the enactment of this Act, the Secretary shall publish such Model Act in the Federal Register.

TRAINING AND TECHNICAL ASSISTANCE

SEC. 8. (a)(1) The Secretary is authorized to make grants to and enter into contracts with institutions of higher education, State and local public agencies, and private organizations to provide preservice and inservice training to teachers, other care givers, and administrative personnel involved in child-care programs, to recruit and train low-income parents for child-care positions, to provide specialized training in early childhood education for certified elementary school teachers who are unemployed, to train child-care resource and referral workers, to train persons in the provision of services to disabled children, migrant children, and children with limited English-language proficiency, and to develop and improve teacher certification criteria for child-care programs.

(2) The Secretary is authorized to provide technical assistance to States in planning, developing, and coordinating child-care services, in developing, expanding, and implementing State licensing or regulating of child-care programs, and in developing and conducting teacher or child-care-provider training programs with special attention to the factors described in paragraph (1).

(b) No grant may be made under this section unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary considers necessary.

ALLOTMENTS

SEC. 9. (a) From the sums appropriated pursuant to section 14(a) for each fiscal year, the Secretary shall allot not more than one percent among Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective needs.

(b) From the remainder of such sums, the Secretary shall allot—

(1) to each State the amount which bears the same ratio to 50 percent of such remainder as the number of children living in homes in which—

(A) both parents of such child are employed or seeking employment, or

(B) the child resides with only one parent and that parent is employed or seeking employment,

in such State bears to the number of such children in all States; and

(2) to each State an amount which bears the same ratio to 50 percent of such remainder as the number of children who reside in households having incomes which are equal to or less than one-half of the median income of the United States for families of the same size, as determined in accordance with criteria established by the Secretary, in such State bears to the number of such children in all States.

For the purpose of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(c) The Secretary shall obtain from the appropriate departments and agencies of the United States the most recent satisfactory data available in order to determine the allocation provided for in subsection (b).

(d) That portion of any State's allotment under subsection (b) for a fiscal year that the Secretary determines will not be required for the period for which such allotment is available shall be available, from time to time on such date during such period as the Secretary may fix, for reallotment to other States in proportion to the original allotment of such States under subsection (b) for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates will be needed in such State and will be used for such period for carrying out State plans approved under this Act, and the total of such reduction shall be similarly reallotted among the States whose proportionate amounts are not so reduced. Any amount reallotted to a State under this subsection during a year shall be deemed part of its allotment under subsection (b) for such year.

PAYMENTS

SEC. 10. (a) From the amounts allotted to each State under section 9, the Secretary shall make a grant to each State having a plan approved under section 4 in an amount equal to the total sums to be expended by the State under the plan for the fiscal year for which the grant is to be made.

(b) Payments under this Act may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

WITHHOLDING OF GRANTS

SEC. 11. Whenever the Secretary, after reasonable notice and opportunity for a hearing to a State, finds—

(1) that there has been a failure to comply substantially with any provision or any requirements set forth in the State plan of that State approved under section 4, or

(2) that in the operation of any program or project funded under this Act there is a

failure to comply substantially with any applicable provision of this Act,

the Secretary shall notify such State of the findings and that no further payments may be made to such State under this Act (or, in the case of noncompliance by a particular program or project, that further payments to the State will be limited to programs or projects under the State plan, or portions thereof, not affected by such noncompliance) until the Secretary is satisfied that there is no longer any such failure to comply, or that the noncompliance will be promptly corrected.

REVIEW AND EVALUATION

SEC. 12. (a) The Secretary shall make reviews and evaluations of the programs and activities funded under this Act (to be conducted by persons not directly or indirectly involved in administration of the programs or activities to be reviewed or evaluated), and conduct studies of child-care needs for the purpose of providing information aimed at—

(1) enabling the Congress and the executive branch to seek to reach agreement upon specific, realistic objectives and expectations of achievement for programs and activities funded under this Act;

(2) determining whether the programs and activities established and carried out under this Act at the Federal, State, and local levels will be likely to achieve progress toward such objectives and expectations;

(3) ensuring that sufficient data necessary to ascertain such progress is collected and made available to the Congress and the executive branch; and

(4) improving the capability of the Congress and the executive branch to understand child-care needs in the Nation and how best to meet such needs in a cost-effective fashion.

(b) In carrying out reviews, evaluations, and studies under this section, the Secretary shall—

(1) ascertain the specific objectives and expectations for achievement regarding programs and activities carried out under this Act of appropriate managers and policymakers in the executive branch and of appropriate committees of the Congress;

(2) examine a representative sample of the actual operation and results of such programs and activities at the Federal, State, and local levels;

(3) compare the objectives and expectations for achievement with the actual operation and results of such programs and activities, including comparisons of the objectives of State plans with the actual operation and results under such plans and an assessment of the effects of increased availability of child care (including changes in the incidence of child abuse, school vandalism, and juvenile delinquency, and other relevant effects such as changes in health status, school attendance, and school performance);

(4) identify or develop programs and activities, or parts of programs and activities, that are able, or are likely to be able, to achieve in a cost-effective fashion progress toward such objectives and expectations; and

(5) determine how the results of such reviews, evaluations, and studies can best be disseminated and utilized to achieve the purposes described in subsection (a).

The Secretary shall prepare and transmit to the President and the Congress on or before March 1 of 1990 and every two years thereafter a concise report containing—

(1) a statement of specific, realistic objectives and expected progress toward such objectives over the next two years for the programs and activities funded under this Act, and a statement relating such objectives and expected progress to the purposes of this Act;

(2) the results of all comparisons made under subsection (b)(3), including comparisons necessary for judging the effectiveness with which State plans, and the objectives of such plans, are carried out at the State and local levels;

(3) the results of efforts under subsection (b)(4), including options or recommendations (or both) with respect to any legislative action that the Secretary considers necessary or desirable for achieving the purposes set forth in subsection (a); and

(4) plans for reviews, evaluations, and studies under this section for the ensuing year, including a statement detailing the programs and activities (or parts thereof) funded under this Act to be the subject of such reviews, evaluations, and studies.

(d) The Secretary shall prepare and transmit to the President and the Congress not later than four years after the date of the enactment of this Act a report on child-care needs in the Nation. Such report shall include, but not be limited to, a summary of the results of data collection under sections 4(a)(6)(A), 4(a)(6)(B), and 4(b)(2)(C) and any studies of child-care needs conducted by the Secretary under this section, a summary of other relevant research on child-care needs, and an analysis of options for more fully meeting such needs, including options for legislative action.

(e) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after the completion of a program, project, or activity authorized or assisted under this Act, have access for the purpose of audit and examination to any books, documents, papers, and records of entities receiving grants or contracts under this Act that in the opinion of the Secretary or the Comptroller General may be related or pertinent to assistance provided under this Act.

DEFINITIONS

SEC. 13. As used in this Act—

(1) "child" means any individual who has not attained the age of fifteen except that with respect to eligibility for services, the definition of "child" may include a disabled individual who has not yet attained the age of eighteen;

(2) "parent" includes any natural parent, foster parent, or legal guardian with whom the child resides;

(3) "Secretary" means the Secretary of Health and Human Services; and

(4) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, America Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

AUTHORIZATION OF APPROPRIATIONS

SEC. 14. (a) Except as provided in subsection (b), there are authorized to be appropriated $200,000,000 for fiscal year 1988 and such sums as may be necessary for each of the four succeeding fiscal years for carrying out the provisions of this Act. Of the sums so appropriated for any fiscal year, 75 percent shall be used for making grants under section 4, relating to grants for carrying out the State plan; 5 percent shall be used for making grants under section 6, relating to demonstration projects; 5 percent shall be used for making grants under section 7, relating to licensing assistance; 5 percent shall be used for making grants or contracts under section 8(a), relating to training programs; and 10 percent shall be used for carrying out the provisions of sections 5, 8(b), and 12, relating to national administration (including the reasonable expenses of the National Advisory Panel on Child Care Needs and Services) and training and technical assistance.

(b) No funds are authorized to be appropriated for any fiscal year unless funds appropriated for the preceding fiscal year to carry out part A of title V of the Economic Opportunity Act of 1964, relating to Project Head Start, are at least equal to the funds appropriated for such part for fiscal year 1987.

By Mr. CRANSTON (for himself and Mr. BURDICK):

S. 5. A bill to require the executive branch to enforce applicable equal employment opportunity laws and directives so as to promote pay equity by eliminating wage-setting practices which discriminate on the basis of sex, race, ethnicity, age, or disability, and result in discriminatory wage differentials; to the Committee on Governmental Affairs.

PAY EQUITY ACT OF 1987

Mr. CRANSTON. Mr. President, I am pleased to introduce S. 5, the proposed Pay Equity Act of 1987. This legislation is virtually identical to the pay-equity legislation I introduced in the 98th Congress and—also as S. 5—in the 99th Congress. I am joined in sponsoring this measure by the distinguished Senator from North Dakota [Mr. BURDICK] who cosponsored this legislation in the last two Congresses as well.

Similar legislation has been introduced in the House by Representative MARY ROSE OAKAR with whom I have worked closely on this issue as well as on the Social Security earnings-sharing legislation, S. 3, which I am also introducing today.

Our legislation is aimed at helping bring an end to what is one of the most devastating economic problems facing millions of American women and their families and one of the most pervasive forms of employment discrimination in our society—the refusal of many employers in both the public and private sectors to pay female employees fair and equitable wages for the work they perform.

Mr. President, this type of discrimination against female employees has persisted despite applicable State and Federal laws and directives and court decisions outlawing gender-based wage discrimination. Unfortunately, the existence of these laws and court decisions has not been translated into elimination of these unlawful practices. What is clearly needed is a strong national commitment to ending once and for all the practice of paying

certain employees lower wages because those employees are female.

S. 5 is intended to stimulate those Federal agencies responsible for enforcement of our Federal equal employment opportunity laws to begin an aggressive campaign to enforce these laws and help bring about an end to wage discrimination.

In addition to S. 5, I will soon be introducing with the Senator from Washington [Mr. EVANS], and numerous other cosponsors, a revised version of legislation, S. 519, which we introduced in the 99th Congress. S. 519 would provide for an objective, independent pay-equity study of the Federal work force. The provisions of the revised S. 519 are included as well in section 6 of S. 5. It is our intention to move as swiftly as possible with the provisions relating to the study of the Federal work force in the separate bill we will be introducing later this month.

THE PROBLEM: THE WAGE GAP

Mr. President, I am sure that every Member of this body is acutely aware of the enormous gap between the average earnings of female workers and the average earnings of male workers. In the 1950's, full-time female workers earned 64 cents on the average for every $1 earned by a full-time male worker. For the past decade, the ratio of male to female earnings has hovered around the 60-percent mark. Today, the ratio of male to female earnings is about 65 percent—the same ratio that existed in the 1950's notwithstanding all of the civil rights and equal employment opportunity laws and advancements in the intervening three decades.

In 1985, the median earnings—representing the point below and above which fall an equal number—for fully employed female workers—those working 50 or more weeks per year and 35 or more hours per week—was $16,252; for similarly employed males, it was $24,999. However, it is important to note that the mean—or average—earnings for this group was $18,088 for the female workers and $28,747 for male workers. This represents a ratio of 62.9 percent in terms of mean or average earnings, as compared to a ratio of 65 percent when dealing with median income data.

The difference in earnings for minority women, as compared to all male wage earners has consistently been even wider. For example, in 1985, the median earnings for black women in this category was $14,590; for Hispanic women it was $13,522. These represent a ratio of 58.4 percent and 54 percent, respectively, as compared to the median earnings for all male wokers in this category.

The disparity between the average wages earned by female workers and those earned by male workers exists today in every profession, occupation, or field of employment and at every level of experience. It persists in male-dominated fields. It persists in female-dominated fields. It persists in the new occupational fields that have not yet become sexually stereotyped.

Mr. President, the overall wage gap has been closely and repeatedly studied by researchers. Variables such as attachment to the work force, level of experience, education, job commitment, and similar factors have been examined in various studies. These studies attempting to explain the difference in earnings between male and female workers have been able to account for generally less than one-fourth and never more than one-half of the earnings differential on the basis of different labor-force participation patterns of male and female workers. Virtually every researcher has concluded that there remains a large gap which can be explained only by the existence of sex-based discriminatory employment policies.

PAY EQUITY: EQUAL PAY AND COMPARABLE PAY

Mr. President, two distinct forms of wage discrimination contribute to the earnings gap. The first involves the problem of equal pay for equal work. The second involves the problem of comparable pay for comparable work.

The first—equal pay for equal work—is relatively simple to understand and has clearly been unlawful since the passage of the Equal Pay Act in 1963. That law provides that it is unlawful for an employer to discriminate between employees on the basis of sex by paying lower wages than those paid to employees of the other sex for the same work. Prior to the enactment of the Equal Pay Act, many employers openly paid female workers lower wages for performing the same work as male workers.

Unfortunately, this practice continues today, albeit in more subtle forms. Employers no longer argue—as they did prior to 1963—in favor of lower pay for female workers on the grounds that women need less than male workers. Instead, they have developed creative rationalizations for paying women less than men for substantially identical work.

The Federal Equal Pay Act actually encourages this type of creativeness since it provides four defenses which an employer may raise when a violation of the act has been alleged. For example, the fourth defense—that the discrimination was based upon a factor other than sex—invites employers to develop arguments that the apparent discrimination is actually based upon a factor other than sex.

For example, employers have argued that the willingness of female workers to work for lower wages constitutes a factor other than sex which would justify setting their wages below those of male workers who would refuse to work at the lower wages.

Fortunately, the courts have, for the most part, rejected these thinly disguised discriminatory practices.

It is clear, however, that although it has been almost 25 years since passage of the Equal Pay Act, equal pay for equal work has not yet been fully achieved. Indeed, even more vigorous enforcement activities are needed today to deal with the more subtle and devious tactics used to justify the continuation of Equal Pay Act violations.

But, Mr. President, it is generally agreed that denial of equal pay for equal work is no longer the major factor contributing to the earnings gap. The major factor today is the concentration of female workers in a limited number of job classifications where the wages are lower than the education, training, skills, experience, effort, responsibility, or working conditions involved would otherwise warrant. The conclusion is virtually inescapable that a primary reason that wages are lower in these jobs is because they are filled predominantly by women. This problem, often referred to as the comparable worth issue, must be dealt with forcefully if we are ever to achieve equitable pay for all workers.

COMPARABLE PAY FOR WORK OF COMPARABLE WORTH

Mr. President, the concept of comparable pay for work of comparable worth stands for the relatively simple notion that the wages a worker earns should be based upon the value of the work performed, not the sex of the employee. Unfortunately, it is widely recognized that the wages paid in jobs and occupational fields dominated by female workers are lower than the wages paid in those jobs and occupational fields dominated by male workers that involve comparable education, skills, training, education, effort, responsibilities, and working conditions.

In the now classic case of *Lemons* v. *City and County of Denver*, 620 F.2d 228 (tenth circuit 1980), the nurses in the city of Denver public hospitals were paid less than the men who trim the trees in the city parks, not because of any greater intrinsic value of the work done by the tree trimmers or greater difficulty in finding individuals to trim trees, but simply because the tree trimmers were predominantly male and the nurses were predominantly female. The court held that the city's pay system did not violate title VII.

Numerous examples of this type of inequity have been found. In Montgomery County, MD, clerks in the county-operated liquor stores were found to earn more than teachers in the county schools. In New York and Wisconsin, the salaries for State parking lot attendants were considerably higher than wages paid to State clerical employees. In San Jose, CA, the

salaries of librarians were below those paid to street-sweeper operators. In New York City, fire department dispatches—predominantly white males—were paid several thousand dollars a year more than police department dispatchers—predominantly black females. Dog pound attendants and zoo keepers were rated higher in a commonly used dictionary of occupational titles than nursery school teachers or day-care workers.

In each of these examples, one difference emerged: the higher wages were paid where employees were predominantly males and lower wages were paid where employees were predominantly females. In many cases, the employers' own numerical job-evaluation system gave the male-dominated jobs and the female-dominated jobs similar ratings; yet, the wages for the female jobs were nonetheless set lower than the male-dominated jobs.

Mr. President, although the phrase "comparable pay for work of comparable worth" has been useful in helping to understand the circumstances involved, the underlying issue is really simply one of wage discrimination based upon the sex of the employee. Hence, the term "pay equity," which also includes the better understood concept of equal pay for equal work, is a more accurate description of the effort which is ongoing to help reduce that portion of the wage gap which is attributable to sex-based discrimination.

In reality, comparable worth is simply a tool or technique for looking at wage disparities to determine if sex-based wage discrimination is present. A disparity alone may not indicate the existence of discrimination, but it certainly suggests a closer look is warranted. Although for clarity sake, I have used the comparable worth phraseology, I believe that pay equity is a more accurate and preferable term.

OPPONENTS OF COMPARABLE WORTH

Mr. President, those who oppose elimination of wage disparities based upon the devaluation of work that is performed predominantly by female workers make three basic arguments in opposition to these efforts. First, they argue that it is impossible to compare different jobs and establish their relative worth. Second, they contend it is not discrimination, but the invisible and neutral hand of the marketplace at work in creating these wage disparities. Third, they argue that even if it is discrimination, the cost of eliminating the inequities would be too great. Each of these arguments has an inherent weakness.

First, with respect to the so-called apples-and-oranges argument—that you can't compare different types of jobs—the fact is that different jobs are compared all the time by employers in establishing wage rates. Objective job-evaluation techniques have existed for many years, and they are widely used by employers in both the public and private sectors.

The National Academy of Sciences' Committee on Occupational Classification and Analysis in its important 1981 study, "Women, Work, and Wages: Equal Pay for Jobs of Equal Value," commissioned by the Equal Employment Opportunity Commission, noted the widespread use of such job-evaluation plans. As I will discuss in a few moments, these job-evaluation techniques provide an objective method of determining the value of different jobs and a promising approach to eliminating discriminatory wage-setting practices and the resulting wage differentials.

Second, the short answer to the argument that it is the marketplace, not discrimination, that determines wage rates, is that the so-called free marketplace has been radically altered by the presence of discrimination. Historical wage discrimination against female workers, once not only prevalent but acceptable, continues to distort the marketplace to depress the wages of women and to devalue the work performed by women.

Only in the past 24 years has it become unacceptable—legally and otherwise—to pay women less than men for precisely the same work or to exclude women from certain jobs or occupations. The effects of this *de jure* discrimination against female workers were built into most wage structures, and these effects continue to be felt. The argument that the marketplace is a neutral determinant of job value is clearly specious. A pure marketplace does not exist, given historical wage discrimination.

Moreover, our Nation has already made the decision as a matter of social policy that workers will not be left to whatever fate a so-called free market resolves for them. Protective labor laws do not permit employers to pay workers less than the minimum wage, even though some desperate workers might work for less, nor do they allow employers to set wages lower for minority workers, even though high unemployment rates among many minority groups might drive some of these workers to accept lower wages.

In short, a civilized and humane society does not countenance the exploitation of its workers. Women, like other classes of vulnerable workers, are entitled to the protection of the law against unfair exploitation.

COST IMPLICATIONS

Mr. President, the arguments that eliminating the wage difference would destroy the economy and cost billions and billions of dollars are vastly exaggerated. First, many of these estimates are based upon elimination of the entire wage gap. The studies I mentioned earlier have found that a certain portion of the gap—between one-fourth and one-half—is probably attributable to nondiscriminatory factors, including differences in female-worker labor-force participation patterns. No one has ever asserted that the entire gap is caused by discrimination.

Second, as to that portion of the wage gap that is attributable to discriminatory practices, it is not anticipated that the resulting inequities could be eliminated overnight. Even with the most vigorous commitment to eliminating wage inequities, the task is likely to be a long and tedious one. Indeed, in the quarter century since passage of the Equal Pay Act, those inequities have not been eliminated. Attainment of full pay equity is likely to be gradual and incremental.

Finally, Mr. President, the dire predictions of economic disaster simply haven't been borne out where voluntary wage adjustments to achieve pay equity have taken place.

Although most of the opponents point to the size of the judgment initially awarded in the case brought in Washington State, American Federation of State, County, and Municipal Employees v. State of Washington, what has taken place in the State of Minnesota is a much more instructive example of how a pay-equity policy can be implemented in a fiscally responsible manner.

The Washington State case involved a situation where State officials failed for years to act after a 1974 State-commissioned study had shown that State employees in traditionally female jobs received about 20-percent less on the average than State employees in traditionally male jobs of comparable value.

It was not until after a lawsuit was filed in 1983, that the State legislature took any action to eliminate the pay disparities. In 1983, it appropriated $1.5 million for this purpose. The Federal district court characterized this action as belated and a token representing at best a change in attitude by the State. Under the court's judgment, the plaintiffs were awarded back-pay adjustments to September 1979. It was this back-pay award, not simply the correction of the undervaluation of the women's jobs, that created the potential size of the judgment in the Washington State case.

The ninth circuit court of appeals subsequently reversed the trial court's decision in this case. The parties thereafter entered into a settlement which will provide for the expenditure of $46.5 million to correct sex-based inequities in the State's wage scales between 1986 and 1987 and an additional $10 million each July 1, beginning in 1987 and through 1992, to complete implementation of the plan to eliminate wage disparities.

In contrast, the Minnesota Legislature moved quickly to respond to the results of a report from a State-established task force on pay equity. In 1983, the Minnesota Legislature passed a bill providing for a phased-in equalization over 4 years. The annual cost of the pay-equity increases currently amounts to $26 million, or about 4 percent of the State's payroll budget, and 0.3 percent of the total State budget.

Local government efforts in this area have been numerous. In my own State of California, pay-equity adjustments have been negotiated in recent years for municipal workers in San Jose, Los Angeles, Long Beach, Pismo Beach, Anaheim, Fremont, Hayward, Berkeley, and Woodland. None of these municipalities have gone bankrupt as a result. The increases have been moderate and phased-in over time. For example, librarians in Long Beach won a 5-percent comparable-worth adjustment.

In San Jose, a 2-year agreement for pay-equity adjustments in 60 female-dominated classifications resulted in 5- to 15-percent increases for these categories over a 2-year period, costing a total of $1.4 million. Clerical workers in the city of Los Angeles negotiated pay-equity increases of between 1 and 8½ percent.

Obviously, voluntary and mutual efforts to identify and eliminate pay inequities through wage adjustments phased-in over reasonable periods of time are far preferable to accumulating large back-pay judgments. The costs, while not insubstantial, are clearly manageable when they are approached in this fashion.

Finally, whenever the issue of costs is discussed, it is important to remember that the costs of pay inequities are already being borne—by the underpaid workers. The price is being paid by the increasing feminization of poverty and in the cost of government assistance to those underpaid workers and their families who cannot survive on the meager wages produced by discriminatory employment practices. Society is also paying in terms of the loss of productivity and reduced consumer spending that results when workers are denied fair wages.

OTHER OPPOSING ARGUMENTS

Mr. President, some of the opponents of efforts to eliminate these types of pay inequities have also attempted to portray such activities as leading to the Federal Government setting the wages for all workers. This is clearly a distortion and scare tactic designed to avoid entering into a serious dialog about the problem and how to remedy it. There is absolutely nothing in the comparable-worth issue that would lead to such a result, any more than passage of the Equal Pay Act or title VII led to government control of wage-setting practices.

Former Secretary of Labor, Raymond Marshall, in a very thoughtful and comprehensive paper entitled, "The Employment and Earnings of Women: The Comparable Worth Debate," has aptly stated:

> A remedy for pay discrimination does not require that wages be equalized for men and women, only that the jobs valued on a nondiscriminatory basis. This does not lead to central planning or government wage fixing; the government does not have to fix wages to eliminate discrimination.

Mr. President, implementing pay equity means nothing more than requiring employers to eliminate discriminatory wage-setting practices. There are certainly legitimate issues for discussion regarding the concept of comparable worth, but dragging out the spectre to big government control of wages does not contribute to a responsible discussion of those issues.

IMPORTANCE OF RESOLVING THE COMPARABLE-WORTH PROBLEM

Mr. President, there are some who may argue that rather than attempting to resolve the difficult issues surrounding the comparable-worth problem, we should be focusing our attentions on eliminating the earnings gap by encouraging young women to enter nontraditional, male-dominated fields where the wages are likely to be higher and the advancement opportunities more open.

I believe we must do both.

I have long been deeply committed to opening up every occupational or professional field to women. The barriers which have blocked women seeking to enter male-dominated fields must be eliminated. Our educational systems must be encouraged to do a better job in preparing young women for the world of work and educating them about the jobs that will be emerging out of the new technologies. Their horizons should not be limited in any fashion by sexist stereotypes about what is or is not an appropriate field of employment for women or by false perceptions about the work force.

But at the same time that we are seeking to break down those barriers which have kept many women in job ghettos where the wages are low and the opportunties for advancement limited, it is important to recognize that the work performed in many of these "female-dominated" fields is important both to our economy and to our society. It we force our creative and talented teachers to leave our schools in order to get adequate compensation, or our Nation's nurses all to become doctors in order to gain the recognition and compensation they deserve, what would happen to the quality of our schools or our hospitals? We need good teachers as well as good nurses, regardless of their sex.

Moreover, Mr. President, whatever opportunities may exist for young women just entering or about to enter the work force, those women who have already acquired years of education, training, and experience in fields like teaching or nursing should not be required to abandon those career investments in order to earn a decent wage.

Finally, unless we resolve once and for all the ambivalence about the value of female workers that underlies the comparable-worth problem, the inequities are not likely to end. Indeed, as more and more women enter a new field, the wages there are likely to become depressed. History has already demonstrated this to be true. For example, bank tellers were once universally male. The job then represented a relatively well-trained position on the career ladder to higher management in the banking field. Today, bank tellers are predominantly female and the wages and advancement opportunities have been curtailed accordingly. It is unconscionable for a job to be devalued just because more women fill the positions.

GUNTHER VERSUS COUNTY OF WASHINGTON

Mr. President, until 1981, there was some disagreement as to the interrelationship of the Equal Pay Act, with its scope limited to matters relating to equal pay for equal work, and the broader coverage of title VII of the Civil Rights Act of 1964 with respect to discrimination on the basis of sex in all aspects of employment, including compensation. Some argued that the Bennett amendment to title VII limited its coverage to only those instances of wage discrimination which would be covered by the Equal Pay Act. Others, noting the broad purposes of Congress in enacting title VII, argued that an employer violated title VII when the wages of female workers were set below those paid to male workers, even though the jobs were not identical.

The issue was definitively resolved in the landmark decision of the Supreme Court in *Gunther* v. *County of Washington*, 452 U.S. 161 (1981).

Mr. President, the facts in the Gunther case are interesting because they show how blatant much of the wage discrimination against women can be. In Gunther, the employer evaluated the "worth" of both male and female correction guards and determined that the female guards should be compensated at a rate of 95 percent that of the male rate. Notwithstanding that determination, the county set the female wage rate at only 70 percent of the male rate while paying the male guards the full 100-percent value established in the job evaluation.

In Gunther the Supreme Court held that it would be a violation of title VII for an employer to set the wages of female workers below the value determined by the employer's own objective job evaluation while setting the wages of male workers at the full value. The Court correctly concluded that Con-

gress intended title VII to prohibit "all practices in whatever form which create inequality in employment opportunity due to discrimination on the basis of race, religion, sex, or national origin" and to "strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes."

Mr. President, wage discrimination in situations where the jobs involved are different—as well as where they are similar—is now clearly unlawful under title VII following Gunther. What remains to be settled is how this rule will be applied in particular fact situation and what evidence will suffice to demonstrate unlawful discrimination.

In the much discussed case involving the State of Washington, *AFSCME* v. *State of Washington*, 578 F. Supp. 846 (W.D. Wash. 1983), reversed, 770 F.2d 1401 (9th Cir. 1985), the district court had found evidence of intentional discrimination against female employees based primarily on the State's delay in implementing a State pay-equity study disclosing sex-based wage disparities between male- and female-dominated job classifications. On September 4, 1985, the ninth circuit court of appeals reversed the district court's decision. The appeals court found the evidence of intentional discrimination to be insufficient and flatly rejected the argument that the State was bound to implement the results of its own pay-equity study. The court stated that a study indicating that a particular wage structure would be more equitable should not categorically bind the employer who commissioned it and suggested that a contrary rule would "penalize rather than commend employers for their effort and innovation in undertaking such a study."

Although opponents of pay equity have claimed the ninth circuit decision as a great victory, a close reading of the decision and subsequent cases in other circuits makes it quite clear that each case turns upon the factual evidence produced by the plaintiffs. The court of appeals decision in the AFSCME case holds that the existence of wage disparities alone does not provide sufficient evidence of a title VII violation. But such disparities coupled with other evidence of discriminatory practices would state a cause of action. This point was made clear by the seventh circuit in the more recent case of *American Nurses Association* v. *State of Illinois*, 606 F. Supp. 1313 (N.D. Ill. 1985), reversed, 783 F.2d 716 (7th Cir. 1986). The district court dismissed the nurses' case on the grounds that "unequal pay for jobs alleged to be of comparable worth on the basis of an evaluative study which the employer commissioned but never adopted does not constitute a viable legal theory under title VII." The seventh circuit agreed that the complaint would have failed to state a claim under title VII if it had alleged discrimination based solely on the State's failure to implement the results of its pay-equity study. However, the appellate court found that the complaint included other allegations of intentional discrimination and remanded the case for futher proceedings.

Similar decisions have been reached in other pending pay-equity lawsuits including a district court decision in *AFSCME* v. *County of Nassau*, 609 F. Supp. 695 (E.D.N.Y 1985), an unreported district court decision in Hawaii, *Hawaii Government Employees Association* v. *State of Hawaii*, No. 84-1314 (D. Hawaii, Aug. 12, 1985) ("* * * [W]hile evidence of comparable work will not alone be sufficient to establish a prima facie case of sex discrimination, the comparability of jobs can be relevant to determining whether discriminatory animus can be inferred * * *", slip op. at 1, Aug. 12, 1985), and in an unreported district court case in California, *California State Employees Assoc.* v. *State of California*, No. C-84-7275 (N.D. Cal. Sept. 13, 1985) ("The ninth circuit's decision [in AFSCME] does not foreclose the application of title VII to wage disparities between job classifications held primarily by women and job classifications held primarily by men where a discriminatory animus is shown, even though the wage rates may have had their antecedents in market rates * * *", slip op. at 27).

Numerous other lawsuits are pending throughout the country. Where the evidence demonstrates the presence of sex-based wage discrimination, it is clear that a remedy exists under title VII. The emerging case law indicates that although wage disparities alone may not give rise to a title VII cause of action, such disparities can be used with other evidence to demonstrate that sex-based wage discrimination exists. Indeed, most proponents of pay equity have never contended that a disparity in wages between comparably evaluated jobs automatically constitutes a violation of law, since certain disparities can be attributable to legitimate compensable factors such as merit or seniority.

More important, the case law makes clear that a progressive employer can undertake a pay-equity study without fear that the results would automatically have to be implemented. A number of voluntary efforts—involving collaboration between labor and management—are underway in both the public and private sectors to identify and eliminate wage discrimination. Such voluntary, collaborative action is far preferable to resort to time-consuming and expensive litigation.

STATE, LOCAL, AND PRIVATE INITIATIVES

Mr. President, it has been estimated that in the past 4 years over 100 governmental initiatives have taken place in the area of comparable worth. These activities have included actions by State legislatures, city councils, county commissions, school boards, Governors' offices, and State administrative agencies. I ask unanimous consent that a summary of State and local pay-equity/comparable-worth initiatives that was included in the testimony of Nina Rothchild, commissioner for employee relations of the State of Minnesota, at the U.S. Civil Rights Commission consultation on comparable worth—June 1984—be printed in the RECORD at this point.

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

APPENDIX

(To Testimony of Nina Rothchild, Commissioner of Employee Relations, State of Minnesota, published in "Comparable Worth: Issue for the 80's", a Consultation of the U.S. Commission on Civil Rights, June 6-7, 1984 (pg 127-28))

State and Year	Description
State Pay Equity Legislation	
Alaska: 1980	Adds specific comparable worth (CW) language to fair employment practices (FEP) law.
California:	
1981	Establishes CW as policy for State workers, requires annual reports.
1983	Prohibits local government ordinances or policies which preclude consideration of CW.
1983	Creates commission on status of women task force on CW.
1983	Adds specific CW language to FEP law. (Pending as of 5/1/84.)
Connecticut:	
1979	Pilot study for State workers.
1981	Full job evaluation (JE) study for State workers.
Hawaii:	
1981	(Resolution) Urges employers to adopt CW policies.
1982	Requires report and recommendations on CW for State employees.
Idaho: 1977	Provides for JE study on State employees.
Illinois:	
1982	Requires pilot CW study for civil service; $10,000.
1983	Requires comprehensive JE study for civil service. (Pending as of 5/1/84.)
1983	Includes CW standard in State equal pay act. (Pending as of 5/1/84.
Iowa: 1983	Establishes CW policy, requires JE study of civil service, appropriates $150,000 for study.
Kentucky: 1982	Allocates $14,000 for JE study.
Massachusetts: 1983	Requires JE study of civil service, appropriates $75,000 for study.
Michigan: 1982	Amends wage and hour law to prohibit wage secrecy policies.
Minnesota:	
1982	Establishes CW policy and process for civil service.
1983	Appropriates $21.8 million for CW increases.
1984	Requires local governments to implement CW.
Missouri: 1983	Requires report and recommendations on CW for civil service; establishes CW policy.
Montana: 1983	Requires "work toward the goal of establishing equal pay for comparable worth," study and annual report.
Nebraska: 1978	Requires preliminary civil service study.
Nevada: 1983	Requires preliminary civil service study.
New Jersey: 1984	Establishes task force to study civil service; appropriates $150,000. (Not yet signed by Governor as of 5/1/84.)
New Mexico: 1983	Appropriates $3.3 million in salary increases to lowest paid State workers.
Oregon: 1983	Requires JE/CW study for civil service; appropriates $300,000 for study.
Pennsylvania: 1983	Adds CW language to FEP law. (Pending as of 5/1/84.)
Virginia: 1984	Requires research on CW.

State and Year	Description
Washington:	
1977	Requires biennial update of 1974 JE study that had not yet been implemented.
1983	Establishes CW policy for civil service and sets up a 10-year implementation plan.
1983	Appropriates $1.5 million for salary increases to lowest paid workers.
Wisconsin: 1977	Establishes CW policy for civil service.
Other State-level Activity	
Illinois: 1983	AFSCME wins pay equity increases for word processing operators through arbitration.
Hawaii: 1983	AFSCME wins pay equity increases for nurses through arbitration.
Connecticut: 1983	AFSCME negotiates pay equity increases for clerical workers.

Local Government and Type	Description
Local Pay Equity Initiatives (a partial listing)	
Fresno, CA: City	Information gathering pay equity policy.
San Francisco, CA: City	Information gathering pay equity policy.
Sonoma County, CA: County	Information gathering.
South Lake Tahoe, CA: City	Information gathering.
Alameda County, CA: County	Information gathering.
Colorado Springs, CO: City	Information gathering implementation.
Berkeley, CA: City	Information gathering.
Montgomery County, MD: County	Information gathering.
Los Angeles Sch Di, CA: School	Information gathering.
Minnetonka SD, MN: School	Negotiated CW increases.
Osseo SD, MN: School	Information gathering.
Northfield SD, MN: School	Information gathering.
Tucson SD, AZ: School	JE study.
Chico SD, CA: School	JE study.
Manhattan Beach, CA: School	JE study.
Sacramento SD, CA: School	JE study negotiated by SEIU.
San Lorenzo SD, CA: School	JE study.
Hunter College, NY: School	JE study.
Virginia Beach, VA: City	JE study; implementation.
Bellevue, WA: City	JE study; implementation.
Renton, WA: City	JE study; implementation.
Seattle, WA: City	JE study.
Los Gatos, CA: City	Pay equity policy.
Long Beach, CA: City	Implementation.
Burlington, VT: City	Implementation.
Princeton, MN: City	JE study; implementation.
Los Angeles, CA: City	Pay equity increases negotiated (AFSCME).
Spokane, WA: City	Pay equity increases negotiated for all female-dominated classes (AFSCME).
Green Bay, WI: City	Pay equity increases for nurses of $118 per month (AFSCME).
San Mateo, CA: County	Pay equity increases negotiated (AFSCME).
San Jose, CA: City	Pay equity increases negotiated (AFSCME).
Hennepin County, MN: County	Pay equity increases negotiated for welfare eligibility technicians (AFSCME).
Belmont, CA: City	Pay equity increases negotiated (AFSCME).
Woodland Hills, PA: School	Pay equity increases negotiated; implementation on a 3-year schedule (SEIU).
Vacaville, CA: School	Negotiated for comparable worth committee and pay equity study (SEIU).
Mott Comm. College, MI: School	Negotiated for JE study and appeals procedure for classification decisions (SEIU).
Santa Clara, CA: County	Negotiated for reclassification of many jobs and pay equity adjustments (SEIU).

Mr. President, Ms. Rothchild, in her testimony also reviewed in detail the experience of the State of Minnesota in addressing and implementing a pay-equity initiative. Observing that Minnesota had gone further than other State in actual implementation of pay equity, she stated, "We now have the experience to show that implementation need not be extremely costly, chaotic, or controversial."

Mr. President, GAO, in connection with its work relating to a pay-equity study of the Federal work force, surveyed each of the States on pending and completed pay-equity activities. In September 1986, GAO issued a report, "Pay Equity: Status of State Activities" (GAO/GGD-86-141BR), which found that a majority of States had engaged in some pay-equity study or data collection activity. In July 1984, the National Governors Association formally adopted a resolution urging States to implement pay-equity principles.

In addition to these activities with respect to State and local public employees, pay equity has become a major issue at the bargaining table. On November 14, 1984, I placed in the CONGRESSIONAL RECORD (S14644, daily ed.) a report issued by the Communications Workers of America entitled "Closing the Wage Gap". This report not only provided a comprehensive overview of the pay-equity problem, but it also described some of the efforts made by this particular union to help close the wage gap through collective bargaining efforts. Although most of the activities that have taken place have been in the area of public employees, labor/management negotiations on pay-equity issues in the private sector, for example, between AT&T and the Communications Workers, have also been instituted.

Mr. President, a number of major companies have quietly begun their own pay equity initiatives. An article entitled "Comparable Worth: It's Already Happening" which appeared in the April 28, 1986, issue of Business Week provided a long and impressive list of companies such as BankAmerica, Chase Manhattan, IBM, Motorola, General Electric, and Control Data which are working on narrowing the wage gaps between male and female employees. These companies are re-evaluating their wage systems and trying to ensure that factors used to evaluate jobs aren't biased against work usually done by women.

Clearly, Mr. President, these voluntary initiatives to identify and remedy pay inequities ought to be encouraged. S. 5 contains provisions directing the Equal Employment Opportunity Commission to develop and implement an education and information program aimed at assisting those employers seeking information on the various techniques that can be used to identify and eliminate pay inequities.

FEDERAL ENFORCEMENT ACTIVITIES

However, despite the considerable activity taking place in the States and in the courts, Federal efforts in this area are at a virtual standstill. Prior to the Reagan administration, the two agencies with primary responsibility for enforcement of Federal equal employment opportunity laws and directives—the Equal Employment Opportunity Commission [EEOC] and the Department of Labor's Office of Federal Contract Compliance Programs [OFCCP]—had begun activities in the comparable-worth area. EEOC filed an amicus curiae brief on the side of the plaintiffs in the Gunther case and commissioned the National Academy of Sciences study I mentioned earlier. In August 1981, shortly after the Gunther decision, EEOC, then under the acting chairmanship of J. Clay Smith, issued interim guidelines to its field offices to assist in identifying and processing cases in light of the Gunther decision. Similarly, OFCCP included in regulations published in December 1980 language clarifying that the prohibition against employment discrimination by Federal contractors encompassed wage differentials based upon comparable-worth principles.

However, under pressure from the Reagan administration those regulations were suspended. Thereafter, under the Reagan-appointed EEOC, work on comparable-worth cases has ceased.

Mr. President, EEOC is specifically charged by law and executive order with the responsibility of providing Federal leadership in matters relating to equal employment opportunity. It has clearly failed to me that responsibility in this area—as well as others I might add. S. 5 is designed to provide both EEOC and OFCCP with a specific congressional directive to enforce fully and aggresively the Federal laws and directives relating to unlawful employment practices.

JOB-EVALUATION TECHNIQUES

Mr. President, before I describe the specific provisions of S. 5, I want to take a few moments to discuss a specific issue related to the eliminations of unlawful wage discrimination—utilization of objective job-evaluation techniques.

As I indicated earlier, objective job-evaluation techniques have been utilized for many years by employers in both the public and private sectors as a basis for determining job classifications and wage rates. Job-evaluation techniques employ numerical rating systems to provide standards and measures of job worth that are used to estimate the relative worth of jobs. It has been reported that almost two-thirds of the adult working population is already paid on the basis of a job-evaluation scheme, and that virtually every large employer, including Federal and State Governments, uses some objective job-evaluation system to determine the relative worth or grade level of each job classification. GAO's survey of State pay-equity practices released in September 1986, that I mentioned earlier, found that 46 of 48 States responding to the survey used job evaluations to set pay for classified positions.

In a job-evaluation plan, pay ranges for a job are based on estimates of the worth of the jobs according to such criteria as the skill, effort, and responsibility required by the job and the working conditions under which it is performed. Pay for an individual, within the pay range, is set by the worker's individual characteristics, such as credentials, seniority, productivity, and quality of job performance.

Job-evaluation systems vary from employer to employer, both in terms of the criteria used and the relative weights. However, the concept of numerical rating and comparative measurement of different jobs is common to all job-evaluation systems.

The National Academy of Sciences in its 1981 study, "Women, Work and Wages: Equal Pay for Jobs of Equal Value", observed: . . . job evaluation plans provide measures of job worth that, under certain circumstances, may be used to discover and reduce wage discrimination for persons covered by a given plan. Job evaluation plans provide a way of systematically rewarding job for their content—for the skill, effort, and responsibility they entail and the conditions under which they are performed. By making the criteria of compensation explicit and by applying the criteria consistently, it is probable that pay differentials resulting from traditional stereotypes regarding the value of women's work or work customarily done by minorities will be reduced.

Mr. President, this study went on to state that existing job-evaluation techniques were by no means perfect. Many incorporated into them factors associated with sex, race, or ethnicity, and many utilized actual wages to figure into the computations, thereby perpetuating existing inequities; other problems in applying these plans universally were also raised. The Academy concluded, nevertheless, that statistical techniques exist that may be able to generate job worth scores from which components of wages associated with sex, race, or ethnicity have been at least partly removed. The Academy urged that these techniques be further developed.

It is also important to note that in many cases where the employer has utilized a job-evaluation plan to establish the comparative worth of different jobs, the employer has simply chosen not to apply the results of its own evaluation to the wages of the female workers. For example, as I mentioned earlier, in the Gunther case the employer arbitrarily paid the female workers 25-percent less than the employer's own job evaluation had determined was the comparative worth of the jobs.

Finally, Mr. President, it should be noted that the failure of an employer to utilize a job-evaluation system to set wages can give rise to an inference of intentional discrimination. In one case brought under the Equal Pay Act, *Taylor* v. *Charley Brothers,* 25 FEP Cases 602 (W.D.Pa. 1981), a Pennsylvania Federal district court found that an employer's intent to discriminate against female employees could be inferred from the fact, among other things, that it had not undertaken any evaluation that would have indicated the value of jobs held by either men or women. Employers seeking to avoid the impact of the Gunther decision by refusing to do their own objective job evaluations certainly run the risk of thereby providing evidence of intentional discrimination.

CONGRESSIONAL ACTION DURING THE 98TH AND 99TH CONGRESSES

Mr. President, during the last two Congresses, significant progress was made on pay-equity issues. First, the House of Representatives has twice passed by overwhelming margins legislation authored by Representative MARY ROSE OAKAR to provide for a study of the Federal job classification system to determine if sex-based wage discrimination exists. Although we were not successful in getting the Senate-companion legislation, S. 519, acted upon, our legislation gained 32 cosponsors shortly before the 99th Congress adjourned.

As the result of an agreement reached during the 98th Congress, the General Accounting Office submitted to Congress on March 1, 1985, an excellent and comprehensive report entitled, "Options for Conducting a Pay Equity Study of the Federal Pay and Classification Systems," (GGD-85-37). This GAO report highlighted the wage gap between male and female employees in the Federal work force and provided a blueprint for how a pay-equity study could be designed to determine the reasons for this wage gap. The Senate Subcommittee on Civil Service, Post Office, and General Services of the Governmental Affairs Committee held 4 days of hearings on this GAO report in May and July 1985. The analysis and recommendations made by the GAO report became the basis for the legislation—S. 519 in the Senate and H.R. 3008 in the House—to mandate this study.

Two major recommendations emerged in the GAO report regarding the conduct of a pay-equity study. Both of these recommendations are carried out in the House-passed bill in the 99th Congress and in the revised version of S. 519 which is included in S. 5.

First, GAO recommended that the study utilize both a job-content and an economic analysis. A job-content analysis looks at the jobs themselves—the difficulty, working conditions, and responsibilities associated with the job. An economic analysis attempts to measure and explain wage differentials using characteristics of individuals, occupations, and the work place to determine whether factors such as education, work experience, or occupation account for the wage differences. GAO observed that "use of both approaches can provide a clearer understanding of how Federal wages are set and would be less susceptible to charges that important explanatory variables have been ignored."

Second, GAO recommended that the study be carried out by an objective body. The report suggested a steering committee composed of representatives from affected groups and experts from various fields to direct the conduct of the study and report directly to Congress.

Subsequently, GAO provided a further legal analysis of existing laws relating to Federal classifications. That analysis submitted on July 29, 1986, demonstrated clearly that existing Federal law—section 5101 and 5341 of title 5, United States Code—already encompasses the elements of a job-worth or comparable-worth system. GAO observed in its July 29 report that "Implementation of [title 5] should result not only in equal pay for equal work, but also in (1) equal pay for different work which is valued equally in terms of difficulty, responsibility and qualification requirements, and (2) proportionate pay for work that differs in value." For example, section 5101(1)(B) provides that purpose of the General Schedule System is to provide a plan under which "variations in rates of basic pay will be proportional to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed".

Last summer, Senator EVANS and I prepared an amended version of S. 519, which is reflected in the language of the legislation I am introducing today, to focus the study on determining whether these existing title 5 policies were being implemented. This change was intended to clarify that the pay-equity study would not establish any new Federal classification standard but rather would be premised on determining whether the pay-equity standards that have been set forth in title 5, United States Code, which was codified in the Classification Act of 1949, which in turn, incorporated the basic classification policies established by Congress in the Classification Act of 1923.

COVERAGE OF RACE, ETHNICITY, AGE, OR DISABILITY

Mr. President, throughout this statement I have focused upon the problems faced by women working in jobs held predominantly by females. Minority workers, older workers, and disabled workers are also affected by the types of discriminatory wage-setting practices which depress the wages of female workers. Although much more work has been done on focusing on the problems of pay equity in terms of sex-based wage discrimination, the legislation which was passed by the House last year, H.R. 3008, also called for examination of the problems faced by minority workers. The version of S. 5 that I introduced in the last Congress and the bill I am introducing today also covers discriminatory prac-

tices based upon sex, race, ethnicity, age, or disability. I believe that it is important that our efforts to attain pay equity extend to all groups which may be affected by discriminatory wage-setting practices.

OUTLINE OF LEGISLATION

Mr. President, as I indicated at the outset, S. 5 is aimed at compelling those Federal agencies responsible for enforcement of Federal equal employment opportunity laws to begin an aggressive campaign to enforce those laws and help bring about an end to wage discrimination against female workers. Certainly this could be accomplished by the executive branch without a congressional mandate. The law already prohibits wage discrimination. But the law is not self-executing.

Unfortunately, under the current administration it is highly unlikely that executive enforcement action will be taken voluntarily. Congress, however, has the power and the authority to direct these agencies to take appropriate action. Enactment of this legislation would provide the congressional mandate that is evidently necessary if there is to be any Federal enforcement action in this area. I do not believe that it is fair or appropriate to rely solely upon private litigants to enforce the law. The Federal Government has a role and responsibility to fulfill. It's time it did so.

SUMMARY OF PROVISIONS: "PAY EQUITY ACT OF 1987"

Mr. President, I would like to outline the provisions of S. 5:

Section 1 would establish the short title of the bill as the "Pay Equity Act of 1987."

Section 2 would set forth the findings and purposes of the act. The findings pertain to the existence of the earnings gap between male and female workers, its causes and impact upon individuals and our economy, and the failure of appropriate Federal agencies to enforce applicable laws and directives. The expressed purpose of the act is to help eliminate discriminatory wage-setting practices and resulting discriminatory wage differentials by, first, providing for the development and utilization of equitable job-evaluation techniques to promote the establishment of wage rates based upon the work performed rather than the sex, race, ethnicity, age, or disability of the employee; second, directing the Federal agencies charged with the responsibility for enforcement of Federal equal employment opportunity laws to help eliminate discriminatory wage-setting practices and discriminatory wage differentials; third, encouraging public and private employers to use equitable job-evaluation techniques in order to eliminate discriminatory wage-setting practices and discriminatory wage differentials; and, fourth, bringing the Federal Government's wage-setting practices into compliance with the purpose of the proposed act and the provisions of title V of the United States Code which provide that wages be proportional to the duties, difficulty, responsibility, or qualification requirements of the work performed and that equal pay should be provided for work of equal value performed by Federal employees.

Section 3 would set forth definitions of the various terms utilized in the act.

Section 4 would set forth specific actions to be taken by the Equal Employment Opportunity Commission [EEOC]. First, the Commission would be directed to issue guidelines for the identification and elimination of discriminatory wage-setting practices and discriminatory wage differentials.

Mr. President, the EEOC is charged by Executive order with the responsibility for providing leadership within the Federal Government on matters relating to the equal employment laws. Its nonaction on the important and urgent issue of pay equity is inexcusable. Employers are entitled to some guidance from the Commission to enable them to identify and eliminate discriminatory wage-setting practices. In the past, the Commission has made many important contributions to the development of equal employment opportunity law; for example, its early guidelines on employment testing issues contributed to the development and utilization of validated testing procedures. It should be fulfilling a similar role with respect to the development and utilization of equitable job-evaluation techniques.

In order to bring about appropriate coordination between the Commission and the Department of Labor's Office of Federal Contract Compliance Programs [OFCCP], the office responsible for enforcement of equal employment opportunity rules with respect to Federal contractors and subcontractors, section 4 of the bill would specifically require consultation with OFCCP in the promulgation of the Federal guidelines. Section 4 also would direct the Commission to develop and carry out a continuing program of education, information, and technical assistance with respect to the elimination of discriminatory wage-setting practices and discriminatory wage differentials and the development and utilization of equitable job-evaluation techniques.

Mr. President, in order to enhance adequate congressional oversight, section 4 contains provisions directing the Commission to make annual reports to the President and Congress on the steps it has taken, and plans to take, to carry out the proposed act. A self-evaluation of the effectiveness of the Commission's efforts is to be included in the report along with inclusion of such recommendations for statutory changes or administrative action, or both, as the Commission considers necessary to effectuate the purpose of the proposed act. The requirements with respect to this report have been made rather detailed in light of the fact that the Commission has shown no willingness voluntarily to take any action in this area.

Section 5 would set forth directives to the Secretary of Labor, acting through OFCCP, with regard to Federal contractors. One primary way in which the Federal Government has sought to eliminate discrimination in employment is to obligate Federal contractors and subcontractors to ensure nondiscrimination with regard to employment practices and to take affirmative steps to provide equal employment opportunities throughout all of their activities as a condition of the contract. Executive Order 11246, promulgated by President Johnson in 1965, provides this basic directive and requires that Federal contractors meet these requirements. The lead agency for enforcement of this Executive order is the Department of Labor, through OFCCP.

Section 5 would specifically direct the Secretary of Labor, acting through OFCCP, to issue guidelines to require Federal contractors to identify and eliminate discriminatory wage-setting practices and discriminatory wage differentials. Those guidelines would be issued after and should be consistent with the guidelines that would be required to be issued by EEOC under section 4. Section 5 also would required that such OFCCP guidelines also provide that Federal contractors required to submit written affirmative action plans or updates of existing plans include in such plans or updates—within a year after the guidelines are issued—a review of their wage-setting practices, an identification of any discrimination in those practices, and a plan of action to correct such discrimination. Section 5 would also strongly encourage these contractors to use equitable job-evaluation techniques by requiring OFCCP to conduct pay-equity compliance reviews for those who fail to do so.

Currently, OFCCP guidelines provide generally that Federal contractors with more than 50 employees and a contract of more than $50,000 must submit a written affirmative action plan and require annual updating of such plans. Section 5 would thus require those contractors to include in their written affirmative action plans additional material relating to discriminatory wage-setting practices and discriminatory wage differentials. Although the guidelines would not require every Federal contractor to adopt an equitable job-evaluation system for use in setting wage rates, they would provide a strong stimulus to do so.

Section 5 would further require the Secretary of Labor to submit to the President and Congress annual reports describing in detail the activities undertaken by the Department to carry out the provisions of the proposed act. Again, this reporting requirement is designed to give Congress adequate information to exercise its oversight responsibilities.

Mr. President, as I indicated earlier, section 6 contains the provisions of the revised version of S. 519 which the Senator from Washington [Mr. EVANS] and I developed during the 99th Congress. Prior to adjournment, S. 519 had 32 cosponsors.

Following the major recommendations contained in the GAO report, this section would provide for the establishment of an independent commission to select a consultant to carry out a study of the classification, grading, and pay-setting practices within and between the position-classification system and the job-grading system used for Federal jobs. The study would use both job evaluation and economic analysis techniques to determine whether the development or implementation of these processes result in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, or qualification requirements of the work performed as required by the existing applicable provisions of title 5 of the United States Code. The legislation provides for a timetable for the completion of this study and provides that funds shall be allocated from the amounts appropriated to OPM for general operating purposes to pay the costs of carrying out such a study.

Section 7 would provide that each Federal agency required under section 717 of the Civil Rights Act to submit an equal employment opportunity plan must include in such plan, or update of an existing plan, information on its wage-setting practices and wage differentials. Again, we are building on a written plan already required to be prepared under section 717; this legislation would simply add to what that plan is required to include new information with respect to discriminatory wage-setting practices and discriminatory wage differentials. The required information would be required to be submitted within 1 year of the date of enactment.

Finally, Mr. President, section 8 would require the EEOC to provide the President and Congress with a detailed report on its enforcement activities relating to the Equal Pay Act. The statistics relating to the average earnings of women indicate a continuing failure to achieve equal pay for equal work. Congress needs a clear understanding of what the Commission has been able to do since responsibility for Equal Pay Act violations was transferred to it in 1978 and of what was done by the Department of Labor prior to the transfer. Section 8 also would require submission to the Congress of the Department of Labor's comments on the Commission's report.

FEMINIZATION OF POVERTY

Mr. President, pay equity is a matter of fundamental fairness. It is also a matter of economic necessity.

Our Nation has increasingly been experiencing what is graphically described as the feminization of poverty. Two out of three adults in this Nation living in poverty are women. As the National Advisory Council on Economic Opportunity noted in 1981, "Poverty among women is becoming one of the most compelling social facts of this decade."

Lack of comparable pay for work of comparable worth is a primary factor in producing this poverty rate.

For men in our society, poverty often comes as a consequence of joblessness and the way out of poverty is through employment. But many women live in poverty even though they already have jobs and are working full-time; their jobs just do not pay a living wage. The poverty rate for families headed by a full-time working woman is more than double that for households headed by full-time working men.

The National Advisory Council on Economic Opportunity also concluded that if working women earned the same wages that similarly qualified men now earn, the number of families living in poverty would be cut in half.

CONCLUSION

Mr. President, the elimination of discriminatory wage-setting practices that deny female workers a fair return for their labor should be of paramount importance to every American. The issue of wage discrimination is not a woman's issue or a special interest issue. It is a national issue. It goes to the very heart of our national commitment to the eradication of poverty, our commitment to a just society, and our commitment to revitalize our economy. Pay inequities must end. We cannot afford the enormous societal costs—in low morale, lost productivity, increased government support payments, and perpetuation of injustice—of allowing pay inequities to persist.

Mr. President, I ask unanimous consent that the text of S. 5 be inserted in the RECORD at this point.

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

S. 5

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 "Pay Equity Act of 1987".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the average earnings of full-time female workers are significantly lower than the average earnings of similarly situated male workers;

(2) this average earnings difference arises, in significant part, because wages paid in occupational fields or job classifications held predominantly by female workers are lower than those paid in occupational fields or job classifications held predominantly by male workers, and this differential results, in significant part, from wage-setting practices based on the sex of the employees, rather than any intrinsic differences in the comparable worth of the job as measured by the education, training, skills, experience, effort, responsibility, or working conditions required for the job or other factors exclusive of sex;

(3) because of these discriminatory wage differentials resulting from discriminatory wage-setting practices, many female workers are underpaid and undercompensated for their work efforts and thereby denied equal employment opportunities;

(4) these discriminatory wage-setting practices and discriminatory wage differentials result in depressing the wages, devaluing the work, and lowering the living standards of many female workers and contribute to the increasing number of women and children living at or near the poverty level and a consequent increase in their need for various forms of government assistance;

(5) the contributions of female workers are vital to our economy, and the continued existence and tolerance of these discriminatory wage-setting practices and discriminatory wage differentials prevent full utilization of the talents, skills, experience, and potential contributions of female workers and result in the exploitation of those workers.

(6) workers who are members of particular racial or ethnic groups, older workers, and disabled workers may experience similar discriminatory wage-setting practices and discriminatory wage differentials;

(7) these discriminatory wage-setting practices and discriminatory wage differentials persist despite applicable State and Federal equal employment opportunity laws and directives;

(8) the Federal agencies charged with the responsibility for enforcement of Federal equal employment opportunity laws and directives have failed to take action, pursuant to applicable such laws and directives, to seek to eliminate discriminatory wage-setting practices and discriminatory wage differentials; and

(9) objective job-evaluation techniques now exist which are utilized by many public and private employers to determine the comparative value of different jobs through a system which numerically rates the basic features and requirements of a particular job, and additional efforts should be made to develop, improve, and implement these techniques so as to help eliminate discriminatory wage-setting practices and discriminatory wage differentials.

(b) Recognizing that the elimination of discriminatory wage-setting practices and discriminatory wage differentials is in the public interest, the purpose of this Act is to help eliminate such practices and differentials by—

(1) providing for the development and utilization of equitable job-evaluation techniques that will promote the establishment

of wage rates based upon the work performed rather than the sex, race, ethnicity, age, or disability of the employee;

(2) providing to those Federal agencies charged with the responsibility for enforcement of Federal equal employment opportunity laws and directives specific guidance and direction to help eliminate discriminatory wage-setting practices and discriminatory wage differentials;

(3) encouraging and stimulating public and private employers to eliminate discriminatory wage-setting practices and discriminatory wage differentials through the development and utilization of equitable job-evaluation techniques in setting wage rates; and

(4) bringing the Federal Government's wage-setting practices into compliance with the purpose of this Act, the provisions of sections 5101 and 5341 of title 5, United States Code, which provide that rates of basic pay for federal positions are in proportion to the duties, difficulty, responsibility, or qualification requirements of the work performed, and section 2301(b)(3) of such title, which provides that equal pay should be provided for work of equal value in Federal employment.

DEFINITIONS

SEC. 3. As used in this Act except in section 6, the term—

(1) "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4);

(2) "Secretary" means the Secretary of Labor;

(3) "Federal agency" means any agency of the Federal Government or the District of Columbia, including any executive agency as defined in section 105 of title 5, United States Code, the United States Postal Service and the Postal Rate Commission, and the Library of Congress, the General Accounting Office, and the Office of Technology Assessment;

"discriminatory wage-setting practices" means—

(A) the setting of wage rates paid for jobs held predominantly by female workers lower than those paid for jobs held predominantly by male workers or

(B) the setting of wage rates paid for jobs held by workers of a particular racial or ethnic group, older workers, or disabled workers lower than those paid for jobs held predominantly by other workers

based upon sex, race, ethnicity, age, or disability of the workers rather than any other factor although the work performed requires comparable education, training, skills, experience, effort, and responsibility, and is performed under comparable working conditions;

(5) "discriminatory wage differentials" means different rates of compensation resulting from utilization of discriminatory wage-setting practices;

(6) "job-evaluation technique" means an objective, quantitative method of rating positions within occupations based upon factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved; and

(7) "equitable job-evaluation technique" means a job-evaluation technique which, to the maximum extent feasible, does not include components for determining the comparative value of a job that reflect the sex, race, ethnicity, age, or disability of the employee.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ACTIVITIES

SEC. 4. (a)(1) Not later than nine months after the date of the enactment of this Act, the Commission, in consultation with the secretary (acting through the Office of Federal Contract Compliance Programs in the Department of Labor), shall publish in the Federal Register, for public review and comment, proposed guidelines for the purpose of identifying and eliminating discriminatory wage-setting practices and discriminatory wage differentials. Such guidelines shall include recommendations for utilization of equitable job-evaluation techniques in setting rates for employees.

(2) Not later than one year after such enactment date, the Commission, in consultation with the Secretary (acting through the Office of Federal Contract Compliance Programs), shall publish final guidelines for the purpose described in paragraph (1).

(b) In order to effectuate the purpose of this Act, the Commission shall develop and carry out a continuing program of education and information, under which, among other things, the Commission shall—

(1) undertake and promote research into the development of equitable job-evaluation techniques;

(2) develop a program for maximum dissemination and utilization of such equitable job-evaluation techniques; and

(3) develop and implement a program for providing appropriate technical assistance to any public or private entity requesting such assistance to eliminate discriminatory wage-setting practices and discriminatory wage differentials.

(c) On February 1, 1989, and annually thereafter, the Commission shall submit to the President and the Congress a report describing in detail the activities of the Commission during the preceding fiscal year to carry out the provisions of subsection (b). Such report shall include an evaluation of the effectiveness of such activities, a description of the Commission's plans for carrying out the provisions of subsection (b) and effectuating the purpose of this Act during the fiscal year in which the report is submitted, and any recommendations for statutory changes or administrative action, or both (other than any measure which would result in a reduction in the rate of pay payable for any position), that the Commission considers necessary to effectuate such purpose.

FEDERAL CONTRACTS

SEC. 5. (a)(1) Not later than thirty days after the date of the publication final guidelines under section 4(a)(2), the Secretary (acting through the Office of Federal Contract Compliance Programs) shall publish in the Federal Register proposed guidelines for the purpose of requiring all contractors of the United States to identify and eliminate discriminatory wage-setting practices and discriminatory wage differentials. Such guideline shall—

(A) include provisions to encouarge all such contractors to develop and utilize equitable job-evaluation techniques in setting wages rates for employees;

(B) provide that each such contractor that is required by Federal law or directive to submit a written affirmative action plan shall (i) with respect to each such plan or update of each such plan submitted after the date of the publication of the final guidelines published pursuant to paragraph (2), include in such plan or update a review and identification of any discriminatory wage-setting practices and discriminatory wage differentials within such contractor's labor force and a plan of action to eliminate any such practices and differentials, or (ii) if such contractor does not submit such plan or update within one year after such publication date, submit, within such one-year period, an amendment to its existing plan which shall include the information described in subclause (i); and

(C) provide for compliance reviews of any such contractor that has failed to utilize equitable job-evaluation techniques in setting wage rates for employees.

(2) Not later than sixty days after the date of the publication of the proposed guidelines under paragraph (1), the Secretary shall publish final guidelines for the purpose described in paragraph (1).

(b) On February 1, 1989, and annually thereafter, the Secretary shall submit to the President and the Congress a report describing in detail the activities by the Office of Federal Contract Compliance Programs pursuant to subsection (a) undertaken during the preceding fiscal year and planned to be undertaken during the fiscal year in which the report is submitted. Such report shall include any recommendations for statutory changes or administrative action, or both (other than any measure which would result in a reduction in the rate of pay payable for any position), that the Secretary considers necessary to effectuate the purpose of this Act.

FEDERAL EMPLOYEE COMPENSATION STUDY

SEC. 6. (a) This section may be cited as the "Federal Employee Compensation Study Act of 1987".

(b) For the purpose of this section—

(1) the term "position" means employee positions that are subject to classification under chapter 51 of title 5, United States Code, or the job-grading system under subchapter IV of chapter 53 of such title;

(2) the term "Commission" means the Commission on Compensation established under subsection (c);

(3) the term "Director" means the Director of the Office of Personnel Management;

(4) the term "employee" means an individual to whom chapter 51 or subchapter IV of chapter 53 of such title applies;

(5) the term "labor organization" shall have the meaning given such term by section 7103(a)(4) of such title;

(6) the term "executive agency" shall have the meaning given such term by section 105 of such title;

(7) the term "job-evaluation analysis" means an objective quantitative method of rating positions within occupations based upon factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved; and

(8) the term "economic analysis" means a method analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education or work experience, geographic factors, supply and demand factors, or any other factors exclusive of sex, race, or ethnicity.

(c) There is established a commission to be known as the Commission on Compensation Equity.

(d) In order to determine whether distinctions between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial dif-

ferences in the duties, difficulty, responsibility, and qualification requirements of the work performed, in accordance with sections 5101 and 5341 of title 5, United States Code, and are not based on considerations of sex, race, or national origin, the Commission shall provide, by contract with the consultant selected pursuant to subsection (h), for—

(1) the conduct of a study of classification, grading, and pay-setting processes within and between the position classification system under chapter 51 of such title and the job-grading system under subchapter IV of chapter 53 of such title, using standard job-evaluation and economic analysis techniques, to determine whether the development or implementation of these processes result in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, or qualification requirements of the work performed, and

(2) the preparation and submission of a report containing the findings of such study, including a list of any such positions and the extent of the differences in the rates of pay in such cases.

(e)(1) Not later than eighteen months after the date of the enactment of the Act, the Commission shall transmit to the appropriate Committees of the Congress the report required by subsection (d) and shall provide a copy of this report to the Director.

(2) The report shall include—

(A) the Commission's findings resulting from the study; and

(B) the Commission's recommendations (other than any recommendation which would result in a reduction in the rate of pay payable for any position) for any administrative or legislative actions, or both, that it considers appropriate (including any recommendations for modification of the provisions of subsection (g).

(3) Not later than ninety days after the Commission submits its report to the appropriate committees of the Congress pursuant to subsection (e)(1), the Director shall submit to such committees and the Commission a report commenting on the Commission's report and specifying the Director's plan (and timetable therefor) to carry out each of the Commission's recommendations or, in the event that the Director does not specify a plan to carry out one or more of such recommendations, the Director's reasons for not specifying such plan.

(4) Not later than sixty days after the Director submits the report to the appropriate committees of the Congress pursuant to subsection (e)(3), the Commission shall submit to such Committees any additional comments that the Commission considers appropriate in response to the Director's report.

(5) The study prepared by the consultant selected pursuant to subsection (h) and any findings, conclusions, recommendations, or comments by the consultant or the Commission under this section with respect to such study shall be considered to be of an advisory nature only.

(f)(1)(A) The Commission shall be composed of nine members as follows:

(i) Two appointed by the President of the United States.

(ii) One appointed by the majority leader of the Senate.

(iii) One appointed by the minority leader of the Senate.

(iv) One appointed by the Speaker of the House of Representatives.

(v) One appointed by the minority leader of the House of Representatives.

(vi) Three appointed by the Director to represent Federal employee labor organizations, one designated (and certified to the Director) by each of the three respective labor organizations representing, as exclusive representatives, the largest number of individuals occupying positions that are subject to chapter 51 or subchapter IV of chapter 53, of title 5, United States Code.

(B) Members of the Commission shall not be Members of Congress and shall, to the maximum extent practicable, be chosen from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration and study.

(2) All appointments under subsection (f) shall be made not later than sixty days after the date of the enactment of this Act.

(g)(1)(A) The President shall designate a Chairman of the Commission from among the Commission members. The Commission shall elect a Vice-Chairman from among its members. The Vice-Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman.

(B) The Commission shall adopt such rules and regulations it considers necessary to establish its procedures and to govern the manner of its operations, its organization, and its personnel.

(C) Five members of the Commission shall constitute a quorum.

(D) Any vacancy in the Commission shall not affect its powers except with respect to satisfaction of the quorum requirements in subparagraph (C). Such vacancy shall be filled in the manner in which the original appointment was made.

(2) Each member of the Commission who is not an officer or employee of the United States Government shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for level IV of the Executive Schedule for each day the member is engaged in the performance of the duties of the Commission.

(3)(A) The Commission may appoint, terminate, and subject to subparagraph (B), fix the compensation of such personnel as it considers advisable to employ to assist in the performance of its duties, without regard to the civil services laws, the provisions of title 5, United States Code, or any other law relating to the number, classification, or compensation of employees. The Commission may also procure temporary and intermittent services in carrying out its responsibilities. The Chairman shall appoint an executive director of the Commission with the approval of a majority of the Commission members.

(B) An employee of the Commission may not receive compensation at a rate exceeding the rate of pay payable for grade GS-18 under section 5332 of title 5, United States Code.

(C) Service of an individual 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 United States Government for the purposes of section 8344 of title 5, United States Code.

(4) All members and employees of the Commission and all individuals performing temporary or intermittent services for the Commission shall, while performing the duties of the Commission, be paid per diem, travel, and transportation expenses in the same manner as provided for under subchapter I of chapter 57 of title 5, United States Code.

(5)(A) The Commission or any member authorized by the Commission may, for the purposes of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangements, with or without consideration or bond, and take any other actions that the Commission considers advisable, to the extent that amounts provided pursuant to subsection (j) are available. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member.

(B) The Commission is authorized to obtain directly from any officer, department, agency, establishment, or instrumentality of the United States Government any information, suggestions, estimates, and statistics that the Commission considers necessary to carry out this section. Each such officer, department, agency, establishment, or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made on behalf of the Commission.

(C) The Commission may use the United States mails and receive administrative support from the Administrator of General Services in the same manner and under the same conditions as departments and agencies of the United States Government.

(D) No officer or agency of the United States Government shall require the Commission to submit any report, recommendation, or other matter to any such officer or agency for approval, comment, or review before submitting such report, recommendation, or other matter to the Congress or Committees of the Congress or to the President.

(E) The Commission shall meet from time to time, as its members consider appropriate.

(g) The Commission shall cease to exist ninety days after the date on which it submits its comments pursuant to subsection (e)(4).

(h)(1) The Commission shall solicit from the Comptroller General of the United States, the Congressional Office of Technological Assessment, and the National Academy of Sciences, and the Comptroller General and the Office shall provide to the Commission not later than 60 days after the date of such solicitation, a list of consultants which on the basis of their objectivity, extensive knowledge, and technical expertise in the matters to be studied pursuant to this section are appropriate to conduct the study required by subsection (d).

(2) From among the consultants on the lists provided pursuant to paragraph (1), the Commission shall select one consultant to conduct such study.

(i) Nothing in this section shall be construed to limit any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938, or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap or age.

(j) Of the sums appropriated to the Office of Personnel Management for general operating expenses for fiscal year 1988 and 1989, such amount as is estimated by the Comptroller General of the United States as necessary to carry out this section shall be

made available to pay the expenses of the Commission and shall remain available for such purpose until September 30, 1990.

FEDERAL DEPARTMENT AND AGENCY EQUAL EMPLOYMENT OPPORTUNITY PLANS

SEC. 7. Each Federal agency responsible for submitting an equal employment opportunity plan pursuant to section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) shall include, in each such plan or update of such plan submitted to the Commission after the date of the enactment of this section, a review and identification of any discriminatory wage-setting practices and discriminatory wage differentials with respect to its labor force and a plan of action to eliminate any such practices and differentials. Any such agency which does not submit such plan or update within one year after such enactment date shall, not later than one year after such enactment date, submit an amendment to its existing plan which shall include the information described in the preceding sentence.

EQUAL PAY ACT REPORT

SEC. 8. (a) Not later than January 1, 1988, the Commission shall submit to the President and the Congress a report describing in detail the activities of the Commission with respect to enforcement of the provisions of the Equal Pay Act of 1963 (29 U.S.C. 206(d)) since the date of transfer of authority for Equal Pay Act enforcement activities to the Commission pursuant to Reorganization Plan Numbered 1 of 1978. Such report shall include with respect to such activities—

(1) information on the number of complaints received and processed by the Commission, their disposition, and the allocation of Commission resources to Equal Pay Act enforcement activities.

(2) a comparison of the disposition of, and allocation of resources to, these cases by the Commission to the disposition of, and allocation of resources to, similar cases by the Department of Labor prior to the transfer of such responsibilities to the Commission; and

(3) any recommendations for statutory changes or administrative action, or both, that the Commission considers necessary to carry out the provisions of such Act and effectuate the purpose of this Act.

(b) Not later than ninety days after the date of the submission of the report required by subsection (a), the Secretary shall submit to the President and the Congress a report commenting on the Commission's report and containing any recommendations for statutory changes or administrative action, or both, that the Secretary considers necessary to carry out the provisions of such Act and effectuate the purpose of this Act.

By Mr. CRANSTON (for himself, Mr. MATSUNAGA, Mr. DECONCINI, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. GRAHAM, and Mr. LAUTENBERG):

S. 6. A bill to amend title 38, United States Code, to improve various aspects of Veterans' Administration health-care programs, to provide certain new categories of persons with eligibility for readjustment counseling from the Veterans' Administration and to postpone the transition period for the Vet Center Program, to authorize the establishment of a pilot program for the furnishing of noninstitutional care to certain veterans, and to increase the per diem rates paid to States for providing care to veterans in State homes; and to prohibit the excessing of certain Veterans' Administration properties; and to promote greater emphasis by affiliated health-professional training institutions on geriatric training and research, and for other purposes; to the Committee on Veterans' Affairs.

VETERANS' HEALTH-CARE IMPROVEMENT ACT OF 1987

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I am today introducing S. 6 the proposed "Veterans' Health-Care Improvement Act of 1987." I am joined in introducing this measure by my good friends and colleagues on the Veterans' Affairs Committee, Senators MATSUNAGA, DECONCINI, MITCHELL, and ROCKEFELLER, as well as by Senator LAUTENBERG. This bill has as its basic purpose the continued maintenance and improvement of the VA's ability to meet the health-care needs of our Nation's veterans and their dependents. In view of my very strong concern that we must find ways to reduce the Federal deficit, this legislation seeks to find ways to improve VA programs without incurring any significant new costs.

SUMMARY OF PROVISIONS

Mr. President, the 10 substantive provisions in this measure would:

First, provide a basis for a 1-year extension—from October 1, 1987, until October 1, 1988—of the date by which the VA's Readjustment Counseling Program for Vietnam-era veterans is to begin a 2-year transition from being a program providing counseling services primarily through Vet Centers, which are located apart from the VA's general medical facilities, to being a program providing such services primarily through the VA's general medical facilities (section 4(b)).

Second, require the Administrator to conduct a 4-year pilot program through not less than 5 nor more than 10 demonstration projects where veterans eligible for and otherwise in need of VA institutional care would instead receive care, including health-related services from non-VA entities, in noninstitutional settings (section 5).

Third, increase the rates of per diem payments to State veterans' homes for eligible veterans (section 7).

Fourth, provide eligibility for VA readjustment counseling to (1) Armed Forces activity duty personnel who served during the Vietnam era, and (2) persons who served in the Armed Forces after the Vietnam era in combat situations (section 4(a)).

Fifth, provide for a revision of the statutory framework of the Office of the VA's Chief Medical Director so as to establish a second Associate Deputy Chief Medical Director position and to authorize the appointment of certain health-care professionals other than physicians to various positions in that office (section 8).

Sixth, provide authority for the VA to furnish services to a service-connected veteran or the spouse of a service-connected veteran to achieve pregnancy, for example through artificial insemination or in vitro fertilization, in cases in which a veteran's service-connected disability impairs procreative ability (section 2).

Seventh, revise eligibility for VA domiciliary care so as to reflect more accurately the VA's current philosophy and practice in furnishing that type of care (section 3).

Eighth, eliminate the Administrator's authority to restrict eligibility for VA health-care benefits (section 6).

Ninth, prohibit the VA from excessing certain lands located in southern California (section 9).

Tenth, set forth findings of Congress regarding the need to prepare for the impact of the aging of the U.S. population and of the importance of the Veterans' Administration playing a leadership role in that regard, particularly with reference to increasing the efforts by medical and other health-professional schools affiliated with the VA in training professionals to care for older patients and in research into the aging process and diseases associated with aging, and require a one-time report from the Administrator, due not later than March 1, 1988, on the VA's activities, and the success of those activities, to promote such increased efforts by affiliated schools (section 10).

VIETNAM VETERANS READJUSTMENT COUNSELING ISSUES

Mr. President, section 4 of the measure I am introducing contains two provisions relating to the VA's Readjustment Counseling Program for Vietnam veterans—one of which expands the categories of individuals who are eligible to request counseling through that program and the other of which provides a basis for delaying by 1 year, from October 1, 1987, to October 1, 1988, the date on which a 2-year transition in that program, which is described in more detail below, is to begin.

As the author of the legislation that initially established the VA's Readjustment Counseling Program—section 103 of Public Law 96-22, enacted in 1979—and various extensions of that program, I have been deeply interested in this program since its inception and have been very gratified over the years that the program has achieved such great success, helping so many veterans—over 500,000 thus far. At present, there are 189 Vet Centers—primarily storefront facilities located apart from other VA health-care facilities—across the Nation providing counseling and other assistance to eligible Vietnam-era veterans and their

families. The two provisions in section 4, if enacted, will improve and strengthen this ongoing program.

EXTENSION OF READJUSTMENT COUNSELING ELIGIBILITY

Mr. President, under current law, section 612A of title 38, United States Code, eligibility for readjustment counseling services is limited to veterans of the Vietnam era. Provisions in section 4(a) of this measure would make two additional categories of individuals eligible for such services.

First, individuals who served during the Vietnam era but who are still on active duty—and thus are not "veterans" under the applicable title 38, United States Code, definition—would be made eligible for readjustment counseling. Although I am not aware of any data suggesting a widespread unmet need for counseling among active-duty personnel who served in Vietnam, I continue to hear from individuals working in the VA's Vet Center Program and also from such active-duty personnel directly about requests from active-duty personnel for such counseling. Indeed, I have been aware of informal efforts at some Vet Centers to provide services to active-duty personnel despite a lack of express authority to do so. I do not believe that any individual who served in the Armed Forces during the Vietnam era and feels a need for readjustment counseling should be barred from eligibility simply because he or she is still on active duty. Section 4(a) of the bill would remove that bar.

The second change in eligibility for readjustment counseling that would be made by this section of the bill would be to add certain service after May 7, 1975, the end of the Vietnam era, to the period of service that makes an individual eligible for readjustment counseling. Under this change, the Administrator, after consultation with the Secretary of Defense, would be authorized to specify that services during periods of time in specific locations where U.S. Armed Forces were under hostile fire would be qualifying service for readjustment counseling purposes. This provision recognizes that members of our Armed Forces are at times exposed to situations short of declared—such as existed in Beirut or Grenada, or in connection with our actions against Libya or that possibly exist today in Central America—that might produce the need for readjustment counseling to help deal with the psychological aftermath of their experiences. I want to stress my view that this authority, if enacted, should be used only in very limited circumstances in which our service personnel actually experienced combat situations.

I also note that it is my intention that the Vet Center Program would meet out of existing resources whatever increased demand for services resulted from enactment of either or both of these changes. I am not proposing nor would I expect that there would be any expansion in the size of the Vet Center Program as a result of the enactment of these provisions. Finally, with reference to the eligibility criteria, I note that other provisions in the section—discussed below—will require the VA Administrator to comment on the desirability of extending eligibility to veterans from earlier war periods.

DELAY IN TRANSITION PERIOD

There are a number of milestones in current law, as amended in 1983 by Public Law 98-160 and again last year in Public Law 99-576, which are related to a process whereby the existing readjustment counseling program is scheduled to undergo a 2-year transition beginning October 1, 1987, from a program providing services primarily through the Vet Centers to a program providing such services primarily through general VA health-care facilities, such as medical centers and outpatient clinics. The "primarily" criterion is generally construed—including by the VA's general counsel in a White Paper prepared last year—to require that by the end of the transition period a majority of readjustment counseling programs must be operated at traditional VA facilities.

The first of these milestones was October 1 of last year, the date by which the Administrator of Veterans' Affairs was mandated to submit a report to the two Veterans' Affairs Committees on the results of a comprehensive study of the prevalence and incidence among Vietnam veterans of posttraumatic stress disorder—PTSD—and other postwar psychological problems in readjusting after their service. Following that report, and taking the results of the study into consideration, the Administrator is required under current law to submit two additional reports before the transition period begins. The first of these is due on April 1, 1987, and is required to set forth the Administrator's evaluation of the VA's effectiveness in meeting the readjustment needs of Vietnam-era veterans and his opinion on whether the VA should go forward with the transition effort as in current law or whether there should be some modification of that requirement. The second report, due on July 1, 1987, must set forth the Administrator's plan for accomplishing the transition during fiscal year 1988 and 1989. Also, as a result of a provision which I authored last year and which was enacted in Public Law 99-576, there is a requirement for a third, midtransition report, due under current law by February 1, 1989, on the experience of the VA during the first year of the transition.

This approach of a comprehensive study together with sequenced reports was designed to enable the Congress to make informed decisions about the future of the Readjustment Counseling Program, including the nature and timing of its integration into other VA health-care facilities. However, in a May 12, 1986, letter transmitting proposed legislation to the Congress, and Veterans' Administration noted that the private contractors who are carrying out the study on PTSD and other postwar psychological problems, which was due last October 1, "have experienced delays in the study's design and initiation." In view of those delays, the VA proposed moving the due date for the report on the study back one year, to October 1, 1987.

Since the time of that initial notification of problems with the study's progress, it has become apparent that the study timetable has become seriously disrupted.

In May of last year, committee staff met with representatives of the VA and the study contractor, Research Triangle Institute, Inc., of North Carolina, to review various problems and allegations that had arisen about the scope and conduct of the study. Thereafter, on June 6, the chairmen and ranking minority members of both the House and Senate Committees on Veterans' Affairs wrote to the Office of Technology Assessment asking OTA to convene a panel to review the situation and make recommendations. OTA did that and on September 5 issued a report to the committee recommending some major alterations in the study personnel and VA supervisory relationship to the study.

On November 24, 1986, the VA responded to the OTA recommendations and, late last month, committee staff met with the VA, OTA, and representatives of the contractor. From the VA's reply and the followup meeting, it now appears that the VA is making a bona fide effort to put the study back on track and to complete it swiftly. According to the contractor, the interim study report will be submitted a year late, on October 1 of this year; the final report by December 31, 1988.

Because I continue to consider this PTSD/Vietnam veterans readjustment policies and needs assessment study vitally important and relevant to the potential needs of Vietnam-era veterans for readjustment counseling and related services, I believe that, as originally conceived, it definitely should be considered in the planning for and conduct of the transition period for the Vet Center Program.

The measure we are introducing today, in section 4(b), would provide that if, as it appears nearly inevitable at this point, the Administrator does not have the benefit inevitable at this point, the Administrator does not have the benefit of the results of this study in time to take them into account in

preparing the April 1, 1987, transition-planning report, the start of the transition period will be delayed 1 year, until October 1, 1988. In addition, in the event of that contingency, our bill would extend for a similar period the due date of the three report requirements that I just described. It would also amend the requirements relating to two of the reports—first, to require the Administrator, as part of the report on plans for the transition of the Readjustment Counseling Program, to comment on the desirability of expanding eligibility for readjustment counseling to veterans of other wars, and second, to require that the report on the first year of the transition contain the Administrator's views on whether the transition requirement should be modified.

Mr. President, I note that I am joining with the Senator from Arizona [Mr. DECONCINI], also a cosponsor of this measure, in also introducing today a separate bill to delay the transition period and the three reporting provisions by 1 year. I very much hope that our committee will be able to move forward very rapidly with legislation to provide for a year's delay in the beginning of the transition period.

TECHNICAL CHANGE

Finally, Mr. President, I note that the bill contains, in section 4(b), a technical change in the terminology used to describe the transition period. Currently, the section 612(g)(1)(A) refers to providing readjustment counseling services "primarily through centers located in facilities situated apart from the health-care facilities operated by the Veterans' Administration for the provision of other health-care services under other provisions of this chapter." Our bill would refer to a program providing readjustment counseling through "Vet Centers" and define that term as "Facilities which are operated by the Veterans' Administration for the provision of services under this section and which are situated apart from Veterans' Administration general health-care facilities." No substitute change in the law would be made by this provision.

PILOT PROGRAM OF NONINSTITUTIONAL ALTERNATIVES TO INSTITUTIONAL CARE

Mr. President, section 5 of the bill would require the VA to conduct, from January 1, 1988, through December 31, 1991, a 4-year pilot program at not less than 5 nor more than 10 demonstration project sites to evaluate noninstitutional alternatives to institutional care. Through this pilot program, the VA would provide certain veterans with medical, rehabilitative, and other health services and, by contract with non-VA entities, with health-related services.

These health and health-related services would be provided in noninstitutional settings—such as the veteran's home or a board-and-care home—with the goal of avoiding institutional care, such as in a hospital, nursing home, or domiciliary facility, for the participants in the program.

Participation would be limited to veterans eligible for and otherwise in need of VA hospital, nursing home, or domiciliary care. Priority for care and services through the pilot program would be accorded to veterans in four categories: Those with service-connected disabilities; those who are 65 or older; those who are totally and permanently disabled; and those who are suffering from Alzheimer's disease or another form of dementia.

Mr. President, section 5 is, except for date changes and minor drafting changes, identical to section 204 of S. 2422 as reported by our committee last September. That provision—which was derived from section 8 of S. 2388, legislation I introduced on April 30, 1986, and from section 3 of S. 2445, as introduced by then-Chairman MURKOWSKI on May 8—was considered and passed by the Senate as part of an amendment to H.R. 5299 on September 30, 1986. Unfortunately, we were unable to gain House agreement on this pilot program and the provision was not included in the measure that was ultimately enacted as Public Law 99-576.

I am reintroducing this provision at this time because I remain convinced that, in light of current developments in health services which enable more individuals to receive needed care without being institutionalized and of the rapid increase in the number of veterans age 65 and older who may be seeking care from the VA in the years ahead, the VA must take steps to develop new approaches to addressing the health-care needs of veteran patients. By 1990 there will be 7.2 million veterans in this age group, and there will be 9 million veterans age 65 or older by the year 2000.

The kinds of new VA approaches this legislation envisions must include an emphasis on increased interaction with community entities that provide health and health-related services if the VA is to get the maximum health-care benefit out of every dollar spent. There also must be a greater emphasis on reducing the need for institutional care for veterans. In my view, this proposed pilot program is an appropriate response to these concerns.

With specific reference to the goal of avoiding institutional care and of providing services in an individual's home, I note that the VA, in its 1984 report, "Caring for the Older Veterans," set forth a number of objectives that were central to the agency's strategies for meeting the needs of the older veteran and that the first of these was:

To sustain older individuals' independence, comfort, and contentment in their own home environment for as long as possible, providing supportive services to do so.

Clearly, this proposed pilot program would help reach that goal.

On the issue of increased VA-community interaction and cooperation, which the pilot program is also designed to address, I am convinced that the VA must make greater use of community resources which help to maintain individuals in their homes—such as homemaker, personal care, communal or at-home nutrition, and transportation assistance services—in order for the agency to respond in a reasonably adequate way to the growing demand for care that it faces as the veteran population ages so rapidly between now and the end of the century.

We must, of course, always be greatly concerned about the cost of any new programs. However, the bill limits the total expenditures over the life of this pilot program to 60 percent of the cost that would otherwise have been incurred by the VA if the veterans participating in the program had been furnished nursing home care instead of the noninstitutional services provided under the program. It is my intention—as it was the committee's intention last year—that this pilot program would be carried out through the use of funds that would otherwise be used for the provision of more costly intermediate care and that the balance of the funds would be applied to care for more veterans than would have been served in the absence of this new, innovative program.

SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITY AFFECTING PROCREATION

Mr. President, section 2 of the bill would authorize the VA to furnish services to help a male or a female veteran or a male veteran's spouse achieve pregnancy in cases in which the veteran's service-connected disability impairs procreative ability.

As a result of my work on behalf of a woman veteran who had a service-connected disability which prevented her from becoming pregnant, I became aware of the fact that the VA does not believe that it has legal authority under current law to provide services to help overcome such a disability. In that case, the veteran was seeking an in vitro fertilization procedure. I have also been working for over a year with representatives of the Paralyzed Veterans of America, which has expressed a strong interest on behalf of its members in such services for males suffering from spinal cord injuries.

Although I do not believe that the VA's restrictive legal interpretation of its existing authority is correct—and did my utmost to bring about a change in that interpretation—I was not successful. Hence, we are proposing in this bill to provide express authority in order to remove any doubts that may exist on this issue.

I note that this provision is derived from section 8 of S. 2388, legislation

which I authored last year and our committee favorably reported and the Senate passed in section 205 of S. 2422. Unfortunately, the House did not agree to this provision and it was not included in the measure that was ultimately enacted as Public Law 99-576.

Mr. President, because this new authority would be limited to cases in which a veteran's service-connected condition is impairing procreative ability, it would be targeted on those veterans as to whom the VA has always had the greatest responsibility—those disabled during their service. Because of this targeted focus, I anticipate that there would be a relatively limited number of veterans who would be eligible to be furnished these new services and an even smaller number who would wish to receive them. Thus, I do not foresee significant new costs associated with this proposed change in the law.

However, to the extent there are new costs associated with this new authority, it is my intention that they would be absorbed through a shift of funds from lower priority expenditures under the VA's medical care account, for which $9.4 billion has been appropriated for fiscal year 1987, and that, as a result, no new appropriations would be provided in connection with the new authority. The end result of such a shift in resources would be an increase in services available to service-connected disabled veterans to help overcome these disabilities.

INCREASE IN PER DIEM PAYMENTS TO STATE VETERANS' HOMES

Mr. President, under title 38, the VA participates in two separate programs of assistance to State veterans' homes—one, a program of per diem payments to the homes for care provided to eligible veterans; the other, a program of matching grants to the States for the construction, remodeling, or renovation of State home facilities.

The State Home Program is a vital adjunct to the VA's overall efforts, both now and in the years ahead, to meet the health-care needs of older veterans, and I strongly support the overall program.

Last year, in section 224 of Public Law 99-576, the authorization of appropriations—at the level of "such sums as may be necessary"—to be made to the VA for the purpose of making matching grants to the States was extended for 3 years, through fiscal year 1989. Section 7 of the bill we are introducing today would address the other element of the State Home program by increasing the authorized per diem rates from $7.30 to $8.70 for domiciliary care and from $17.05 and $15.25 to $20.35 for nursing home and hospital care, respectively. These proposed new per diem rates—which were last increased in April 1985—would enable the Federal Government to continue to shoulder an appropriate share of the total cost of providing care to eligible veterans in State home facilities.

The single most important element of the State Home Program is, in my view, nursing home care. The change we are proposing in the rate for nursing home care would restore the VA's share of the average cost of providing such care in State homes to approximately 25 percent, the level that was achieved following the last two increases in per diem rates in 1979 and 1984. The same percentage increase, 19.4 percent, required to increase the rate of nursing home care from $17.05 to $20.35, would be applied to the rate for domiciliary care, thus increasing that rate from $7.30 to $8.70.

The hospital care rate would be increased from $15.25 to $20.35 in order to eliminate the existing disparity between the rates for hospital and nursing home care. Only six States currently have State home hospital beds. Congress' goal is to encourage the addition of State Veterans' Home extended care beds and not hospital care beds.

Indeed, there is no authorization for the VA to make grants for construction of new State home hospital beds and last year, in section 224 of Public Law 99-576, we enacted a provision making expansion of existing State home hospital bed capacity the lowest priority for the expenditure of funds under that program. Hence, there is no longer any reason to continue to reimburse the States affected at unrealistic rates for their State Veterans' Home hospital beds in order to discourage the proliferation of these beds.

Finally, Mr. President, I note with favor that the administration's budget for fiscal year 1988 would request $42 million for State home construction, the same amount requested and appropriated for fiscal year 1987, a substitutional increase over the fiscal year 1986 level of $21 million.

ORGANIZATION OF THE DEPARTMENT OF MEDICINE AND SURGERY

Section 8 of this measure would amend section 4103 of title 38, relating to the organization of the Office of the Chief Medical Director [CMD], so as to establish one new position in that office, provide new flexibility in the appointment of individuals to other positions in the CMD's office, and to make various technical changes in the section.

This section is identical to section 215 of S. 2422 as reported by our committee last year, which, in turn, was derived in part from S. 2172, legislation introduced at the request of the administration. The provision derived from S. 2172 would establish a second Associate Deputy Chief Medical Director [ADCMD] as an assistant to the Chief Medical Director [CMD] and the Deputy CMD. The establishment of this position would enable the VA to carry out fully a reorganization of the CMD's office which was first proposed last year. As part of that reorganization, the former, single ADCMD position would be divided into two positions—an ADCMD for Operations, responsible for overseeing current operations of DM&S—currently this responsibility is carried out by a Director of Operations—and an ADCMD for program development and planning, responsible for overseeing planning and program management matters.

A second principal category of changes which would be made by this provision would authorize the Administrator to appoint, in addition to physicians, certain nonphysician health-care professionals—dentists, registered nurses, optometrists, pharmacists, podiatrists, and psychologists—to various positions in the CMD's office. Thus, these nonphysician professionals would be made eligible to serve in either of the ADCMD positions. In addition, these professionals—including dentists, who are already eligible—could be appointed to the positions of Assistant CMD [ACMD] and Medical Director. Also, in the case of one ADCMD position and not more than two ACMD positions, appointments would also be authorized to such positions of individuals who have served as Directors of VA health-care facilities. These changes in the description of the qualifications of appointees to the office of the CMD would not mandate any change from current appointment practices. Rather, the intent would be to provide greater flexibility in identifying candidates for the positions in question.

A related change would amend section 4103 so as to specify that all individuals appointed to positions in the Office of the CMD must be qualified in the administration of health services. Under current law, such a requirement is specified as a prerequisite only with reference to nonphysicians appointed to not more than two of the ACMD positions.

ELIGIBILITY FOR DOMICILIARY CARE

Mr. President, section 3 of this measure would authorize the VA to provide domiciliary care to veterans who are in need of such care for the purpose of receiving treatment or rehabilitation and who either have a service-connected disability or are incapacitated from earning a living and have no adequate means of support.

The issue of how eligibility for domiciliary care should be stated in the law arose 2 years ago in the context of the 1985 reconciliation legislation, the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, which revised eligibility criteria for VA hospital, nursing home, and

outpatient care. Under current law, section 610(b) of title 38, veterans are eligible for domiciliary care under two general categories: In the first category are service-connected disabled veterans who are suffering from a permanent disability or tuberculosis or a neuropsychiatric ailment and are incapacitated from earning a living and have no adequate means of support; in the second, more general category are veterans who are in need of domiciliary care and who are unable to defray the cost of such care. This statutory scheme is both terribly confusing as well as not consistent with current VA philosophy and practice.

As noted in the explanatory statement that accompanied the conference report on the reconciliation legislation—House Report No. 99-453, page 695—despite agreement among the conferees that the existing eligibility criteria for domiciliary care should be revised, it was not possible to reach a final agreement with reference to domiciliary care at that time and the final legislation left the eligibility unchanged. In reaching that result, however, the conferees noted that they were "not expressing satisfaction with the status quo" and also noted that both Committees on Veterans' Affairs planned to hold hearings in 1986 "to consider appropriate revisions to the eligibility for domiciliary care".

Last year, I introduced a provision relating to this issue in S. 2388 and our committee included that provision in S. 2422 as reported. Unfortunately, we were again unable to reach final agreement with our colleagues in the House on this issue and the Senate-passed provision was not included in the legislation enacted as Public Law 99-576. I remain convinced that there is a need for a new statutory eligibility standard for domiciliary care along the lines of the provision.

RULES AND REGULATIONS RELATING TO HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

Section 6 of the bill would amend section 621 of title 38, which relates to the Administrator Veterans' Affairs' authority to issue rules and regulations relating to the provision of medical care by the VA, so as to eliminate the Administrator's authority to prescribe limitations on the furnishing of such care. This authority in current law dates from the Economy Act of 1933, which was the single most negative legislative action in the area of veterans' affairs in U.S. history.

As far as I am aware, the VA, during the 18 years I have been in the Senate, has not relied on this authority in acting to limit any health-care benefits. However, in 1984, during congressional action on the reconciliation legislation, the VA's Office of General Counsel submitted to the staffs of the two Veterans' Affairs Committees an informal "white paper" which included a discussion of the availability of this provision in the event that the Administrator desired to provide access to health-care benefits on a different, more restrictive basis than prescribed in chapter 17 of title 38.

Without reference to whether an Administrator would ever choose to take such an action and without suggesting whether or not such an action would be lawful, I can see no basis for vesting in an executive branch official the appearance of having such a power to reverse the will of the Congress, particularly in light of the changes in VA health-care eligibility made by the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, in which Congress mandated the provision of VA care to certain groups of veterans. Therefore, our bill proposes that this authority be replealed.

EXCESSING OF VA PROPERTIES IN SOUTHERN CALIFORNIA

Mr. President, section 10 of the bill would prohibit the Administrator from taking any action to declare as excess to the needs of the VA, to transfer to another Federal agency, or otherwise to relinquish any VA interest in, any portion of certain lands at two VA medical centers in southern California—46 acres at Sepulveda and 109 acres at West Los Angeles. This provision is subsistently identical to a measure I introduced in the 99th Congress (S. 2141), together with Senators MATSUNAGA, DECONCINI, MITCHELL, and ROCKEFELLER, to address the Administration's very ill-advised proposal to excess those parcels of land. Although I worked very hard on this issue in the last Congress, I was successful in achieving only a temporary solution to the problem. The provisions of this measure will, when enacted, constitute a permanent solution.

As my Senate colleagues may recall, on February 5, 1986, despite internal VA objections, the then Acting VA Administator was forced by OMB to propose to declare various parcels of land at these two southern California VA medical centers to be "no longer needed by the Veterans' Administration in carrying out its functions". If declared excess by the VA, this property would then be disposed of by the General Services Administration under Governmentwide disposal guidelines. After reconsidering the February 5 notice, the hereby appointed Administrator of Veterans' Affairs, Thomas K. Turnage, submitted a June 6, 1986, modification of the February 5 proposal. In each case, he reduced the amount of acreage to be excessed—in West Los Angeles from 109 to 80 acres and in Sepulveda from 46 to 32 acres.

On June 26, 1986, when the committee marked up the 1986 compensation and health-care legislation (S. 2422), I proposed an amendment, derived from S. 2141, which would have prohibited the Administrator from taking any action to declare as excess to the needs of the VA, to transfer to another Federal agency, or otherwise to relinquish any VA interest in, any portion of those parcels of land. My amendment failed in committee on a 5-to-5 vote.

Mr. President, although the Senate committee failed to approve my amendment regarding this land excessing proposal, the House approved a provision in H.R. 4623 to prohibit this land excessing and sale from occurring. After extensive discussions about this issue involving myself and the chairman of the Veterans' Affairs Committee in the other body, Mr. MONTGOMERY, who authored the House-passed prohibition, and then committee chairman in the Senate, Mr. MURKOWSKI, we were able to develop a compromise to prohibit the VA from proceeding with its plan to dispose of these lands.

Basically, Mr. President, section 234 of Public Law 99-576, as signed into law on October 28, 1986, prohibits the Administrator from taking any action before January 1, 1986, in connection with declaring the properties as excess, or with transferring them, relinquishing the VA's interest in them, or disposing of them, and would nullify any such action taken prior to that date. Thus, the VA is permitted to do nothing to dispose of these properties until July 1988 since, by rendering without effect any actions taken prior to January 1, 1988, in that connection, the new law nullifies the February 5, 1986, notice submitted by the Administrator under section 5022(a)(2) of title 38 and the June 7, 1986, letters to the committees modifying that notice. Current law, in section 5022(a)(2) of title 38, prohibits VA land from being declared excess and transferred to GSA until the expiration of a 180-day period beginning on the date that the VA submits to the Veterans' Affairs Committees a report on the facts concerning the proposed transaction. Thus, if the VA should wish to propose the excessing of any of these approximately 155 acres in the future, the earliest date on which it could submit a new section 5022(a)(2) notice would be January 1, 1988.

Although enactment of the time-limited prohibition provided a much-welcomed beathing period for California's veterans, Los Angeles commuters, West Los Angeles and Sepulveda neighbors and children, and the city and county of Los Angeles, it failed to provide a permanent and totally satisfactory solution to the administration's ill-conceived and short-sighted proposal. That is what our bill seeks to do.

Let me review the arguments against the American's proposal to sell-off this VA land with: First, these parcels pro-

vide important buffer zones between the facilities and the surrounding communities. I strongly believe that not all lands should be developed; open space is a valuable commodity, especially in highly congested areas such as West Los Angeles.

Second, retention of these lands is also necessary to provide latitude for possible expansion in the future. Possible uses mentioned in a 1986 VA task force report could include a planned new State veterans' home, veterans' recreation, and joint venture projects with UCLA or others. Specifically, I now understand that the State of California Department of Veterans' Affairs is actively pursuing the possibility of constructing a new State nursing home on the West Los Angeles property. In addition, a December 29, 1986, letter to me from Elwin V. Swenson, vice chancellor for institutional relations for UCLA, notes that some of the possible joint venture projects include an expansion of the Nursing Home Care Program, including a mental health component, a specialized Adult Day Care Program, the establishment of a pathology reference laboratory, a child-care facility, and other programs that the medical staff of the VA and the UCLA faculty are discussing but have not reached a specific recommendation on for the committee.

Mr. President, I ask unanimous consent that a copy of the vice chancellor's letter be printed in the RECORD at the conclusion of my remarks.

Third, a major portion of the land in question at West Los Angeles is either part of a deep ravine or separated from the facility by the ravine. Without massive landfill, this land is unattractive and difficult to utilize and would not have the commercial value OMB has attributed to it.

Fourth, the VA has used the ravine for waste disposal, including remnants of an old VA hospital that once stood on an adjacent site. This compounds problems for any developer since the contaminated soil would need to be removed and the substructure of the land shored up before landfilling is begun. Additionally, the parcel includes an area where the VA once disposed of radioactive waste, and digging in the area could be hazardous.

Fifth, conditions exist that suppress the market value of the property, including in the case of West Los Angeles, a country moratorium on new "access cuts" into Wilshire Boulevard. Also, the zoning for the VA land is "open space", and no development could be undertaken without a zoning variance—which is highly unlikely given the strong opposition to the administration's proposal by both the county board of supervisors and Los Angeles City officials. An August 15, 1986, letter prepared by the county counsel of Los Angeles County raised serious questions about the zoning applicable to the property and specifically the status of "the restrictive open space regulations" under the county general plan.

Sixth, Mr. President, the major veterans organizations—both nationally and in the State—have expressed and continue to express vigorous opposition to any excessing of this land.

Seventh, the surrounding communities in both West Los Angeles and Sepulveda strongly oppose the additional major construction activity and the resultant development that would occur, as well as the disruption of a number of existing leases and agreements with the VA regarding the use of some of the land proposed for excessing.

In short, I have not been able to identify any significant gain to be achieved by supporting the excessing of these properties beyond it resulting, at some distant point in time, in possibly increased revenues to the Federal Government. And it seems clear that the proceeds of any sales—especially in the case of West Los Angeles, where tremendous barriers to development exist—would be far, far less than the several hundred million dollars that the administration has projected. This possibility of revenue is far outweighed by the vigorous community and veteran organization opposition, the depressed value and condition of the land, its current "open space" zoning, and the fact that the administration has not demonstrated convincingly that the land could not be used for such purposes as sharing with medical schools, veterans' recreation, cemetery expansion, or a State nursing home.

REPORT ON CERTAIN ACTIVITIES OF MEDICAL AND OTHER HEALTH-PROFESSIONAL SCHOOLS AFFILIATED WITH THE VETERANS' ADMINISTRATION

Mr. President, it is abundantly clear at this time that a major public policy issue facing our Nation is how we will respond to the needs of our elderly citizens as the population ages. It has been estimated by the Census Bureau that by the year 2030, the proportion of the U.S. population age 65 and older will have risen to nearly 22 percent from the current level of approximately 12 percent. This fundamental shift in the composition of our society has significant implications for how national resources are to be allocated and how a wide range of services are to be furnished. Key among such services are those which help address the health-care needs of our population.

Although there are efforts—both governmental and nongovernmental—underway at present seeking to address the many challenges associated with this fundamental demographic change, I believe there is still a need for increased, focused efforts as we prepare to come to terms with the impact of the aging of our population.

Because veterans of military service cluster in age groups related to the periods of major conflicts—World War I, World War II, the Korean conflict, and the Vietnam conflict in this century—trends relating to the general population are realized differently in the veteran population. In the area of aging, the change in the overall population, which will peak around the first third of the next century, will be accelerated in the case of veterans. The veterans of World War II, who make up 37 percent of the total veteran population, are already approaching an average age of 65 and the veterans of the Korean conflict are just behind them.

Because of the large numbers of veterans who are entering the age range with the greatest need for health and health-related services, the VA, spurred on by active congressional interest, has been very active for a number of years in seeking ways to meet the needs of older veterans. In connection with these efforts, the agency has furnished a significant measure of care—on inpatient, outpatient, and extended care bases—to older veterans; has developed new approaches for furnishing such care, such as through the use of hospital-based home care, geriatric evaluation units, and adult day care health programs; has trained health-care professionals in the care of older patients; and has carried out and funded research into the diseases and disabilities associated with aging and into the aging process itself.

Mr. President, despite these many activities, I am concerned that the VA may not be taking full advantage of the potential influence that it has to motivate health-care training institutions which are affiliated with the VA to increase their efforts in the areas of training health-care professionals in the care of older patients and research related to aging issues. Through its affiliation agreements—the VA is affiliated with 101 medical schools, 59 dental schools, and 850 other health-care professional schools—the VA can play a significant role in influencing decisions made at affiliated institutions. Certainly, there has been some progress at the schools affiliated with the 10 VA medical centers that have Geriatric Research, Education, and Clinical Centers—GRECC's—centers of excellence mandated by section 4101(f) of title 38, United States Code. In fact, I specifically included in that law, a provision recognizing explicitly the need for a commitment on the part of the affiliated institution to action in the area of aging. Specifically, section 4101(f)(1)(C) provides that a GRECC can be established at a VA medical center only when the GRECC has arrangements with affiliated schools which provide education and

training in geriatrics and at which medical residents and nursing or allied health personnel receive training and education in geriatrics through regular rotation through the VA medical center.

This use of the VA to promote action at affiliated institutions should be expanded. The VA should be seeking comprehensive action from all affiliated institutions, not only those affiliated with medical centers with a GRECC.

In order to gauge the extent to which the VA has had an impact on affiliated institutions in regard to their training and research efforts in the area of aging and the need for extension of legislative mandates such as those that apply to GRECC-affiliated institutions, section 10 of the measure we are introducing would require the Administrator to submit a report, not later than March 1, 1987, to the two Veterans' Affairs Committees setting forth detailed information with regard to such past, present, and planned efforts at affiliated institutions.

CONCLUSION

Mr. President, as I noted at the outset, the central purpose of this legislation is to bring about the continued improvement and updating of the VA's authority and capacity to meet the needs of our Nation's veterans and their dependents. I look forward to working on this measure with our committee's ranking minority member, Mr. MURKOWSKI, and the other members of the committee, with the VA, with the various veterans' service organizations, and with others interested in legislation affecting veterans.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following the December 29 letter from UCLA Vice Chancellor Svenson, which I previously described.

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

S. 6

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

SEC. 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Health Care Improvement Act of 1987".

(b) REFERENCES TO TITLE 38.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITIES AFFECTING PROCREATION.

Clause (A) of section 601(6) is amended to read as follows:

"(A)(i) surgical services, (ii) services to achieve pregnancy in a veteran or a veteran's spouse where such services are necessary to overcome a service-connected disability impairing the veteran's procreative ability, (iii) dental services and appliances as described in sections 610 and 612 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, (vi) (except under the conditions described in section 612(f)(1)(A)(i) of this title) wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Administrator determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and".

SEC. 3. ELIGIBILITY FOR DOMICILIARY CARE.

(a) IN GENERAL.—Subsection (b) of section 610 is amended to read as follows:

"(b) The Administrator, through Veterans' Administration facilities, may furnish such domiciliary care as the Administrator determines is needed by a veteran for the purpose of receiving treatment or rehabilitation if the Administrator finds, pursuant to regulations which the Administrator shall prescribe, that the veteran—

"(1) has a service-connected disability, or

"(2) is incapacitated from earning a living and has no adequate means of suppports.".

(b) CONFORMING AMENDMENT.—Section 622(g) is amended by striking out "section 610(b)(2) and" and inserting in lieu thereof "section".

SEC. 4. READJUSTMENT COUNSELING AND RELATED MENTAL HEALTH SERVICES.

(a) EXTENSION OF ELIGIBILITY.—Section 612A(a) is amended—

(1) by inserting "(1)" before "Upon", and

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

"(2)(A) Upon the request of—

"(i) a person who is serving on active duty and who also served on active duty during the Vietnam era, or

"(ii) a person (I) who is a veteran or is serving on active duty, and (II) who served on active duty after May 7, 1975, in an area during a period in which hostilities (as defined in subparagraph (B) of this subsection) occurred in such area, the Administrator shall, within the limits of Veterans' Administration facilities, furnish counseling to assist such person in readjusting to civilian life or to active duty following service during such era or in such area.

"(B) For the purpose of subparagraph (A)(ii) of this subsection, the term 'hostilities' means a situation in which members of the Armed Forces were, as determined by the Administrator in consultation with the Secretary of Defense, subjected to danger from armed conflict comparable to the danger to which members of the Armed Forces have been subjected in battle with the enemy during a period of war.".

(b) DELAY IN TRANSITION PERIOD.—Section 612A(g) is amended—

(1) in paragraph (1)(A), by striking out "centers located" and all that follows through "such health-care facilities" and inserting in lieu thereof "Vet Centers to a program providing readjustment counseling services primarily through Veterans' Administration general health-care facilities";

(2) in paragraph (2)—

(A) in subparagraph (A), by striking out "(Public Law" and all that follows through "available)"; and

(B) in subparagraph (B)—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting in lieu thereof a semicolon and "and"; and

(iii) by adding at the end the following new clause:

"(iii) the Administrator's analysis and findings (focusing on veterans who served in combat) as to whether or not veterans who served on active duty during World War II or the Korean conflict could benefit from services provided under this section and, if so, the Administrator's recommendations on the most desirable means by which such services could be furnished.";

(3) in paragraph (3), by striking out "(or" and all that follows through "available)";

(4) in paragraph (4), by striking out "experience" the first place it appears and all that follows and inserting in lieu thereof "Administrator's evaluation of the experience under as much of the transition as was carried out pursuant to paragraph (1) of this subsection prior to September 30, 1989, and, based on that evaluation, the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (Public Law 98-160), and other pertinent information regarding the readjustment counseling program, the Administrator's opinion as to the extent to which the provision of readjustment counseling services under this section through Vet Centers is needed to meet the readjustment needs of veterans who served on active duty during the Vietnam era."; and

(5) by adding at the end the following new paragraph:

"(5) In the event that the study related to post-traumatic stress disorder referred to in subparagraph (A) of paragraph (2) of this subsection is not completed in sufficient time for the Administrator to give the results of the study consideration (as required by such subparagraph) in the preparation of the report which the Administrator is required by such subparagraph to submit not later than April 1, 1987, regarding the future direction of the program for providing readjustment counseling and mental health services pursuant to this section, the dates by which such report and the reports required by paragraphs (3) and (4) of this subsection must be submitted shall be postponed by 1 year and the 24-month period referred to in paragraph (1) of this subsection shall be deemed to be the 24-month period ending on September 30, 1990. In the event that the postponements described in the preceding sentence take effect, the Administrator shall promptly publish a notification thereof in the Federal Register and promptly so advise the Committees on Veterans' Affairs of the Senate and House of Representatives.".

"(6) For the purpose of this subsection—

"(A) The term 'Vet Centers' means facilities which are operated by the Veterans' Administration for the provision of services under this section and which are situated apart from Veterans' Administration general health-care facilities.

"(B) The term 'Veterans' Administration general health-care facilities' means health-care facilities operated by the Veterans' Administration for the furnishing of health-care services under this chapter, not limited to services provided through the programs established under this section.".

SEC. 5. PILOT PROGRAM OF NONINSTITUTIONAL ALTERNATIVES TO INSTITUTIONAL CARE.

(a) ESTABLISHMENT OF PILOT PROGRAM.—Subchapter 11 of chapter 17 is amended by adding at the end the following new section:

"SEC. 620C. Noninstitutional alternatives to institutional care; pilot program

"(a)(1) The Administrator, during the period beginning January 1, 1988, and ending December 31, 1991, and subject to subsection (c) of this section, shall conduct a pilot program under which veterans eligible under this chapter for and otherwise in need of hospital, nursing home, or domiciliary care will be furnished medical, rehabilitative, and health-related services in noninstitutional settings at not less than five nor more than ten demonstration project sites.

"(2) In selecting veterans for participation in the program, the Administrator shall accord priority to veterans who have service-connected disabilities, to veterans who are 65 years of age or older, to veterans who are totally and permanently disabled, and to veterans who are suffering from Alzheimer's disease or other forms of dementia.

"(b)(1)(A) In the conduct of the program, the Administrator shall (i) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (ii) in the case of each veteran furnished services under the program, appoint a Veterans' Administration health-care employee to furnsh case management services.

"(B) For the purposes of subparagraph (A) of this paragraph, 'case management' includes the coordination and facilitation of all services furnished to a veteran by the Veterans' Administration, either directly or through contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by the Veterans' Administration, either directly or through a contract, or by an entity other than the Veterans' Administration), monitoring, reassessment, and follow up.

"(2) In order to evaluate the cost-effectiveness of utilizing certain health services of agencies other than the Veterans' Administration in cases in which no Veterans' Administration facility in the vicinity of a demonstration project provides such services, the Administrator, in not more than two of the demonstration projects, may utilize appropriate health services of appropriate public and private agencies that furnish such services.

"(3) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a facility furnishing services to veterans under subparagraph (1)(A)(i) of this subsection. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the facility concerned. The Administrator may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Veterans' Administration receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Veterans' Administration facility that provided the assistance.

"(c) The total cost of conducting the pilot program under this section shall not exceed 60 percent of the cost that would have been incurred by the Veterans' Administration during the period of the pilot program if the veterans furnished services under the pilot program had been furnished, instead, nursing home care under section 610 of this title. In any fiscal year, the cost of carrying out the pilot progam shall not exceed 65 percent of the cost that would have been so incurred during such year in furnishing the veterans who received services under the pilot program with nursing home care under such section 610.

"(d) Not later than April 1, 1991, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the Administrator's evaluation, findings, and conclusions regarding the pilot program, and its results for the participating veterans, during its first 36 months. The report shall include a description of the conduct of the program (including a description of the veterans furnished services and of the services furnished under the pilot program), and any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620B the following new item:

"620C. Noninstitutional alternatives to institutional care; pilot program.".

SEC. 6. RULES AND REGULATIONS RELATING TO HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE.

The text of section 621 is revised to read as follows:

"The Administrator shall prescribe all rules and regulations which are necessary and appropriate to govern the furnishing of hospital, nursing home, and domiciliary care and medical services under laws administered by the Veterans' Administration and which are consistent therewith, including such rules and regulations as are necessary and appropriate in order to promote good conduct on the part of persons who are receiving such care or services in Veterans' Administration facilities.".

SEC. 7. INCREASE IN PER DIEM RATES FOR CARE IN STATE HOMES.

Section 641(a) is amended by striking out clauses (1) through (3) and inserting in lieu thereof:

"(1) $8.70 for domiciliary care, and

"(2) $20.35 for nursing home and hospital care,".

SEC. 8. ORGANIZATION OF THE DEPARTMENT OF MEDICINE AND SURGERY.

(a) OFFICE OF THE CHIEF MEDICAL DIRECTOR.—Section 4103(a) is amended—

(1) by inserting "persons, each of whom shall be qualified in the administration of health services" after "following";

(2) in clause (3)—

(A) by striking out "The" and inserting in lieu thereof "Two";

(B) by striking out "Director" the first place it appears and inserting in lieu thereof "Directors";

(C) by striking out "an assistant" and inserting in lieu thereof "assistants"

(D) by striking out "shall be a qualified doctor of medicine" and inserting in lieu thereof "both shall be persons with specified qualifications"; and

(E) by adding at the end the following new sentence: "Not more than one Associate Deputy Chief Medical Director may be a person who is a person with specified qualifications solely by reason of clause (ii) of the last sentence of this subsection.";

(3) in clause (4)—

(A) in the first sentence, by striking out "who shall be" the first place it appears and inserting in lieu thereof "all of whom shall be persons with specified qualifications,";

(B) in the second sentence, by striking out "qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines" and inserting in lieu thereof "who are persons with specified qualifications solely by reason of clause (ii) of the last sentence of this subsection"; and

(C) in the last sentence, by striking out "qualified physician" and inserting in lieu thereof "person with specified qualifications";

(4) in clause (5)—

(A) by inserting a comma and "all of whom shall be persons with specified qualifications," after "Directors";

(B) by striking out the commas after "Administrator" and "Director"; and

(C) by striking out the second sentence;

(5) in clause (6), by inserting "upon the recommendation of the Chief Medical Director" after "Administrator";

(6) in clause (7)—

(A) by inserting a comma and "each of whom shall be licensed in the appropriate service field" after "Optometric Service;"; and

(B) by inserting "upon the recommendation of the Chief Medical Director" after "Administrator"; and

(7) by adding at the end the following new sentence: "For the purpose of this subsection, the term 'person with specified qualifications' means (i) a person meeting the requirements set forth in clause (1), (2), (3), (4), (5), (6), (7), or (8), of subsection (a) of section 4105 of this title, or (ii) a person who meets or has met the requirements set forth in clause (4) of such subsection.".

(b) TECHNICAL AMENDMENT.—Section 4103(b) (3) is amended by inserting a comma after "reappointed" and after "extended" and by striking out the comma after "reappointment."

SEC. 9. PROHIBITION AGAINST EXCESSING OF CERTAIN VETERANS' ADMINISTRATION PROPERTIES.

(a) Section 234 of Public Law 99-576 is repealed.

(b) The Administrator of Veterans' Affairs may not declare as excess to the needs of the Veterans' Administration, or otherwise take any action to dispose of, the land and improvements at the Veterans' Administration Medical Center, West Los Angeles, California (consisting of approximately 109 acres), and at the Veterans' Administration Medical Center, Sepulveda, California (consisting of approximately 46 acres), described in letters dated February 5, 1986 (and enclosed maps), from the Administrator to the Committees on Veterans' Affairs of the Senate and House of Representatives pursuant to section 5022(a)(2) of title 38, United States Code.

SEC. 10. REPORT ON CERTAIN ACTIVITIES RELATING TO TRAINING IN GERIATRICS OF MEDICAL AND OTHER HEALTH-PROFESSIONAL SCHOOLS AFFILIATED WITH THE VETERANS' ADMINISTRATION

(a) The Congress makes the following findings:

(1) In view of the estimate that, by the year 2030, the percentage of the United States' population that is age 65 and older will have risen to nearly 22 percent from the current level of approximately 12 percent, responding appropriately to the future health-care needs of the increasing elderly

population of the United States represents one of our Nation's greatest challenges.

(2) Because veterans cluster in age groups related to periods of major conflicts, the aging of the general population is accelerated in the case of veterans, and veterans of World War II and the Korean conflict will enter in the near future the age range with the greatest need for health and health-related services and constitute a very significant portion of the total veteran population.

(3) In response to the needs of the growing number of older veterans, the Veterans' Administration, pursuant to Congressional guidance and direction, has increased its efforts with respect to the development of new approaches to furnishing such care, the training of health-care professionals in the care of older patients, and the carrying out and funding of research into diseases and disabilities associated with aging and into the aging process.

(4) As a result of the Veterans' Administration's affiliation arrangements with 101 medical schools, 59 dental schools, approximately 500 nursing schools, and approximately 350 other health-care professional training institutions through which over 100,000 students and trainees receive training in Veterans' Administration facilities annually and the important role which those arrangements fulfill in those schools carrying out their education and training missions, the Veterans' Administration has a vital opportunity to improve efforts to train health-care professionals in the care of older patients and to heighten research activity into diseases and disabilities associated with aging and into the aging process.

(5) As an indication of the importance of the Veterans' Administration's role in promoting efforts by affiliated health-care professional training institutions, the Congress in Public Law 96-330, provided that no Veterans' Administration medical center could be designated as the site for a Geriatric Research, Education, and Clinical Center—centers of excellence in the area of aging research, education, and treatment—unless the Veterans' Administration medical center has arrangements with affiliated schools which provide education and training in geriatrics and which provide medical residents and nursing or allied health personnel with training and education in geriatrics through regular rotation through all bed components of the Veterans' Administration medical center.

(b)(1) In light of the findings in subsection (a), not later than March 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the Veterans' Administration's activities, and the success of those activities, designed to promote increased efforts by affiliated medical and other health-professional training schools (1) in training health-care professionals to care for older patients, and (2) in research into the aging process and diseases and disabilities associated with aging.

(2) The report shall include—

(A) information, for each academic year from 1980-81 through 1986-87, on the number of institutions affiliated with the Veterans' Administration (hereinafter in this paragraph referred to as "affiliated institutions"), broken down by type of institution and type of training, that—

(i) have a program through which students or trainees receive education and training in geriatrics through regular rotation through Veterans' Administration medical centers, nursing homes, domiciliary care facilities, or other units providing extended care to veterans; or

(ii) have a formal program providing education and training in geriatrics; or

(iii) have both such programs;

(B) information on the number of affiliated institutions (broken down by type of institution) that are planning to establish programs as described in subparagraph (A), together with a timetable for such actions;

(C) estimates of the costs, both to the Veterans' Administration and to the affiliated institutions, of the programs described in subparagraphs (A) and (B);

(D) estimates of the number of Veterans' Administration patients receiving care or who will receive care from the students or trainees participating in programs described in subparagraphs (A)(i) and (B);

(E) a descrition of the role of the Veterans' Administration in encouraging the establishment and continuation of the programs described in subparagraph (A); and

(F) the views of the Administrator on the feasibility and desirability of requiring, as a condition of the Veterans' Administration's entering into or continuing an affiliation agreement with a health-care professional training institution, the establishment with such institution of the appropriate type of arrangements described in subparagraph (C)(i) or (ii) of section 4101(f) of title 38, United States Code.

UNIVERSITY OF CALIFORNIA, LOS ANGELES,
OFFICE OF THE CHANCELLOR,
Los Angeles, CA, December 29, 1986.

Senator ALAN CRANSTON,
Committee on Veterans' Affairs, Russell Senate Office Building, Washington, DC.

DEAR SENATOR CRANSTON: I thought that you would be interested in receiving the enclosed information regarding UCLA's long-standing relationship with the Veterans' Administration in West Los Angeles. This compilation of material will provide you with a complete background and overview of UCLA's past and present work with the VA.

In brief, UCLA's affiliation with the VA began in 1947 at the Wadsworth Hospital in West Los Angeles. UCLA's contracts cover all medical/surgical and psychiatric services provided by the VA, and include the Schools of Nursing, Public Health, and Dentistry. The UCLA School of Dentistry is currently working with the VA to provide staff for small on-site dental clinics at the West Los Angeles and Sepulveda facilities. The UCLA School of Nursing's Geriatric Nurse Practitioner program provides services in facilities at VA/Sepulveda, and its graduates are a primary source of staffing for the VA's domiciliary care beds at Sepulveda.

Under a ten-year cost-reimbursement contract for approximately $15.8 million with the National Cancer Institute, UCLA undertook to acquire a high linear energy transfer neutron generator ("cyclotron") costing approximately $4.5 million; construct facilities costing $3.6 million; conduct field tests and initiate clinical trials for a potential new form of cancer radiation therapy. The Clinical Neutron Therapy Research Facility is adjacent to the Wadsworth Hospital. Delivery and installation of the cyclotron was performed by UCLA employees and the UCLA Medical Center provided financing of $250,000 to help with final equipment fabrication problems stemming from the bankruptcy. You may recall that both you and your staff played an essential role in working out the details of the processing of the NCI contract for which we are all enormously appreciative.

In early 1983, formal agreement was reached with the VA to stage fine arts productions at the "Wadsworth Theater." UCLA provided $350,000 of structural and cosmetic improvements to the theater as well as offering free tickets for VA patients to all entertainment events. At least 20 tickets per event and frequently more are allocated to VA patients and families in coordination with Recreation Officers at both the VA Wadsworth and Brentwood Divisions.

For more than twenty-five years UCLA has been utilizing facilities in cooperation with the American Legion. In 1980, UCLA made a major renovation with the concurrence of the VA on the Jackie Robinson Baseball Stadium. One of the main reasons for this project was to provide a spectator sport for veterans. UCLA maintains and protects this land under a three-year renewable lease agreement. The Jackie Robinson Stadium was dedicated on February 7, 1981 and the ceremony was attended by representatives of the VA, UCLA, the Los Angeles Dodgers and many civic groups. On April 27, 1985, a statue of Jackie Robinson was unveiled at the Stadium.

As you may know, in February, 1986, a task force was established to develop long-range plans for the use of the land at the VA Medical Center. Director William Anderson asked me to represent UCLA on the committee along with Associate Dean Esther Hays from the Medical School. This committee in turn has reviewed the many joint programs between UCLA and the VA as well as taking into consideration the long term needs of the veterans. This was done in order to respond to the proposed possibility of declaring excess some of the land. It was clear to the committee that it was in the best interest of the VA as well as of service to the programmatic needs of UCLA to participate in the joint planning of opportunities and activities to benefit the veterans. Some of the new programs under discussion include: an expansion of the nursing home care program including a mental health component, a specialized adult day care program, the establishment of a pathology reference laboratory, a child care facility, and other programs that the medical staff of the VA and the UCLA faculty are discussing but have not reached a specific recommendation on the committee.

Mr. Anderson and I have talked about the possibility of UCLA providing assistance in reviewing the overall programmatic use of the VA land and the long term proposed plans of expansion of facilities for the veterans. UCLA is reviewing the most efficient use and design of the land on our campus and has offered the services of our land design experts to the VA. Mr. Anderson has been very appreciative of this offer and we look forward to working together on this project.

I hope that this information will be helpful to you. If I can provide you with additional information, please call me at (213) 825-4282.

Sincerely,

ELWIN V. SVENSON,
Vice Chancellor-Institutional Relations.

By Mr. CRANSTON:

S. 7. A bill to provide for the protection of the public lands in the California desert; to the Committee on Energy and Natural Resources.

S. 7: THE CALIFORNIA DESERT PROTECTION ACT OF 1987

Mr. CRANSTON. Mr. President, I introduce for appropriate reference the California Desert Protection Act. Except for technical amendments and map corrections, the bill is identical to S. 2061 which I sponsored in the 99th Congress.

The California Desert covers 25 million acres, from Death Valley National Monument south to the Mexican border, from the San Jacinto and San Bernardino Mountains east to the Colorado River—about one-fourth of California's land surface. Of this 25 million acres, approximately 12.1 million acres are public lands administered by the Department of the Interior's Bureau of Land Management.

In 1976, Congress enacted the Federal Land Policy and Management Act [FLPMA] which among its provisions established the California Desert Conservation Area and started a process for protecting the resources of the California Desert. FLPMA also called for wilderness review of the public lands administered by the BLM, including those in the California Desert.

The California Desert Protection Act continues this process of appropriately providing for protection of significant resources of the public lands in the California Desert.

I have worked closely with California conservationists to determine the highest and best use for each area within the California Desert. Our goal has been to establish in law the most appropriate pattern of protection to assure that all Californians and visitors to the desert will have the full value of these lands.

This legislation implements the conservationists' proposal, providing permanent, lasting protection for the beauty and wildness of the California Desert through the designation of national parks and wilderness areas.

The bill designates approximately 4.5 million acres of desert lands as wilderness to be administered by the BLM. It redesignates two national monuments—Death Valley and Joshua Tree—as national parks and makes appropriate additions to these units of the national park system. It creates a new Mojave National Park. It designates 3.9 million acres of national park wilderness in these three parks. Further, the bill completes a long pending proposal for the expansion of the Red Rock Canyon State Park, transferring 20,500 acres of BLM lands to the California Department of Parks and Recreation. And it creates protective units to be administered by the BLM for a botanical area—the Desert Lily Sanctuary—and an historical site—the Indian Canyons.

Mr. President, wilderness is a distinguishing characteristic of the public lands in the California Desert, one which affords an unrivalled opportunity for experiencing vast areas of the Old West essentially unaltered by man's activities. But the wilderness values of the California Desert are increasingly threatened by and especially vulnerable to impairment, alteration, and destruction by activities and intrusions associated with incompatible use and development. To assure that present and future generations will be able to enjoy the diverse resources of the desert, this bill gives statutory protection to 82 separate wilderness areas.

Three distinct areas within the California Desert fully qualify as national parks. The bill confers that status on Death Valley, Joshua Tree, and the east Mojave. First, the bill redesignates the existing Death Valley and Joshua Tree National Monuments as national parks and adds contiguous Federal lands of national park caliber. Estabished by Presidential proclamations in the 1930's, Death Valley and Joshua Tree today are recognized as major units of the National Park System. But the existing monument boundaries do not include all lands of significant natural, ecological, geological, archaeological, cultural, historical, and wilderness value, thus exposing them to incompatible development.

In 1977 the Western Regional Office of the National Park Service issued a report evaluating proposed additions to death Valley, including Panamint Valley, Saline Valley, and Eureka Valley. The report concluded that Death Valley "needs to be rounded out with several additions to better represent and preserve a superb example" of the California Desert. In 1979, the desert plan staff of the BLM prepared its report on the possible addition of the Eureka-Saline area to the park system. Like the Park Service, the BLM staff found this area "provides some of the finest and most diverse scenery in the California Desert" and reported that "analysis of natural and cultural themes represented by the area lead one to the unavoidable conclusion that the area qualifies for inclusion into the National Park System as a national park, or as an addition to Death Valley National Monument." My bill adds these remarkable areas to Death Valley as recommended by the National Park Service and BLM.

The proposed additions to Joshua Tree comprise areas that were part of the original monument established in 1936 to protect various objects of historical and scientific interest. However, in 1950 lands were removed from the monument because of commercial mining activity at Eagle Mountain. Associated with the now defunct Kaiser Steel operations at Fontana, CA, the Eagle Mountain mine has since closed. Fortunately some of these lands which were part of the monument were not mined and remain pristine and of national park caliber. This bill restores 245,000 acres of the previous deletions.

Lying between Death Valley and Joshua Tree is the vast Mojave Desert, an area of outstanding natural, culturral, historical, and recreational values now afforded only impermanent administrative protection as the East Mojave National Scenic Area. This area also has been evaluated by the BLM Desert Plan staff for its park potential and found to be highly qualified. The area contains sixteen mountain ranges, four dry lakes, a perennial stream, innumerable washes, mesas, buttes, badlands, cinder cones, lava beds, caves, California's most complex sand dune system, alluvial fans, bajadas, and many other expressions of geoligical and geographic interest. According to the BLM report "In all of the California Desert there is no finer grouping of different wildlife habitats." The report continues that "Many observers feel that the East Mojave embodies the finest scenery in the California Desert."

My bill recognizes these park values and provides the full statutory protection the area deserves by designating a 1.5 million acre Mojave National Park. The area involved is the same as the existing scenic area, with the exception of a small boundary change at Soda Springs where the boundary has been moved from the lakeshore to the ridgetop, adding about 6,000 acres. The Mountain Pass mine owned by Molycorp and the associated claims on lands dropped from the scenic area in 1983 remain outside the boundaries of the park.

I am aware that there are a number of mining claims, grazing permits, power transmission facilities, a natural gas pipeline, and communication cable within the proposed Mojave National Park. These valid existing rights are recognized in the bill and allowed to continue. However, the bill closes the proposed parklands to new mineral entry.

The bill also calls for a comprehensive management plan for the park and for a visitor center. No purchase of private lands within the park is contemplated, although the legislation does provide acquisition authority, with an emphasis on acquisition by exchange from willing landowners.

Additionally, the bill designates appropriate lands within all three parks as wilderness—a 3.2 million Death Valley Wilderness which incorporates the National Park Service's wilderness recommendations, 133,520 acres as additions to the existing Joshua Tree Wilderness, and 747,940 acres as the Mojave Wilderness.

Additional provisions include the transfer of 20,500 acres of BLM lands to the California Department of Parks and Recreation for inclusion in Red Rock Canyon State Park. The scenic

cliffs of Red Rock Canyon are well known to travelers from southern California to the eastern Sierra. The area has been used many times as the setting for numerous western films. At the urging of local governments and citizens, the State of California in 1969 decided to establish this area as a State park. It's my understanding the State was to acquire the private lands and that the BLM would transfer the surrounding Federal lands necessary to complete the park. The State has virtually completed the private acquisitions, but the BLM has not conveyed its lands. My bill resolves the issue. The transfer is not intended to affect the city of Los Angeles' existing easement for power transmission lines.

The bill also gives statutory protection to the existing 2,040 acre Desert Lily Sanctuary. The Desert Lily grows only in the deep powder sand areas of the low desert—every fragile land. The lily is vulnerable to flooding from higher elevations. But as a result of the sanctuary protection, the Desert Lily has survived in wet years, blooming by the thousands throughout the area. Statutory protection, as provided in my bill, will insure that the BLM does not redesignate the area or reduce its size.

Finally, the bill designates the Indian Canyon National Historic Site, protecting an area now listed on the national register of historic places, but threatened by a golf course development. As the lands are not now in Federal ownership, the legislation directs the Secretary of the Interior to acquire them by exchange. And to ensure continued Indian control over their use, the bill provides for a cooperative management agreement between Interior and the Agua Caliente Band of Cahuilla Indians, with title to the land held in trust by the United States for the tribe.

Mr. President, with the passage of this bill, approximately 4.6 million acres of public lands in the California Desert administered by the BLM will remain available for other multiple uses—hunting, mining, grazing, and motorized recreation. Moreover, in drawing the boundaries of the areas to be protected, I have been careful to exclude major areas enjoyed by off-road vehicle enthusiasts and areas with known commercial resource conflicts.

In reintroducing the bill today, I am making a number of map corrections to ensure that several existing and planned activities are not affected by the legislation. Specifically, I have amended the boundaries of the proposed Chuckwalla Mountains Wilderness, to exclude private lands on which the State of California plans to construct a prison; the Granite Mountains Wilderness, to exclude private lands under consideration for a radioactive waste site; the North Algodones Dunes Wilderness, to exclude a designated off-road vehicle open area erroneously included; the Palo Verde Mountains Wilderness, to include lands accidentally ommitted; the Sacatar Trail Wilderness, to exclude the Los Angeles Department of Water and Power aquaduct tunnels; the Soda Mountains and Hollow Hills Wildernesses, to clarify that the IPP transmission line is outside the wilderness areas; the Death Valley Wilderness, to include all lands recommended by the National Park Service and exclude a road through the Greenwater Range; and the Mojave Wilderness, to exclude the Mojave Road.

Additionally I have made several technical changes. To eliminate the burden on the Secretary of Interior to determine within 2 years the validity of all mining claims in the new park areas, the bill now provides for validity determinations of unpatented mining claims only prior to the approval of plans of operation.

In light of a proposal for a new natural gas pipeline through an existing utility corridor in the East Mojave, I have amended the rights-of-way provision to accommodate this project.

In response to concerns of the tribal council of the Aqua Caliente Band of Cahuilla Indians, I have modified the Indian Canyons National Historic Site section to clarify that the present owners will receive full compensation for acquisition of any of their lands and to ensure tribal control over the national historic site and its irreplaceable tribal cultural resources.

Finally, to address the concern of the State lands commission about the inclusion of State lands within park and wilderness areas and possible impact on the State teachers retirement fund, the bill includes a new provision to facilitate exchanges with the State. I look forward to working with the State to resolve any remaining difficulties.

Mr. President, in the January 1987 issue of the National Geographic, Barry Lopez writes of the California Desert as "a place of hushed and intricate beauty," but threatened by the conflicting demands of various user groups. He also wrote:

> Dennis Casebier, a desert historian and longtime observer of conflicts over the desert's use, told me one day that conflict was no longer the central issue. "What's wrong" said Casebier, "is that we have no vision. How do all these different things—four-wheel drive tours and cattle ranching and geothermal development—relate to each other? BLM can't just make everyone happy. They've got to sit down and decide what they want the desert to look like in 20 years." Which is to say the country itself, the people acting through Congress, must decide what they want the Nation's public lands to look like in the future.

Twenty-six environmental and civic organizations have a vision of how they want the California Desert to look 20 years from now and in the years beyond. They believe the California Desert needs greater protection and support the California Desert Protection Act. I hope that the 100th Congress will consider this legislation and act to ensure that the California Desert is preserved for future generations to enjoy.

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

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

S. 7

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 "California Desert Protection Act of 1987".

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds and declares that—

(1) the federally owned desert lands of Southern California constitute a public wildland resource of extraordinary and inestimable value for this and future generations;

(2) these desert wildlands display unique scenic, historical, archeological, environmental, ecological, wildlife, cultural, scientific, educational, and recreational values used and enjoyed by millions of Americans for hiking and camping, scientific study and scenic appreciation;

(3) the public land resources of the California desert now face and are increasingly threatened by adverse pressures which would impair, dilute, and destroy their public and natural values;

(4) the California desert, embracing wilderness lands, units of the National Park System, other federal lands, state parks and other state lands, and private lands, constitutes a cohesive unit posing unique and difficult resource protection and management challenges;

(5) through designation of national monuments by Presidential proclamation, through enactment of general public land statutes (including section 601 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701 et seq.) and through interim administrative actions, the federal government has begun the process of appropriately providing for protection of the significant resources of the public lands in the California desert; and

(6) statutory land unit designations are needed to afford the full protection which the resources and public land values of the California desert merit.

(b) In order to secure for the American people of this and future generations an enduring heritage of wilderness, national parks, and public land values in the California desert, it is hereby declared to be the policy of the Congress that—

(1) appropriate public lands in the California desert shall be included within the National Park System and the National Wilderness Preservation System, in order to—

(A) preserve unrivaled scenic, geologic, and wildlife values associated with these unique natural landscapes;

(B) perpetuate in their natural state significant and diverse ecosystems of the California desert;

(C) protect and preserve historical and cultural values of the California desert asso-

ciated with ancient Indian cultures, patterns of western exploration and settlement, and sites exemplifying the mining, ranching and railroading history of the Old West;

(D) provide opportunities for compatible outdoor public recreation, protect and interpret ecological and geological features, and historic, paleontological, and archeological sites, maintain wilderness source values, and promote public understanding and appreciation of the California desert; and

(E) retain and enhance opportunities for scientific research in undisturbed ecosystems.

TITLE I—WILDERNESS ADDITIONS

FINDINGS

SEC. 101. The Congress finds and declares that—

(1) wilderness is a distinguishing characteristic of the public lands in the California desert, one which affords an unrivaled opportunity for experiencing vast areas of the Old West essentially unaltered by man's activities, and which merits preservation for the benefit of present and future generations;

(2) the wilderness values of desert lands are increasingly threatened by and especially vulnerable to impairment, alteration, and destruction by activities and intrustions associated with incompatible use and development; and

(3) preservation of desert wilderness necessarily requires the highest forms of protective designation and management.

DESIGNATION OF WILDERNESS

SEC. 102. In furtherance of the purposes of the Wilderness Act of 1964 (78 Stat. 890, 16 U.S.C. 1131 et seq.), and sections 601 and 603 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 43 U.S.C. 1701 et seq.), the following lands in the State of California, as generally depicted on maps, appropriately referenced, dated February 1986, (except as otherwise dated) are hereby designated as wilderness, and therefore, as components of the National Wilderness Preservation System—

(1) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy-seven thousand three hundred eighty acres, as generally depicted on a map entitled "Argus Range Wilderness—Proposed", and which shall be known as the Argus Range Wilderness;

(2) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately sixty-one thousand three hundred twenty acres, as generally depicted on a map entitled "Avawatz Mountains Wilderness—Proposed", and which shall be known as the Avawatz Mountain Wilderness;

(3) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately ten thousand eight hundred seventy acres, as generally depicted on a map entitled "Bigelow Cholla Garden Wilderness—Proposed", and which shall be known as the Bigelow Cholla Garden Wilderness;

(4) certain lands in the California Desert Conservation Area, of the Bureau of Land Management and within the San Bernardino National Forest, which comprise approximately thirty-three thousand eight hundred acres, as generally depicted on a map entitled "Bighorn Mountain Wilderness—Proposed", and which shall be known as the Bighorn Mountain Wilderness;

(5) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management, which comprise approximately forty-seven thousand five hundred seventy acres, as generally depicted on a map entitled "Big Maria Mountains Wilderness—Proposed", and which shall be known as the Big Maria Mountains Wilderness;

(6) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise thirteen thousand nine hundred forty acres, as generally depicted on a map entitled "Black Mountain Wilderness—Proposed", and which shall be known as the Black Mountain Wilderness;

(7) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seven thousand two hundred acres, as generally depicted on a map entitled "Blackwater Well Wilderness—Proposed", and which shall be known as the Blackwater Well Wilderness;

(8) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately nine thousand five hundred twenty acres, as generally depicted on a map entitled "Bright Star Wilderness—Proposed", and which shall be known as the Bright Star Wilderness;

(9) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-two thousand six hundred forty acres, as generally depicted on a map entitled "Cadiz Dunes Wilderness—Proposed", and which shall be known as the Cadiz Dunes Wilderness;

(10) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eighty-five thousand nine hundred seventy acres, as generally depicted on a map entitled "Cady Mountains Wilderness—Proposed", and which shall be known as the Cady Mountains Wilderness;

(11) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fifteen thousand seven hundred acres, as generally depicted on a map entitled "Carrizo Gorge Wilderness—Proposed", and which shall be known as the Carrizo Gorge Wilderness;

(12) certain lands in the California Desert Conservation Area and Yuma District, of the Bureau of Land Management and within the Havasu National Wildlife Refuge, which comprise approximately sixty-eight thousand three hundred acres, as generally depicted on a map entitled "Chemehuevi Mountains Wilderness—Proposed", and which shall be known as the Chemehuevi Mountains Wilderness;

(13) certain lands in the Bakersfield District, of the Bureau of Land Management, which comprise approximately fifteen thousand seven hundred acres, as generally depicted on a map entitled "Chimney Peak Wilderness—Proposed", and which shall be known as the Chimney Peak Wilderness;

(14) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred sixty-five thousand two hundred acres, as generally depicted on a map entitled "Chuckwalla Mountains Wilderness—Proposed", dated January 1987, and which shall be known as the Chuckwalla Mountains Wilderness;

(15) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise fifty thousand six hundred sixty acres, as generally depicted on a map entitled "Cleghorn Lakes Wilderness—Proposed", and which shall be known as the Cleghorn Lake Wilderness: Provided, That the Secretary of Interior may pursuant to an application filed by the Department of Defense, grant a right-of-way for, and authorize construction of, a road within the area depicted as "non-wilderness road corridor" on the map entitled "Cleghorn Lakes Wilderness—Proposed";

(16) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty thousand acres, as generally depicted on a map entitled "Clipper Mountains Wilderness—Proposed", and which shall be known as the Clipper Mountains Wilderness;

(17) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fifty thousand eight hundred twenty acres, as generally depicted on a map entitled "Coso Range Wilderness—Proposed", and which shall be known as the Coso Range Wilderness;

(18) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eighteen thousand six hundred acres, as generally depicted on a map entitled "Coyote Mountains Wilderness—Proposed", and which shall be known as the Coyote Mountains Wilderness;

(19) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eight thousand six hundred forty acres, as generally depicted on a map entitled "Darwin Falls Wilderness—Proposed", and which shall be known as the Darwin Falls Wilderness;

(20) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-nine thousand six hundred eighty acres, as generally depicted on a map entitled "Dead Mountains Wilderness—Proposed", and which shall be known as the Dead Mountains Wilderness;

(21) certain lands in the Bakersfield District, of the Bureau of Land Management, which comprise approximately thirty-six thousand three hundred acres, as generally depicted on a map entitled "Domelands Wilderness Additions—Proposed", and which shall be hereby incorporated in, and which shall be deemed to be a part of the Domeland Wilderness as designated by Public Laws 93-632 and 98-425;

(22) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately sixteen thousand one hundred acres, as generally depicted on a map entitled "El Paso Mountains Wilderness—Proposed", and which shall be known as the El Paso Mountains Wilderness;

(23) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-seven thousand one hundred acres, as generally depicted on a map entitled "Fish Creek Mountains Wilderness—Proposed", and which shall be known as the Fish Creek Mountains Wilderness;

(24) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately ten thousand two hundred forty acres, as generally depicted on a map entitled "Frog Creek Wilderness—Proposed", and which

shall be known as the Frog Creek Wilderness;

(25) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-four thousand five hundred ten acres, as generally depicted on a map entitled "Funeral Mountains Wilderness—Proposed", and which shall be known as the Funeral Mountains Wilderness;

(26) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-seven thousand seven hundred acres, as generally depicted on a map entitled "Golden Valley Wilderness—Proposed", and which shall be known as the Golden Valley Wilderness;

(27) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy thousand two hundred forty acres, as generally depicted on a map entitled "Granite Mountains Wilderness—Proposed", dated January 1987, and which shall be known as the Granite Mountains Wilderness;

(28) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-one thousand seven hundred twenty acres, as generally depicted on a map entitled "Grass Valley Wilderness—Proposed", and which shall be known as the Grass Valley Wilderness;

(29) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eight thousand eight hundred acres, as generally depicted on a map entitled "Great Falls Basin Wilderness—Proposed", and which shall be known as the Great Falls Basin Wilderness;

(30) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-nine thousand seven hundred forty acres, as generally depicted on a map entitled "Hollow Hills Wilderness—Proposed", dated January 1987, and which shall be known as the Hollow Hills Wilderness;

(31) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-eight thousand two hundred acres, as generally depicted on a map entitled "Ibex Wilderness—Proposed", and which shall be known as the Ibex Wilderness;

(32) certain lands in the California Desert Conservation Area, of the Bureau of Land Management and the Imperial National Wildlife Refuge, which comprise approximately thirty-nine thousand one hundred acres, as generally depicted on a map entitled "Indian Pass Wilderness—Proposed", and which shall be known as the Indian Pass Wilderness;

(33) certain lands in the California Desert Conservation Area and the Bakersfield District, of the Bureau of Land Management and within the Inyo National Forest, which comprise approximately two hundred ten thousand six hundred sixty acres, as generally depicted on a map entitled "Inyo Mountains Wilderness—Proposed", and which shall be known as the Inyo Mountains Wilderness;

(34) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-five thousand one hundred sixty acres, as generally depicted on a map entitled "Jacumba Wilderness—Proposed", and which shall be known as the Jacumba Wilderness;

(35) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred twenty-nine thousand eight hundred twenty acres, as generally depicted on a map entitled "Kelso Dunes Wilderness—Proposed", and which shall be known as the Kelso Dunes Wilderness;

(36) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, and the Sequoia National Forest, which comprise approximately eighty-eight thousand two hundred eighty acres, as generally depicted on a map entitled "Kiavah Wilderness—Proposed", and which shall be known as the Kiavah Wilderness;

(37) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately two hundred fifty-five thousand two hundred ninty acres, as generally depicted on a map entitled "Kingston Range Wilderness—Proposed", and which shall be known as the Kingston Range Wilderness;

(38) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-nine thousand four hundred eighty acres, as generally depicted on a map entitled "Little Chuckwalla Mountains Wilderness—Proposed", and which shall be known as the Little Chuckwalla Mountains Wilderness;

(39) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management, and within the Imperial National Wildlife Refuge, which comprise approximately thirty-nine thousand eight hundred sixty acres, as generally depicted on a map entitled "Little Picacho Wilderness—Proposed", and which shall be known as the Little Picacho Wilderness;

(40) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-three thousand two hundred forty acres, as generally depicted on a map entitled "Malpais Mesa Wilderness—Proposed", and which shall be known as the Malpais Mesa Wilderness;

(41) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-seven thousand one hundred acres, as generally depicted on a map entitled "Manly Peak Wilderness—Proposed", and which shall be known as the Manly Peak Wilderness;

(42) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-two thousand seven hundred twenty acres, as generally depicted on a map entitled "Mecca Hills Wilderness—Proposed", and which shall be known as the Mecca Hills Wilderness;

(43) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fifty-four thousand nine hundred acres, as generally depicted on a map entitled "Mesquite Wilderness—Prosposed", and which shall be known as the Mesquite Wilderness;

(44) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eleven thousand three hundred acres, as generally depicted on a map entitled "Middle Park Canyon Wilderness—Proposed" and which shall be known as the Middle Park Canyon Wilderness;

(45) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-two thousand nine hundred acres, as generally depicted on a map entitled "Newberry Mountains Wilderness—Proposed", and which shall be known as the Newberry Mountains Wilderness;

(46) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred ten thousand eight hundred eighty acres, as generally depicted on a map entitled "Nopah Range Wilderness—Proposed", and which shall be known as the Nopah Range Wilderness;

(47) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-one thousand forty acres, as generally depicted on a map entitled "North Algodones Dunes Wilderness—Proposed", dated January 1987, and which shall be known as the North Algodones Dunes Wilderness;

(48) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately ten thousand acres as generally depicted on a map entitled "North Coso Range Wilderness—Proposed", and which shall be known as the North Coso Range Wilderness;

(49) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-six thousand eight hundered forty acres, as generally depicted on a map entitled "North Mesquite Mountains Wilderness—Proposed", and which shall be known as the North Mesquite Mountains Wilderness;

(50) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred forty-six thousand one hundred ten acres, as generally depicted on a map entitled "Old Woman Mountains Wilderness—Proposed", and which shall be known as the Old Woman Mountains Wilderness;

(51) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fifty-six thousand five hundred acres, as generally depicted on a map entitled "Orocopia Mountains Wilderness—Proposed", and which shall be known as the Orocopia Mountains Wilderness;

(52) certain lands in the California Desert Conservation Area and the Bakersfield District, of the Bureau of Land Management, which comprise approximately seventy-five thousand six hundred forty acres, as generally depicted on a map entitled "Owens Peak Wilderness—Proposed", and which shall be known as the Owens Peak Wilderness;

(53) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy-four thousand eight hundred acres, as generally depicted on a map entitled "Pahrump Valley Wilderness—Proposed", and which shall be known as the Pahrump Valley Wilderness;

(54) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately two hundred fourteen thousand four hundred twenty acres, as generally depicted on a map entitled "Palen/McCoy Wilderness—Proposed", and which shall be known as the Palen/McCoy Wilderness;

(55) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-two thousand three hundred twenty acres, as generally depicted on a map entitled "Palo Verde Mountains Wilderness—Proposed", dated January 1987, and which shall be known as the Palo Verde Mountains Wilderness;

(56) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seven thousand three hundred acres, as generally depicted on a map entitled "Picacho Peak Wilderness—Proposed", and which shall be known as the Picacho Peak Wilderness;

(57) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-one thousand six hundred eighty acres, as generally depicted on a map entitled "Pinto Mountains Wilderness—Proposed", and which shall be known as the Pinto Mountains Wilderness;

(58) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy-four thousand eight hundred forty acres, as generally depicted on a map entitled "Piper Mountain Wilderness—Proposed", and which shall be known as Piper Mountain Wilderness;

(59) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-nine thousand forty acres, as generally depicted on a map entitled "Piute Mountains Wilderness—Proposed", and which shall be known as Piute Mountains Wilderness;

(60) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy-eight thousand eight hundred eighty acres, as generally depicted on a map entitled "Resting Spring Range Wilderness—Proposed", and which shall be known as the Resting Spring Range Wilderness;

(61) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty thousand eight hundred twenty acres, as generally depicted on a map entitled "Rice Valley Wilderness—Proposed", and which shall be known as the Rice Valley Wilderness;

(62) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management, which comprise approximately twenty-four thousand one hundred acres, as generally depicted on a map entitled "Riverside Mountains Wilderness—Proposed", and which shall be known as Riverside Mountains Wilderness;

(63) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty thousand one hundred acres, as generally depicted on a map entitled "Rodman Mountains Wilderness—Proposed", and which shall be known as the Rodman Mountains Wilderness;

(64) certain lands in the California Desert Conservation Area and the Bakersfield District, of the Bureau of Land Management, which comprise approximately fifty-two thousand six hundred acres, as generally depicted on a map entitled "Sacatar Trail Wilderness—Proposed", dated January 1987, and which shall be known as the Sacatar Trail Wilderness;

(65) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fourteen thousand eight hundred acres, as generally depicted on a map entitled "Saddle Peak Hills Wilderness—Proposed", and which shall be known as the Saddle Peak Hills Wilderness;

(66) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-three thousand five hundred acres, as generally depicted on a map entitled "San Gorgonio Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the San Gorgonio Wilderness as designated by Public Laws 88-577 and 98-425;

(67) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately fifty-three thousand two hundred forty acres, as generally depicted on a map entitled "Santa Rosa Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of the Santa Rosa Wilderness designated by Public Law 98-425;

(68) certain lands in the California Desert District, of the Bureau of Land Management, which comprise approximately thirty-five thousand four hundred acres, as generally depicted on a map entitled "Sawtooth Mountains Wilderness—Proposed", and which shall be known as the Sawtooth Mountains Wilderness;

(69) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred seventy-seven thousand acres, as generally depicted on a map entitled "Sheephole Valley Wilderness—Proposed", and which shall be known as the Sheephole Valley Wilderness;

(70) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventy thousand three hundred forty acres, as generally depicted on a map entitled "Slate Range Wilderness—Proposed", and which shall be known as the Slate Range Wilderness;

(71) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately ninety-two thousand six hundred ninety acres, as generally depicted on a map entitled "Soda Mountains Wilderness—Proposed", dated January 1987, and which shall be known as the Soda Mountains Wilderness;

(72) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately sixty-one thousand nine hundred fifty acres, as generally depicted on a map entitled "South Algodones Dunes Wilderness—Proposed", and which shall be known as the South Algodones Dunes Wilderness;

(73) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately twenty-six thousand six hundred fifty acres, as generally depicted on a map entitled "South Avawatz Mountains Wilderness—Proposed", and which shall be known as the South Avawatz Mountains Wilderness;

(74) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately sixteen thousand seven hundred eighty acres, as generally depicted on a map entitled "South Nopah Range Wilderness—Proposed", and which shall be known as the South Nopah Range Wilderness;

(75) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately nine thousand acres, as generally depicted on a map entitled "Stateline Wilderness—Proposed", and which shall be known as the Stateline Wilderness;

(76) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately eighty-one thousand six hundred acres, as generally depicted on a map entitled "Stepladder Mountains Wilderness—Proposed", and which shall be known as the Stepladder Mountains Wilderness;

(77) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-seven thousand six hundred forty acres, as generally depicted on a map entitled "Surprise Canyon Wilderness—Proposed", and which shall be known as the Surprise Canyon Wilderness;

(78) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately seventeen thousand eight hundred twenty acres, as generally depicted on a map entitled "Sylvania Mountains Wilderness—Proposed", and which shall be known as the Sylvania Mountains Wilderness;

(79) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately thirty-three thousand seven hundred twenty acres, as generally depicted on a map entitled "Trilobite Wilderness—Proposed", and which shall be known as the Trilobite Wilderness;

(80) certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately one hundred forty-four thousand five hundred acres, as generally depicted on a map entitled "Turtle Mountains Wilderness—Proposed", and which shall be known as the Turtle Mountains Wilderness; and

(81) certain lands in the California Desert Conservation Area and the Yuma District, of the Bureau of Land Management, which comprise approximately seventy-five thousand five hundred acres, as generally depicted on a map entitled "Whipple Mountains Wilderness—Proposed", and which shall be known as the Whipple Mountains Wilderness.

ADMINISTRATION OF WILDERNESS AREAS

SEC. 103. Subject to valid existing rights, each wilderness area designated under this title shall be administered by the appropriate Secretary in accordance with the provisions of the Wilderness Act: *Provided*, 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 title and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary who has administrative jurisdiction over the area.

FILING OF MAPS AND DESCRIPTIONS

SEC. 104. As soon as practicable after enactment of this title, a map and a legal description on each wilderness area designated under this title shall be filed by the Secretary concerned with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and each such map and description shall have the same force and effect as if included in this title: Provided, That correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal

description shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management, Department of the Interior, or the Chief of the Forest Service, Department of Agriculture, as is appropriate.

WILDERNESS REVIEW

SEC. 105. The Congress hereby finds and directs that lands in the California Desert Conservation Area, of the Bureau of Land Management not designated as wilderness by this Act have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act (90 Stat. 2743, 43 U.S.C. 1701 et seq.), and are no longer subject to the requirement of section 603(c) of the Federal Land Policy and Management Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

DESIGNATION OF WILDERNESS STUDY AREA

SEC. 106. (a) In furtherance of the purposes of the Wilderness Act, the Secretary of Agriculture shall, before completion of the Inyo National Forest Land Resource and Management Plan, review certain lands in the California Desert Conservation Area, of the Bureau of Land Management, which comprise approximately forty-three thousand seven hundred acres, as generally depicted on a map entitled "White Mountains Wilderness Study Area—Proposed", dated February 1986, to determine their suitability or nonsuitability for preservation as wilderness and shall submit his recommendation to the President.

(b) The wilderness study area designated by subsection (a) shall be administered by the Secretary of the Interior in accordance with the provisions of section 603 (c) of the Federal Land Policy and Management Act.

TITLE II—DEATH VALLEY NATIONAL PARK

FINDINGS

SEC. 201. The Congress hereby finds that—

(1) proclamations by Presidents Herbert Hoover in 1933 and Franklin Roosevelt in 1937 established and expanded the Death Valley National Monument for the preservation of the unusual features of scenic, scientific, and educational interest therein contained;

(2) Death Valley National Monument is today recognized as major unit of the National Park System, having extraordinary values enjoyed by millions of visitors;

(3) the Monument boundaries established in the 1930's exclude and thereby expose to incompatible development and inconsistent management, contiguous federal lands of essential and superlative natural, ecological, geological, archeological, paleontological, cultural, historical and wilderness values;

(4) Death Valley National Monument should be substantially enlarged by the addition of all contiguous federal lands of national park caliber, and afforded full recognition and statutory protection as a national park; and

(5) the wilderness within Death Valley should receive maximum statutory protection by designation pursuant to the Wilderness Act.

ESTABLISHMENT OF DEATH VALLEY NATIONAL PARK

SEC. 202. There is hereby established the Death Valley National Park, as generally depicted on a map entitled "Death Valley National Park", dated February 1986, which shall be on file and available for public inspection in the offices of the Superintendent of the Park and the Director of the National Park Service, Department of the Interior. The Death Valley National Monument is hereby abolished as such, and the lands and interests therein are hereby incorporated within and made part of the new Death Valley National Park.

TRANSFER AND ADMINISTRATION OF LANDS

SEC. 203. Upon enactment of this title, the Secretary of the Interior shall transfer the lands under the jurisdiction of the Bureau of Land Management depicted on the map described in section 202 of this title, without consideration, to the administrative jurisdiction of the Director of the National Park Service for administration as part of the National Park System. The boundaries of the public lands and the national parks shall be adjusted accordingly. The areas added to the National Park System by this title shall be administered in accordance with the provisions of law generally applicable to units of the National Park System.

MAPS AND LEGAL DESCRIPTION

SEC. 204. Within six months after the enactment of this title, the Secretary shall file a legal description of the park designated under this title with the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives. Such legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in section 202. The legal description shall be on file and available for public inspection in the offices of the Superintendent of the Park and the Director of the National Park Service, Department of the Interior.

DISPOSITION UNDER MINING LAWS

SEC. 205. Subject to valid existing rights, the federal lands and interests therein added to the park system by this title are withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970.

STUDY AS TO VALIDITY OF MINING CLAIMS

SEC. 206. The Secretary shall not approve any plan of operation prior to determining the validity of any unpatented mining claims within the additions to the park system and submit to Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands.

TITLE III—JOSHUA TREE NATIONAL PARK

FINDINGS

SEC. 301. The Congress hereby finds that—

(1) a proclamation by President Franklin Roosevelt in 1936 established Joshua Tree National Monument to protect various objects of historical and scientific interest;

(2) Joshua Tree National Monument today is recognized as a major unit of the National Park System, having extraordinary values enjoyed by millions of visitors;

(3) the Monument boundaries as modified in 1950 and 1961 exclude and thereby expose to incompatible development and inconsistent management, contiguous federal lands of essential and superlative natural, ecological, archeological, paleontological, cultural, historical and wilderness values;

(4) Joshua Tree National Monument should be enlarged by the addition of contiguous federal lands of national park caliber, and afforded full recognition and statutory protection as a national park; and

(5) the non-designated wilderness within Joshua Tree should receive maximum statutory protection by designation pursuant to the Wilderness Act.

ESTABLISHMENT OF JOSHUA TREE NATIONAL PARK

SEC. 302. There is hereby established the Joshua Tree National Park, as generally depicted on a map entitled "Joshua Tree National Park", dated February 1986, which shall be on file and available for public inspection in the offices of the Superintendent of the Park and the Director of the National Park Service, Department of the Interior. The Joshua Tree National Monument is hereby abolished as such, and the lands and interests therein are hereby incorporated within and made part of the new Joshua Tree National Monument.

TRANSFER AND ADMINISTRATION OF LANDS

SEC. 303. Upon enactment of this title, the Secretary of the Interior shall transfer the lands under the jurisdiction of the Bureau of Land Management depicted on the map described in section 302 of this title, without consideration, to the administrative jurisdiction of the Director of the National Park Service for administration as part of the National Park System. The boundaries of the public lands and the national parks shall be adjusted accordingly. The areas added to the National Park System by this title shall be administered in accordance with the provisions of law generally applicable to units of the National Park System.

MAPS AND LEGAL DESCRIPTION

SEC. 304. Within six months after the enactment of this title, the Secretary shall file a legal description of the park designated by this title with the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives. Such legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in section 302. The legal description shall be on file and available for public inspection in the offices of the Superintendent of the Park and the Director of the National Park Service, Department of the Interior.

DISPOSITION UNDER MINING LAWS

SEC. 305. Subject to valid existing rights, federal lands and interests therein added to the park system by this title are withdrawn from disposition under the public lands laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from the operation of the Geothermal Steam Act of 1970.

STUDY AS TO VALIDITY OF MINING CLAIMS

SEC. 306. The Secretary shall not approve any plan of operation prior to determining the validity of any unpatented mining claims within the park and submit to Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental conse-

quences of the extraction of minerals from these lands.

TITLE IV—MOJAVE NATIONAL PARK

FINDINGS

SEC. 401. The Congress hereby finds that—

(1) Death Valley and Joshua Tree National Parks, as established by this Act, protect unique and superlative desert resources, but do not embrace the particular ecosystems and transitional desert type found in the Mojave Desert area lying between them on public lands now afforded only impermanent administrative designation as a national scenic area;

(2) the Mojave Desert area possesses outstanding natural, cultural, historical, and recreational values meriting statutory designation and recognition as a unit of the National Park System;

(3) the Mojave Desert area should be afforded full recognition and statutory protection as a national park; and

(4) the wilderness within the Mojave Desert should receive maximum statutory protection by designation pursuant to the wilderness Act.

ESTABLISHMENT OF THE MOJAVE NATIONAL PARK

SEC. 402. There is hereby established the Mojave National Park, comprising approximately one million five hundred thousand acres, as generally depicted on a map entitled "Mojave National Park", dated February 1986, which shall be on file and available for inspection in the offices of the Director of the National Park Service, Department of the Interior.

TRANSFER OF LANDS

SEC. 403. Upon enactment of this title, the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall transfer the lands under the jurisdiction of the Bureau of Land Management depicted on the map described in section 402 of this title, without consideration, to the administrative jurisdiction of the Director of the National Park Service. The boundaries of the public lands shall be adjusted accordingly.

MAPS AND LEGAL DESCRIPTION

SEC. 404. Within six months after the enactment of this title, the Secretary shall file a legal description of the park designated under this title with the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives. Such legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in section 402. The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

ABOLISHMENT OF SCENIC AREA

SEC. 405. The East Majave National Scenic Area, designated on January 13, 1981 (46 FR 3994) and modified on August 9, 1983 (48 FR 36210), is hereby abolished.

ADMINISTRATION OF LANDS

SEC. 406. The Secretary shall administer the park in accordance with this title and with the provisions of law generally applicable to units of the National Park System, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4).

DISPOSITION UNDER MINING LAWS

SEC. 407. Subject to valid existing rights, federal lands within the park, and interests therein, are withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970.

STUDY AS TO VALIDITY OF MINING CLAIMS

SEC. 408. The Secretary shall not approve any plan of operation prior to determining the validity of any unpatented mining claims within the park and submit to Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands.

REGULATION OF MINING

SEC. 409. Subject to valid existing rights, all mining claims located within the park shall be subject to such reasonable regulations as the Secretary may prescribe to assure that mining will, to the maximum extent practicable, be consistent with the protection of the scenic, scientific, cultural and other resources of the park, and any patent which may be issued after the date of enactment of this title shall convey title only to the minerals together with the right to use the surface of lands for mining purposes subject to such reasonable regulations.

GRAZING RIGHTS

SEC. 410. The Secretary shall permit those persons holding currently valid grazing permits within the boundary of the park to continue to exercise such permits consistent with other applicable law: Provided, however, that upon expiration of the current term of such permits, the permits shall not be renewed.

RIGHTS-OF-WAY

SEC. 411. Nothing in this title shall have the effect of terminating any validly issued right-of-way or right-of-use issued, granted, or permitted for

(a) systems for transmission or distribution of electric energy,

(b) pipelines for the transmission or distribution of natural gas or oil, and

(c) communication cables or lines within any utility corridor designated as of January 1, 1987.

PREPARATION OF MANAGEMENT PLAN

SEC. 412. Within three years of the date of enactment of this title, the Secretary shall submit to the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives a detailed and comprehensive management plan for the park. Such plan shall place emphasis on historical and cultural sites and ecological and wilderness values within the boundaries of the park and shall evaluate the feasibility of using the Kelso Depot and existing railroad corridor to provide public access to and a facility for special interpretive, educational and scientific programs within the park.

CONSTRUCTION OF VISITOR CENTER

SEC. 413. The Secretary is authorized to construct a visitor center in the park for the purpose of providing information through appropriate displays, printed material, and other interpretive programs, about the resources of the park.

ACQUISITION OF LANDS

SEC. 414. The Secretary is authorized to acquire all lands and interest in lands within the boundary of the park by donation, purchase, or exchange, except that—

(1) any lands or interests therein within the boundary of the park which are owned by the State of California, or any political subdivision thereof, may be acquired only by donation or exchange; and

(2) lands or interests therein within the boundary of the park which are not owned by the State of California or any political subdivision thereof may be acquired only with the consent of the owner thereof unless the Secretary determines, after written notice to the owner and after opportunity for comment, that the property is being developed, or proposed to be developed, in a manner which is detrimental to the integrity of the park or which is otherwise incompatible with the purpose of this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 415. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE V—NATIONAL PARK WILDERNESS

DESIGNATION OF WILDERNESS

SEC. 501. The following lands are hereby designated as wilderness in accordance with section (3) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132 (c)) and shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act.

(1) Death Valley National Park Wilderness, comprising approximately three million one hundred fifty-nine thousand seven hundred twenty acres, and potential wilderness additions comprising approximately twenty thousand four hundred acres, as generally depicted on a map entitled "Death Valley National Park Wilderness—Proposed", dated January 1987, and which shall be known as the Death Valley Wilderness;

(2) Joshua Tree National Park Wilderness Additions, comprising approximately one hundred thirty-three thousand five hundred acres, as generally depicted on a map entitled "Joshua Tree National Park Wilderness Additions—Proposed", dated February 1986, and which are hereby incorporated in, and which shall be deemed to be a part of the Joshua Tree Wilderness as designated by Public Law 94-567; and

(3) Mojave National Park Wilderness, comprising approximately seven hundred forty-seven thousand nine hundred forty acres, as generally depicted on a map entitled "Mojave National Park Wilderness—Proposed", dated February 1986, and which shall be known as the Mojave Wilderness.

FILING OF MAPS AND DESCRIPTIONS

SEC. 502. A map and description of the boundaries of the areas designated in section 501 of this title shall be on file and available for public inspection in the Office of the Director of the National Park Service, Department of the Interior, and in the Office of the Superintendent of each area designated in section 501. As soon as practicable after this title takes effect, maps of the wilderness areas and descriptions of their boundaries shall be filed with the Commission on Energy and Natural Resources of the United States Senate and the Commission on Interior and Insular Affairs of the House of Representatives, and such maps and descriptions shall have the same force and effect as if included in this title: Provided, That correction of clerical and ty-

pographical errors in such maps and descriptions may be made.

CESSATION OF CERTAIN USES

SEC. 503. Any lands (in section 501 of this title) which represent potential wilderness additions upon publication of the Federal Register of a notice by the Secretary of the Interior that all uses thereon prohibited by the Wilderness Act have ceased, shall thereby be designated wilderness. Lands designated as potential wilderness additions shall be managed by the Secretary of the Interior insofar as practicable as wilderness until such time as said lands are designated as wilderness.

ADMINISTRATION OF WILDERNESS AREAS

SEC. 504. The areas designated by section 501 of this title as wilderness shall be administered by the Secretary of the Interior in accordance Interior in accordance with the applicable provisions of the Wilderness Act governing areas designated by that title 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 title, and where appropriate, and reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

TITLE VI—MISCELLANEOUS PROVISIONS

TRANSFER OF LANDS TO RED ROCK CANYON STATE PARK

SEC. 601. Upon enactment of this title, the Secretary of the Interior shall transfer to the State of California certain lands within the California Desert Conservation Area, California, of the Bureau of Land Management, comprising approximately twenty thousand five hundred acres, as generally depicted on a map entitled "Red Rock Canyon State Park Additions", dated February 1986, for inclusion in the State of California Park System. Should the State of California cease to manage these lands as part of the state park system, ownership of the lands shall revert to the Department of the Interior to be managed as part of the California Desert Conservation Area to provide maximum protection for the area's scenic and scientific values.

DESERT LILY SANCTUARY

SEC. 602. (a) There is hereby established the Desert Lily Santuary within the California Desert Conservation Area, California, of the Bureau of Land Management, comprising approximately two thousand forty acres, as generally depicted on a map entitled "Desert Lily Sanctuary", dated February 1986. The Secretary of the Interior shall administer the area to provide maximum protection to the desert lily.

(b) Subject to valid existing rights, federal lands within the sanctuary, and interests therein, are withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970.

INDIAN CANYONS NATIONAL HISTORIC SITE

SEC. 603. (a) There is hereby established the Indian Canyons National Historic Site, comprising approximately four hundred ninty acres, as generally depicted on a map entitled "Indian Canyons National Historic Site", dated February 1986.

(b) Upon enactment of this title, the Secretary of the Interior shall enter into negotiations to acquire by exchange the privately owned lands or interests therein within the national historic site designated by subsection (a). The value of the properties so exchanged either shall be equal or, if they are not equal, the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(c) The Secretary shall enter into a cooperative management agreement with the Agua Calients Band of Cahuilla Indians for the purposes of managing the Indian Canyons National Historic Site. Upon execution of the management agreement, the Secretary shall transfer title of the land to be held in trust for the Agua Caliente Band of Cahilla Indians as part of the Agua Caliente Indian Reservation and such transfer shall remain effective so long as the agreement remains in force and in effect.

LAND TENURE ADJUSTMENTS

SEC. 604. In preparing land tenure adjustment decisions within the California Desert Conservation Area, of the Bureau of Land Management, the Secretary shall give priority to consolidating federal ownership within the national park units and wilderness areas designated by this Act.

LAND EXCHANGES WITH THE STATE OF CALIFORNIA

SEC. 605. (a) The Secretary of the Interior shall exchange such public lands or interests in lands, as are of approximately equal value and selected by the State of California, acting through the State Lands Commission, for any state lands or interests therein located within the boundaries of the wilderness or the parks.

(b) Within six months from the date of enactment of this Act, the Secretary of the Interior shall notify the Chairman of the State Lands Commission what state lands or interests therein are within the wilderness areas or national park units designated by this Act. The notice shall include notice of the Secretary's duty to exchange public lands selected by the state for any state land contained within the boundaries of the wilderness areas or national park units. The notice shall contain a listing of all public lands within the boundaries of the state, which have not been withdrawn from entry and which have not been withdrawn from entry and which the Secretary identifies as available to the state in exchange for state lands within the wilderness areas or national park units.

(c) After the receipt of the list of available public lands, if the Chairman of the State Lands Commission gives notice to the Secretary of the state's selection of lands, the Secretary shall notify the Chairman in writing as to whether the Department of the Interior considers the state and federal lands to be of approximately equal value. In the case of disagreement between the Secretary and the Chairman as to relative value of the acquired and selected lands, the Secretary and the Chairman shall agree on the appointment of a disinterested independent appraiser who will review valuation data presented by both parties and determine the amount of selected land which best represents approximate equal value. Such determination will be binding on the Secretary and the State Lands Commission. The transfer of title to lands or interests therein to the State of California shall be completed within two years from the date of enactment of this Act.

By Mr. CRANSTON:

S. 8. A bill to provide Federal financial assistance to facilitate the establishment of alliances between educational agencies and the private sector to increase the use of resources of the private and nonprofit sectors in the provision of elementary and secondary education, and for other purposes; to the Committee on Labor and Human Resources.

ALLIANCE FOR EDUCATION ACT OF 1987

Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to encourage and facilitate cooperative alliances between the private sector and the public schools. The Alliance for Education Act of 1987 will provide grants to develop model cooperative programs linking the needs of schools and the resources of the private sector, and the nonprofit sector, in order to marshal the full support of our communities for the betterment of education.

At all levels, Americans are reassessing our education system. We want quality. We want our children to be literate in every sense of the word. We want graduates of our school system to be fully functional as individuals, as members of a democratic society, and as contributors to a strong economy for the American future. Every major education reform report tells us that our vitality as a nation and our strength as a world economic power depends upon the job we do in our schools. We must raise school standards and performance in order to bring forth the full potential of this great Nation.

It is with this recognition, and in this spirit, that I introduce the Alliance for Education Act of 1987. Our schools are not discrete entities. They are part of the creative fabric of each community, of each State, of our entire Nation. If we are to revitalize education in America—and we must—our effort must be in partnership with every segment of the school community. For we've come to understand that excellence in education is everyone's responsibility.

Yet even though we know that raising education standards is the job of every segment of the community, and in spite of overwhelming public support for education, one of our contemporary tragedies is the lack of community involvement and parent interest in what schools teach and how they teach it. We must take action to realize that support. Too, we are just beginning to comprehend the value of linking the resources of the private and nonprofit sectors—business concerns, private community organizations, institutions of higher education, museums, libraries, educational television stations, as well as State and local governments. But unless we move ahead on these critical fronts, much of our talk about school reform will remain as rhetoric.

In order to encourage community partnerships in education, we must de-

velop and disseminate model cooperative programs in two areas: One, alliances in which business shares its expertise and other resources with the schools; and two, alliances in which other segments of the community—many of them already active in educational efforts of their own—are invited to join the effort to enhance the curriculum.

Everyone can gain from this.

The fact is, the private business sector depends more and more upon education—education in schools and education in the corporation—to supply its skilled workers and to help its managers sustain quality and productivity. Some years ago, in my State of California, an organization of leaders of business and industry, called the California Roundtable, identified education as a priority issue for dealing with three persistent problems: One, a pervasive unemployment problem, particularly among minority youth in urban areas; two, the difficulty companies have in locating qualified entry-level employees; and three, an increasingly technical job market, requiring employees who have mastered the basics in high school and are therefore trainable. In fact, the Roundtable estimates that by 1990 half of all jobs in California will be technically based.

The Roundtable's concern about whether or not students are being adequately prepared for college and for work resulted in a comprehensive, independent research study, commissioned by the Roundtable, to determine the current level of student performance and ascertain areas where improvement is needed and where support can be provided. But the issue was not simply studied: Based on the organization's conviction that education was of paramount importance to the future of California business and industry, the Roundtable worked very successfully to enact a far-reaching set of education reforms for the State and to raise the funding level for education to the highest in the State's history.

The positive climate for education reform in California was greatly improved by the Roundtable's effort. In this instance, a keen business interest in schools resulted in substantial advancement for schools. In other areas of the country, collaborative efforts between business and schools have been more modest but no less effective. Chicago has a citywide Adopt-A-School Program, in which a network of industries work with schools at least once a week, for a year at least. St. Louis has a School Partnership Program, bringing together the resources of business and the resources of government and cultural agencies and colleges as well. In Los Angeles, the Atlantic Richfield Joint Education Project was started when employees of Atlantic Richfield volunteered to tutor children at innercity elementary schools several hours each week, and now the program involves other businesses and is citywide.

This kind of involvement is critical—for both education and for the economy.

In a recent interview, Labor Secretary William Brock said:

> One of the strangest things about the American economic-educational system is that it's been like two ships passing in the night. There's business on one side and educators on the other. They have very little contact or communication. Each seems to be somewhat intimidated by the other. Business has an enormous vested interest in seeing a much more effective public education system in place in this country quickly, and education, obviously, has an interest in finding out what the demands of the work place are going to be and how they can more effectively respond to them, because in that process they'll gain more support.

Secretary Brock is right. And what has happened in California via the Roundtable experience, and what is happening in other areas of the country where business is expressing an active interest in educational excellence must be given full encouragement. It is in the clear national interest for the Federal Government to fund model projects in business/education collaboration that can then be successfully undertaken in other areas of the country.

Other segments of the school community belong in this collaborative effort—museums, libraries, colleges, and universities, and other nonprofit organizations. Again and again, research suggests that when the total community actively supports schools, great power is generated to bring about change and improvement. In fact, there can likely be no effective education carried out in a setting where the community—including the family—is indifferent or even hostile to the schools.

Where community partnerships have been launched, they have been successful and varied. The University of North Dakota, for example, is working with 10 high schools in Grand Forks to improve student preparation for college. Faculty members and school staff have worked together—through conferences, assistance to teachers, and demonstration projects—in order to help teachers give students a better understanding of what college will be like and what skills they will need.

Promising activities for other communities can be programs in which the arts resources—and experts—in a community can work with the schools. In Boston, the nonprofit cultural education collaborative coordinates programs between Boston public schools and the city's outstanding performing companies, museums, and art centers, in Philadelphia, PATHS—a coalition of businesses, universities, and the Philadelphia public schools is developing a national model for improving humanities instruction in urban school districts. Operating from New York City, the Rockefeller Brothers Fund has identified schools with a distinguished arts program and recognizes excellence with $10,000 awards.

Cooperative programs can include alliances between schools and college math and science departments, nonprofit vocational training programs, programs for students with special needs, university and college efforts in teacher development, and in the health professions: In Manhattan, eighth and ninth graders at Joan of Arc Junior High School spend 1 day per week over a 2-year period at the New York University Medical Center Program studying laboratory techniques and basic sciences. As a result, numerous students from the program have entered the health professions as a career.

The possibilities for business/community alliances for schools are as limitless as the American imagination. And so are the potential results. From the California Roundtable experience, it is clear that business leaders can be a powerful positive force for education reform within a State—including the achieving of much greater financial support for schools. From a host of other experiences, in cities and in States around the Nation, it is clear that students can make more informed career decisions in encounters with professionals in business. Students can have access to expensive state-of-the-art equipment. Business can provide help in school management programs, and facilities and personnel for student instruction. And in urban areas, the corporate community can gear assistance to programs encouraging economically disadvantaged youth to stay in school, as has been done by the New York City Partnership.

One of the biggest gains for education through the alliances my bill encourages is a gain in support for schools and for the essential mission of our education system. Because of America's heterogeneity, our Nation's sheer size, and our emphasis on individuality, we must work hard and diligently to maintain a sense of unity in our educational effort. Trust, respect, and communitywide agreement on what schools should do and how they should do it can best be built if all segments of the community are represented and active in the schools.

The bill I introduce today provides for grants to begin building alliances between the public schools and the private and nonprofit sectors. Grants will be made to apply the full resources of the private and nonproft sections to elementary and secondary school needs in the community, to encourage business to work with educa-

tionally disadvantaged as well as gifted students, and to broaden the career awareness of secondary school students. Grants may also be made for developing model State statutes in support of cooperative ties between the private sector and schools, for academic internship programs, for tutorial and volunteer work, and for staff training. Federal support is on a declining scale, with the projects to be self-supporting at the end of the grant period. Grant criteria and program policy will be made by a presidentially appointed board composed of 15 members from specified backgrounds appointed by the President, and including the Secretaries of Education, Commerce, and Labor, and the chairman of the National Endowment for the Arts and the National Endowment for the Humanities. The Secretary of Education administers the program, conducts an annual evaluation of grants made under the act, and disseminates information in order to encourage the broadest possible use of successful strategies and methods.

Mr. President, I ask unanimous consent that the text of my bill and a section-by-section analysis be printed in the RECORD.

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

S. 8

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Alliance for Education Act of 1987".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to encourage the creation of alliances between public schools and the private sector in order to—

(1) apply the resources of the private and nonprofit sectors of the community to the needs of the elementary and secondary schools in that community;

(2) encourage business to work with educationally disadvantaged students and with gifted students;

(3) apply the resources of communities for the improvement of elementary and secondary education; and

(4) enrich the career awareness of secondary school students to exposures to the private sector and their work.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "Board" means the Alliance for Education Board established pursuant to section 6.

(2) The term "eligible alliance" means a local educational agency and business concerns, nonprofit private organizations, institutions of higher education, museums, libraries, educational television stations, and if the State agrees to participate, appropriate State agencies.

(3) The term "elementary school" has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

(4) The term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965.

(5) The term "local educational agency" has the same meaning given that term under section 198(a)(10) of the Elementary and Secondary Education Act of 1965.

(6) The term "secondary school" has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

(7) The term "Secretary" means the Secretary of Education.

(8) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(9) The term "State educational agency" has the same meaning given that term under section 198(a)(17) of the Elementary and Secondary Education Act of 1965.

PROGRAM AUTHORIZED

SEC. 4. (a) The Secretary, subject to the general policies and criteria established by the Board and in accordance with the provisions of this Act, is authorized to make grants to eligible alliances to pay the Federal share of the costs of the activities described in section 5.

(b) There are authorized to be appropriated $30,000,000 for the fiscal year 1988 and for each of the three succeeding fiscal years to carry out the provisions of this Act.

AUTHORIZED ACTIVITIES

SEC. 5. (a) An eligible alliance may use payments received under this Act in any fiscal year for—

(1) model cooperative programs designed to apply the resources of the private and nonprofit sectors of the community to the elementary and secondary schools of the local educational agency in that community;

(2) projects designed to encourage business concerns and other participants in the eligible alliance, to work with educationally disadvantaged students and with gifted students in the elementary and secondary schools of local educational agencies;

(3) projects designed to apply the resources of the community to the elementary and secondary schools of the local educational agency in that community to improve the education of students in such schools;

(4) projects designed to enrich the career awareness of secondary school students through exposure to officers and employees of business concerns and other agencies and organizations participating in the eligible alliance for education;

(5) projects for statewide activities designed to carry out the purpose of this Act including the development of model State statutes for the support of cooperative arrangements between the private sector and the elementary and secondary schools within the State;

(6) special training projects for staff designed to develop skills necessary to facilitate cooperative arrangements between the private and nonprofit sectors and the elementary and secondary schools of local educational agencies;

(7) academic internship programs, including where possible academic credit, involving activities designed to carry out the purpose of this Act; and

(8) projects encouraging tutorial and volunteer work in the elementary and secondary schools of local education agencies by personnel assigned from business concerns and other participants in the eligible alliance.

ALLIANCE FOR EDUCATION BOARD

SEC. 6. (a)(1) There is established within the Department of Education an Alliance for Education Board.

(2) The Board shall be composed of 15 members as follows:

(A) Ten members shall be appointed by the President—

(i) of whom 2 shall be appointed from among individuals who are representatives of business concerns.

(ii) of whom 3 shall be appointed from among individuals who are representative of elementary and secondary school teachers and elementary and secondary school administrators.

(iii) of whom 2 shall be appointed from among chief State school officers.

(iv) of whom 3 shall be appointed from among members of the general public who by reason of experience or interest are qualified to serve on the Board.

(B) The Secretary of Education.

(C) The Secretary of Commerce.

(D) The Secretary of Labor.

(E) The Chairman of the National Endowment for the Arts.

(F) The Chairman of the National Endowment for the Humanities.

(3) The members of the Board listed in subparagraphs (B) through (F) shall be ex officio members of the Board.

(b) The Board shall establish general policies with respect to the functions of the Secretary under this Act including—

(1) guidelines for the establishment and operation of an eligible alliance under this Act;

(2) priorities for the approval of applications; and

(3) such other matters as the Secretary may prescribe.

(c) The Chairman of the Board shall be designated by the President from among the appointed members of the Board. Except as provided in subsection (d)(2), eight appointed members of the Board shall constitute a quorum.

(d) The Board shall meet at the call of the Chairman, except that—

(1) it shall meet not less than four times each year; and

(2) it shall meet whenever one-third of the appointed members request a meeting in writing, in which event seven of the appointed members shall constitute a quorum.

(e) Members of the Board who are not in the regular full-time employ of the United States shall receive, while engaged in the business of the Board, compensation for service at a rate to be fixed by the President, except that such rate shall not exceed the rate specified at the time of such service for grade GS-18 set forth in section 5332 of title 5, United States Code, including traveltime, and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed in Government service.

APPLICATION

SEC. 7. (a) Any eligible alliance which desires to receive a grant under this Act shall submit an application to the Secretary, at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Each such application shall—

(1) describe the activities for which assistance under this Act is sought;

(2) provide evidence that the eligible alliance meets the general criteria established by the Board pursuant to section 6;

(3) provide assurance that the eligible alliance will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources;

(4) provide assurances that the eligible alliance will take such steps as may be available to it to continue the activities for which the eligible alliance is making application after the period for which assistance is sought; and

(5) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this Act.

(b) A consortium of eligible alliances may file a joint application under the provisions of subsection (a) of this section.

APPROVAL OF APPLICATION

SEC. 8. (a) The Secretary shall approve applications in accordance with the general policies criteria established by the Board under section 6.

(b) No application may be approved by the Secretary if the State educational agency notifies the Secretary that the application is inconsistent with State plans for elementary and secondary education in the State.

PAYMENTS; FEDERAL SHARE; LIMITATION

SEC. 9. (a)(1) The Secretary shall pay to each eligible alliance having an application approved under section 7 the Federal share of the cost of the activities described in the application.

(2) The Federal share—

(A) for the first year for which an eligible alliance receives assistance under this Act shall be 90 percent;

(B) for the second such year shall be 75 percent;

(C) for the third such year shall be 50 percent; and

(D) for the fourth such year 33⅓ percent.

(3) The non-Federal share of payments under this Act may be in cash or in kind fairly evaluated, including planned equipment or services.

(b) Not more than 15 percent, or 1,000,000, whichever is greater of the funds appropriated under this Act in any fiscal year may be paid to eligible alliance in any single State.

EVALUATION AND DISSEMINATION

SEC. 10. (a) The Secretary shall conduct an annual evaluation of grants made under this Act to determine—

(1) the type of activities assisted under this Act;

(2) the impact upon the educational characteristics of the elementary and secondary schools from activities under this Act;

(3) the extent to which activities assisted under this Act have improved or expanded the nature of support for elementary and secondary education in the community or in the State, as the case may be; and

(4) a list of specific activities assisted under this Act which show promise as model programs to carry out the purpose of this Act.

(b) The Secretary shall disseminate to State and local educational agencies and other participants in the eligible alliance program information relating to the activities assisted under this Act.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the Act may be cited as the "Alliance for Education Act of 1987".

PURPOSE

SECTION 2. The stated purpose of the Act is to encourage the creation of alliances between public schools and the private sector in order to apply the resources of the private and nonprofit sectors of the community to the needs of elementary and secondary schools in the community, to encourage business to work with educationally disadvantaged as well as gifted students, to apply community resources to improve elementary and secondary education, and to enrich the career awareness of secondary school students.

DEFINITIONS

SECTION 3. This section defines terms used in the Act. Several of the terms are defined in the customary manner. "Board" means the Alliance for Education Board established pursuant to the Act. "Eligible Alliance" means a local educational agency and business concerns, private organizations, institutions of higher education, museums, libraries, educational television stations, and State agencies.

PROGRAM AUTHORIZED

SECTION 4. (a) Authorizes the Secretary of Education to make grants in accordance with provisions of the Act; and (b) authorizes $30 million for the fiscal year 1988 and for each of three succeeding fiscal years.

AUTHORIZED ACTIVITIES

SECTION 5. This section states that a grantee may use payments received under the Act for model cooperative programs applying private and nonprofit sector resources to elementary and secondary schools in the community, for projects to encourage business and others in the alliance to work with educationally disadvantaged and with gifted students, for projects to apply community resources to improve the education of students in elementary and secondary schools in the community, for projects to enrich the career awareness of secondary school students, for statewide activities including the development of model State statutes for the support of cooperative ties between the private sector and schools, for special staff training projects, for academic internship programs, and for tutorial and volunteer work in elementary and secondary schools.

ALLIANCE FOR EDUCATION BOARD

SECTION 6. This section establishes within the Department of Education an Alliance for Education Board, composed of 15 members from specified backgrounds appointed by the President, and including the Secretaries of Education, Commerce, and Labor, and the Chairman of the National Endowment for the Arts and the National Endowment for the Humanities. The section sets forth duties of the Board, meeting criteria, and compensation for service including per diem in lieu of subsistence.

APPLICATION

SECTION 7. This section sets forth application criteria, including a requirement for assurances will pay the non-Federal share and assurances that steps will be taken to continue the activities covered under the application after the grant period.

APPROVAL OF APPLICATIONS

SECTION 8. This section directs the Secretary to approve applications in accordance with Board-established criteria, and specifies that no application may be approved that is deemed by the State education agency as inconsistent with State plans for elementary and secondary education.

PAYMENTS; FEDERAL SHARE; LIMITATION

SECTION 9. This section sets the Federal share of the cost of the activities funded as 90 percent for the first year, 75 percent for the second year, 50 percent for the third year, and 33⅓ percent for the fourth year. The non-Federal share may be in cash or in kind, and not more than 15 percent or $1,000,000 whichever is the greater of the funds appropriated under the Act in any fiscal year may be paid to eligible alliances in a single State.

EVALUATION AND DISSEMINATION

SECTION 10. This section directs the Secretary to conduct an annual evaluation of grants made under the Act in order to determine the types of activities assisted, the educational impact upon elementary and secondary schools, the extent to which assisted activities have improved or expanded support for schools, and those activities which show promise as model programs. Directs the Secretary to disseminate information on activities assisted under the Act.

By Mr. CRANSTON (for himself, Mr. MATSUNAGA, Mr. DECONCINI, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. GRAHAM, and Mr. LAUTENBERG):

S. 9. A bill to amend title 38, United States Code, to increase the rates of disability compensation and dependency and indemnity compensation for veterans and survivors; to provide additional eligibility for certain educational or rehabilitation assistance to veterans and other eligible individuals with drug or alcohol abuse disabilities; to increase the maximum amount of a home loan which is guaranteed by the Veterans' Administration; to improve housing, automobile, and burial assistance programs for service-disabled veterans; and to extend and establish certain exemptions from sequestration for certain veterans' benefits; and for other purposes; to the Committee on Veterans' Affairs.

SERVICE-DISABLED VETERANS' BENEFITS IMPROVEMENT ACT OF 1987

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I am today introducing S. 9, the proposed "Service-Disabled Veterans' Benefits Improvement Act of 1987." Joining with me as original cosponsors of this measure are five other committee members, Senators MATSUNAGA, DECONCINI, MITCHELL, ROCKEFELLER, and GRAHAM, all of whom serve with me on the committee, and the Senator from New Jersey [Mr. LAUTENBERG].

This measure would provide for a cost-of-living increase in the rates of disability compensation for veterans who suffer from service-connected disabilities and the rates of dependency and indemnity compensation [DIC] for the survivors of veterans who have died from service-connected causes (section 2). In addition, the bill would provide increases in the maximum amount of VA specially adopted housing assistance grants for certain se-

verely disabled, service-connected veterans (section 3), increase the funeral and burial allowance for service-connected deaths (section 4), toll the eligibility period for GI Bill and certain other educational and vocational rehabilitation programs for veterans and other eligible persons who have been prevented from participating in such programs because of alcohol or drug dependence or abuse (section 5), increase the maximum loan guaranty under the VA's home-loan guaranty program (section 6), and increase the amount of the automobile assistance grant provided to certain severely disabled, service-connected veterans (section 7).

Finally, the measure (section 8) would also make permanent the Gramm-Rudman-Hollings sequestration exemptions—currently for fiscal year 1987 only—enacted late last year for the VA's program of vocational rehabilitation for certain service-connected disabled veterans (chapter 31) and the program of educational assistance for survivors and dependents of certain service-connected disabled veterans (chapter 35) and would create a permanent Gramm-Rudman-Hollings sequestration exemption for the VA's home-loan guaranty program (chapter 37).

COMPENSATION RATE INCREASE

The VA's service-connected disability compensation program is at the very heart of our system of veterans' benefits. The Committee on Veterans' Affairs has consistently attached the highest priority to the needs of service-connected disability veterans and the survivors of those who have made the ultimate sacrifice. Meeting the needs of the more than 2.2 million veterans who suffer from disabilities resulting from their service and the 340,000 survivors of those who died from service-connected disabilities will remain my No. 1 priority in veterans' affairs.

Mr. President, the legislation we are introducing today would, in section 2, provide for a compensation and DIC cost-of-living adjustment [COLA] equal to the COLA percentage to be provided for Social Security and VA pension benefits, effective December 1, 1987. As I and other members of the committee have noted on numerous occasions, our commitment to this approach remains strong.

The Congressional Budget Office [CBO] estimates that the Social Security increase will be 4.1 percent. If so, the compensation/DIC increase would cost approximately $352 million in budget authority and $317 million in outlays for fiscal year 1988.

SPECIALLY ADAPTED HOUSING ASSISTANCE

Mr. President, section 3 of our bill would increase by 12.5 percent, from $35,500 to $40,000, effective October 1, 1987, the maximum amount payable in specially adapted housing assistance, under the so-called wheelchair home program, to certain totally and permanently service-connected disabled veterans. The measure would also increase by 12.5 percent, from $6,000 to $6,750, effective October 1, 1987, the maximum amount payable in adapted housing assistance to certain veterans who suffer from service-connected blindness or who have suffered the loss or loss of use of two upper extremities. These programs are codified in chapter 21 of title 38, United States Code.

Under the wheelchair home program, the VA provides veterans who have certain permanent and total service-connected disabilities involving mobility impairments with cash assistance in acquiring suitable housing with adaptations made necessary by the nature of their disabilities. Under current law, these disabled veterans are eligible for a grant not to exceed 50 percent of the cost of the home and necessary land, up to a maximum of $35,500. Veterans eligible for housing assistance grants are principally quadriplegics, paraplegics, amputees, and certain others who, because of their service-connected disabilities, require the use of a wheelchair, braces, a cane, or crutches to move about. Their disabling conditions typically require ramps, special bathroom equipment, extra-large rooms and hallways, and various other adaptations that protect their health and safety.

Increases in the maximum amount of the grant have been provided periodically. When originally enacted in Public Law 80-702 in 1948, the specially adapted housing program provided for assistance of up to $10,000. Since then, the maximum amount of assistance has been increased on six occasions based on legislation I authored or coauthored. The last increase, to $35,500, derived from legislation I introduced in the 98th Congress, was made by Public Law 98-543 and was effective on January 1, 1985. At that time, according to the National Association of Realtors, the average cost of an existing home was $73,100. In October 1986, that average cost had increased to $79,700—a 9-percent increase. According to the latest projections compiled in August by the CBO, the Consumer Price Index is expected to increase by 3.9 percent in fiscal year 1987.

Thus, by raising the maximum limit of the assistance by 12.9 percent, to $40,100, effective October 1, 1987, our bill would counter the effects of inflation on the value of this benefit over the 2½ years preceding that date.

Similarly, our bill would also increase by 12.9 percent, from $6,000 to $6,775, effective October 1, 1987, the maximum amount of assistance for special housing adaptations that is available to certain veterans suffering from service-connected total blindness or the loss or loss of use of both upper extremities. This program of assistance, payable pursuant to section 801(b) of title 38, was enacted in 1980 based on legislation I authored. Under this program, an eligible veteran is entitled to up to a maximum of $6,000 for the purposes of making special adaptations that the Administrator determines are reasonable necessary because of the veteran's disability. This maximum amount was last increased from $5,000 to $6,000, effective January 1, 1985, when the wheelchair grant assistance maximum was increased.

In fiscal year 1985, under both programs, the VA made a total of 540 specially adapted housing grants with an average benefit payment of $29,286. In fiscal year 1986, 499 grants under both programs were made with an average benefit payment of $30,284. The VA has estimated that in fiscal year 1987, a total of 390 grants will be made with an average payment of $30,962.

Based on informal CBO estimates, the cost of providing for these increases would be approximately $2.4 million for fiscal year 1988.

FUNERAL AND BURIAL BENEFITS FOR SERVICE-CONNECTED DEATHS

Mr. President, section 4 of the measure we are introducing today would also provide for an increase of $900—from $1,100 to $2,250—in the allowance which the VA pays, at the request of the survivors, to defray the funeral and burial expenses for a veteran who dies of service-connected causes. This program is codified in chapter 23 of title 38, United States Code.

Until 1974, there was no difference between the funeral and burial benefits paid to the survivors of veterans who died from service-connected causes and those who died from nonservice-connected causes. The amounts so provided for funeral and burial expenses were substantially less than the average funeral and burial costs in this country. In clear recognition of the greater Federal responsibility for service-connected deaths, the Congress corrected that situation, in part, by enacting legislation I proposed to increase substantially, from $250 to $800, the maximum allowance payable for such deaths. That legislation, section 5(a)(2) of the National Cemeteries Act of 1973 (Public Law 93-43), tied the amount of allowances payable to the amount payable under section 8134(a) of title 5, United States Code, on behalf of Federal employees who die from injuries sustained in the performance of their duties.

However, the $800 maximum payable under that title 5 provision was set in 1958 and has not been increased despite the very substantial rise in funeral and burial expenses over the past nearly 30 years. In 1978, the National Association of Funeral Directors

estimated that the average cost of a funeral, including the basic funeral and the casket, had risen to $1,348. On the basis of this data, the Senate adopted my proposal for an increase in the maximum allowance to $1,500. In Public Law 95-479, the Congress raised the maximum to $1,100—approximately 82 percent of the average funeral cost.

According to the National Funeral Directors Association, a study by the Federation of Funeral Directors has found that the cost of an average adult funeral was $2,745 in 1986.

Mr. President, I have long felt that the highest priority of VA programs relating to burial and cemetery benefits should be assistance to the survivors of those veterans who die from service-connected causes. Hence, in view of the substantial increase in the cost of burial since 1978, our measure would increase the maximum allowance in such cases to $2,250, thereby restoring the 82-percent coverage.

Based on informal CBO estimates, the cost of providing for these increases would be approximately $8.8 million for fiscal year 1988.

TOLLING THE RUNNING OF DELIMITING PERIODS BY REASON OF DRUG OR ALCOHOL CONDITIONS

Mr. President, in the GI bill Improvement Act of 1977, Public Law 95-202, the Congress adopted legislation I proposed to amend the Vietnam Era GI bill and the Survivors' and Dependents' Educational Assistance (chapters 34 and 35, respectively) to grant extensions of the 10-year delimiting period in the case of an eligible veteran or an eligible spouse who is prevented from pursuing a program of education during that period due to a mental or physical disability not the result of willful misconduct. Similar authorities were subsequently incorporated in all of the educational assistance programs authorized by title 38—the chapter 30, new GI bill program, the chapter 31, Vocational Rehabilitation Program, and the chapter 32, Post-Vietnam Era Veterans Program. Under these provisions, the delimiting period does not run during any period of time that the veteran or eligible spouse is determined to have been unable to pursue training because of the disability.

However, there have been a number of instances in which the VA has denied a delimiting-period extension to an otherwise eligible veteran when the condition on which the veteran based his or her claim was an alcohol or drug abuse or dependence disability, which the VA considers categorically to be a condition due to willful misconduct. The VA has based its denial in these cases on the legislative history of the 1977 provision that addressed the issue of how determinations of disability should be made for the purposes of the extension. In particular, the report of the Veterans' Affairs Committee (S. Rept. No. 95-468) on the provision which was enacted as section 203(a)(1) of Public Law 95-202, in discussing the concept of "willful misconduct," stated at pages 69-70:

> In determining whether the disability sustained was a result of the veteran's own "willful misconduct," the Committee intends that the same standards be applied as are utilized in determining eligibility for other VA programs under title 38.

The report further referenced VA regulations and manual provisions relating to the determination of willful misconduct for the purposes of determining service-connected disability. Under the VA's interpretation of those standards, in section 3.301(C)(2) and (3) of title 38, Code of Federal Regulations, alcoholism and drug addiction and injuries proximately and immediately resulting from the effects of the deliberate ingestion of an alcoholic beverage or voluntary use of a drug—such as driving while under the influence of alcohol or a drug—are considered to be the result of willful misconduct.

In 1979, our committee reexamined the practical consequences of denying a delimiting period extension in such cases and the differences between awarding such an extension on the grounds of alcohol or drug disabilities and awarding other VA benefits, such as compensation or pension, based on such disabilities. As a result of this reexamination, the committee saw no substantial purpose to be served by denying a veteran a GI bill delimiting-period extension when the veteran had been prevented by a drug or alcohol disability, during part of all of the ordinary 10-year delimiting period, from using GI bill educational assistance. In fact, the committee noted its view that allowing extensions in such cases was desirable because helping veterans pursue their educations would have considerable value in contributing to achieving and maintaining the medical, social, and economic rehabilitation of veterans recovering from disabilities related to alcohol or drugs.

In contrast, the committee noted that some undesirable consequences might flow if a similar rule were applied for purposes of other VA benefit programs, such as service-connected compensation, where the rate and duration of benefits depend directly upon the severity and duration of the disability. If an individual were to be granted disability compensation for alcoholism or drug addiction, there would be a strong financial incentive established—in the form of a higher rate of compensation or the continuation of receipt of compensation—for the worsening or prolongation of the disability, either of which can, to a greater or lesser degree, be within the control of the veteran because they depend upon the amount, frequency, and duration of his or her consumption of alcoholic beverages or drugs.

Thus, the committee reported in S. 870—and the Senate passed in section 201(2) of H.R. 5288—a provision to establish that an alcohol or drug dependence or abuse disability from which a veteran or eligible spouse has recovered will not, solely for purposes of deciding requests for delimiting-period extensions, be considered to be the result of willful misconduct.

Similarly, in S. 1188, the bill reported by the committee in 1980 to revise and update chapter 31, relating to VA rehabilitation programs for service-connected disabled veterans, the Senate passed on September 4, 1980, a comparable provision to provide for the tolling of a service-connected disabled veteran's delimiting period for a chapter 31 rehabilitation program on account of an alcohol or drug disability.

However, despite the committee's strongest urgings, the House would accept neither the GI bill nor the rehabilitation program provision for delimiting-period extensions based on drug or alcohol disabilities.

In 1981, in S. 921, the Veterans' Programs Extension and Improvement Act of 1981, the Senate approved similar provisions, and again the House refused to accept them. In 1982, in S. 2913, the proposed Veterans' Compensation, Education, and Employment Amendments of 1982, the Senate passed these provisions with revisions to address certain concerns expressed by the VA; again the House refused to accept the Senate provisions. In 1984, the Senate again approved provisions in S. 2736, largely similar to those approved in 1982, and again, the House refused to accept them.

Mr. President, I continue to believe that the opportunity to use VA educational and rehabilitation benefits can be extremely important to the readjustment and rehabilitation of the Vietnam-era and service-connected disabled veterans involved and that the delimiting period extensions for those who were, but are no longer, prevented by alcohol or drug disabilities from using those benefits is fully consistent with the readjustment and rehabilitation goals of these programs. I am moving forward with this rehabilitative effort again at this point because of the great and concerted efforts made by both Houses late last year in enacting major new drug and alcohol abuse legislation, the Anti-Drug Abuse Act of 1986, Public Law 99-570. In that legislation, Congress clearly recognized the imperative of providing individuals who have drug or alcohol conditions with every reasonable opportunity to participate in programs that can help them return to full, productive lives.

In view of the present national priority on ending drug and alcohol dependency in our society, I am hopeful that the House committee and the Veterans' Administration will be willing to reconsider their opposition to these provisions which we have repeatedly passed in the Senate before.

Thus, the provisions in section 5 of the measure we are introducing today, which are derived from the provisions passed by the Senate in 1984, would amend chapters 30, 31, 32, 34, and 35 to permit the Administrator to extend delimiting periods in the cases of veterans and other eligible persons who have been prevented from using their education or rehabilitation entitlements under title 38 as a result of alcohol or drug dependence or abuse conditions.

In 1984, in connection with the S. 2736, CBO estimated that the number of veterans who would be affected by tolling extensions would be too small for the enactment of these provisions to result in a significant cost.

INCREASE IN LOAN GUARANTY MAXIMUM

Mr. President, the VA's home-loan guaranty is designed to substitute, in large measure, for the down payment that would otherwise be required when a veteran purchases a home. Under current law, the guaranty is limited to 60 perent of the loan amount or $27,500, whichever is the lesser, with regard to conventionally built homes and condominium apartments. Lenders are thus assured of the substantial protection afforded by the VA loan guaranty and are generally willing to make loans to veterans without the necessity of a downpayment or with a lower downpayment than would otherwise be required. The VA Home-Loan Guaranty Program is codified in chapter 37 of title 38, United States Code.

As my colleagues are well aware, housing prices have risen substantially since the most recent increase in the VA loan-guaranty maximum, enacted by the Congress, effective on October 1, 1980. According to data collected by the National Association of Realtors, the median purchase price of an existing home in October 1980 was $62,700. By October 1986—the most recent month for which data are available—the median purchase price of an existing home had risen by 27 percent to $79,700. In the case of new homes, the National Association of Home Builders advises that in calendar year 1980 the median purchase price was $64,600; by the end of calendar year in 1986, the price had risen to $91,400—an increase of 41.5 percent. In addition, according to the latest CBO projections, the Consumer Price Index is expected to increase by 3.9 percent in fiscal year 1987. Our bill adopts the more modest of the two 7-year increases measure. By raising the guaranty by 31 percent—the percentage increase in the existing home median purchase price plus the projected 3.9-percent fiscal year CPI increase—to $36,000, effective October 1, 1987, section 6 of this bill would help to ensure that the value of the VA home-loan guaranty keeps pace with increases in the housing market.

Mr. President, the continuing popularity of and demand for the VA's Home Loan Program is clearly evident. In fiscal year 1986, the VA guaranteed 313,469 home loans totaling a record $21.9 billion and issued commitments to guarantee loans totaling another $12.4 billion. This represented a significant increase over fiscal year 1985 when the VA guaranteed $11.45 billion in loans, representing 178,931 loans. But for hundreds of thousands of other veterans seeking to use their VA home-loan guaranty entitlements, the cost of housing is so high that they cannot find any decent housing for the maximim price—$110,000—which the VA loan-guaranty maximum will enable them to pay on a nodownpayment loan.

This increase will help ensure that, to the extent interest rates and other economic factors generally make home purchases possible, the VA Loan-Guaranty Program will continue to play the role Congress intends of helping veterans become homeowners.

This provision of S. 9, Mr. President, is similar to S. 2265 which I introduced in the 98th Congress and to S. 9 which I introduced in the 99th Congress—both of these bills proposed increases in the maximum to $35,000. Despite the passage by the House of Representatives in the 98th Congress (section 1 of H.R. 5617) and the passage by the Senate in the 99th Congress (section 303 of S. 1887) of provisions that would have substantially increased the loan-guaranty maximum and despite my best efforts, the enactment of an increase was not achieved.

Part of the reason for this reluctance to enact an increase in the last several years has been concern about the high rates of default and foreclosures on VA-guaranteed home loans. However, during that period the Congress and the administration have focused a great deal of attention on the program and the development of reasonable means to bring down the default and foreclosure rates and reduce the Government's liability in the event of a foreclosure. Thus, in the Deficit Reduction Act of 1984—Public Law 98-369—Congress enacted provisions establishing criteria for determining when the VA pays the guaranty on a property versus taking title to the property and limiting the number of vendee loans which the VA may make. Subsequently, in Public Law 99-576, enacted on October 28, 1986, Congress required the development of new underwriting criteria for the approval of VA home loans.

As a result of efforts such as these, I believe that those who have shied away from supporting an increase in the guaranty maximum may now consider the program to be on a firmer footing than previously and that these actions should create a more favorable environment for consideration of the need for an appropriate increase in the loan-guaranty maximum. I am committed to continuing to pursue the enactment of such an increase in the 100th Congress.

In 1985, the CBO estimated that the first-year cost of providing for an increase to $33,500 million would be zero budget authority and $6 million in outlays. An increase to $36,000 would entail similar costs.

AUTOMOBILE ASSISTANCE ALLOWANCE

Mr. President, section 7 of the measure we are introducing would also provide for an increase in the maximum amount of the automobile assistance allowance, provided by the VA to veterans with certain severe service-connected disabilities. The bill would increase by 10.9 percent, the allowance from $5,000 to $5,530, effective October 1, 1987.

The program of automobile assistance, now codified in chapter 39 of title 38, United States Code—was established by the Congress in Public Law 79-663, enacted in 1946. Under this program, veterans who have suffered the service-connected loss or loss of use of one or both feet, or one or both hands, or service-connected blindness are entitled to a one-time VA grant to assist them in purchasing an automobile. This is a highly deserving category of veterans, and I believe all of my colleagues would agree that this benefit for them should not be permitted to be diminished over the years by the rising cost of a new car.

That was the position of the Congress in 1970 when it enacted section 2 of Public Law 91-666, which I authored and which increased, effective January 11, 1971, the maximum amount of the allowance payable toward the purchase of an autombile or other conveyance from the original $1,600 to $2,800. According to the Senate report accompanying the Senate version of that legislation—Senate Report No. 91-1212, page 14—the purpose of the 1971 increase was to "reestablish, to an effective degree, the comparability which originally existed between the cost of an automobile or other conveyance and the monetary assistance provided for its purchase."

In 1974, 1978, 1981, and 1984, increases—based on legislation I authored—were enacted into law by Public Laws 93-548, 95-479, 97-66, and 98-543, respectively. Since the effective date of the last increase, January 1, 1985, the Bureau of Labor Statistics' Consumer Price Index component for

new automobiles has risen by 6.7 per cent. As previously noted, according to the latest CBO projections compiled in August 1986, the Consumer Price Index is expected to increase by 3.9 percent in fiscal year 1987.

Increasing the automobile assistance allowance by 10.6 percent, from $5,000 to $5,530, would thus help protect the value of this benefit from being eroded by inflation.

According to the VA, 909 veterans received automobile assistance allowances in fiscal year 1986 and the average benefit payment was $4,783. In fiscal 1987, the VA estimates that 550 veterans would receive assistance under this program.

The CBO has informally estimated that the cost of providing for this increase would be approximately $0.5 million for fiscal year 1988.

SEQUESTRATION EXEMPTIONS

Section 8 of our bill would modify provisions enacted in section 601 of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986—Public Law 99-576—which provided exemptions from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985—Public Law 99-177—commonly referred to as "Gramm-Rudman," for certain VA programs—so as to provide for appropriate supplementations of those exemptions.

BACKGROUND

Either in the original Gramm-Rudman law or in subsequent legislation, Congress has enacted provisions making the following categories of VA programs at least temporarily or partially exempt from sequestration or similar reductions:

First, permanent exemptions were provided for most benefits for which entitlement is based on service-connected death or disability, including compensation paid to veterans with service-connected disabilities; dependency and indemnity compensation [DIC] paid to the survivors of those who died from service-connected causes; specially adapted housing grants, mortgage protection life insurance, and automobile and adaptive equipment grants for certain service-connected-disabled veterans; and burial benefits for those who die from service-connected causes. The compensation and DIC exemptions were enacted as permanent Gramm-Rudman exemptions in the original legislation, in section 255(b) of Public Law 99-177. Exemptions for the other benefits were enacted in the 1986 veterans' bill, section 601 of Public Law 99-576, effective beginning with fiscal year 1987.

Second, section 601 of Public Law 99-576 provided 1-year-only—fiscal year 1987—exemptions for two programs of benefits for which entitlement is based on service-connected death or disability; namely, vocational rehabilitation for certain service-connected-disabled veterans and educational assistance for the survivors of those who die from service-connected causes and the dependents of veterans with service-connected disabilities rated totally and permanently disabling.

Third, section 601 of Public Law 99-576 provided two VA revolving funds that are entirely self-sustaining—that is, never require appropriations and do not contribute to the budget deficit—namely the special therapeutic and rehabilitation activities fund, which is used to provide VA patients with compensated work therapy through contracts with private firms which pay into the fund amounts payable to the patients as compensation for the work they perform, and the canteen service revolving fund, which is used for the operation of canteen services, such as cafeterias and gift and snack shops, at VA medical facilities.

Fourth, section 255(g)(2) of Gramm-Rudman provided a permanent exemption for the Government's "prior legal obligations" under VA-administered insurance programs and, after the administration ruled, erroneously in my view, that that exemption did not cover insurance policy loans under those programs, Congress enacted in section 601 of Public Law 99-576 a permanent exemption for such loans, effective beginning in fiscal year 1987.

Fifth, in the case of VA-guaranteed home loans, Congress enacted two measures, Public Law 99-255 and section 1 of Public Law 99-322, raising the cap which the March 1, 1986, fiscal year 1986 sequestration order—based on what proved to be a far-too-low estimate of the volume of VA loan guaranty commitments that would be issued in fiscal year 1986 in absence of a cap—had placed on the making of VA loan guaranty commitments in fiscal year 1986. Ultimately, the second increase, to $38.28 million, made on the basis of an updated estimate as of mid-May of the fiscal year 1986 volume if uncapped, exceeded by about $4 billion the total amount of commitments issued by the VA in fiscal year 1986 and thus provided a de facto exemption for that year.

PROPOSED EXEMPTION FOR SERVICE-CONNECTED BENEFITS

Mr. President, as I have indicated, most service-connected VA benefits have been made permanently exempt from sequestration. Only in the cases of the VA's programs of rehabilitation for service-connected disabled veterans, under chapter 31 of title 38, United States Code, and the program of educational assistance for survivors and dependents, under chapter 35 of title 38, have the exemptions been limited to one year.

The history of the legislation, enacted in section 601 of Public Law 99-576, providing for these two limited restrictions is as follows:

On March 12, 1986, the then-chairman of the Veterans' Affairs Committee [Mr. MURKOWSKI] and committee member DECONCINI each introduced bills to provide exemption for various VA programs. Senator MURKOWSKI's bill, S. 2186, would have provided no exemption for the chapter 35 dependents' and survivors' educational assistance and, in the case of the chapter 31 vocational rehabilitation program, would have provided an exemption limited to the cases of veterans with service-connected disabilities rated 50 percent or more disabling. Senator DECONCINI's bill, S. 2187, and a subsequent measure that he introduced on May 8, S. 2423, would have provided permanent exemptions for both programs.

At the committee's June 26, 1986, meeting, then-Chairman MURKOWSKI placed before the committee legislation, proposed to be reported as an original bill, that contained no exemption for the dependents' and survivors' educational assistance program. Thus, during the meeting, Senator DECONCINI proposed an amendment to add a permanent exemption for the chapter 35 program. However, his amendment, which I, together with Senators MATSUNAGA, MITCHELL, ROCKEFELLER, and SPECTER, supported, failed by a tie vote of 6 to 6 to be adopted.

With respect to the chapter 31 program, the measure that Senator MURKOWSKI put before the committee reflected a compromise agreement among the members of the committee to provide for a 1-year, fiscal year 1987 only, exemption for that program. As part of the compromise on the chapter 31 program, it was agreed that the committee would conduct a review of that program during the next Congress.

Although the House of Representatives passed legislation, in H.R. 5299, that would have permanently exempted both the chapter 31 and chapter 35 programs, the compromise agreement enacted in Public Law 99-576 on these and various other House and Senate measures contained only the 1-year exemptions for each program.

The bill we are introducing today would provide unrestricted exemptions for these programs, effective beginning in fiscal year 1987.

Mr. President, I regret that we were not able last year to enact permanent exemptions for these high-priority service-connected benefits and am hopeful that we will have better success this year. Regarding the chapter 31 program, I plan to honor the agreement reached last year in our committee for a review of that program during this Congress. However, I strongly believe that any problems that may come to light regarding the program should be remedied by administrative or legislative modifica-

tions of the program—not through a limitation on that sequestration exemption.

With respect to the chapter 15 program, I remain convinced that, in light of the high moral obligation which underlies this program, the sequestrian exemption for it should not be time limited. I see no basis for distinguishing between this program of recompense through educational assistance for those whose veteran spouse or parent has died as a result of a service-connected disability and the DIC program of recompense through cash assistance for those same spouses and dependents.

PROPOSED EXEMPTION FOR VA HOME LOAN GUARANTIES

Mr. President, as I have noted, Congress has not enacted a Gramm-Rudman exemption for the VA's home-loan guaranty program. However, in fiscal year 1986 Congress twice raised the cap that had been placed on the program under the March 1 sequester order, and the level to which the cap was raised ultimately exceeded the total amount of guaranty commitments that the agency issued during that fiscal year. Thus, the sequester order had no impact on the program in fiscal year 1986.

For fiscal year 1987 and subsequent years, despite efforts in both Houses last year to provide an exemption, no legislation has been enacted to exempt the program from sequestration.

Rather, in section 601 of Public Law 99-576, Congress enacted only a requirement for the VA, in any year in which a sequestration occurs, to report to the Congress on a monthly basis on the level of activity in the program.

In the Senate, Senator DECONCINI had introduced on May 8 a veterans' program Gramm-Rudman exemption bill, S. 2423, which included a permanent exemption for the program. The bill introduced by Senator MURKOWSKI, S. 2186, on March 12 did not include such an exemption.

The original bill reported by the committee contained no exemption—only the monthly reporting requirement.

The committee's stated reasoning was that, since Congress in fiscal year 1986 had already demonstrated its ability and willingness to enact legislation to protect this program and monthly reports would give the Congress clear opportunity to act to do so when and if the need for such action should arise, a statutory exemption was unnecessary.

Although the House passed, in H.R. 5299, a permanent exemption for the home loan program, in the negotiations on the overall legislation the committees reached agreement on only the monthly reporting requirement and the exemption was dropped.

I believe that this program should be exempted for essentially three reasons. First, as long as a fee is charged for the issuance of VA guaranties to veterans who have no service-connected disabilities, a sequestration cap reducing the total amount of guaranties issued in the year of the sequestration actually would increase—not decrease—the deficit in the fiscal year of the sequestration. For example, according to the August 20, 1986, "snapshot" report issued by the Directors of CBO and the Office of Management and Budget pursuant to section 251 of Gramm-Rudman, a fiscal 1987 sequestration reduction in the VA loan-guaranty program would have increased the fiscal year 1987 deficit by over $9 million. In subsequent years, the reduction in guaranties would be expected to reduce the deficit, but the extent of any such impact would be reduced by the steps that the VA is taking, as a result of provisions enacted in section 402 of Public Law 99-516, to tighten up its underwriting standards in order to avoid guaranteeing loans that would be the most likely to result in foreclosure.

Second, based on the experience in fiscal year 1986, it seems likely that, if the program is ever again threatened with a substantial interruption in the issuance of guaranty commitments due to sequestration, Congress would act swiftly to raise the sequestration cap in order to avoid such an interruption. Thus, an exemption would simply avoid the need for legislative action that would provide annual exemptions.

Third, if a sequestration reduction in the issuance of VA loan-guaranty commitments were actually to occur, it seems clear that the sequestration would operate extremely inequitably. The administration indicated in fiscal year 1986 that it would implement sequestration by cutting off the issuance of commitments when the sequestration cap was reached. Thus, the veterans whose home loan applications were approved after the cap is reached would be denied a guaranty at that point and would be at risk of having the purchase agreement fall through before the issuance of guaranty commitments is resumed at the start of the next fiscal year. Those veterans would in effect be denied the benefit in toto. Other veterans would be completely unaffected.

I consider it unacceptable for equally deserving veterans to be treated so differently with respect to this important benefit. Yet this is what a sequestration almost certainly would bring about.

Thus, our bill would provide an exemption for the VA's home-loan guaranty program.

MODIFICATION OF EFFECTIVE DATE OF EXEMPTIONS FOR TWO SELF-SUSTAINING REVOLVING FUNDS

Both the original House-passed H.R. 5299 and the Senate Veterans' Affairs Committee reported Gramm-Rudman exemptions bill, S. 2885, contained provisions for permanent exemptions for the VA's Special Therapeutic and Rehabilitation Activities Fund and Canteen Service Revolving Fund, and, as noted in the Senate Committee report—page 34 of S. Rept. No. 99-494—The administration supported these exemptions.

The rationale for these exemptions is that these revolving funds are self-sustaining, that is, they require no appropriation of tax funds and do not contribute to the deficit.

Both the House and Senate Veterans' Affairs Committees, in supporting these exemptions, did not believe that a retroactive effective date applicable to fiscal year 1986 was necessary or advisable. This was because the staffs were under the impression that the fiscal year 1986 sequestration meant only the imposition of caps of fiscal year 1986 obligations from the revolving funds, with the caps being at levels 4.3 percent below the estimated levels of obligations in the absence of sequestration; because the VA had informally advised the committees that, although the caps were an inconvenience, they entailed no hardship or significant adverse programmatic impact in fiscal year 1986; and because, since the bill was being enacted very near to or after the close of that fiscal year, a retroactive effective date was not expected to have any impact.

After final passage of the bill, however, we learned from the VA that Gramm-Rudman was being interpreted by the Office of Management and Budget in such a way as to require the VA to pay to the Treasury from these revolving funds the sequestered amounts—the differences between the estimated obligations and the caps and that the VA General Counsel agreed with that interpretation.

For the canteen fund, the payment was $8.1 million; for the rehabilitation activities fund, $100,000.

Mr. President, the effect of this required one-time payment—in light of the prospective, permanent exemption that has been enacted—was to reduce from $12 million to $4 million the amount available in the canteen fund to carry out planned renovations and equipment purchases, an obviously severe cutback. The source of this $8 million was amounts paid by VA hospital patients, employees, and visitors for goods and services they purchased at VA canteens. Obviously, the veteran-patient's expectation in making a purchase at a canteen shop is that the purchase price will go toward the cost of the merchandise to the canteen, with the markup being used for canteen operating expenses—for example, canteen-employee salaries—and capital costs. The effect of the sequestration was to extract a levy from—in essence

to impose a hidden tax on—canteen operations that will obviously result in the postponement of needed improvements and thus the provision of shabbier, less efficient canteen services.

In case of the rehabilitation fund, the $100,000 loss for a program with an annual operating budget of only about $2.3 million means a significant administrative burden for a small, very worthwhile program that was established statutorily in 1976 by legislation I authored—section 105 of Public Law 94-581—and that I strongly support as a cost-effective means of helping disabled veterans regain economic productivity and become healthier, more self-sufficient individuals. In fact, we have just succeeded after a 2-year effort, in enacting section 205 of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Public Law 99-576, a provision to strengthen this program by providing that payments to low-income, disabled veterans participating in the program will not be considered income so as to reduce the VA pensions of veteran participants.

It is very clear to me that, if this fiscal year 1986 payment requirement had come to light before final action on the 1986 veterans legislation enacted as Public Law 99-576, I, and I suspect others of us participating in the negotiations on the bill, would have done all possible—probably successfully in my view—to make these revolving fund exemptions retroactive to fiscal year 1986 and thus avoid the requirement for the payments.

To provide for a correction of the situation and mandate the return of the amounts involved to the revolving funds, our bill would provide for the exemptions for these two funds to take effect retroactively with respect to fiscal year 1986 and would specifically direct the Secretary of the Treasury to take such action as is necessary to implement the provision for a fiscal year 1986 exemption for these revolving funds.

Mr. President, I ask unanimous consent that the text of S. 9 be printed in the RECORD at this point.

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

S. 9

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

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) This Act may be cited as the "Service-Disabled Veterans' Benefits Improvement Act of 1987".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES.

(a) IN GENERAL.—(1) The Administrator of Veterans' Affairs shall, as provided in paragraph (2), increase, effective December 1, 1987, the rates of and limitations on Veterans' Administration disability compensation and dependency and indemnity compensation.

(2)(A) In the case of each of the rates and limitations in sections 314, 315(a), 362, 411, 413, and 414 of title 38, United States Code, that were increased by amendments made by title I of the Veterans' Compensation Rate Increase and Job Training Amendments of 1985 (Public Law 99-238), the Administrator shall further increase such rates and limitations, as in effect on November 30, 1987, by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1987, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Administrator may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1988, the Administrator shall publish in the Federal Register the rates and limitations being increased under this section and the rates and limitations as so increased.

SEC. 3. SPECIALLY ADAPTED HOUSING ASSISTANCE.

(a) INCREASE IN MAXIMUM GRANTS.—Section 802 is amended—

(1) in subsection (a), by striking out "$35,500" and inserting in lieu thereof "$40,100"; and

(2) in subsection (b), by striking out "$6,000" and inserting in lieu thereof "$6,775".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1987.

SEC. 4. SERVICE-CONNECTED DEATH BENEFITS.

(a) INCREASE IN MAXIMUM BURIAL AND FUNERAL EXPENSES AWARD.—Section 907 is amended by striking out "$1,100" and inserting in lieu thereof "$2,250".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 1987.

SEC. 5. TOLLING EDUCATIONAL AND REHABILITATION ASSISTANCE DELIMITING PERIODS BY REASON OF INCAPACITY DUE TO DRUG OR ALCOHOL CONDITIONS.

(a) EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE ALL-VOLUNTEER FORCE.—Section 1431(d) is amended—

(1) by inserting "(1)" before "In";

(2) by inserting at the end the following new paragraph:

"(2)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of an eligible individual in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) such individual has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (1) of this subsection, an eligible individual's application for and extension of the 10-year period for use of entitlement under this chapter because of such a condition may be granted if such individual files an application for the extension not later than 1 year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) The period of time during which, based on the existence of such a condition, such 10-year period does not run shall not exceed the lesser of—

"(I) the period during which the eligible individual was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such individual demonstrates, to the satisfaction of the Administrator, that such individual was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the 10-year period with respect to such individual will again begin running on whichever of the following first occurs—

"(I) the first day, following the condition becoming sufficiently under control to enable such individual to pursue such individual's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for such individual to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

"(II) the day after the fourth year of the extension.".

(b) PROGRAMS OF REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES.—Section 1503(b)(1) is amended—

(1) by inserting "(A)" before "In";

(2) by inserting "(other than a condition described in subparagraph (B)(ii) of this paragraph)" after "medical condition" in subparagraph (A), as so redesignated; and

(3) by inserting at the end the following new subparagraph:

"(B)(i) Subject to clauses (iii) and (iv) of this subparagraph, in any case in which the Administrator determines, under regulations which the Administrator shall prescribe, that a veteran has been prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility prescribed in subsection (a) of this section because a condition described in clause (ii) of this subparagraph made it infeasible for the veteran to participate in such a program, the 12-year period of eligibility shall not run during the period of time that the veteran was so prevented from participating in such a program.

"(ii) A condition referred to in clause (i) of this subparagraph is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(I) the veteran has received recognized treatment or has participated in a program of rehabilitation for the condition, and

"(II) the condition is sufficiently under control to enable the veteran to participate in a vocational rehabilitation program under this chapter.

"(iii) Clause (i) of this subparagraph applies only if the veteran has filed an application under this paragraph not later than 1 year after whichever of the following last occurs:

"(I) The last date of the period of eligibility otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to clause (i) of this subparagraph are published in the Federal Register.

"(v) The period of time during which, pursuant to clause (i) of this subparagraph, the 12-year period of eligibility does not run shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for a condition described in clause (ii) of this subparagraph plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by such condition from participating in a vocational rehabilitation program under this chapter, or

"(II) 4 years.

"(vi) When pursuant to clause (i) of this subparagraph a period of eligibility does not run for a period of time, such period of eligibility shall again begin to run on whichever of the following first occurs—

"(I) the first day, following such condition becoming sufficiently under control to enable the veteran to participate in such program of vocational rehabilitation, on which it is reasonably feasible, in accordance with under such regulations, for the veteran to participate in such a program, or

"(II) the day after the period of eligibility has not run, pursuant to such clause, for a period of time equalling 4 years.".

(c) EDUCATIONAL ASSISTANCE FOR POST-VIETNAM ERA VETERANS.—Section 1632(a) is amended—

(1) in paragraph (2)(A)—

(A) by inserting "or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section," after "misconduct"; and

(B) by inserting "(except as provided in paragraph (4)(B) of this subsection)" after "length of time";

(2) in paragraph (3) by inserting "because of such disability," after "subsection"; and

(3) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for such extension not later than 1 year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following occurs—

"(I) the first day, following the condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

"(II) the day after the end of the fourth year of the extension.".

(d) EDUCATIONAL ASSISTANCE FOR VIETNAM-ERA VETERANS.—Section 1662(a) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by inserting "or because of a condition (and under the circumstances) described in paragraph (4) of this subsection," after "misconduct"; and

(B) in the second sentence, by inserting "because of such disability" after "sentence"; and

(2) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragraph (1) of this subsection is an alcohol or drug dependence or abuse condition of a veteran in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) the veteran has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (1) of this subsection, a veteran may be granted an extension of the applicable delimiting period because of such a condition if the veteran files an application for the extension not later than 1 year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program or rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the veteran was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as the veteran demonstrates, to the satisfaction of the Administrator, that the veteran was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the delimiting period with respect to the veteran will again begin running on whichever of the following first occurs—

"(I) the first day, following such condition becoming sufficiently under control to enable the veteran to pursue the veteran's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for the veteran to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

"(II) the day after the end of the fourth year of the extension.".

(e) EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS.—Section 1712(b) is amended—

(1) in paragraph (2)—

(A) by inserting "or because of a condition (and under the circumstances) described in paragraph (4)(A) of this section," after "misconduct";

(B) by inserting "(except as provided in paragraph (4)(B)(ii) of this subsection)" after "length of time"; and

(C) by inserting "because of such disability," after "sentence"; and

(2) by inserting at the end the following new paragraph:

"(4)(A) A condition referred to in paragraph (2) of this subsection is an alcohol or drug dependence or abuse condition of an eligible person in a case in which it is determined, under regulations which the Administrator shall prescribe, that—

"(i) such person has received recognized treatment or participated in a program of rehabilitation for the condition, and

"(ii) the condition is sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter.

"(B)(i) Notwithstanding the provisions of paragraph (2) of this subsection, an eligible person may be granted an extension of the applicable delimiting period because of such a condition if such person files an application for such extension not later than 1 year after whichever of the following last occurs:

"(I) The last date of the delimiting period otherwise applicable under this section.

"(II) The termination of the last period of such treatment or such program of rehabilitation.

"(III) The date on which final regulations prescribed pursuant to subparagraph (A) of this paragraph are published in the Federal Register.

"(ii) An extension of the applicable delimiting period because of such a condition shall not exceed the lesser of—

"(I) the period during which the eligible person was receiving treatment or participating in a program of rehabilitation for the condition plus such additional length of time as such person demonstrates, to the satisfaction of the Administrator, that such person was prevented by the condition from initiating or completing such program of education, or

"(II) 4 years.

"(iii) When such an extension is granted, the delimiting period with respect to such person will again begin running on whichever of the following first occurs—

"(I) the first day, following the condition becoming sufficiently under control to enable such person to pursue such person's chosen program of education under this chapter, on which it is reasonably feasible, as determined in accordance with such regulations, for such person to initiate or resume pursuit of a program of education with educational assistance under this chapter, or

"(II) the day after the end of the fourth year of the extension.".

SEC. 6. HOME-LOAN GUARANTY PROGRAM.

(a)(1) INCREASE IN MAXIMUM GUARANTY.—Section 1810(c) is amended by striking out "$27,500" and inserting in lieu thereof "$36,000".

(2) Section 1811(d)(2)(A) is amended by striking out "$27,500" both places it appears and inserting in lieu thereof "$36,000".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1987.

SEC. 7. AUTOMOBILE ASSISTANCE ALLOWANCE.

(a) INCREASE IN MAXIMUM ALLOWANCE.—Section 1902(a) is amended by striking out "$5,000" and inserting in lieu thereof "$5,530."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 1987.

SEC. 8. EXEMPTION OF CERTAIN PROGRAMS FROM SEQUESTRATION.

(a) IN GENERAL.—Section 113 is amended—

(1) in subsection (a)—

(A) in clauses (4) and (5) by striking out "(but only with respect to fiscal year 1987)" each place it appears; and

(B) by adding at the end the following new clause:

"(6) Benefits under chapter 37 of this title, relating to housing and small business loans for certain veterans and for the spouses and surviving spouses of certain veterans.";

(2) by striking out subsection (e); and

(3) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(b) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall apply with respect to a sequestration ordered, or a sequestration law enacted, for a fiscal year after fiscal year 1986.

(2)(A) Notwithstanding subsection (b) of section 601 of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Public Law 99-576), clause (2) of subsection (b) of section 113 of title 38, United States Code, as added by subsection (a) of section 601 of such Act, shall apply with respect to a sequestration order issued, or a sequestration law enacted, for a fiscal year after fiscal year 1985.

(B) The Secretary of the Treasury shall take such action as is necessary to implement subparagraph (A) and shall, not later than 60 days after the date of the enactment of this Act, report to the appropriate Committees of the Congress on the action taken by the Secretary pursuant to this paragraph.

By Mr. CRANSTON (for himself, Mr. KENNEDY and Mr. GORE):

S. 10. A bill to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes; to the Committee on Labor and Human Resources.

THE EMERGENCY MEDICAL SERVICES AND TRAUMA CARE IMPROVEMENT ACT OF 1987

Mr. CRANSTON. Mr. President, today I am very pleased to be introducing S. 10, the proposed "Emergency Medical Services and Trauma Care Improvement Act of 1987." Joining me as the principal cosponsor of the bill is the chairman of the Labor and Human Resources Committee and the Senate's primary leader for over a decade of efforts to improve health care for all Americans, the Senator from Massachusetts [Mr. KENNEDY]. Joining as an original cosponsor as well is my distinguished colleague, the Senator from Tennessee [Mr. GORE].

Senator KENNEDY, as the chairman of the Labor Committee's Subcommittee on Health, was a principal cosponsor throughout the 1970's of the legislation I introduced which was enacted as the Emergency Medical Services Systems Act of 1973 and the 1976 and 1979 amendments to that act. I am delighted once more to be joining with the Senator from Massachusetts in the EMS initiative we are introducting today.

The goals of this legislation are twofold. First, it is designed to remove the barriers and rectify the problems that, in many parts of the country, prevent quick and efficient emergency medical services from being provided. Second, it would provide incentives for States and localities to establish well-coordinated regionalized trauma-care systems that would enable severely injured individuals to receive highly specialized trauma care as rapidly as possible following their injury.

SUMMARY OF PROVISIONS

The provisions of the bill may be briefly summarized as follows:

Section 2 would authorize the establishment of a Federal clearinghouse for information on EMS.

Section 3 would provide for improved coordination between State EMS and Department of Transportation offices with regard to emergency medical services.

Section 4 would permit Public Health and Health Services block grant funds to be used for equipment purchases to improve EMS communications systems; specify that loans under the Farmers Home Administration's Community Facilities Loan Program may be used for the purchase of EMS communications equipment and implementation of 911 systems; modify the community development block grant to permit recipients to use the funds for the implementation of 911 systems; and require the Federal Communications Commission to study the availability of radio frequency channels for communications between ambulances and hospitals and to develop a plan to ensure that sufficient frequencies are allocated for EMS purposes.

Section 5 would establish a new grant program to States for the purposes of the States providing funds to State and local regions to develop integrated trauma systems and to designated trauma centers to defray a portion of their uncompensated costs resulting from high-cost trauma patients.

Section 6 would require the Secretary of Health and Human Services [HHS] to study whether the current Medicare system and State Medicaid plans are providing financial disincentives for the establishment of trauma centers and, if so, to make recommendations for removing such disincentives.

Section 7 would require the Secretary of HHS to conduct a long-term comprehensive study on the economic and social impacts of trauma.

INJURY—STILL A LEADING CAUSE OF DEATH AND DISABILITY

Mr. President, in 1985, the prestigious National Academy of Sciences issued a report, "Injury in America," which assessed the magnitude and characteristics of injury, efforts to prevent and treat injury, and Federal support for injury research. It was conducted as a follow up to a landmark study conducted 20 years earlier by the National Research Council, entitled, "Accidental Death and Disability: The Neglected Disease of Modern Society." The National Academy of Sciences concluded that, tragically, insufficient progress had been made in injury control since the first study was reported.

Each year, more than 140,000 Americans die from injuries and 1 person in 3 suffers a nonfatal injury. Injury is the fourth leading cause of death among all Americans and the major killer of children and young adults. More Americans between the ages of 1 and 34 die from injuries than from all diseases combined.

Injury is also a leading cause of short- and long-term disability. More than 80,000 persons become permanently disabled from brain or spinal cord injuries each year. Over 4 million years of future worklife are lost to injury annually—nearly double that of heart disease or cancer.

Injury represents one of our most expensive health problems, costing $75 to $100 billion a year in direct and indirect costs. The societal costs from motor vehicle crashes alone in 1980 were estimated to be $36 billion, including costs of $7.5 billion and $3.5 billion to the Federal and State governments, respectively, in direct payments and revenue losses.

Accidents from firearms are another major source of severe injury in the United States. More than 20 percent

of all injury deaths in 1982 were the result of firearms.

Mr. President, I agree with the Chairman of the NAS study that "injury is a public health problem whose toll is unacceptable." Serious injury affects Americans of every socioeconomic level, every ethnicity and race, every age group, and every community.

Mr. President, the time has come for our Nation to make a concerted effort to reduce drastically the impact of these tragedies. We must no longer let injuries—preventable and treatable injuries—rob our young people of their youth and cause pain and suffering to Americans everywhere.

Much of the death and disability resulting from injury—particularly severe injury—can be prevented or ameliorated by quick response teams providing prehospital care and through the accessibility and availability of sophisticated emergency hospital care when needed. The legislation we are introducing today is designed to ensure that injury and trauma victims—as well as others, such as heart attack victims, in need of emergency care—receive that kind of swift and effective medical attention. If enacted, this legislation will directly help save lives and reduce disability.

DEVELOPMENT OF EMERGENCY MEDICAL SERVICES

Mr. President, nearly 15 years ago, I first introduced legislation which was ultimately enacted as the Emergency Medical Services Systems Development Act of 1973 (Public Law 93-154). I introduced that legislation in order to improve the ability of communities to respond immediately and effectively to emergency medical crises. In the early 1970's, the state of emergency medical services [EMS] in this country was characterized by poorly trained ambulance and emergency room personnel, outdated equipment, little coordination of services in urban areas, and the absence of emergency care facilities in rural areas. Therefore, I introduced legislation to perfect and improve the 1973 act, and this legislation was enacted as the Emergency Medical Services Amendments of 1975 (Public Law 94-573) and the Emergency Medical Services Systems Amendments of 1979 (Public Law 96-142).

Only 5 percent of the Nation's ambulance attendants met even minimum standards of training recommended by national professional organizations. In fact, ambulance services in many communities were run by the local undertaker. Fewer than 25 hospitals in the entire Nation had physicians in their emergency departments 24 hours a day. Ambulances brought patients to the nearest hospital, or the hospital to which they were paid to take them, regardless of the type of medical emergency or the level of care the hospital was capable of providing. Total annual accidental deaths and prehospital cardiac deaths were at an all-time high.

However, new advances in medical technology—portable equipment for treating heart attack victims, fully-equipped mobile, critical-care units, and advanced methods of radio communications and telecommunications—that could drastically reduce the number of deaths and serious injuries from accidents were becoming available. All of this technology, as well as helicopter evacuation capabilities, had been brought together by our armed services in Vietnam to provide battlefield casualties with rapid, effective treatment, and paramedics trained in on-the-spot emergency medicine were returning from Vietnam.

The 1973 law was intended to help local communities use existing resources and generate other potential sources of support to plan and develop comprehensive and integrated EMS systems through a 5-year sequence—from preliminary planning to fully functioning, advanced systems. It provided for the leadership and authorized the funding needed to establish national standards for emergency medical care, organize cost-effective systems of care on a regional basis, and create the training programs necessary for the development of the skilled manpower needed to operate the systems.

The first 3 years of the grant support under the 5-year sequence provided for in the grant program were designed to enable a region to achieve basic life support [BLS] capacity. A BLS system consists of a regional system of care with central communication and dispatch capabilities, coordination of ambulances, and designation of appropriate emergency rooms in the area for differing degrees of injury. An effective BLS system can provide patient stabilization, airway management, hemorrhage control, shock management with initial wound care, fracture stabilization, and, under medical supervision, certain noninvasive treatments.

The last 2 years in the 5-year cycle were designed to enable a region to achieve advanced life support [ALS] capacity, which adds to the BLS system the trained paramedic who is in constant communication with a physician and who has the training and technology available to provide life-saving treatment to the patient on the way to the hospital. At the ALS level, mobile prehospital units are equipped with intravenous fluids, drugs, and some form of bioelectric communication and are staffed by paramedics with proper physician backup to provide expert diagnosis, treatment, and triage of critical conditions.

Mr. President, studies carried out in the early 1980's show that EMS saves lives. Data compiled by 98 EMS regions for calendar year 1979 demonstrated that the median number of fatalities per 100 motor vehicle accident injuries decreased as EMS systems developed. In areas served by EMS systems in the planning stages, there were 3.1 deaths per 100 injuries; in those served by systems having ALS capabilities, the rate was 1.8 deaths per 100 injuries.

Individual regions reported dramatic successes. For example, Clark County in Nevada showed a decrease of 23 percent in the early death rate for spinal cord injury victims from 1976 to 1981, during which time an EMS program was established. The rural EMS program in Charlottesville, VA, estimated in 1981 that the actual death risk from acute heart attacks had decreased 26 percent for all persons under 70 in its service area since the development of its EMS system.

On March 30, 1981, the country witnessed the life-saving capabilities of the EMS system in Washington, DC, which had received assistance from the EMS Grant Program during the late 1970's. On that date, President Reagan was shot. He was rushed to the George Washington University Hospital Trauma Center where a highly trained and expert emergency medical team removed the bullet near his heart. The President's emergency care was so successful because of the high state of readiness, training, and technological skill of the emergency medical team—results of a fully functioning EMS and trauma system. Dr. Benjamin Aaron, the surgeon who operated on the President, said that, "only because the President got prompt and highly skilled modern shock trauma care was he in no danger of dying."

Yet, in 1981, despite these successes and the fact that a majority of the 303 designated EMS regions had not yet completed the 5-year cycle, the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as recommended by the administration, terminated the so-called categorical grant program, under which grants to regions were targeted for the development of EMS systems in accordance with national standards, and shifted the funding into the Preventive Health and Health Services [PHHS] block grant. During congressional hearings in 1981 on the proposed transfer, much concern was expressed that termination of the categorical grants would result in disarray and a breakdown in the coordination of the many systems which were in various phases of development throughout the country. I testified that repealing the categorical grant authority might send a signal to State and local governments that the Congress no longer placed a priority on the EMS program.

GAO REPORT ON EMS

Mr. President, 2 years ago, I sought to determine how EMS programs were faring under the block grant—whether the abandonment of the categorical grant program caused support for EMS to drop, development of EMS systems to slow, or fully functioning systems to break down. Since the Office of Emergency Medical Services within the Department of Health and Human Services was dismantled under the 1981 law, information regarding the present status of or funding for regional EMS programs was very difficult to obtain.

Preliminary data in a May 1984 General Accounting Office [GAO] report revealed that many States were assigning a low priority to the use of block grant funds for EMS programs and that funding for those programs decreased between 1981 and 1983.

In an effort to get more complete answers to the questions regarding EMS under the block grant, I, joined by my good friend from Massachusetts, then the ranking minority member and now the chairman of the Labor and Human Resources Committee, Mr. KENNEDY, requested the GAO to look into these issues—to review and analyze the levels of support and proficiency of EMS systems throughout the country.

I ask unanimous consent that a copy of our letter be printed in the RECORD at the conclusion of my remarks followed by the GAO's executive summary.

In response, the GAO investigated the status of EMS in 6 States—California, Massachusetts, Iowa, Pennsylvania, Florida, and Texas—and 18 localities within those States where programs were established under the categorical grant program. The States studied have about 30 percent of the total population of the Nation.

In general, the GAO found that in the six States surveyed overall expenditures for EMS initially fell soon after EMS' incorporation into the PHHS block grant in 1982. However, by 1985 most States had reversed that trend. For instance, California's EMS programs experienced a 40-percent reduction in funding during the period 1981 to 1983, but from 1983 to 1985, funding increased 52 percent. Nevertheless, the fiscal year 1985 total for the six States, $15 million, was still 16 percent below the fiscal year 1981 level, $17.8 million.

Mr. President, it is heartening that the GAO found that, in the absence of Federal leadership, States generally are assuming a more active leadership role in financing and regulating emergency medical services. Five of the six States reviewed have chosen to channel funds to most of the regions created under the categorical EMS program. According to a 1985 State survey conducted by the National Association of State EMS Directors, 76 percent of the regions—219 of 287 regions—in 37 of the 50 States were receiving funding from the State governments.

BLS emergency care is generally available in the 6 States and 18 local areas visited by the GAO. ALS is available to at least 50 percent of the population in all nine urban areas surveyed, although four of the eight rural areas had less than 50 percent of their populations covered. Rural areas have particular difficulty implementing ALS because the caseload of critically ill or injured victims is often too small to justify the expense of ALS or to maintian a high level of proficiency by the paramedics.

Mr. President, the GAO also identified areas in which gaps in emergency medical services still exist and in which Federal actions and leadership are desirable and made recommendations for congressional action in these areas.

IMPROVING DISSEMINATION OF INFORMATION ON EMS ACTIVITIES

Since the advent of the 1981 block grant, the Federal role in collecting and disseminating information on the successes and problems experienced by State and local agencies in EMS has been very limited. States are constantly upgrading their emergency and trauma care because of the emergence of new technologies and the development of new initiatives. State officials surveyed by the GAO indicated that they could benefit greatly by a program for sharing information regarding a wide variety of EMS-related matters, such as practices and policies governing regulation of air ambulance services and the establishment of trauma systems, research assessing the most effective service delivery methods, and the generation of new revenues for EMS activities.

Although the Association of State EMS Directors has begun to collect and disseminate information on State EMS activities, lack of funding for start-up costs for a clearinghouse is limiting the scope of its activities.

BILL PROVISION

In order to assist in the development of a nationwide EMS clearinghouse section 2 of S. 10 would authorize the appropriation of $500,000 to the Secretary of Health and Human Services for fiscal year 1988. Funding would be phased out in subsequent years—with appropriations of $300,000 authorized for fiscal year 1989 and $100,000 for fiscal year 1990. The Secretary would award the contract for a clearinghouse through a competitive grant process.

With the phasing out of Federal assistance, I am satisfied, as a result of discussions with State EMS officials, that over the 3 fiscal years, the clearinghouse could achieve self-sufficiency through subscriptions, user fees, or other means.

IMPROVING COORDINATION OF EMS EXPENDITURES

The GAO also found that many State transportation departments and State health departments do not coordinate expenditures for EMS-related functions. State transportation departments receive Federal highway safety funds from the Department of Transportation [DOT]; State health departments generally receive PHHS block grant moneys from the Department of Health and Human Services. In four of the six States the GAO visited during the fall of 1985, State transportation departments were not coordinating with the EMS offices when deciding to use DOT funds for EMS activities.

For example, in California, $1.3 million of Federal highway safety funds were spent on EMS in 1985. The State EMS office director informed the GAO that his office was not involved in that decision, and, consequently, could not determine whether the expenditures were consistent with the State plan or needs in the emergency medical services area.

Better coordination of EMS activities between State agencies could increase the effectiveness of such expenditures.

BILL PROVISION

To accomplish this, section 3 of S. 10 would require the State grantees of the State and Community Highway Safety Program and the PHHS block grant to provide assurances that both the State EMS director and State government highway safety representative have opportunities to participate in the development of all plans for EMS services and to review and comment on any proposals for the use of grants that may be applied to EMS-related purposes.

UPGRADING COMMUNICATIONS SYSTEMS

Mr. President, communications—between patient or other individual on the scene and central dispatcher, between dispatcher and ambulance or other emergency vehicle, and between emergency vehicle and hospital—are at the core of a successful EMS system.

First, individuals experiencing or witnessing a medical emergency must be able to gain access to the EMS system. This can best be accomplished through a single coordinated telephone system, such as the 911 emergency telephone number. As the GAO noted, a 911 system has two advantages. Callers need only remember one easily recognized 3-digit number, which is used wherever the system is implemented throughout the country, and an area-wide 911 system automatically routes the call to the most appropriate ambulance service or other emergency responder. In contrast, individuals living in or visiting areas without access to a single area-wide

telephone number often experience substantial time delays in reaching the ambulance provider or fire department—thus losing precious time which can mean the difference between life and death.

Although the availability of 911 has grown, more than 50 percent of the population of the United States still does not have access. Lack of access is particularly widespread in rural areas. For example, in the regions visited by the GAO, six of the nine urban areas have 100 percent of the population covered by 911, while only two of the nine rural areas have complete coverage. I am very pleased that my own State of California recently completed implementing 911 throughout the entire State. In the 10 surveyed areas which the GAO found lacked complete 911 coverage, the most common factors cited as barriers to providing a 911 system were start-up and operating costs. Installing a basic 911 system costs an average of $250,000.

Second, the dispatch center must be able to transfer incoming calls to appropriate ambulance service providers as rapidly as possible. The number of times an incoming call is transferred and the amount of information that the dispatch center must obtain in order to make the transfer directly affect response time. For example, an enhanced 911 system, in which the address and telephone number of the incoming call are automatically displayed on a computer screen, reduces errors, speeds response time, and is particularly helpful when children call in for help. Again, lack of funds often prohibits the implementation of this advanced system, which can cost up to four times the amount of a basic 911 system.

Third, the ambulance or other emergency vehicle must be able to contact the base hospital during all phases of the medical emergency. Radio communications are essential for an ambulance to locate the medical emergency and to determine the most appropriate hospital to which the patient should be transported. In addition, in order to provide highly skilled, sophisticated care at the scene of the medical emergency, particularly ALS services for cardiac and trauma patients, paramedics must have radio contact with a physician in order to obtain medical direction. Too often, however, outmoded equipment and interference due to overcrowded radio frequencies hamper radio communications between ambulances and hospitals.

For example, the GAO reported that in Alameda County mountainous terrain blocks communications between the ambulance crew and the hospital in certain areas. Although a new tower would overcome this geographical barrier, Federal funding under the PHHS block grant is prohibited from being used for any such equipment purchases. Many other communities indicated to the GAO that the prohibition prevents them from upgrading and replacing old communications equipment.

New communications equipment is also needed by many communities to take advantage of new radio frequencies as they become available because competition for frequencies is fierce and interference is a major problem. The GAO found that in 10 of the 18 local areas, substantial radio interference from other emergency and nonemergency users exists.

Under Federal Communication Commission [FCC] rules, EMS providers share channels with other nonemergency medical-related users and EMS providers are not necessarily given priority in the allocation of new channels. At the same time, competition for frequencies is increasing markedly. The medical services frequencies in particular are extremely congested, especially in densely populated urban areas.

In 1985, the FCC projected severe shortfalls of available frequencies for public safety users in the 1990's in many major metropolitan areas, such as southern California, New York, and the Baltimore-Washington, DC, areas.

In April 1986, the FCC began taking action to help resolve the frequency-overcrowding problem. It designated an organization to review new license applications for emergency users and to recommend frequencies with the least likelihood of interference. The FCC also allocated a new and unused range of frequencies for public safety users, including EMS.

However, although I am pleased that the FCC has taken first steps to resolve some immediate problems, long-term solutions are still needed.

BILL PROVISIONS

In pursuit of such long-term solutions, section 4 of S. 10 would:

First, in order to improve rural communities' abilities to implement and operate 911 systems, amend the community Facilities Loan [CFL] Program under the Farmers Home Administration to specify expressly that CFL's may be used for 911 development and communications-equipment purchases. This modification is consistent with the intent of the CFR Program, which is designed to improve community facilities providing essential services to rural residents, including fire and rescue services and health benefits.

Second, in order to improve urgan areas' abilities to implement and operate 911 systems, modifythe community development block grant [CDBG] so that an urban community could use it for the development of a 911 system if at least 51 percent of the residents of the area involved have low or moderate incomes. This modification would preserve the intent of the CDBG Program to assist low-income communities.

Third, amend the prohibition against using PHHS block grant funds for equipment in order to permit expenditures for equipment to improve communications capabilities within an EMS system. In addition, States would be required to provide equal matching funds.

Fourth, require the FCC to assess the current and future availability of radio frequency channels for EMS communications between ambulances, both public and private, and hospitals and to establish a plan which ensures that the needs of EMS systems would be adequately provided for in making future allocations of frequencies.

IMPROVING TRAUMA CARE

Emergency medical services systems are integrated, coordinated systems designed to provide medical care to those with any unpredicted immediate need—whether for an injury or illness—and continued care once in an emergency facility. Within the general categories of persons in need of emergency care, victims of severe injury require time-sensitive, highly specialized care. Trauma systems specifically focus on the identification, care, and treatment of only severely injured victims and, therefore, could be considered a subset of an EMS system.

Time is of the essence for trauma victims. Death from trauma most often occurs during one of three times following the injury: First, within minutes after the injury, usually because of severe damage to the brain, spinal cord, or heart; second, within hours after an injury, usually from shock, internal bleeding, or damage to other organs; or third, within days or weeks after an injury, usually from infection or multiple organ failure.

Roughly 30 to 40 percent of the deaths from trauma fall into the second category, and virtually all of these deaths are unnecessary and preventable. But those trauma victims must receive immediate and highly skilled surgical intervention and other medical attention within what is called "the golden hour" following the initial trauma. This can best be accomplished through a well-coordinated and managed trauma system.

Trauma systems, by necessity, must include emergency medical services and, therefore, can function properly only if an EMS system is in place. Without efficient prehospital services, a trauma system would be ineffective. In addition, however, a trauma system must specifically provide for the identification and designation of trauma centers, which have specialized physicians, surgeons, and equipment immediately available on a 24-hour basis; a method to identify severe trauma victims in the pre-hospital phase; and the establishment of policies to ensure

that all major trauma victims are transported to trauma centers.

In 1976, the American College of Surgeons [ACS] first published a document, entitled "Optimal Hospital Resources for Care of the Seriously Injured," outlining the resources needed for optimal care of injured patients. It recommended guidelines and suggested policies for the establishment of complete trauma systems. Since 1976 the ACS guidelines and policies have been periodically updated, most recently in October 1986.

The first component essential for trauma systems is the organization of trauma services at certain designated institutions. The ACS flatly rejects the notion that a severely injured patient should be taken to the nearest hospital. Rather, it advocates that patients generally be transported immediately to institutions with appropriate levels of skills and technology.

The ACS recommends a system of classifying trauma centers into one of three levels, depending on the availability of specialized surgical personnel and equipment, the frequency with which they perform surgical procedures related to trauma, and the presence of research and teaching activities. Level I and II trauma centers, for example, must have surgical and emergency medical personnel trained in trauma care, including neurosurgeons, available 24 hours a day. Level I centers must also have a wider variety of surgical and nonsurgical specialists oncall or promptly from other institutions as well as have teaching and research activities. Level III hospitals, which generally serve smaller communities, must demonstrate a commitment to trauma care commensurate with their resources.

It is more cost-effective and medically sound to concentrate scarce and expensive medical resources in a few hospitals. Medical outcomes improve as a facility has more experience in performing a given procedure, and all hospitals cannot afford to provide all types of specialized medical care.

The second essential component of a trauma system is triage—the classification of patients according to medical need. Various systems for identifying severe trauma patients have been developed; most use some form of numerical scoring. For example, the injury severity score [ISS] system assesses the level of injury in three different anatomical regions. A 1983 study showed that less than 6 percent of all patients treated for injury have an ISS of at least 15, which represents at least a 10-percent risk of dying from a single severe injury or multiple serious injuries. Paramedics and emergency medical technicians must be trained in an agreed-upon triage practice or scoring system in order to assure that severe trauma victims are accurately identified and taken to an appropriate trauma center.

Unfortunately, with any patient assessment system there are always a certain number of patients incorrectly identified as needing trauma-center care who could be adequately cared for at a typical community hospital. The incorrect routing of a patient to a trauma center is referred to as an overtriage. Policies should be designed to minimize overtriage as much as possible in order to prevent costly overuse of trauma centers, the inappropriate diversion of patients away from community hospitals, and, particularly in cases of accident victims who do not have severe injuries and who do not have insurance or another payment source, inappropriate transfers to trauma centers solely for financial reasons.

The third component necessary for a trauma system to function effectively is an efficient network of transfer and transport arrangements between hospitals and ambulance services participating in the system. Transport agreements must involve ambulance services to facilitate the prompt transport of patients to appropriate designated facilities within and between different jurisdictions. Transfer agreements are particularly important in rural areas, where distances are great and high-level trauma centers may not exist, so that victims who might be transported initially to a level III facility would then later be transferred to a level I or level II facility, if possible.

BARRIERS TO TRAUMA SYSTEM DEVELOPMENT

Ten of the 18 areas visited by the GAO do not have fully developed trauma systems. Five do not have designated trauma centers, five are without triage systems, and seven lack transfer and transport policies.

The GAO reported that economic and political factors are the major barriers to developing and implementing trauma systems. There is intense competition between hospitals—which often see trauma center designation as a way to improve the hospital's image and status within the community—to become designated trauma centers, and the process for designation can become vulnerable to local political pressures. Without a systematic approach for designating and accrediting trauma centers that includes a strict evaluation process, communities often find themselves with more so-called trauma centers than the population can support. As a result, many of these trauma centers do not meet the standards for trauma centers recommended by the ACS. Unfortunately, as the GAO noted, most States have not provided the leadership to overcome these political problems and competition between hospitals.

Conversely, the financial burdens that can accompany trauma center designation are a major problem for many trauma centers, particularly in urban centers that provide a high proportion of uncompensated care associated with trauma. For suburban centers, the majority of trauma patients sustain their injuries from falls or car accidents and are usually covered by some form of insurance. In cities, particularly in inner-city areas, trauma centers treat a higher number of injuries that are the result of knife or gunshot wounds. The costs are high and, most often, there is no insurance to cover them. This can lead to a severe financial crisis and compromise the ability of some institutions to provide quality trauma care.

California Medical Center [CMC], located in downtown Los Angeles, was forced to cease functioning as a trauma center because of the great losses it incurred. In July 1984, CMC was designated as a level II trauma center. It anticipated that 50 percent of its trauma patients would be indigent and that it would incur an annual loss of $1.5 million in the operation of the trauma center. However, it also expected that the additional nontrauma revenue resulting from the trauma center designation would eventually outweigh the losses associated with increased costs and indigent care.

Within months of CMC's designation, severely injured indigent patients were overloading the trauma center as well as many other areas of the hospital. At one point these problems caused the CMC emergency room to be closed for more hours than it was open.

Seven of every ten trauma patients that CMC treated had no insurance or other means of paying for their care. The hospital's overall percentage of nonpaying business had increased 158 percent since the opening of the trauma center. Also, instead of the trauma designation attracting new nontrauma revenue, the overcrowding caused some physicians to begin taking their revenue-producing patients to other facilities.

Had CMC's trauma center stayed operational for the whole year, it would have lost $5.3 million—more than triple what it expected to lose. But by February 1985, the trauma center closed.

CMC's experience and that of a number of other hospitals with trauma centers raise serious concerns about the ability of hospitals in inner cities to meet low-income urban residents' needs for trauma care.

The Federal Government's health financing programs also tend to create disincentives for regionalized trauma care. CMC's Medi-Cal—California's Medicaid Program—reimbursement rate, for example, amounted to less than half of its average cost for treating a major trauma victim.

In addition, Medicare's prospective payment system under which hospitals are paid a fixed amount according to the diagnosis related group [DRG] in which the illness or injury is classified, produces incentives that are contrary to the goal of regionalizing specialized medical care. The payment to hospitals of a rate determined to be the average cost for a particular DRG is based on the assumption that hospitals treat roughly equal numbers of high-cost and low-cost cases in each DRG. Trauma centers, however, are designed to treat the most severely injured patients having the greatest complexity and complications, while the less severely injured in the same DRG's go to lower level or community hospitals.

Thus, under the Medicare system, a trauma center's caseload is heavily weighted toward high-cost patients. Since operating a trauma center is extremely expensive and the average cost of treating a severely injured patient is over $30,000, losses for trauma centers can be very great. Although a very small number of trauma patients have Medicare coverage, up to 20 percent are covered by Medicaid and many State Medicaid plans are also adopting DRG payment systems.

Preliminary results from a study being conducted by the Johns Hopkins University show that indeed trauma centers are not fairly compensated under Medicare. Maryland has a fully functioning trauma system in place, with the Maryland Institute of Emergency Medical Services Systems [MIEMSS] serving as the level I trauma center. MIEMSS receives the most severe cases of trauma, while less severe cases are transported to lower level centers and community hospitals. For head and spinal injuries under one specific DRG, the study found that the average charges for patients at MIEMSS under this category were $35,300, as compared to community hospital charges, which averaged $8,300. The average statewide charge for this DRG is $22,900, resulting in a $12,400 deficit for MIEMSS.

TRAUMA SYSTEMS SAVE LIVES

Nevertheless, in those instances where the financial and political barriers have been overcome, there is a clear consensus that trauma systems work. Numerous studies have demonstrated that trauma systems result in dramatic reductions in death and disability.

For example, in 1980, Orange County, CA, established a trauma system comprised of five designated trauma centers. The system was established following the release of a study which showed that nonneurological trauma care was inadequate at hospitals without special trauma capabilities. Before implementation of the system, researchers found that 34 percent of the deaths occurring in trauma cases were preventable. After the system was in place, that figure dropped to 15 percent. Thus, more than half of the preventable deaths were in fact being avoided. Furthermore, none of the patients in the study died as a result of bypassing a conventional hospital in order to get to a trauma center.

In August 1984, San Diego implemented its regionalized trauma system. After 1 year of operation, the trauma death rate decreased by 55 percent. More than 90 percent of trauma deaths now occurring there are considered to be nonpreventable.

Finally, West Germany is an example of a country with excellent regional trauma care. It successfully transferred to civilian health care the knowledge and methods Americans developed in providing battlefield care in Vietnam. West Germany classifies hospitals according to their ability to provide trauma care and has established trauma centers along the main autobahns. A prehospital transport system comprised of helicopters and ambulances effectively ensures rapid access to them. It is estimated that 90 percent of the population is within 15 minutes of a trauma center.

As a consequence of this regionalized system, the mortality rate from motor vehicle accidents in West Germany has dropped from 16,000 per year in 1970 to 12,000 per year in 1983—a 25-percent reduction. That is consistent with findings that between 30 and 40 percent of trauma deaths are preventable.

I would also note once again the swift and very skillful response of the George Washington University Hospital—a level I trauma center—to President Reagan's 1981 gunshot wound. If not for the availability of the newest technologies and a team of physicians and nurses specifically trained in shock-trauma, the President might not have survived the assassination attempt.

The value of a trauma center lies not only in reduction in deaths and disabilities but also in positive financial contribution to society. Dr. Donald Trunkey, a surgeon at the University of California, San Francisco and expert in trauma care, estimates that the reduction in West German trauma deaths translates into an increase of $220 million in the gross national product and of $55 million in taxes. Trunkey speculates that if the death rate from injuries throughout the United States decreased by a comparable amount after implementing a regional trauma system, over the first 10 years, this country's GNP could be increased by more than $2 billion and the additional taxes paid could amount to more than half a billion dollars.

BILL PROVISIONS

Section 5 of S. 10 contains provisions designed to foster the development and continued operation of regionalized trauma-care systems. Thus, this section would require, beginning in fiscal year 1989, that each State annually submit, as part of its application for PHHS block grant funds, a State comprehensive emergency medical and trauma-care plan providing for the development of statewide trauma care systems and designation of trauma centers. Each State plan would be required to:

First, specify which entity would be authorized to designate trauma centers.

Second, establish a framework and set minimum standards for the implementation of regionalized trauma care systems, including guidelines for prehospital triage and transportation and for the resources and equipment needed by trauma facilities.

Third, establish minimum standards and requirements for designation of trauma centers, at least as stringent as the ACS guidelines, including the number and type of trauma cases necessary to assure that trauma facilities will provide an acceptable quality of care to trauma cases.

Fourth, establish a process for the accreditation and evaluation of designated centers and trauma systems.

Fifth, provide for the establishment of a centralized data reporting and analysis system that would accurately identify severely injured trauma patients at all facilities participating in trauma systems, identify the uncompensated trauma-care dollar volume by trauma hospital, and monitor patient care at facilities throughout the trauma systems.

Next, section 5 would establish a new program of trauma-care grants to the States, for which $75 million would be authorized to be appropriated for each of fiscal years 1988, 1989, and 1990. Up to 5 percent of a trauma grant could be used for State administrative expenses and up to 15 percent could go to counties, multicounty regions, or States for planning, implementation, and monitoring of trauma systems. Each trauma system plan must meet State standards and would be required to:

First, establish triage systems to be used by paramedics and emergency medical technicians to assess severity of injury;

Second, establish transport and transfer policies to facilitate prompt delivery of patients to appropriate designated facilities within and without its jurisdiction;

Third, establish criteria to identify or designate a trauma center;

Fourth, provide for public education on injury prevention and gaining access to the EMS system; and

Fifth, provide assurances, as part of the triage and transport/transfer policies that, under the trauma system, only patients properly identified as trauma victims would be transported directly or transferred to designated trauma centers.

The remainder of the block grant would be used to reimburse trauma centers—designated through a formal, competitive process pursuant to the State plan—for portions of their uncompensated trauma-care costs. The only trauma centers that would be eligible to receive block grant funds would be those which meet criteria consistent with the guidelines of the American College of Surgeons for level I or level II trauma centers and serve areas in which triage, transport, and transfer policies, as described earlier in the summary of trauma-system-plan requirements, have been implemented.

Institutions would provide to the State's centralized data collection office statistics reflecting utilization during the preceding fiscal year, including the number of major trauma victims, the number of inpatient days consumed by these major trauma victims, and the total amount appropriately billed for which there was no identifiable third-party payor source. Institutions would also provide information on the diagnosis of, treatment provided to, and outcome of care for trauma patients.

Beginning in fiscal year 1989, States would be required to submit reports to the Federal Government regarding the amount of uncompensated trauma care that was provided in hospitals participating in trauma systems.

Section 6 of S. 10 would require the Secretary of HHS to conduct a study of the financial impact on trauma centers of Medicare's DRG system and State reimbursement policies under Medicaid and report the results of the study to the Congress.

RESEARCH ON THE LONG-TERM IMPACT OF TRAUMA

Although trauma is the leading cause of death and disability in children and young adults, destroys the health, lives, and livelihoods of millions of people, and is the most costly of all major health problems, very little data are available about the long-term economic consequences of trauma. Knowledge about the chronic effects of injury on personal abilities in occupations and recreation and on social and psychological functioning is sorely lacking.

In contrast, for many health problems, such as cancers and cardiovascular diseases, long-term studies have provided valuable epidemiologic data on which to base intervention strategies.

BILL PROVISION

In order to establish an effective data collection base for evaluating the cost-effectiveness of trauma systems, section 7 of S. 10 would require the Secretary of HHS to conduct a comprehensive study on the long-term economic impact of trauma in the United States. The study would follow a multidisciplinary approach and draw on diverse fields such as epidemiology, statistics, biomedical engineering, behavioral sciences, health economics, and general economics in order to identify and evaluate the many factors that influence the impact and long-term outcome of a trauma incident. Such sums as are necessary for the study would be authorized to be appropriated.

CONCLUSION

Mr. President, before concluding I would like to take this opportunity to express my deep gratitude to the General Accounting Office for the excellent study it conducted on the present status of EMS. It specifically identified both the successes and current problems in EMS programs throughout the country. The data, information, and analyses in the report were extremely helpful in crafting this legislation.

Mr. President, since the enactment of the Emergency Medical Services Systems Development Act 14 years ago, we have made great progress in providing persons with swift and effective treatment in medical emergencies. However, as the GAO and NAS have reported, much still needs to be accomplished, particularly in the area of injury control. Hundreds of thousands of senseless and tragic deaths and lifelong disabilities occur each year from accidents and injuries. Many resulting from trauma are totally preventable and treatable—if we choose to place a priority on achieving that goal.

It is a goal within our grasp. We need only have the foresight and determination to organize and allocate medical resources to ensure that trauma victims are rapidly identified and transported to facilities specifically designed to provide the optimal level of care.

Mr. President, the legislation we are introducing has the potential to improve the ability of EMS systems to respond in medical emergencies and to help communities plan and implement regional trauma systems. I urge all my colleagues to support this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following the March 5, 1985, letter and GAO executive summary.

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

S. 10

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Medical Services and Trauma Care Improvement Act of 1987".

CLEARINGHOUSE ON EMERGENCY MEDICAL SERVICES

SEC. 2. (a) The Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall by contract provide for the establishment and operation of a National Clearinghouse on Emergency Medical Services (hereinafter referred to as the "Clearinghouse"). The Clearinghouse shall—

(1) foster the development of appropriate, modern emergency medical services and trauma care through the sharing of information among agencies and individuals involved in planning, furnishing, and studying such services and care;

(2) collect, compile, and disseminate information on the achievements of, and problems experienced by, State and local agencies in providing emergency medical services and trauma care;

(3) provide technical assistance relating to emergency medical services and trauma care to State and local agencies; and

(4) sponsor workshops and conferences on emergency medical services and trauma care.

(b) A contract entered into by the Secretary under this section may provide that the Clearinghouse shall charge fees or assessments in order to defray, and beginning with fiscal year 1990, to cover, the costs of operating the Clearinghouse.

(c) To carry out this section, there are authorized to be appropriated $500,000 for fiscal year 1988, $300,000 for fiscal year 1989, and $100,000 for fiscal year 1990.

(d) The authority of the Secretary to enter into contracts under this section shall be to such extent or in such amounts as are provided in appropriation acts.

COOPERATION BETWEEN STATE AGENCIES

SEC. 3. (a) 1905(c) of the Public Health Service Act is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof a semicolon and "and"; and

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

"(7) agrees to provide the officer of the State government responsible for the administration of the State highway safety program with an opportunity to—

"(A) participate in the development of any plan by the State relating to emergency medical services, including the State plan required by section 1910B; and

"(B) review and comment on any proposal by any State agency to use any Federal grant or Federal payment received by the State for the provision of emergency medical services.".

(b) Paragraph (1) of section 402(b) of title 23, United States Code, is amended—

(1) by striking out the period at the end of each subparagraph and inserting in lieu thereof a comma,

(2) by adding "or" at the end of subparagraph (F), and

(3) by adding at the end thereof the following new subparagraph:

"(G) provide procedures that ensure that State officials who are responsible for the provision of emergency medical services within the State have the opportunity to—

"(i) participate in the development and implementation of the State highway safety program,

"(ii) provide advice on the development and implementation of the State highway safety program, and

"(iii) review, and comment on, any proposals to use funds provided to the State under this section for emergency medical services.".

IMPROVING COMMUNICATIONS SYSTEMS

SEC. 4. (a)(1) The last sentence of section 1904(a)(1)(F) of the Public Health Service Act is amended by striking out "1905(c)(2))." and inserting in lieu thereof "1905(c)(2) and other than the purchase of communications equipment for such systems in accordance with paragraph (4))."

(2) Section 1904(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(4) A State may not, under subparagraph (F) of paragraph (1), use amounts described in paragraph (1) to pay more than 50 percent of the costs of communications equipment for emergency medical services systems.".

(b) The first sentence of section 306(a)(1) of the Consolidated Farm and Rural Development Act is amended by inserting "emergency telephone service, communications equipment for emergency medical services," after "recreational developments,".

(c)(1) Section 105(c)(2) of the Housing and Community Development Act of 1974 is amended—

(A) by inserting "(A)" after the paragraph designation;

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(C) by adding at the end thereof the following new subparagraph:

"(B) The requirements of subparagraph (A) do not prevent the use of assistance under this title for the development, establishment, and operation for not to exceed 2 years after its establishment, of a uniform emergency telephone number system if the Secretary determines that—

"(i) such system will contribute substantially to the safety of the residents of the area served by such system;

"(ii) not less than 51 percent of the use of the system will be by persons of low and moderate income; and

"(iii) other Federal funds received by the grantee are not available for the development, establishment, and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee.

The percentage of the cost of the development, establishment, and operation of such a system that may be paid from assistance under this title may not exceed the percentage of the population to be served that is made up of persons of low and moderate income.".

(2)(A) The amendments made by this subsection shall be applicable to amounts made available for fiscal year 1987 and each succeeding fiscal year.

(B) Not later than the expiration of the 30-day period following the date of enactment of this Act, the Secretary of Housing and Urban Development shall notify each fiscal year 1987 grantee of assistance under section 106 of the Housing and Community Development Act of 1974 of the availability of such assistance for the development, establishment, and operation of a uniform emergency telephone number system in accordance with section 105(c)(2)(B) of such Act.

(C) Not later than the expiration of the 30-day period following the date of enactment of this Act, the Secretary of Housing and Urban Development shall by notice establish such requirements as may be necessary to carry out the amendments made by this subsection. Such notice shall not be subject to section 553 of title 5, United States Code, or section 7(o) of the Department of Housing and Urban Development Act.

(D) The Secretary of Housing and Urban Development shall issue such regulations, based on the notice required in subparagraph (C), as may be necessary to carry out the amendments made by this subsection. Such regulations shall be published for comment in the Federal Register not later than 90 days after the date of enactment of this Act.

(d) Not later then one year after the date of enactment of this Act, the Federal Communications Commission shall—

(1) complete a study of the availability of radio frequency channels for emergency medical services communications between ambulances and hospitals, including both public and private ambulances and hospitals;

(2) establish a plan to ensure that the needs of emergency medical services communications shall be adequately provided for in the allocation of frequencies; and

(3) submit a report to Congress containing such study and plan relating to emergency medical services communications.

IMPROVING EMERGENCY MEDICAL SERVICES AND TRAUMA CARE

SEC. 5. (a) Part of title XIX of the Public Health Service Act is amended by adding at the end thereof the following new section:

"STATE COMPREHENSIVE EMERGENCY MEDICAL SERVICES AND TRAUMA CARE PLAN

"SEC. 1910B. (a)(1) For each fiscal year, beginning with fiscal year 1989, each State shall submit a State comprehensive emergency medical services and trauma care plan (hereafter in this section referred to as the 'State plan') to the Secretary. Each State plan shall—

"(A) specify the public or private entity which will designate trauma centers in the State;

"(B) contain minimum standards and requirements for the designation of trauma centers by such entity, including standards and requirements for—

"(i) the number and types of trauma patients for whom such centers must provide care in order to ensure that such centers will have sufficient experience and expertise to be able to provide quality care for victims of injury; and

"(ii) the resources and equipment needed by such centers;

"(C) contain standards and requirements for the implementation of regional trauma care systems, including standards and guidelines for triage and transportation of trauma patients prior to care in designated trauma centers;

"(D) specify procedures for the accreditation and evaluation of designated trauma centers and trauma care systems; and

"(E) provide for the establishment in the State of a central data reporting and analysis system to—

"(i) identify severely injured trauma patients at all health care facilities within regional trauma care systems in the State;

"(ii) identify the total amount of uncompensated trauma care expenditures made for each fiscal year by each health care facility in the State; and

"(iii) monitor trauma patient care in each health care facility (including each designated trauma center) within regional trauma care systems in the State.

"(2) The Secretary shall promulgate regulations governing the establishment by States of standards and requirements under subparagraphs (B) and (C) of paragraph (1). Regulations promulgated under this paragraph shall be at least as stringent as the guidelines for the designation of trauma centers and for triage, transfer, and transportation policies specified by the American College of Surgeons in the Bulletin of the American College of Surgeons issues in October, 1986, except to the extent that the Secretary determines it infeasible or inadvisable to promulgate regulations under this paragraph which are not at least as stringent as such guidelines. If the Secretary make a determination under the preceding sentence, the Secretary shall, with the regulations promulgated under this paragraph, publish in the Federal Register an explanation for such determination.

"(b)(1) If the Secretary determines that a State has not, by the end of fiscal year 1989, developed the State plan required by subsection (a), the Secretary shall reduce the amount of the State's allotment under this part for fiscal year 1990 by the amount specified in paragraph (4).

"(2) If the Secretary determines that a State has not, by the end of fiscal year 1990, developed and substantially implemented the State plan required by subsection (a), the Secretary shall reduce the amount of the State's allotment under this part for fiscal year 1991 by the amount specified in paragraph (4).

"(3) If the Secretary determines that a State has not, by the end of fiscal year 1991, developed and completely implemented the State plan required by subsection (a), the Secretary shall reduce the amount of the State's allotment under this part for fiscal year 1992 and each succeeding fiscal year by the amount specified in paragraph (4). The Secretary shall discontinue the reduction under this subsection of a State's allotment under this part for a fiscal year if the Secretary determines that the State has, in the preceding fiscal year, developed and completely implemented the State plan required by subsection (a).

"(4) The amount referred to in paragraphs (1), (2), and (3) with respect to a State is the total amount expended by the State for administrative expenses for fiscal year 1987 from amounts paid to the State under section 1903 for such fiscal year.".

(b) Title XIX of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART C—TRAUMA CARE BLOCK GRANT

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 1931. For the purpose of allotments to States to carry out the activities described in section 1934, there are authorized to be appropriated $75,000,000 for each of the fiscal years 1988, 1989, and 1990.

"ALLOTMENTS

"SEC. 1932. (a) Except as provided in subsection (c), for fiscal year 1988, the secretary shall allot to each State an amount which bears the same ratio to the total amount appropriated under section 1931 for such fiscal year as the population of the State bears to the population of all States.

"(b)(1) Except as provided in subsection (c), for fiscal year 1989 and each of the succeeding fiscal years, the allotment of a State

under this part shall be the sum of the amounts allotted to the State under paragraphs (2) and (3).

"(2) Two-thirds of the total amount appropriated under section 1931 for a fiscal year (beginning with fiscal year 1989) shall be allotted to States under this paragraph. The allotment of a State under this paragraph shall be the amount which bears the same ratio to the amount available for allotment under this paragraph as the population of the State bears to the population of all States.

"(3) One-third of the total amount appropriated under section 1931 for a fiscal year (beginning with fiscal year 1989) shall be allotted to States under this paragraph. The allotment of a State under this paragraph shall be the amount which bears the same ratio to the amount available for allotment under this paragraph as the total amount of uncompensated trauma care expenditures made by the State for the most recently completed fiscal year bears to the total amount of such expenditures made by all States for such fiscal year. In determining such expenditures for purposes of this paragraph, the Secretary shall consider the reports submitted under section 1935(f).

"(c) Notwithstanding subsections (a) and (b), the allotment of a State under this section for any fiscal year shall not be less than—

"(1) $500,000, or

"(2) two-thirds of one percent of the total amount appropriated to carry out this part for such fiscal year, whichever is the lesser amount.

"(d) To the extent that all the funds appropriated under section 1901 for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted an application or description of activities in accordance with section 1935 for the fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) some State allotments are offset or repaid under section 1906(b)(3) (as such section applies to this part pursuant to section 1935(e));

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.

"(e)(1) If the Secretary—

"(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this part be provided directly by the Secretary to such tribe or organization, and

"(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this part,

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a), (b), or (c) for a fiscal year the amount determined under paragraph (2).

"(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a), (b), or (c) an amount which bears the same ratio to the State's allotment for the fiscal year involved under subsection (a), (b), or (c) as the population of the tribe bears to the population of the State.

"(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization for which such a determination has been made.

"(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

"PAYMENTS UNDER ALLOTMENTS TO STATES

"SEC. 1933. (a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under section 1932 (other than any amount reserved under subsection (e) of such section) from amounts appropriated for that fiscal year.

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"USE OF ALLOTMENTS

"SEC. 1934. (a)(1) Not more than 15 percent of the total amount paid to a State under section 1933 for a fiscal year may be used by a State to pay the costs of planning, implementing, and monitoring the operation of, county, regional, or State trauma care systems. Each trauma care system supported with amounts made available under this paragraph shall—

"(A) meet the standards and requirements established under the State plan under section 1910B(a)(1)(B);

"(B) provide for the use of triage procedures by paramedics and emergency medical technicians to assess the severity of injury incurred by trauma patients;

"(C) provide for the use of appropriate transportation and transfer policies to ensure the delivery of patients to designated trauma centers and other facilities within and outside of the jurisdiction of such system, including policies to ensure that only individuals appropriately identified as trauma patients are transferred to designated trauma centers;

"(D) conduct public education activities concerning preventing injuries and obtaining access to emergency medical services and trauma care; and

"(E) establish criteria and procedures, in accordance with the State plan required under section 1910B, for the identification and designation of trauma centers to participate in the trauma care system.

"(2) After the application of paragraph (1) of this subsection and of subsection (d) for a fiscal year, the amount available for such fiscal year to a State from the total amount paid to the State under section 1933 for such fiscal year shall be used by the State to reimburse designated trauma centers for such portions of the uncompensated trauma care expenditures of such centers as the State considers appropriate. In order to receive reimbursement of uncompensated trauma care expenditures under this paragraph, a designated trauma center shall—

"(A) be a center which—

"(i) meets the standards and requirements established by the State in accordance with the State plan required under section 1910B; and

"(ii) meets the guidelines for level I or level II trauma centers specified by the American College of Surgeons in the Bulletin described in section 1910B(a)(2);

"(B) serve an area in which the procedures and policies described in subparagraphs (B) and (C) of paragraph (1) have been implemented; and

"(C) maintain its designation as a designated trauma center throughout the fiscal year for which reimbursement is provided under this paragraph.

"(b) The Secretary, if requested by a State, shall provide technical assistance to the State in planning and operating activities to be carried out under this part.

"(c) A State may not use amounts paid to it under section 1933 to—

"(1) make cash payments to intended recipients of services;

"(2) purchase or improve land, purchase, construct, or permanently improve (other than through minor remodeling) any building or other facility, or purchase major medical equipment; or

"(3) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

The Secretary may waive the limitation contained in paragraph (2) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will substantially assist in carrying out this part.

"(d) Not more than 5 percent of the total amount paid to a State under section 1933 for a fiscal year may be used for administering the funds made available under section 1933. The State shall pay from non-Federal sources the remaining costs of administering such funds.

"APPLICATION AND DESCRIPTION OF ACTIVITIES; REQUIREMENTS

"SEC. 1935. (a)(1) In order to receive an allotment for a fiscal year under section 1932, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require.

"(2) Each application required under paragraph (1) for an allotment under section 1932 for a fiscal year shall contain—

"(A) assurances that the State will meet the requirements of subsection (b); and

"(B) the State plan required by section 1910B.

"(b) As part of the annual application required by subsection (a) for an allotment for any fiscal year, the chief executive officer of each State shall—

"(1) certify that the State agress to use the funds allotted to it under section 1932 in accordance with the requirements of this part;

"(2) provide assurances that the State will require each health care facility in the State to provide to the system established pursuant to section 1910B(a)(1)(E) a report for each fiscal year which—

"(A) specifies the number of major trauma patients cared for by such facility during such fiscal year;

"(B) specifies the total number of inpatient hospital days used by such patients during such fiscal year;

"(C) describes the diagnoses, treatment, and treatment outcomes for such patients; and

"(D) specifies the total amount of uncompensated trauma care expenditures incurred by such facility for such patients for such fiscal yaar; and

"(3) certify that the State agrees that Federal funds made available under section 1933 for any period will be so used as 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 programs and ac-

tivities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

"(c) The chief executive officer of a State shall, as part of the application required by subsection (a) for any fiscal year, also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 1933 for the fiscal year for which the application is submitted, including information on the programs and activities to be supported and services to be provided. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) throughout the year as necessary to reflect substantial changes in the programs and activities assisted by the State under this part, and any revision shall be subject to the requirements of the preceding sentence.

"(e) Except where inconsistent with the provisions of this part, the provisions of section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this part in the same manner as such provisions apply to part A of this title.

"(f) Each report (beginning with the report for fiscal year 1989) submitted by a State to the Secretary under section 1906(a)(1) (as such section applies to this part pursuant to subsection (e) of this section) shall include a separate statement which summarizes and analyzes the information provided to the State in the reports required under subsection (b)(2).

"DEFINITIONS

"SEC. 1936. (a) For purposes of this part, the terms 'Indian tribe' and 'tribal organization' have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.

"(b) For purposes of this part and section 1910B—

"(1) the term 'designated trauma center' means a trauma center designated in accordance with the State plan under section 1910B; and

"(2) the term 'uncompensated trauma care expenditures' means any amount which is expended by a health care facility to provide health care services to a trauma patient and for which such facility does not receive payment or reimbursement.".

(c) This section and the amendments made by this section shall take effect on October 1, 1987.

STUDY OR PAYMENTS TO TRAUMA CENTERS UNDER THE MEDICARE AND MEDICAID PROGRAMS

SEC. 6. (a) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study of the financial impact of the prospective payment system established under section 1886(d) of the Social Security Act on medical trauma centers and of possible modifications to that system to provide more adequate and appropriate payments to such centers. The study shall include recommendations with respect to whether separate payment rates should be established for such centers.

(b) The Secretary shall conduct a study of the policies adopted by States in reimbursing medical trauma centers under the medicaid program under title XIX of the Social Security Act. The study shall assess the adequacy and appropriateness of the reimbursements provided by States to such centers under such program and shall include recommendations with respect to whether the requirements imposed under such title should be modified in order to ensure that such centers are appropriately reimbursed.

(c) The Secretary shall report the results of the studies required by standards (a) and (b) to the Congress not later than one year after the date of enactment of this Act.

STUDY ON THE LONG-TERM ECONOMIC EFFECTS OF TRAUMA

SEC. 7. (a) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a comprehensive multidisciplinary study of the long-term economic effects of incidences of trauma in the United States. In conducting the study, the Secretary shall utilize the services of individuals with appropriate expertise in such fields as epidemiology statistics, behavioral sciences, and health economics in order to identify and evaluate as many factors as possible that influence the impact and longterm outcome of a trauma incident.

(b) The Secretary shall report the results of the study required by subsection (a) to the Congress not later than one year after the date of enactment of this Act.

(c) To carry out this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 1988.

U.S. SENATE,
Washington, DC, March 5, 1985.

Hon. CHARLES H. BOWSHER,
Comptroller General of the United States, U.S. General Accounting Office, Washington, DC.

DEAR CHARLES, On November 17, 1973, the Emergency Medical Services Systems Development Act (Public Law 93-154), was enacted in an effort to establish the mechanisms for the creation and coordination of life-saving health services. Senator Cranston was the Senate author of the new law and Senator Kennedy served as Chairman of the Health and Scientific Research Subcommittee of the Labor Committee at that time. In the early 1970s, the state of emergency medical services (EMS) was characterized by poorly trained ambulance and emergency room personnel, outdated equipment, little coordination of services in urban areas, and the absence of emergency care facilities in rural areas. The new law was designed to help local communities use existing resources and generate other potential sources of support to plan and develop comprehensive and integrated EMS system through a 5-year sequence from preliminary planning to fully functioning, advanced systems. Federal matching funds would decline and local contributions would increase over those 5-year periods until the systems would be self-sufficient.

Your Office has previously carried out a comprehensive and very helpful study of the EMS program. The July 13, 1976, GAO report, entitled "Progress, But Problems in Developing Emergency Medical Services Systems", stated, "The Emergency Medical Services Systems Act has stimulated interest and brought improvement in the delivery of emergency medical care." The report also recognized that progress toward achieving regional self-sufficiency was slower than envisioned in the Act. Thus the report concluded that "when Federal funding stops, continuation of regional systems providing EMS at the level planned or established with Federal support will not be assured."

Based on GAO's recommendations, we included in the Emergency Medical Services Amendments of 1976 (Public Law 94-573), which reauthorized appropriations for the EMS program, provisions to ensure that every effort was made by EMS systems to develop community-based sources of funding for the continued operation of the system. The GAO report was also very helpful in identifying the need for the coordination of Federally-supported activities related to emergency medical services, responsibility for which was assigned in Public Law 94-573 to an interagency committee.

In 1979, Congress again reauthorized appropriations for the EMS program for 3 years through FY 1982; in so doing it rejected a proposal for a 1982 phaseout of the program. It was noted at that time that if sufficient funds were made available during fiscal years 1979-1982 only an additional 3 years of federal funding would thereafter be needed in order for the majority of EMS programs to complete their cycles. In FY 1982, however, the program was transferred by the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) into the Preventive Health and Health Services (PHHS) block grant.

During Congressional hearings in 1981 on the proposed program transfer, much concern was expressed that without accountability, leadership, or standards from the Federal government, there would be disarray and discoordination of the many systems which were in various phases of development throughout the country. (Hearings of the House Committee on Energy and Commerce Subcommittee on Health and the Environment on H.R. 2562, pages 146-147 (April 6-7, 1981)) In addition, it was felt by many, as Senator Cranston testified, that this move would send a clear signal to state and local governments that the Congress no longer placed a priority on this program and that the result could be a substantial loss of funding.

By 1982, when the EMS program was transferred to the PHHS block grant, 70 (23 percent) of the 303 EMS regions had completed the 5-year cycle and 66 (21 percent) were in the process of completing the final, advanced-life-support (ALS) stage, while 112 (37 percent) were in the second stage—development of a basic-life-support (BLS) system. Fifty regions (16.5 percent) had advanced only to the planning stage, and five regions had not applied for or received any funds. Since the dismantling in 1982 of the Office of Emergency Medical Services within the Health Services Administration in the Department of Health and Human Services upon incorporation of the EMS program into the block grant, information regarding the present status of or funding for regional EMS programs has been very difficult to obtain.

The information that does exist suggests that our predictions in 1981 have, unfortunately, come to pass. GAO's May 8, 1984, report, entitled "States Use Added Flexibility Offered by the Preventive Health and Health Services Block Grant", in which the implementation of the PHHS block grant in 13 states was reviewed and analyzed, stated that many states have assigned a low priority to the EMS program. The report also revealed that funding for EMS decreased between 1981 and 1983 in 10 of the 11 states for which complete data were available. That report provided the first indications of how states were distributing their block

grant funds. However, complete information is still lacking regarding the progress of the development of EMS systems across the country.

In light of the achievements of the federal EMS program prior to 1982, the Federal investment over the years in the development of EMS systems, and the results presented in your May 1984 report, we believe that a detailed study of the experience of the EMS systems under the block grant is warranted. Therefore, as the ranking minority member of the Committee on Labor and Human Resources and as the Senate author of the enabling legislation, we request that you conduct such a study and that the report on it include:

(1) Information on the progress of the previously designated 303 EMS regions—specifically, data regarding the number of regions that have completed the cycle, that have advanced to the ALS, BLS, and planning stages, respectively, and that have still not begun the process. Please also evaluate what the impact has been on the development and coordination of EMS systems throughout the country of the transfer of authority for the program from the federal government to the states.

(2) An analysis, similar to the one contained in the 1984 report and expanded to include all 50 states and the District of Columbia, and the funding of EMS programs. Please include data regarding the overall levels of support for EMS in each region and a breakdown of federal (by PHHS block grant, categorical grant, and the Department of Transportation), state and local contributions.

(3) An analysis of the extent to which the current status of EMS programs meet the original goal of phasing out Federal program support in FY 1985.

(4) An analysis of the impact that the EMS program has had in reducing morbidity and mortality due to serious accidents, heart attacks, strokes, and similar incidents in which a swift medical response could save lives and minimize disabilities.

We very much appreciate the GAO's past excellent work in connection with this program and look forward to receiving a response from you, at your earliest convenience, regarding the conduct of the requested study. Please have your staff contact Barbara Masters (224-3553 for Senator Cranston) and David Nexon (224-7679 for Senator Kennedy) if you have any questions about this letter.

With warm regards,

Cordially,

EDWARD M. KENNEDY.
ALAN CRANSTON.

HEALTH CARE: STATES ASSUME LEADERSHIP ROLE IN PROVIDING EMERGENCY MEDICAL SERVICES

EXECUTIVE SUMMARY

Purpose

About 550,000 persons die from heart attack and another 140,000 die from injuries each year in the United States. Studies estimate that from 15 to 20 percent of injury and prehospital coronary deaths could be avoided with the delivery of appropriate emergency medical services.

At the request of Senators Alan Cranston and Edward M. Kennedy, GAO reviewed the status of emergency medical services programs in the United States, addressing the following questions:

What effect did the transition from federal to state leadership under the Preventive Health and Health Services block grant have on emergency medical services?

What are the significant issues and barriers affecting the appropriate and timely delivery of local emergency medical services?

While recognizing that states are now responsible for operating the program, the Senators also asked us to identify any actions the federal government could take to enhance states' progress.

Background

Emergency medical services are best delivered through a well-coordinated system of local providers. While local providers and governments have principal responsibility for delivering services, the federal government assumed a lead role in improving these services through categorical grant programs created under the 1966 Highway Safety Act and the 1973 Emergency Medical Services Systems Act.

In the early 1980's the federal government devolved much of its leadership responsibilities to states by folding the Emergency Medical Services Systems Act program into the Preventive Health and Health Services block grant. This prompted concerns that states would make less funds available for emergency medical services.

Between October 1985 and March 1986, GAO reviewed the activities in six states—California, Florida, Iowa, Massachusetts, Pennsylvania, and Texas—to assess their influence on the local delivery of emergency medical services. Within the 6 states, 18 urban and rural areas were selected for case studies.

Results in Brief

Bolstered by the conversion of federal categorical support to the more flexible block grant, states have assumed a more active leadership role in financing and regulating the local delivery of emergency medical services. Although initially reducing funds for emergency medical services in the first years of the block grant, the six states GAO visited have reversed this trend, as the emergency medical services community increasingly looks to them rather than the federal government for leadership.

Many local areas, however, have not yet adopted service delivery practices that have been shown to save lives. Quick telephone access through 911 is estimated to be available to less than 50 percent of the nation; advanced life support ambulance services are generally not available in most rural areas visited; and critically injured patients are not taken to the most appropriate hospital in some areas.

Progress in adopting these practices has been impeded by the costs of installing 911 and acquiring sophisticated ambulance services as well as the lack of cooperation among emergency medical service providers. State and local governments are in the best position to provide the primary impetus in overcoming barriers to further progress. Certain federal actions, however, could help enhance state and local leadership efforts.

Principal Findings

States Assume Leadership Role Under Block Grant

States have reversed the downward funding trends for emergency medical services initially experienced under the block grant. Funding in the six states visited decreased by 34 percent from 1981 to 1983. Although total funding has not returned to 1981 levels, funding increased by 28 percent from 1983 to 1985. Moreover, the states have increased their share of funding from 27 percent in 1981 to 50 percent in 1985.

Under the block grant, states have expanded their regulatory and programmatic roles and have generally kept the regional systems established under the 1973 federal categorical program. As of 1985, states continued support for 76 percent of these regional systems.

Although the block grant has worked well in engaging state leadership, federal highway safety funds expended by states for emergency medical services could be better coordinated with states' overall emergency medical services strategies. Four of the six states have used these funds to support emergency medical services without consulting with state emergency medical services offices.

Availability of 911 Varies Significantly

Although 911 expedites quick public access to emergency medical resources, it is estimated that more than 50 percent of the nation, primarily in rural areas, is still not covered. High installation and operating costs in rural areas GAO visited and the reluctance of urban ambulance services to join an areawide telephone receiving system are among the principal barriers to 911 implementation. While state-mandated coverage and financing arrangements could promote broader coverage, only six states nationwide have mandated 911 coverage and 26 have authorized a special funding mechanism.

Advanced Ambulance Care Limited in Rural Areas

Advanced life support ambulance services, most important to those in critical condition, are primarily found in urban areas. While all nine urban areas GAO visited have these services available to at least 50 percent of their population, only four of nine rural areas have such coverage. Low rural area caseloads often do not provide sufficient revenues to cover advanced life support fixed costs and preclude maintenance of staff medical skills.

States have taken many regulatory actions to upgrade the quality of advanced life support care. Of the 18 local areas visited, however, 10 reported that radio interference hampered communications between ambulance personnel and hospital physicians providing medical direction for field care. The Federal Communications Commission, which allocates radio channels, recently provided more channels, which could ameliorate the interference problem. Further, 10 areas indicated that outmoded communications equipment also limits effective ambulance-hospital communications. However, block grant funds may not be used to purchase new equipment.

Many Areas Have Not Adopted Trauma Care Systems

Although taking severely injured patients to specialized trauma centers increases survival chances, 10 of the 18 areas GAO visited do not have fully developed trauma systems to assure that critically injured patients are taken to these centers. The designation of a hospital as a trauma center may threaten other hospitals in the area with potential loss of patients and prestige. Due partly to these concerns within the medical community, states have done little to encourage the designation of trauma centers.

The new prospective payment system being implemented in Medicare and being adopted by some states in Medicaid to contain health care costs might discourage hospitals from specializing in costly trauma care. This system reimburses hospitals based on the average costs of treating pa-

tients. Trauma centers treating a disproportionate number of severely injured patients may not receive sufficient reimbursement under this averaging method to fully cover the higher costs associated with severe cases.

Matters for Congressional Consideration

Although state and local governments are in the best position to foster needed improvements, the Congress could consider actions in two areas to assist state and local efforts:

A federal loan program financing initial local 911 start-up costs could promote broader 911 coverage, particularly in rural areas, if the Congress decides that promotion of 911 is a desirable national goal. The Congress could explore modifying an existing loan program for rural telephone systems, administered by the Rural Electrification Administration in the Department of Agriculture, to permit existing loan funds to be used by local governments for 911 implementation.

The current prohibition on equipment purchases in the Preventive Health and Health Services block grant could be modified to permit local areas to replace outmoded communications equipment using block grant funds.

Recommendations

To avert a potentially negative federal effect on the development of specialized trauma care, GAO recommends that the Department of Health and Human Services determine whether federal Medicare and state Medicaid reimbursement rates have an adverse financial impact on trauma centers. The results of this analysis should be considered along with other factors in assessing the need for a change in trauma-related payment rates.

Agency Comments

The views of directly responsible officials were sought during GAO's work and have been incorporated in the report where appropriate. GAO did not request official agency comments on a draft of this report.

Mr. KENNEDY. Mr. President, I am very pleased to be joining as an original cosponsor with my good friend and colleague from California [Mr. CRANSTON] in introducing S. 10, the proposed "Emergency Medical Services and Trauma Care Improvement Act of 1987".

Mr. President, I applaud the efforts of the Senator from California [Mr. CRANSTON] who is once again demonstrating his long-standing commitment and leadership to bringing about improvements in health care for individuals with dire medical emergencies. I share his commitment to this end and fully support the purposes of this legislation to improve the quality and availability of emergency medical services and trauma care.

This bill grew out of a September 30, 1986, General Accounting Office report, jointly requested 2 years ago by the two of us, in which the current status of emergency medical services systems throughout the country were reviewed and analyzed. The results and recommendations of the report serve as the basis for this legislation.

Both Senator CRANSTON and I were deeply involved in the original establishment of the EMS Program, and I regard it as one of key parts of our national health care system.

Mr. President, I do have some concerns about one provision, section 5 in the bill, which would establish a program of trauma care grants to the States in order to help the States and local regions develop integrated trauma systems and to enable States to provide financial assistance to designated trauma centers to defray a portion of their uncompensated care costs resulting from high-cost trauma patients.

While I support the goals of the trauma grant program, I would like to study this particular proposal further. I will be working closely with the distinguished Senator from California [Mr. CRANSTON] in the months ahead to further develop and refine this legislation with a view toward its prompt enactment.

Mr. GORE. Mr. President, I am especially pleased to join my colleagues from California and Massachusetts in introducing this much needed legislation.

Trauma policy is not a new issue in the Congress and for good reason. Trauma is the most important, most tragic, and most expensive health problem in the United States today; 550,000 Americans die each year from cardiac arrest. There are 70 million persons injured each year seriously enough to require medical attention in an emergency facility. Between 400,000 and 500,000 of these individuals are permanently disabled. Another 140,000 lose their life. Injuries are the leading cause of death up to the age of 44. They cause more lost working years than all forms of cancer and heart disease combined, with an estimated yearly economic cost to our Nation at around $100 billion.

Yet if you sit down and talk with the trauma experts, as I have done in Tennessee, they will tell you that the greatest tragedy is that doctors aren't losing patients, the system is killing them. We have the ability to save at least 100,000 to 140,000 of these lives and prevent tens of thousands of permanently disabling injuries through appropriate and prompt treatment, but too often appropriate care is received too late.

The bill we are introducing today, the Emergency Medical Services and Trauma Care Improvement Act of 1987, will help provide all U.S. residents access to the appropriate care and as a result will save lives, prevent unnecessary suffering, and save money.

Dismal facts contained in the 1966 National Academy of Sciences' report, "Accidental Death and Disability—The Neglected Disease of Modern Society," and the understanding that through responsible Federal leadership Government could make an important difference, led Congress in 1966 to add emergency medical care among the provisions of the Highway Safety Act. In 1973, Congress enacted the Emergency Medical Services Systems Act to further improve services across the country.

A trauma care system is an organized approach to caring for the acutely injured patient. It is composed of four primary components: Access to care, prehospital care, hospital care, and rehabilitation. The 1966 and 1973 laws focused on the first two components: Access to care and prehospital care. These laws accomplished almost all of what they set out to do. The emergency medical services (EMS) we are familiar with: The new ambulances, the emergency medical technicians and paramedics, are all a result of the 1966 and 1973 laws.

While these were critical first steps, the next steps are equally critical, especially hospital care. It doesn't do much good to have a sophisticated system that insures prompt transfer to the hospital only to have the patient die because when they got there the appropriate medical personnel were unavailable.

In 1976, a task force of the American College of Surgeons published a landmark document titled "Optimal Hospital Resources for Care of the Seriously Injured." In it standards for trauma centers were first established. In 1979, Congress began work on establishing a process to designate trauma centers, but before this program was properly implemented disaster struck the trauma system. In 1981, the Emergency Medical Services System Act was repealed and the program was folded along with six other health programs into a Preventive Health block grant. While this provided States with a great deal of flexibility in implementing programs, progress on designating trauma centers all but stopped. It has left us with an efficient system of prehospital care, but in a muddle about the appropriate locations to which patients should be transported. The tragic result, patients dying not because of their injuries, but because the system has failed them.

The legislation we are introducing today is specifically designed to get us back on track designating trauma centers. It establishes tough standards endorsed by the medical experts that will help States resist potentially disasterous pressure coming from local hospitals to liberalize certifying standards. Some local hospitals may not like it. In some cases, they are afraid not being designated will hurt their ability to compete for patients in other services. While most hospitals are excellent, few can realistically make the commitment it takes to be a successful trauma center.

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It is indeed a tragedy if recent changes in hospital reimbursement have prompted such fears, but it has made it all the more important that legislation addressing trauma center designation be enacted as soon as possible. The bill we are introducing today does just that.

By Mr. CRANSTON (for himself, Mr. SIMPSON, Mr. MATSUNAGA, Mr. DECONCINI, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. STAFFORD, Mr. KENNEDY, Mr. COHEN, Mr. CHILES, Mr. DURENBERGER, Mr. GORE, Mr. PRESSLER, Mr. SASSER, Mr. HEINZ, Mr. KERRY, Mr. WILSON, Mr. SIMON, Mr. LEAHY, Mr. LEVIN, Mr. SARBANES, Mr. RIEGLE, Mr. MELCHER, Mr. JOHNSTON, Mr. BURDICK, and Mr. BINGAMAN):

S. 11. A bill to amend title 38, United States Code, to establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; to apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the Veterans' Administration; to provide for judicial review of certain final decisions of the Administrator of Veterans' Affairs; to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by the Veterans' Administration; and for other purposes; to the Committee on Veterans' Affairs.

VETERANS' ADMINISTRATION ADJUDICATION PROCEDURE AND JUDICIAL REVIEW ACT

Mr. CRANSTON. Mr. President, I am today introducing S. 11, the proposed Veterans' Administration Adjudication Procedure and Judicial Review Act. I am delighted to note that I am joined by a strong bipartisan array of 25 original cosponsors, including my good friends and colleagues on the Veterans' Affairs Committee, our former chairman and my fellow whip, Senator SIMPSON, and Senators MATSUNAGA, DECONCINI, MITCHELL, ROCKEFELLER, and STAFFORD. Five of the cosponsors are members of the Judiciary Committee, including Senators SIMPSON and DECONCINI, who both serve on the Veterans' Affairs and Judiciary Committees.

Mr. President, this is the first Congress since the 94th Congress that my friend, the former Senator from Colorado, Gary Hart, is not taking the lead in introducing legislation to provide for judicial review of VA decisions. Senator Hart's deep and abiding interest in and strong leadership regarding the issue of judicial review of VA decisions was a great inspiration and we will miss his presence. It has been my privilege to join with Senator Hart as the principal cosponsor of this legislation over 3 years, and I am honored to be to be able to pick up the torch upon his retirement from the Senate.

PURPOSE OF THE BILL

The basic purpose of this measure is to ensure that veterans and other claimants before the VA receive all benefits to which they are entitled under law by providing them with the opportunity for judicial review of final decisions of the Administrator of Veterans' Affairs, or those acting for him, in denying claims for benefits or in establishing VA policies, regulations, or other guidance; by codifying certain internal procedures of the VA relating to the adjudication of benefit claims; by requiring that VA rulemaking processes comply with provisions of the Administrative Procedure Act relating to notice and comment; and by allowing claimants to pay attorneys reasonable fees for representation before the VA after a decision by the Board of Veterans' Appeals and for representation in judicial proceedings. My July 30, 1985, floor statement upon Senate passage of S. 367—the substantially identical measure from the last Congress—discusses the bill's provisions and purposes in detail, beginning at page 21398 of the daily edition of the CONGRESSIONAL RECORD. S. 367 was reported by the Veterans' Affairs Committee on July 8, 1985, and passed by the Senate on July 30, 1985. That floor statement accurately describes my intentions with respect to the bill we are introducing today.

BACKGROUND

Mr. President, legislation to provide for judicial review of decisions of the Veterans' Administration has been through an extended period of development in the Senate—beginning in the 94th Congress when the former Senator from Colorado [Mr. HART] first introduced such legislation. During this period, the Committee on Veterans' Affairs has held nine hearings on judicial review legislation, and the Judiciary Committee has held one such hearing. The Veterans' Affairs Committee has four times voted to report such legislation, and the Judiciary Committee twice, after referral of the reported bill for a period of time, has taken no action to amend the reported measures before being discharged from further consideration. The measures reported by the Veterans' Affairs Committees—S. 330 in the 96th Congress, S. 349 in the 97th Congress, S. 636 in the 98th Congress, and S. 367 in the last Congress—were passed by the Senate without dissent.

Unfortunately, until the last Congress, the House Veterans' Affairs Committee, to which the measures were referred in the other body, took no action on any of them. In the second session of the last Congress, the House committee held a number of hearings and conducted a markup on a companion measure, H.R. 585, introduced by my good friend from California, DON EDWARDS. Regrettably, despite the fact that H.R. 585 had 233 cosponsors, the House committee voted on July 16, 1986, to table the bill by a vote of 20 to 12.

Despite that action, I continue to hope that the Committee on Veterans' Affairs in the other body will work with us to develop a consensual approach on this important issue. I also look forward to working with the many veterans service organizations, other interested organizations and individuals, and colleagues on the two Veterans' Affairs Committees in the developing of such an approach.

NEED FOR THE BILL

Mr President, there are a number of strong reasons supporting the enactment of judicial review legislation, and I would like to highlight some of them briefly at this time.

FAIRNESS FOR INDIVIDUAL CLAIMANTS

One of the principal reasons judicial review is needed is to help ensure fairness to individual claimants before the VA. In saying this, I do not mean to indicate a belief that the Board of Veterans' Appeals—the final adjudicative body within the VA—in any way intends to deny to veterans such fairness or in any way routinely denies such fairness. To the contrary, I believe that the members of the Board are fairminded, conscientious individuals who make a concerted effort to carry out their responsibilities in an evenhanded fashion and that, by and large, most claimants before the VA are treated fairly.

However, I do know that the present system, which results in final, unappealable decisions by the Board, together with the statutory limit of $10 on the amount a claimant before the VA can pay an attorney for representation, leaves many disappointed claimants believing that they have been denied a full and fair opportunity to pursue their claims and that, as veterans, they are denied important rights that they and other citizens have in dealing with virtually all other Federal agencies.

In addition to this perception of a denial of justice, Mr. President, is the real possibility that actual injustices do occur under the current system, a problem that opportunity for judicial review would substantially ameliorate. Although I know that the VA claims-adjudication system is set up to be supportive of the veteran—as it should be—the VA is a very large and complex Federal agency, and unfair results do occur. I have long been concerned that the tremendous volume of claims handled by the Department of Veterans' Benefits and the Board of Veterans' Appeals provides a significant opportunity for some injustices to occur. On the basis of current trends, the number of these VA claims will continue to increase, thereby increas-

ing the possibility of unintended unfair results.

REVIEW OF QUESTIONABLE AGENCY POLICIES

Mr. President, another principal reason for judicial review legislation is the need to establish a basis for the review of questionable agency actions restricting, withholding, or withdrawing VA benefits—actions that increase in frequency as there is greater pressure within the executive branch for the VA to act to achieve cost savings in current programs. There have been numerous examples of such actions in recent years—such as efforts by the VA to collect for the cost of health care provided to veterans who happen to be VA employees; attempts by the Agency, at the direction of the Office of Management and Budget, to restrict beneficiary travel reimbursement for eligible veterans; the VA's drawing overly restrictive regulations to implement the targeted GI bill delimiting date extension enacted in Public Law 97-72 as well as the radiation exposure health care eligibility enacted in that same public law; allegations that some VA stations are applying very stringent standards in cases in which Vietnam veterans are seeking to be granted service connection for posttraumatic stress disorder; the review of compensation awards to veterans in Puerto Rico; and what many believe is an overly aggressive debt-collection effort.

In addition to these examples of agency actions restricting benefits, there is also the potential for unduly restrictive legal opinions from the office of the general counsel which may operate to deny veterans' access to benefits to which they would otherwise be entitled. One example with which I was involved concerned a woman veteran who had a service-connected disability which prevented her from becoming pregnant. In the course of assisting her, I became aware of a general counsel opinion which held that the VA does not have legal authorization under current law to provide services to help overcome such a disability. Although I do not believe that the VA's restrictive interpretation of its existing authority is correct—and did my utmost to bring about a change in that interpretation—I was not successful. In fact, in other legislation I am introducing today—section 2 of S. 6—I am proposing to provide the agency with express authority in order to remove any doubts that may exist on this issue.

In each of these instances and in other similar cases, the lack of access to court review has serious implications. Although the Committees on Veterans' Affairs in both Houses do their utmost to oversee the activities of the VA, the limited resources of the committees do not allow for thorough review of and congressional action to resolve satisfactorily all of the legal and policy issues arising in such a large and complex agency. In addition, I do not believe that aggrieved veterans should have to be dependent for relief on congressional committee processes which, for all their virtues, cannot be fairly said to be designed to achieve or to be capable of achieving systematically an evenhanded dispensation of justice. Also, although the results of committee oversight are often salutary in terms of bringing about—either through legislation or administrative action under pressure—reversals of agency action, there is usually a long delay in having the correction made. In contrast, injunctive relief for irreparable injury can be a very speedy remedy.

If the veterans directly affected by various VA actions have access to court to challenge those actions, they would be guaranteed the opportunity to be heard by an entity outside of the VA and, in certain cases, to obtain urgent and timely relief. In particular, the VA's handling of claims based on exposure to agent orange or to radiation from the detonation of a nuclear weapon would benefit from outside review by allowing those who believe they have been harmed to have their claims tested in an independent forum.

Mr. President, in making these points, I do not want to be understood as suggesting that the VA is wrong on all or any of these issues. Rather, I am suggesting that outside review by the independent branch of Government established in our constitutional framework with the special responsibility of determining whether governmental action is legal and whether it is fundamentally fair would benefit all parties involved. The VA would have its processes subjected to appropriate scrutiny and, to the extent the agency's actions were upheld, would be vindicated. Likewise, to the extent the agency's actions were held unlawful or fundamentally unfair, steps could be taken to improve the process so as to ensure that the agency is fulfilling its mission to serve veterans in the best possible fashion. I am concerned that agency action that does not have the benefit of outside scrutiny may fail to address fully the legitimate needs of those the agency exists to serve, and I believe that providing for judicial review would basically correct this shortcoming.

REVIEW BY AN INDEPENDENT TRIBUNAL

Mr. President, another important reason in support of judicial review is related to the status of the Board of Veterans' Appeals. Fundamental principles of due process, as guaranteed by the Constitution, require an independent review of administrative action affecting individuals' liberty or property interests. Although there are earlier court decisions suggesting that veterans' benefits are gratuities and not worthy of general due process protections, such a viewpoint is no longer valid, if it ever was, either philosophically—veterans' benefits are earned by service in the military—or legally. A number of decisions rendered by the Supreme Court in the last two decades—for example, *Goldberg.* v. *Kelly,* 397 U.S. 254 (1970); *Board of Regents* v. *Roth,* 408 U.S. 564 (1972); *Goss* v. *Lopez,* 419 U.S. 565 (1975); and *Paul* v. *Davis,* 424 U.S. 693 (1976)—have held that various statutory governmental benefits are legal entitlements and, thus, protected property interests of the beneficiary.

Mr. President, I do not believe that review by the Board provides the required independent action required by due process. Although the Board is not directly under the control of the Administrator of Veterans' Affairs, it is far too bound up with the agency, in many informal ways, to be truly independent and more importantly its independence is restricted by law. Under section 4004(c) of title 38, the Board is "bound in its decisions by the regulations of the Veterans' Administration, instructions of the Administrator, and the precedent opinions of the chief law officer." I certainly do not mean to suggest any lack of integrity on the part of either the Administrator or VA General Counsel, but the fact is that the potential for them—and future incumbents in those offices—to restrict the decisionmaking authority of the Board significantly restricts that body's independence.

CLARIFY THE STATE OF THE LAW

A final purpose of judicial review legislation is to help clarify the state of the law on the scope of the current law provision that bars judicial review, section 211(a) of title 38. At present, there are some important differences between the various U.S. Court of Appeals regarding the sweep of this prohibition, and I am concerned that the U.S. Government contributes to this confusion by raising the 211(a) bar in cases in which it is not appropriate. Thus, the decision as to which Federal circuit a veteran brings an action may well determine the outcome of the case—a result that should be avoided.

Some courts have held, correctly I believe, that the 211(a) bar applies only to claims for benefits by individual veterans, while other courts have let the 211(a) bar preclude suits involving other than individual benefit decisions. A brief description of this split among the Federal courts of appeals can be found in the decision of the Court of Appeals for the D.C. Circuit in the case of *McKelvey* v. *Turnage,* 792 F.2d 194, 198 n.1 (D.C. Cir. (1986)).

Despite the agency's acknowledgement, in testimony before our committee in 1983, that some courts of appeals clearly have allowed veterans to bring actions challenging VA regula-

tions on other than constitutional grounds, the U.S. Government, on behalf of the VA, continues to raise the section 211(a) statutory bar to judicial review in VA cases that do not involve individual claims for benefits.

SCOPE OF REVIEW

The last matter that I want to touch on involves the appropriate scope of review that a court would apply in the review of a VA fact decision. This issue has been a matter of long and involved discussion in our committee over the years, and I will not attempt to go over all that background. Rather, the one point I want to stress on this issue today is my belief that it is vital that whatever scope of review is chosen must provide some basis for court review of questions of fact. The bills passed by the Senate in 1981, 1983, and 1985 each included a very narrow scope of review of factual issues. The bill we are introducing today contains that same provision.

Our intent in providing only a very narrow basis on which a court could review a decision by the Board of Veterans' Appeals on a question of fact is to reaffirm the Board's role as the expert final arbiter of such questions. However, by refusing to limit the review to questions of law only and thus preclude all review of questions of fact—an approach that some have advocated—this legislation affords an opportunity to correct truly egregious decisions on fact questions. Although I believe that such decisions are rare, I do not believe that total preclusion of review of facts would be appropriate or productive. Indeed—and I believe this is a vitally important point—the very existence of the possibility of review even with such a very narrow window of reviewability would, I am confident, have the effect of preventing almost all such outrageous decisions from ever being made in the first instance.

FUNDAMENTAL FAIRNESS FOR VETERANS

Mr. President, I want to answer a question I am sometimes asked in view of our lack of success to date in getting judicial review legislation favorably considered in the other body. The question is usually posed along the following lines: "What is so wrong about the present system for adjudicating VA claims that you persist in pursuing this legislation?" Although I am fully able to respond to the issue posed in this way—as I did briefly earlier in my statement—I do not believe finding fault with the current system is a necessary step in making the case for judicial review. Rather, I believe the appropriate first question is whether there is any continuing reason—putting to one side the question of whether there ever was a valid reason—for denying veterans the same right of access to court review of VA benefits decisions that is available in the case of virtually every other Federal benefit.

Although there are some restrictions in current law on access to judicial review of some Federal agency actions, only one area in which a restriction exists, Federal employee workers' compensation benefits, is at all analogous to VA benefits and is an infinitely smaller benefit program than the combination of the myriad VA benefits programs codified with title 38 of United States Code. Moreover, those benefits programs which VA benefits programs most closely, denials of benefits under the Social Security Act—such as old age and survivors insurance, Social Security disability insurance, supplemental security income, and Medicare—are all able to be challenged in court.

When the issue is posed this way—why should veterans be denied rights available to others in their dealings with the Federal Government in directly analogous areas?—I have never heard a satisfactory answer justifying maintaining the current-law preclusion. I realize that concerns have been expressed that judicial review could have an undue impact on the agency's current claims adjudication processes. I have also heard concerns that providing for judicial review would make the VA claims process more adversarial, would create unnecessary delay, and would cost veterans money in the form of attorneys' fees. Although I fully recognize the genuineness of these concerns, I do not believe they are well founded. Briefly, here is why.

RESPONSES TO ARGUMENTS ABOUT JUDICIAL REVIEW

As to the possibility that providing for judicial review could have an untoward effect on the current VA system, the legislation that has been developed in the Senate over the years contains numerous provisions that have been designed expressly to avoid that result. These provisions would ensure that the VA's current, desirable adjudication practices and procedures would be protected by providing a statutory basis for them. In this way, not only would current processes be protected in the event of judicial review, but they would actually be strengthened by being set out in law rather than being based on regulations or, in some cases, on no more than informal past practice.

With reference to the concerns about judicial review causing undue delay or about it somehow making the veteran and the agency adversaries, it is important to remember that under this legislation, judicial review would be available only after a veteran's claim has been turned down by the regional office, and, on appeal, by the Board of Veterans' Appeals. At that point, it is difficult to see how providing for judicial review could create any delay. The VA proceedings would have run their normal course. A process no longer going anywhere can't be delayed. Moreover, once the claim is finally denied, the veteran and the VA are clearly in dispute. A veteran whose claim has been finally denied by the VA's highest appeal tribunal would not become an adversary of the VA by virtue of having court review available. Courts don't create adversarial situations; they resolve them.

Regarding attorneys' fees, to me it's almost incomprehensible that the current law limit of $10 on the amount that an attorney can be paid has survived to this time. Whatever behavior characterized the legal profession at the time the original limitation was enacted following the Civil War, it is no longer credible to insist that attorneys would prey on innocent veterans. I also am unable to accept the view that veterans, as a class, are so unable to protect themselves that there needs to be a barrier erected in law between them and attorneys. Let me be clear—I do not believe that most veterans with claims before the VA would be well advised to seek the assistance of an attorney. Certainly, were I asked, my first advice to a veteran with such a claim would be to contact a veterans' service officer. That is what I tell veterans today and what I would tell them were judicial review available. But the existence of the superb resource of representation before the VA by veterans' service officers in claims adjudication is not a reason for totally precluding a veteran from seeking to obtain the services of an attorney at the end of the internal VA process if the veteran wishes to do so.

On this point, I stress again that this legislation would not lift the $10 limit in a particular case until after the veteran has received an initial BVA decision. Thus, this legislation contemplates that the current practice of veterans being assisted by skilled veterans' service officers throughout the VA and BVA administrative process would continue to operate exactly as it does now.

It is important, however, if judicial review is authorized, that, as the measure would allow, a veteran, once he or she has received an initial BVA decision and has sought an attorney's assistance to appeal that decision, would be able to seek further BVA review before going to court. I realize that some have advocated limiting an attorney's involvement exclusively to a court's review of a case. Because this measure allows for court review only of the record made by the agency—and, in fact, expressly precludes de novo review of the claim—limiting an attorney's involvement to court proceedings would, in many instances, preclude a veteran from receiving any assistance from an attorney because the attorney would be unable to im-

prove the agency record. Alternatively, the attorney could seek a remand from the court, a procedure that would result in an unnecessary use of court time and which would lead to further, unnecessary delay in the final resolution of the veteran's claim. Permitting an attorney representing a veteran to seek to reopen the BVA decision would avoid these problems. It would also have the further benefit of promoting the possibility of a claim being resolved finally before the BVA without resort to court action—a result which would be far more advantageous for the veteran in terms of speedy justice and the cost of the attorney's time.

I want to address one final argument that is sometimes raised as a reason for continuing the bar to judicial review—the possible impact of a new class of claimants on the Federal judiciary. Without detailing the various contentions on this point—and there have been widely differing views on this issue expressed before our committee over the years—I do not understand why veterans and others with claims before the VA should continue to be discriminated against and denied important rights because treating them fairly might enlarge the responsibilities of the court system. If the Federal court system is overburdened, the Congress should address that problem on an equitable basis by expanding available resources or limiting access to court on some basis that applies to all citizens. It is blatantly unfair and arbitrary to deal with perceived problems in the courts by singling out veterans for exclusion with respect to benefits earned by service in the military.

In any event, in my view, after a shakedown period in which the narrow scope-of-fact review had resulted in summary judgments against plaintiffs with poor cases and after the BVA had become accustomed to being subject to outside review and had adjusted its decisionmaking and decision-writing activities accordingly, I do not believe the amount of litigation would be a substantial burden on the Federal judiciary.

In summary, the reason I continue to propose this legislation is to provide access to justice for veterans as a matter of fundamental fairness.

COST ESTIMATE

Mr. President, when S. 367 was before the Senate in the last Congress, the Congressional Budget Office estimated that its first-year costs would be $2 million and the cost for the first 5 years would be $16 million. Although that estimate has not yet been updated, I see no reason for any change except for the effects of inflation. Thus, the final cost of this measure would be, I believe, a very modest cost to pay to ensure that veterans, their survivors, and other claimants before the VA are given a full and fair opportunity to have their claims for statutory benefits reviewed and evaluated as well as to challenge VA policies, regulations, guidelines, and legal interpretations.

CONCLUSION

Before concluding, Mr. President, I want to speak for a moment about my plans, as the newly elected chairman of the Veterans' Affairs Committee, with respect to S. 11. In the late seventies as the chairman of this committee and since 1981 as its ranking minority member, I have always believed we should press forward with the basic judicial review legislation and have acted accordingly. Under the able chairmanships of my friends from Wyoming [Mr. SIMPSON] and Alaska [Mr. MURKOWSKI], I strongly advocated prompt action on judicial review legislation.

Now, however, certain circumstances have changed. As I noted earlier, last year, for the first time the House committee held a markup on judicial review legislation and tabled the bill. In the course of the dialog leading up to that markup last July, many individuals' and organizations' positions became polarized. In contrast, judicial review has not heretofore been a controversial issue in the Senate. Actions within our committee and on the floor have most always been unanimous. It is my goal to continue this bipartisan, consensual approach.

But, given the polarization that has now occurred on this issue, I do not think that swift action can be taken to achieve such an approach. Rather, we need a cooling down and calming down period and a fairly extended dialog among all the principals concerned to try to find common ground. Therefore, I will shortly initiate discussions, along with the ranking minority member of our committee, Mr. MURKOWSKI, our most recent chairman with the veterans' service organizations and others toward this end. I would welcome the involvement with us in this effort of the chairman, Mr. MONTGOMERY, and newly designated ranking minority member of the House committee, Mr. SOLOMON.

Mr. President, I look forward to working with the cosponsors of this measure, and all of my colleagues on this important legislation in the months ahead.

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

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

S. 11

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Veterans' Administration Adjudication Procedure and Judicial Review Act".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—ADJUDICATION PROCEDURES

SEC. 101. (a) Chapter 51 is amended by adding at the end of subchapter I the following new section:

"§ 3007. Burden of proof; benefit of the doubt

"(a) Except when otherwise provided by the Administrator in accordance with the provisions of this title, a claimant for benefits under laws administered by the Veterans' Administration shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Administrator shall assist a claimant in developing the facts pertinent to his or her claim.

"(b) When, after consideration of all evidence and material of record in any proceeding before the Veterans' Administration involving a claim for benefits under laws administered by the Veterans' Administration, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of such claim, the benefit of the doubt in resolving each such issue will be given to the claimant, but nothing in this section shall be construed as shifting from a claimant to the Administrator the burden described in subsection (a) of this section.".

(b)(1) The table of chapters at the beginning of title 38, United States Code, and the table of chapters at the beginning of part IV of such title are each amended in the item relating to chapter 51 by striking out "Applications" and inserting in lieu thereof "Claims".

(2) The heading of such chapter is amended to read as follows:

"CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS"

(c)(1) The table of sections at the beginning of such chapter is amended in the item relating to subchapter I by striking out "APPLICATIONS" and inserting in lieu thereof "CLAIMS"

(2) The heading of subchapter I of such chapter is amended to read as follows:

"Subchapter I—Claims"

(d) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 3006 the following new item:

"3007. Burden of proof; benefit of the doubt.".

SEC. 102. Section 3311 is amended by adding at the end the following new sentences: "Subpenas authorized under this section shall be served by any individual authorized by the Administrator by (1) delivering a copy thereof to the individual named therein, or (2) mailing a copy thereof by registered or certified mail addressed to such individual at such individual's last known dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered or certified mail, the return post office receipt therefor signed by the individual so served shall be proof of service.".

SEC. 103. Section 4001 is amended—

(1) in the second sentence of subsection (a), by inserting before the period at the end of such sentence "in a timely manner"; and

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

"(d) The Chairman of the Board shall submit a report to the appropriate committees of the Congress, not later than December 31, 1988, and annually thereafter, on the experience of the Board during the prior fiscal year together with projections for the fiscal year in which the report is submitted and the subsequent fiscal year. Such report shall contain, as a minimum, information specifying the number of cases appealed to the Board during the prior fiscal year, the number of cases pending before the Board at the beginning and end of such fiscal year, the number of such cases which were filed during each of the 24 months preceding the prior fiscal year and the then current fiscal year, respectively, the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the prior fiscal year, and the number of members of, and the professional, administrative, clerical, stenographic, and other personnel employed by, the Board at the end of the prior fiscal year. The projections for the current fiscal year and subsequent fiscal year shall include, for each such year, estimates of the number of cases to be appealed to the Board and an evaluation of the Board's ability, based on existing and projected personnel levels, to ensure timely disposition of such appeals as provided for by subsection (a) of this section.".

SEC. 104. Section 4003 is amended—

(1) in subsection (a), by inserting a comma and "after notice of such additional information is furnished to the claimant and the claimant is provided an opportunity to be heard in connection with such information," after "concerned"; and

(2) in subsection (b)—

(A) by striking out "When" and inserting in lieu thereof "(1) Except as provided in paragraph (2), when";

(B) by inserting a comma and "after notice of such additional information is furnished to the claimant and the claimant is provided an opportunity to be heard in connection with such information," after "concerned"; and

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

"(2) When, without the vote of a temporary member designated under section 4001(c)(1) of this title or the vote of an acting member designated under section 4002(a)(2)(A)(ii) of this title, a section would be evenly divided, such member shall not vote.".

SEC. 105. Section 4004 is amended—

(1) in subsection (a)—

(A) by striking out "involving" in the first sentence and inserting in lieu thereof "for"; and

(B) by inserting before the period at the end of the second sentence "after affording the claimant an opportunity for a hearing and shall be based exclusively on evidence and material of record in the proceeding and on applicable provisions of law";

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b)(1) Except as provided in paragraph (2) of this subsection, when a claim is disallowed by the Board, it may not thereafter be reopened and allowed and no claim based upon the same factual basis shall be considered.

"(2) Following such a disallowance, the Board (directly or through the agency of original jurisdiction, as described in section 4005(b)(1) of this title)—

"(A) when new and material evidence is secured, shall, and

"(B) for good cause shown, may authorize the reopening of a claim and a review of the Board's former decision.

"(3) A judicial decision under subchapter 11 of chapter 71 of this title, upholding, in whole or in part, the disallowance of a claim shall not diminish the Board's authority set forth in paragraph (2) of this subsection to authorize the reopening of a claim and a review of the former decision."; and

(3) by striking out subsection (d) and inserting in lieu thereof the following:

"(d) After reaching a decision in a case, the Board shall promptly mail notice of its decision to the claimant and the claimant's authorized representative, if any, at the last known address of the claimant and at the last known address of the claimant's authorized representative, if any. Each decision of the Board shall include—

"(1) a written statement of the Board's findings and conclusions, and reasons or bases therefor, on all material issues of fact and law and on matters of discretion presented on the record; and

"(2) an order granting appropriate relief or denying relief.".

SEC. 106. Section 4005(d)(5) is amended by striking out "will base its decision on the entire record and".

SEC. 107. Section 4009 is amended by adding after subsection (b) the following new subsection:

"(c) Whenever there exists in the evidence of record in an appeal case a substantial disagreement between the substantiated findings or opinions of two physicians with respect to an issue material to the outcome of the case, the Board shall, upon the request of the claimant and after taking appropriate action to attempt to resolve the disagreement, arrange for an advisory medical opinion in accordance with the procedure prescribed in subsection (b) of this section. If the Board denies the request of such claimant for such an opinion, the Board shall prepare and provide to the claimant and the claimant's authorized representative, if any, a statement setting forth the basis for its determination. Actions of the Board under this subsection, including any such denial, shall be final and conclusive, and no other official or any court of the United States shall have the power or jurisdiction to review any aspect of any such decision by an action in the nature of mandamus or otherwise, the provisions of subchapter II of chapter 71 of this title to the contrary notwithstanding.".

SEC. 108. (a) Chapter 71 is further amended by adding at the end threreof the following new sections:

"§ 4010. Adjudication procedures

"(a) For purposes of conducting any hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, the Administrator may administer oaths and affirmations, examine witnesses, and receive evidence.

"(b) Any oral, documentary, or other evidence, even though inadmissible under the rules of evidence applicable to judicial proceedings, may be admitted in a hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, but the Administrator, under regulations which the Administrator shall prescribe, may provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

"(c)(1) In the course of any proceeding before the Board, any party to such proceeding or such party's authorized representative shall be afforded opportunity—

"(A) to examine and, on payment of a fee prescribed pursuant to section 3302(b) of this title (not to exceed the direct cost of duplication), obtain copies of the contents of the case files and all documents and records to be used by the Veterans' Administration at such proceeding;

"(B) to present witnesses and evidence, subject only to such restrictions as may be set forth in regulations which the Administrator shall prescribe, pursuant to subsection (b) of this section, as to materiality, relevance, and undue repetition;

"(C) to make oral argument and submit written contentions, in the form of a brief or similar document, on substantive and procedural issues;

"(D) to submit rebuttal evidence;

"(E) to present medical opinions and request an independent advisory medical opinion pursuant to section 4009(c) of this title; and

"(F) to serve written interrogatories on any person, including any employee of the Veterans' Administration, which interrogatories shall be answered separately and fully in writing and under oath unless written objection thereto, in whole or in part, is filed with the Administrator by the person to whom the interrogatories are directed or such person's representative.

"(2) The fee provided for in paragraph (1)(A) of this subsection may be waived by the Administrator, pursuant to regulations which the Administrator shall prescribe, on the basis of the party's inability to pay or for other good cause shown.

"(3) In the event of any objection filed under paragraph (1)(F) of this subsection, the Administrator shall, pursuant to regulations which the Administrator shall prescribe establishing standards consistent with standards for protective orders applicable in the United States District Courts, evaluate such objection and issue an order (A) directing that, within such period as the Administrator shall specify, the interrogatory or interrogatories objected to be answered as served or answered after modification, or (B) indicating that the interrogatory or interrogatories are no longer required to be answered.

"(4) If any person upon whom interrogatories are served under paragraph (1)(F) of this subsection fails to answer or fails to provide responsive answers to any such interrogatories within 30 days after service or such additional time as the Administrator may allow, the Administrator shall, upon a statement or showing by the party who served such interrogatories of general relevance and reasonable scope of the evidence sought, issue a subpena under section 3311 of this title (with enforcement of such subpena to be available under section 3313 of this title) for such person's appearance and testimony on such interrogatories at a deposition on written questions, at a location within 100 miles of where such person resides, is employed, or transacts business.

"(d) In the course of any hearing, investigation, or other proceeding in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration, an employee of the Veterans' Administration may at any time disqualify himself or herself, on the basis of personal bias or other cause, from adjudicating the claim. On the filing by a party in good faith of a timely and sufficient affida-

vit averring personal bias or other cause for disqualification on the part of such an employee, the Administrator shall determine the matter as a part of the record and decision in the case.

"(e) The transcript or recording of testimony and the exhibits, together with all papers and request filed in the proceeding, and the decision of the Board (1) shall constitute the exclusive record for decision in accordance with section 4004(a) of this title, (2) shall be available for inspection by any party to such proceeding, or such party's authorized representative, at reasonable times and places, and (3) on the payment of a fee prescribed under section 3302(b) of this title (not to exceed the direct cost of duplication), shall be copied for the claimant or such claimant's authorized representative within a reasonable time. Such fee may be waived by the Administrator, pursuant to regulations which the Administrator shall prescribe, on the basis of the party's inability to pay or for other good cause shown.

"(f) Notwithstanding section 4004(a) of this title, section 554(a) of title 5, or any other provision of law, adjudication and hearing procedures prescribed in this title and in regulations prescribed by the Administrator under this title for the purpose of administering veterans' benefits shall be exclusive with respect to hearings, investigations, and other proceedings in connection with the consideration of a claim for benefits under laws administered by the Veterans' Administration.

"§ 4011. Notice of procedural rights

"In the case of any disallowance, in whole or in part, of a claim for benefits under laws administered by the Veterans' Administration, the Administrator shall, at each procedural stage relating to the disposition of such a claim, beginning with disallowance after an initial review or determination, and including the furnishing of a statement of the case and the making of a final determination by the Board, provide to the claimant and such claimant's authorized representative, if any, written notice of the procedural rights of the claimant. Such notice shall be on such forms as the Administrator shall prescribe by regulation and shall include, in easily understandable language, with respect to proceedings before the Veterans' Administration, (1) descriptions of all subsequent procedural stages provided for by statute, regulation, or Veterans' Administration policy, (2) descriptions of all rights of the claimant expressly provided for in or pursuant to this chapter, of the claimant's rights to a hearing, to reconsideration, to appeal, and to representation, and of any specific procedures necessary to obtain the various forms of review available for consideration of the claim, and (3) such other information as the Administrator, as a matter of discretion, determines would be useful and practical to assist the claimant in obtaining full consideration of the claim.".

(b) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 4009 the following new items:

"4010. Adjudication procedures.

"4011. Notice of procedural rights.".

SEC. 109. (a) In order to evaluate the feasibility and desirability of alternative methods of (1) assuring the resolution of claims before the Administrator of Veterans' Affairs for benefits under laws administered by the Veterans' Administration as promptly and efficiently as feasible following the filing of a notice of disagreement pursuant to section 4005 (as amended by section 106 of this Act) or 4005A of title 38, United States Code, and (2) affording claimants the opportunity for a hearing before or review by a disinterested authority at a location as convenient and soon as possible for each claimant, the Administrator is authorized to conduct a study, commencing not more than 1 year after the date of the enactment of this Act, for a period of 24 months, involving either or both of the alternative methods described in subsection (b) of this section for resolution of claims.

(b)(1) In not more than three geographic areas, the Administrator is authorized to provide an intermediate-level adjudication process whereby each claimant may, within the time afforded such claimant under paragraph (3) of section 4005(d) or 4005A(b) of title 38, United States Code, to file an appeal, request a de novo hearing at the agency of original jurisdiction (as described in section 4005(b)(1) of such title) before a panel of three Veterans' Administration employees, each of whose primary responsibilities include adjudicative functions but none of whom shall have previously considered the merits of the claim at issue. Following such hearing, such panel shall render a decision and prepare a new statement of the case in accordance with the requirements of paragraphs (1) and (2) of section 4005(d) of such title. Such new statement of the case shall, for all purposes relating to appeals under chapter 71 of such title, be considered to be a statement of the case as required by paragraph (1) of such section 4005(d).

(2) In not more than three other geographic areas, the Administrator is authorized to provide for an enhanced schedule of visits, on at least a quarterly basis each year, by a panel or panels of the Board of Veterans' Appeals to conduct formal recorded hearings pursuant to section 4002 of such title in such areas.

(c) Not later than 6 months after the completion of such study, the Administrator shall report to the Congress on the results thereof, including an evaluation of the cost factors associated with each alternative studied and with any appropriate further implementation thereof, the impact on the workload of each regional office involved in such study, and the impact on the annual caseload of the Board of Veterans' Appeals resulting from each alternative studied, together with any recommendations for administrative or legislative action, or both, as may be indicated by such results.

SEC. 110. Section 3010(i) is amended—

(1) by inserting "(1)" after "(i)"; and

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

"(2) Whenever any disallowed claim is reopened and thereafter allowed on the basis of new and material evidence in the form of official reports from the proper service department, the effective date of commencement of the benefits so awarded shall be the date on which an award of benefits under the disallowed claim would have been effective had the claim been allowed on the date it was disallowed.".

TITLE II—VETERANS' ADMINISTRATION RULE MAKING

SEC. 201. (a) Subchapter II of chapter 3 is amended by adding at the end the following new section:

"§ 223. Rule making

"Notwithstanding the provisions of subsection (a)(2) of section 553 of title 5, the promulgation of rules and regulations by the Administrator, other than rules or regulations pertaining to agency management or personnel or to public property or contracts, shall be subject to the requirements of section 553 of title 5.".

(b) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 222 the following new item:

"223. Rule making.".

TITLE III—JUDICIAL REVIEW

SEC. 301. Section 211(a) is amended by striking out "sections 775, 784" and inserting in lieu thereof "sections 775 and 784 and subchapter II of chapter 71 of this title".

SEC. 302. (a) Chapter 71 is further amended—

(1) by inserting after the table of sections the following new heading:

"Subchapter I—General";

and

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

"Subchapter II—Judicial Review

"§ 4025. Right of review; commencement of action

"(a) For the purposes of this chapter—

"(1) 'final decision of the Administrator' means—

"(A) a final determination of the Board of Veterans' Appeals pursuant to section 4004 (a) or (b) of this title; or

"(B) a dismissal of an appeal by the Board of Veterans' Appeals pursuant to section 4005 or 4008 of this title; and

"(2) 'claim for benefits' means—

"(A) an initial claim filed under section 3001 of this title;

"(B) a challenge to a decision of the Administrator reducing, suspending, or terminating benefits; or

"(C) any request by or on behalf of the claimant for reopening, reconsideration, or further consideration in a matter described in clause (A) or (B) of this paragraph.

"(b) Except as provided in subsection (f) of this section, after any final decision of the Administrator adverse to a claimant in a matter involving a claim for benefits under any law administered by the Veterans' Administration, such claimant may obtain a review of such decision in a civil action commenced within 180 days after notice of such decision is mailed to such claimant pursuant to section 4004(d) of this title. Such action shall be brought against the Administrator in the district court of the United States for the judicial district in which the plaintiff resides or the plaintiff's principal place of business is located, or in the district court of the United States for the judicial district where the principal offices of the Board of Veterans' Appeals (established under section 4001 of this title) are located.

"(c) The complaint initiating an action under subsection (a) of this section shall contain sufficient information to permit the Administrator to identify and locate the plaintiff's records in the custody or control of the Veterans' Administration.

"(d) Not later than 30 days after filing the answer to a complaint filed pursuant to subsection (a) of this section, the Administrator shall file a certified copy of the records upon which the decision complained of is based or, if the Administrator determines that the cost of filing copies of all such records is unduly expensive, the Administrator shall file a complete index of all documents, transcripts, or other materials comprising such records. After such index is filed and after considering requests from all parties, the court shall require the Administrator to file certified copies of such indexed

items as the court considers relevant to its consideration of the case.

"(e) In an action brought pursuant to subsection (b) of this section, the court shall have the power, upon the pleadings and the records specified in subsection (d) of this section, to enter judgment in accordance with section 4026 of this title or remand the cause in accordance with such section or section 4027 of this title.

"(f)(1) No action may be brought under this section unless (A) the initial claim for benefits is filed pursuant to section 3001 of this title on or before the last day of the fifth fiscal year beginining after the effective date of this section, and (B) the complaint initiating such action is filed not more than 180 days after notice of the first final decision of the Administrator rendered after the last day of such fiscal year is mailed to the claimant pursuant to section 4004(d) of this title. If the case is reopened pursuant to section 4004(b)(2)(A) of this title within 180 days after such notice is mailed, the next final decision shall, for purposes of this subsection, be considered the first final decision of the Administrator.

"(2) No action may be brought under this section with respect to matters arising under chapters 19 and 37 of this title.

"§ 4026. Scope of review

"(a)(1) In any action brought under section 4025 of this title, the court, to the extent necessary to its decision and when presented, shall—

"(A) decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an action of the Administrator;

"(B) compel action of the Administrator unlawfully withheld.

"(C) hold unlawful and set aside decisions, findings (other than those described in clause (D) of this paragraph), and conclusions of the Administrator found to be—

"(i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(ii) contrary to constitutional right, power, privilege, or immunity;

"(iii) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

"(iv) without observance of procedure required by law; and

"(D) in the case of a finding of material fact made in reaching a decision on a claim for benefits under laws administered by the Veterans' Administration, hold unlawful and set aside such finding when it is so utterly lacking in a rational basis in the evidence that a manifest and grievous injustice would result if such finding were not set aside.

"(2) Before setting aside any finding of fact under paragraph (1)(D) of this subsection, the court shall specify the deficiencies in the record upon which the court would set aside such finding and shall remand the case one time to the Administrator for further action not inconsistent with the order of the court in remanding the case. In remanding a case under the first sentence of this paragraph, the court shall specify a reasonable period of time within which the Administrator shall complete the ordered action. If the Administrator does not complete action on the case within the specified period of time, the case shall be returned to the court for its further action.

"(b) In making the determinations under subsection (a) of this section, the whole record before the court pursuant to section 4025(d) of this title shall be subject to review, and the court shall review those parts of such record cited by a party, and due account shall be taken of the rule of prejudicial error.

"(c) In no event shall findings of fact made by the Administrator be subject to trial de novo by the court.

"(d) When a final decision of the Administrator is adverse to a party and the sole stated basis for such decision is the failure of such party to comply with any applicable regulation of the Veterans' Administration, the court shall review only questions raised as to compliance with and the validity of the regulation.

"§ 4027. Remands

"(a)(1) In any action brought under section 4025 of this title, the court shall, on motion of the Administrator made before the expiration of the time specified for the filing of an answer to a complaint filed pursuant to subsection (b) of such section, allow a single remand of a case to the Administrator for further review by the Administrator. If such review is not completed within 90 days after the date of such remand, the matter shall be returned to the court for its action.

"(2)(A) At any time after the Administrator files an answer, the court may, in the exercise of its direction, remand the case to the Administrator for further action by the Administrator.

"(B) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there is good cause for granting such leave, the court shall remand the case to the Administrator and order such additional evidence to be taken by the Administrator.

"(C) In the case of a remand under subparagraph (A) or (B) of this paragraph, the court may specify a reasonable period of time within which the Administrator shall complete the required action.

"(b) After a case is remanded to the Administrator under subsection (a) of this section, and after further action by the Administrator, including consideration of any additional evidence, the Administrator shall modify, supplement, affirm, or reserve the findings of fact or decision, or both, and shall file with the court any such modification, supplementation, affirmation, or reversal of the findings of fact or decision or both, as the case may be, and certified copies of any additional records and evidence upon which such modification, supplementation, affirmation, or reversal was based. Any such modification, supplementation, affirmation, or reversal of the findings of fact or decision shall be reviewable by the court only to the extent provided in section 4026 of this title.

§ 4028. Survival of actions

"Any action brought under section 4025 of this title shall survive notwithstanding any change in the person occupying the office of Administrator or any vacancy in such office.

§ 4029. Appellate review

"The decisions of a district court pursuant to this chapter shall be subject to appellate review by the courts of appeals and the Supreme Court of the United States in the same manner as judgments in other civil actions.".

(b) The table of sections at the beginning of such chapter is amended—

(1) by inserting before the item relating to section 4001 the following new item:

"SUBCHAPTER I—GENERAL

and

(2) by adding after the item (added by section 108(b) of this Act) relating to section 4011 the following new items:

"SUBCHAPTER II—JUDICIAL REVIEW

"4025. Right of review; commencement of action.
"4026. Scope of review.
"4027. Remands.
"4028. Survival of actions.
"4029. Appellate review.".

SEC. 303. Section 1346(d) of title 28, United States Code, is amended by inserting before the period at the end thereof a comma and "except as provided in subchapter II of chapter 71 of title 38".

TITLE IV—ATTORNEYS' FEES

SEC. 401. Section 3404 is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The Administrator shall approve reasonable attorneys' fees to be paid by the claimant to attorneys for representation before the Veterans' Administration in connection with a claim for benefits under laws administered by the Veterans' Administration, but in no event shall such attorneys' fees exceed—

"(1) for any claim resolved prior to or at the time that a final decision of the Administrator is first rendered, $10; or

"(2) for any claim resolved after such time—

"(A) if the claimant and an attorney have entered into an agreement under which no fee is payable to such attorney unless the claim is resolved in a manner favorable to the claimant, 25 percent of the total amount of any past-due benefits awarded on the basis of the claim; or

"(B) if the claimant and an attorney have not entered into such an agreement, the lesser of—

"(i) the fee agreed upon by the claimant and the attorney; or

"(ii) $500, or such greater amount as may be specified from time to time in regulations which the Administrator shall prescribe based on changed national economic conditions subsequent to the date of enactment of this subsection, except that the Admistrator may, in the Administrator's discretion, determine and approve a fee in excess of $500, or such greater amount if so specified, in an individual case involving extraordinary circumstances warranting a higher fee.

"(d)(1) If, in an action brought under section 4025 of this title, the matter is resolved in a manner favorable to a claimant who was represented by an attorney, the court shall determine and allow a reasonable fee for such representation to be paid to the attorney by the claimant. When the claimant and an attorney have entered into an agreement under which the amount of the fee payable to such attorney is to be paid from any past-due benefits awarded on the basis of the claim and the amount of the fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant, the fee so determined and allowed shall not exceed 25 percent of the total amount of any past-due benefits awarded on the basis of the claim.

"(2) If, in an action brought under section 4025 of this title, the matter is not resolved in a manner favorable to the claimant, the court, taking into consideration the likelihood at the time such action was filed that the claimant would prevail, may determine

and allow a reasonable fee not in excess of $750 to be paid to the attorney by the claimant for the representation of such claimant.

"(e) To the extent that past-due benefits are awarded in proceedings before the Administrator or a court, the Administrator shall direct that payment of any attorneys' fee that has been determined and allowed under this section be made out of such past-due benefits, but in no event shall the Administrator withhold for the purpose of such payment any portion of benefits payable for a period subsequent to the date of the final decision of the Administrator or court making such award.

"(f) The provisions of this section shall apply only to cases involving claims for benefits under the laws administered by the Veterans' Administration, and such provisions shall not apply in cases in which the Veterans' Administration is the plaintiff or in which other attorneys' fee statutes are applicable.

"(g) For the purposes of this section—

"(1) the terms 'final decision of the Administrator' and 'claim for benefits' shall have the same meaning provided for such terms, respectively, in section 4025(a) of this title; and

"(2) claims shall be considered as resolved in a manner favorable to the claimant when all or any part of the relief sought is granted.

"(h) In an action brought under section 4025 of this title, the court may award to a prevailing party, other than the Administrator, reasonable attorneys' fees and costs in accordance with the provisions of subsection (d) of section 2412 of title 28, as in effect on the day before the effective date of the repeal of such subsection (as provided in section 204(c) of the Equal Access to Justice Act (Public Law 96-481; 94 Stat. 2329; 28 U.S.C. 2412 note)).".

SEC. 402. Section 3405 is amended—

(1) by striking out "or" after "title,"; and

(2) by striking out "him" and inserting in lieu thereof "such claimant or beneficiary, or (3) with intent to defraud, in any manner willfully and knowingly deceives, misleads, or threatens a claimant or beneficiary or prospective claimant or beneficiary under this title with reference to any matter covered by this title".

TITLE V—EFFECTIVE DATES

SEC. 501. This Act and the amendments made by this Act shall take effect on the first day of the first month beginning not less than 180 days after the date of enactment of this Act.

SEC. 502. A civil action authorized in subchapter II of chapter 71 of title 38, United States Code (as added by section 302(a) of this Act) may be instituted to review decisions of the Board of Veterans' Appeals rendered on or after April 1, 1987.

● Mr. SASSER. Mr. President, I am pleased to again join as an original cosponsor of the Veterans' Administration Adjudication Procedure and Judicial Review Act. This bill will allow veterans the right to seek judicial review of final claim decisions made by the Veterans' Administration and will raise to a reasonable amount the current $10 cap on legal fees for attorneys who represent veterans.

The United States has always placed a special emphasis on caring for its veterans. Veterans' benefits have traditionally encouraged many fine young men and women to join the Armed Forces. Yet, despite all the Federal programs and benefits offered veterans, current law relegates veterans to second-class citizenship as they try to secure their lawful benefits and services.

A 1933 law prohibits a veteran from taking the Veterans' Administration to court after a final decision has been made on his or her claim by the Board of Veterans Appeals. As a result, veterans who have grievances involving VA benefits do not have the same rights as other citizens to their day in court. Although the VA system works well for many veterans, it is becoming increasingly clear that it does not work well in a number of claims, such as those filed by veterans suffering from exposure to agent orange and atomic radiation.

In addition, an 1864 statute limits legal fees in veterans' benefits cases to $10. While this limit was important to protect Civil War veterans from rapacious lawyers, today, it effectively denies veterans legal representation as they pursue their claims within the VA system. Thus, it is clear that if we are going to allow veterans the right of judicial review, we should also raise the limit on legal fees to a reasonable amount to ensure that veterans have adequate legal representation in court.

The legislation we offer today removes the legal barriers veterans presently face in fighting to obtain benefits denied them by the VA. Similar legislation has passed the Senate the last four Congresses. It is my hope that we can overcome obstacles to enacting this measure in the 100th Congress. I believe we must enact this legislation promptly and I urge my colleagues in the Senate to continue their support for this important bill.

It is time that we allowed our veterans the basic right to have their day in court. It is a right that all American citizens deserve, most especially our veterans.●

By Mr. CRANSTON (for himself, Mr. MURKOWSKI, Mr. MATSUNAGA, Mr. DECONCINI, Mr. MITCHELL, Mr. ROCKEFELLER, Mr. GRAHAM, Mr. COHEN, and Mr. HOLLINGS):

S. 12. A bill to amend title 38, United States Code, to remove the expiration date for eligibility for the educational assistance programs for veterans of the All-Volunteer Force; and for other purposes; to the Committee on Veterans' Affairs.

NEW GI BILL CONTINUATION ACT

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I am today introducing S. 12, the proposed "New GI Bill Continuation Act." Joining with me as original cosponsors of this measure are the former chairman and now ranking minority member of the committee, the Senator from Alaska [Mr. MURKOWSKI], as well as my fellow committee members from Hawaii, Arizona, Maine, West Virginia, and Florida, Senators MATSUNAGA, DECONCINI, MITCHELL, ROCKEFELLER, and GRAHAM, and the Senator from Maine [Mr. COHEN]. This measure would provide for the continuation—beyond the current June 30, 1988, eligibility expiration date—of both the program of educational assistance for members of the All-Volunteer Force under chapter 30 of title 38, United States Code, popularly known as the "New GI Bill," and the program of educational assistance for members of the Selected Reserve under chapter 106 of title 10, United States Code.

Mr. President, these programs were enacted in title VII of the Department of Defense Authorization Act, 1985 (Public Law 98-525), derived from legislation authored by the chairman of the House Committee on Veterans' Affairs and also a senior member of the House Armed Services Committee, Mr. MONTGOMERY, in the House and from legislation that I, along with Senators ARMSTRONG, COHEN, and others sponsored in this body. Under current law, the programs are established as a 3-year test of the recruitment and retention value of the educational assistance they offer. Under the chapter 30 program, a servicemember entering on active duty for the first time during the 3-year period from July 1, 1985, through June 30, 1988, who does not, upon entering on active duty, decline to participate in the program is entitled to basic educational assistance benefits—generally, $300 a month for 36 months for a total of $10,800—in exchange for completion of a 3-year tour of active duty. Alternatively, an individual who completes a 2-year tour of active duty and 4 years' service in the Selected Reserve is entitled to 36 months of basic educational assistance benefits of $250 a month. These basic benefits are paid for and administered by the Veterans' Administration. In return, the servicemember incurs a nonrefundable, $100-per-month, reduction in pay during the first 12 months of the service period. In addition, the service branches may offer recruits various kickers and other enrichments in order to enhance recruitment in critical skill areas or to encourage longer enlistments. These supplemental benefits are administered by the Veterans' Administration but are paid for by the individual service branch.

Under the chapter 106 program, with respect to the Selected Reserves, all reservists who enlist, reenlist, or extend for a period of not less than 6 years during the test period can receive a noncontributory educational benefit of up to $5,040 for undergraduate college education. These benefits are administered by the Veterans' Ad-

ministration but paid for by the Department of Defense.

According to Department of Defense data, as of September 30, 1986, there were 205,548 participants in the chapter 30 programs and 34,613 in the chapter 106.

Our bill would provide for the indefinite continuation of these programs by elimination of the June 30, 1988, termination date of the period during which an individual must, in order to earn new GI bill benefits, enter on active duty, because a member of the Armed Forces, enlist or reenlist in the Selected Reserves, or extend his or her Selected Reserve service.

Mr. President, the chapter 30, new GI bill, program replaced the much less attractive Post-Vietnam Era Veterans' Educational Assistance Program—known as "VEAP"—which initially was suspended during the test period by Public Law 98-525 but now has been terminated for new enrollments by section 309 of Public Law 99-576, the Veterans' Benefits Improvements and Health-Care Authorization Act of 1986. Similarly, the chapter 106 program replaced a much less attractive program of educational assistance for the Selected Reserves which offered fewer benefits to fewer individuals.

As a coauthor of legislation in the Senate that helped lead to the enactment of the new GI bill, I have long believed in the value of educational assistance benefits as an effective tool for recruitment and retention in the All-Volunteer Armed Forces. I continue to believe it is vital that we do everything necessary to make the All-Volunteer Force work and to avoid recourse to conscription to meet our uniformed services personnel needs. The last thing our Nation needs at this point—especially for its young people—is a return to the divisiveness that inevitably accompanies a military draft.

In addition, I consider veterans' educational assistance a highly beneficial investment in our human resources by contributing to the educational development of the young men and women who serve in our Nation's military. The enormous contributions that have been made by the three predecessor GI bills to our Nation through the education and training of our citizenry and the increased productivity, gross national product, and tax revenues produced thereby are well known. The original World War II bill, signed into law on June 22, 1944, is often said to have had more impact on the American way of life than any law since the Homestead Act. Almost 20 million veterans have trained under GI bill programs since World War II.

In a March 1986 report entitled "The New GI Bill: Potential Impact of Ending it Early," the General Accounting Office discussed the recruitment and retention aspects of the administration's proposal submitted in connection with its fiscal year 1987 budget to terminate the new GI bill prior to the end of the test period. In the report, the GAO noted that, since the benefits are greater under the new GI bill than under VEAP and the Government pays a much greater proportion of the benefits, certain budgetary savings will always be produced by proposing termination of the new GI bill. However, the GAO also stated:

> While the potential impact of the New GI Bill on recruiting cannot be conclusively determined, Army statistics show a marked recruiting improvement since the New GI Bill was started on July 1, 1985. In addition, data obtained from the Reserve and National Guard components of the Army and Air Force show other improvements in enlistment, reenlistment, and extension statistics since the start of the New GI Bill.

Mr. President, although it may be that the impact of the new GI bill on Armed Forces recruitment and retention cannot at this time be conclusively determined, I believe that additional study and analysis will demonstrate clearly that the impact of the new GI bill is a positive one.

Certainly, some substantial data already exist in support of maintaining the new GI bill. For example, the new GI bill allows recruiters to penetrate the college-oriented market of young people. Not only does the use of educational benefits to recruit college-oriented young people benefit our Armed Forces, but it also benefits our country in terms of the development of a more highly educated labor force. As reported by the Department of Labor, in 1984 workers with college degrees had median earnings of $27,777. Workers who had completed only high school had median earnings of $18,350 and those with fewer than 4 years of high school earned only $14,776. There is no question that increased taxes paid over a lifetime of work on increased income repays many times the cost of the education borne by the taxpayer.

In addition, analyses conducted by the U.S. Army Recruiting Command show that educational assistance is the most cost-effective means of getting high-quality recruits—that is, recruits in mental categories I through III-A. According to a recent survey conducted by the Army, 35 percent of today's recruits cite the educational benefits as their principal reason for enlisting. Recruits in the upper-level mental category, the high-quality individuals our Armed Forces increasingly need, are attracted by educational benefits, not bonuses. Indeed, the Army survey found that the prospect of money for college is now the leading reason young men and women enlist, replacing a negative motivation: inability to get a civilian job. The effectiveness of the new GI bill in this regard is evidenced by the fact that Army high-quality contracts increased 10 percent during the first 12 months of the program's operation

For the Reserve components, the new GI bill has had an even greater recruiting impact with respect to quality. High-quality recruits in the Army Reserve components increased 24 percent for the first 12 months of the new GI bill. High school graduate recruits in Army Reserve components increased 9 percent and 6-year enlistments increased 28 percent during the same period.

Mr. President, according to Lt. Gen. Robert M. Elton, Deputy Chief of Staff for Personnel for the Army, if the new GI bill were to be terminated or expire the result would be an annual reduction of 6,000 high school graduates in the upper-mental category. This in turn would increase attrition by 1,400 losses at a cost in excess of $25 million. In addition, the termination of the new GI bill could contribute to a return to the difficulties experienced in recruitment and retention so prevalent in our Armed Forces during the late 1970's and early 1980's. For example, in fiscal year 1980, 57 percent of non-prior-service accessions were in the category IV mental category as compared with only 4 percent category IV's recruited during fiscal year 1986.

The new GI bill's value as a recruiting tool for our Armed Forces has recently been highlighted in an article entitled "GI Bill, Once a Reward, Is Now a Lure to Sign Up," which appeared in the December 5, 1986, New York Times.

Mr. President, I request unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

RESPONSE

Mr. CRANSTON. Mr. President, in summary, the new GI bill serves not only as an incentive to attract high quality young people into our Armed Forces and their Reserve components but also as a prudent, wise, and cost-effective investment in our Nation's human resources and a time-proven effective transition mechanism for members of our Armed Forces who elect to return to civilian life. There is no reason to perpetuate any uncertainty about the future of this program. I believe it would be very difficult to design a better, more cost-effective program than the new GI bill. It clearly should be made a part of the permanent framework of benefits provided to those who serve the Nation in our Armed Forces and taken into consideration on a continuing basis by those responsible for planning how best to meet the recruitment and retention needs of those forces.

Mr. President, before concluding my remarks, I want to take a moment to offer my congratulations to the administration for reversing its position

on this issue. Last year, as I noted, the administration proposed in its fiscal year 1987 budget to terminate the new GI bill entirely. This year, in its fiscal year 1988 request, the administration has indicated that it will submit legislation to make the program a permanent recruitment and retention program for the Department of Defense. However, I note that we are not in complete agreement on this issue as the administration will propose that the Department of Defense be responsible for all funding of the program. I reject that approach and continue to believe that the VA should bear at the portion of the costs for basic benefits—that it does under current law—for what is, at least in part, a readjustment benefit.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point prior to the New York Times article together with an article that appeared in the January 5, 1987, issue of the Veterans of Foreign Wars' Washington Action Reporter entitled "The New GI Bill."

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

S. 12

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 "New GI Bill Continuation Act".

SEC. 2 CONTINUATION OF THE ALL-VOLUNTEER FORCE VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.

(a) Section 1411(a)(1)(A) of title 38, United States Code, is amended by striking out "during the period beginning on July 1, 1985, and ending on June 30, 1988," and inserting in lieu thereof "after June 30, 1985,".

(b) Section 1412(a)(1)(A) of such title is amended by striking out "during the period beginning on July 1, 1985, and ending on June 30, 1988," and inserting in lieu thereof "after June 30, 1985,".

SEC. 3. CONTINUATION OF EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE.

SEC. 4. Section 2132(a)(1) of title 10, United States Code, is amendment by striking out "during the period beginning on July 1, 1985, and ending on June 30, 1988" and inserting in lieu thereof "after June 30, 1985".

[From the New York Times, Dec. 5, 1986]

G.I. BILL, ONCE A REWARD, IS NOW A LURE TO SIGN UP

(By Richard Halloran)

WASHINGTON, Dec. 4.—At the end of World War II, Congress voted the first G.I. Bill of educational benefits to help transition back to civilian life for those who had served. Later the bill was extended to those who served in Korea and Vietnam.

Since the end of the draft and the advent of all-volunteer services in 1973, however, the purpose of the G.I. Bill has fundamentally changed. It has become less a reward and more an incentive to attract young recruits to all the services.

Today, halfway through a three-year test of a new version of the G.I. Bill, the Army has found in a survey that the prospect of money for college is now the leading reason young men and women enlist, replacing a negative motivation: inability to get a civilian job. The next reason given is to learn a skill.

BIG RISE IN PARTICIPATION

Army officers also say that 85 percent of new recruits today sign up for the new bill—they must commit to it at the beginning of their service—as against 38 percent under the old Veterans Educational Assistance Program, which ran from 1977 to 1985.

Perhaps most important, the officers report, the new bill has been a key reason that more than 90 percent of those enlisting today are high school graduates, who drill sergeants say make better soldiers than nongraduates.

"From the Army's standpoint," said Maj. Gen. William G. O'Lesky, director of military personnel management, "the test has been eminently successful."

But there are costs. The Government's contribution to benefits under the new bill is higher than it was under the Educational Assistance Program, although less than it was under the still earlier G.I. Bill. For a three year stint in the Vietnam War, the Government paid the veteran $16,128 in benefits; under the 1977-85 program, that dropped to $5,400; the new G.I. Bill costs the Government $9,600.

The new bill costs little now because few young people have served long enough to begin drawing benefits. For this fiscal year, the outlay will be only $400,000. By 1993, according to Army projections, it will have jumped to $400 million a year.

LESS THAN CIVILIAN GRANTS

As against Government aid to education for civilians, however, that is a relatively small sum. The Department of Education's budget last year for Pell Grants cost the taxpayers $3.9 billion.

Another cost of the G.I. Bill over the long run is that it does not help, and many hinder, efforts to retain experienced soldiers. The prospect of a large sum of money to help pay for college gives bright young people an incentive to leave.

But Army officers argue that their service, unlike the Navy and Air Force, which need many technicians, wants large numbers of "grunts," or combat soldiers, for a relatively short period. Only a small portion need be retained as sergeants. In addition, the Army offers bonuses for young men and women who enlist for four years and learn a needed skill. They can earn another bonus by re-enlisting.

Until 1977, all educational benefits under the G.I. Bill were paid by the Government. After that, each soldier, sailor, air force member or marine elected to contribute from $25 to $100 a month while in the service. The Government matched that, $2 for each $1 contribution, for a maximum benefit of $8,100.

But that program did little to overcome a military pay scale that lagged behind the civilian sector. Barely half of the Army's recruits in the late 1970's were high school graduates and the service met quotas only by enlisting people who passed the armed forces entrance tests with the lowest acceptable scores.

Then Congress in 1979 authorized the Army, but not the other services, to offer extra payments, known in the military as "kickers," to attract high school graduates and those who could score well. The added benefits were $8,000 for a two-year tour of service and $12,000 for three years.

The kickers, along with substantial raises in the early 1980's, improved recruiting. But many in Congress were still dissatisfied. That led to the new G.I. Bill, which became effective in July 1985, with a test to run until June 1988.

BENEFITS PAID FOR 3 YEARS

Today, a young person entering the Army or any of the other services must choose the G.I. Bill the day he or she joins and agree to contribute $100 a month of the $573 base pay for the first 12 months of service. After two years, the soldier's benefit is $9,000; for three years, $10,800. In either case, the benefits are paid monthly for 36 months while the ex-soldier is in an accredited college.

On top of the G.I. Bill is the Army's College Fund, the kicker a recruit may earn for enlisting in the combat arms, such as infantry, armor or artillery, for which only men are eligible. But men and women both may earn kickers by agreeing to train for a specialty the Army needs, including tank mechanic, electronic warfare specialist and parachute rigger. A soldier who serves for four years can leave with $25,200 in benefits.

The Army also began in 1985 to offer benefits to men and women who completed two years of college. They may enlist for two years in a specialty the army needs, then return to college in the Reserve Officers Training Corps for two years with a benefit worth $21,000

[From the VFW Washington Reporter, January 1987]

THE NEW G.I. BILL

(By Cooper T. Holt)

The Veterans of Foreign Wars should take great pride in the important role it has played in the development of the new GI Bill.

No doubt about it, the new GI Bill is, across the board, the best educational incentive the Department of Defense has to offer today.

Further, it is a low cost and highly patriotic means for this nation's young people, who could not otherwise afford it, to further their education and then fully achieve their potential both as mature individuals and as informed citizens.

All this is accomplished while providing the necessary high quality personnel to maintain our all volunteer armed forces.

Even so, a dark cloud in the form of certain Administration and OMB officials who view this highly beneficial program as overly generous has fallen over the new GI Bill. These shortsighted bureaucrats maintain the program is too expensive.

The VFW is incredulous at this assertion. The new GI Bill is dollar-for-dollar the most cost-effective means of recruitment now in existence. The Army has stated that the new GI Bill is saving it about $234 million a year in military personnel costs.

These savings come from attracting more intelligent and highly motivated people into the military. These bright, hardworking recruits pose fewer disciplinary problems and are more likely to complete their initial obligation.

This reduces wear and tear on equipment and brings down the overall training cost. Simply keeping high quality personnel in the military for the whole enlistment saves money because it cost $10,000 to recruit an

individual. Additional money is saved by not having to duplicate the training for a new person.

The VFW would point to the fact that the size of this program in dollars in return for service to the nation pales in significance when compared to the massive Pell Educational Grant program of close to $4 billion annually.

Pell grants are provided with no expectation of service to the nation whatsoever in contrast to the new GI Bill which directly benefits both the participant and the country.

Now the all volunteer armed forces are generally regarded as a success. But it is generally understood that the military will come under pressure in the next five years because of fewer potential recruits and less money.

The pool of those 17 to 20 years old is shrinking. But late 1991 there will be just over 13 million in this age group, down from 17.5 million in 1980, that means the services will have to draw a higher percentage from the available pool.

At the same time, budget pressures are eroding many of the bonuses and financial incentives the Pentagon relies on to attract a soldier. Even after accounting for the recently approved 3 percent pay increase, enlisted soldiers and sailors next year will be paid 9.6 percent less than the Defense Department, figures they could earn in the private sector. That's the biggest gap in 10 years.

Compounding these problems is the uncertainty about the continued existence of the GI Bill educational benefit program. According to the Army, 35 percent of today's recruits cite educational benefits as their principal reason for enlisting. Addditionally, according to a 1985 new recruit survey, 43 percent, of the high quality recruits—those most needed to maintain the high-tech armed forces—would not have joined except for the GI Bill and Army college fund.

Thus, the future not only of the new GI Bill but also the all volunteer armed forces might depend on whether the armed services can convince White House budget planners that the educational benefits program can pay for itself by improving recruit quality and reducing turnover in personnel. The Veterans of Foreign Wars, for its part, stands ready to do everything in its power to ensure the continuation of this invaluable readjustment benefit for those young men and women who have chosen to serve in the armed forces.

Along with providing a highly motivated and capable armed forces, drawn from a full cross section of the population, the new GI Bill's indirect benefit to the nation is also profoundly felt. For example, the country benefits from a more highly educated populace. As reported by the Department of Labor in 1984, workers with college degrees had median earnings of $27,800. Those who had completed high school had median earnings of about $18,400 and those with fewer than four years of high school earned only about $14,800. Increased taxes paid on increased income more than repays the cost of this educational benefit.

As I have already stated, recruitment problems will become more severe through the years because of the continuing decline in the 18-year-old population. It will be necessary to recruit one out of every two eligible noncollege males by the early 1990s.

Furthermore, the manpower ceilings now in place increase the importance of recruiting quality young people as the nation seeks to maintain its worldwide commitments. It is more important than ever to value quality over quantity in the recruiting process.

With this in mind, the VFW points to the fact that the Army has estimated that the loss of the new GI Bill would result in an annual reduction of 6,000 upper half high school graduates. This would in turn increase annual attrition by 1,400 at a cost of more than $25 million. The Army expects a 10% lower job performance from those who replace the lost high quality personnel.

Quite honestly I just cannot see how the armed forces or the nation can afford to let this invaluable, educational and recruiting program go by the boards for lack of funding.

Our nation is served best by an educational incentive which most improves our people resource. Participation rates indicate that the new GI Bill is the incentive our military personnel will use the most and will therefore provide the greatest improvement to society as a whole. To my mind the time is right to make the new GI Bill permanent. With the termination of VEAP, the lackluster former educational assistance incentive program, a permanent new GI Bill is imperative.

As it stands right now, the new GI Bill is scheduled to expire in July of 1988. This in itself is hurting military recruitment since it is causing uncertainty about the continued wellbeing of the program.

As a readjustment mechanism for veterans returning to civilian life, an incentive to attract high quality young people into military service and a prudent investment in our nation's human resource, it will be difficult to design a better program than the new GI Bill. The cost of this program, when compared with the direct and indirect benefit to the nation, is finally very small indeed. In fact, there are few things that this nation has undertaken which have been so very profitable in both the short and long term. The armed forces and the nation cannot afford to have the new GI Bill killed. It is time to include it as a line item in the President's budget.

● Mr. MURKOWSKI. Mr. President, I rise to join with my colleague, Senator CRANSTON, who today again assumes the responsibilities of the chairmanship of the Committee on Veterans' Affairs, in introducing legislation which would make permanent the current veterans' education pilot program popularly known as the New GI Bill. I urge my colleagues to join me in supporting this important step in continuing the Nation's long and distinguished tradition of rewarding, and providing for the readjustment to civilian life, of those who secure and protect our freedom.

Balancing the obligations of the Nation to individual citizens against the obligations of individual citizens to their Nation is one of this body's most important functions. This interlocking tapestry of duty and responsibility is perhaps nowhere more vivid than in the protection of our independence and liberty.

The United States has no obligation more fundamental than ensuring that the freedoms and opportunities we enjoy are protected from those who would destroy them by force of arms. To meet this obligation to its citizens the Nation must impose upon them a corresponding duty to support the Armed Forces which defend both the Nation and the Constitution which protects our liberties. At times, that support must take the form of service in the Armed Forces.

When circumstances compel us to call Americans to arms we, in turn, have a responsibility to provide for the readjustment to civilian life of those who have protected our liberty. Veterans' benefits are one of the major tools we have to meet this responsibility.

In the early years of the Republic, we provided former soldiers with grants of land. This was a generous and appropriate benefit for an agricultural economy. In subsequent years we provided old age pensions for former soldiers. This was a generous and appropriate benefit in an era when Social Security was still a dream. Since World War II, we have provided education benefits to our returning servicemembers. In a nation increasingly dependent upon the knowledge and skills of its citizens, such a benefit works to the advantage of society as well as the veteran. In an economy where the future of an individual is dependent on his or her education, such a benefit allows an individual to prepare for a productive and independent life. An education benefit is uniquely appropriate to assist veterans in their readjustment to civilian life and to provide the United States with the productive and skilled citizens we will need to succeed in the highly competitive international economy we can expect to face in the future.

The education benefits of the original GI bill were limited to veterans who were called up during time of war. Thus, veterans of World War II and Korea received education benefits; veterans who served only during the peacetime period between World War II and Korea did not. In 1966, when the Vietnam-era GI bill was enacted, eligibility was retroactively extended to veterans of the peacetime period between the Korean conflict and the Vietnam era. The provision of education benefits for veterans of peacetime service acknowledged two changes in the defense of our Nation. First, we no longer maintain only a small professional military during times of peace. We must maintain large standing Armed Forces, ready for action at all times. This means that at any one time we must call upon millions of Americans to wear the uniform of the Armed Forces. In addition, service during peacetime is not always peaceful. The men and women of our Armed Forces have always stood ready to defend our liberty without regard to whether the Nation was at peace or war. However, rarely have peacetime

servicemembers been required to attain and sustain a level of readiness and operational tempo comparable to that of today.

Rarely have peacetime servicemembers been subject to armed attack as they are today. Rarely have peacetime servicemembers been required to be ready to make the transition from peacetime to wartime on such short notice. We can be proud that the men and women who wear the uniforms of our Armed Forces are successfully meeting the challenges of the eighties. We must, however, remember the interwoven tapestry of reciprocal responsibility and duty created by their service. Mr. President, at the moment I speak, the men and women of our Armed Forces are on duty in defense of this body, the Constitution which created it, and the Nation which sustains us all. Their service imposes on this body an obligation to provide the tools for transition to civilian life when their service is completed. An education benefit is the ideal tool for that task. The Education Program created by chapter 30 of title 38, United States Code, commonly known as the New GI Bill, is the ideal education benefit to meet this need.

The new GI bill was conceived and created with the benefit of the experience and knowledge gained through the operation of the veterans' education programs which preceded it. The new GI bill is voluntary. Only those servicemembers who desire to participate in the program do so. Participants in the new GI bill do not make contributions to fund their participation. Instead, they elect to receive a lower rate of pay for the first year of their service. In comparison with earlier veterans' education programs the value of the educational opportunity created by the new GI bill is enhanced by both the servicemember's voluntary decision to participate and by the short-term sacrifice represented by the lower rate of monthly pay. A servicemember who knows that an honorable discharge will create an opportunity for education is more likely to provide enthusiastic and honorable service than one whose enlistment was motivated by the prospect of immediate gratification from a bonus or high rate of pay. In addition, the servicemember is more likely to derive long-term advantage from an investment in education than from the pleasures and objects which can be purchased with ready cash. This advantage, like the advantage to the Nation of skilled, knowledgeable citizens, will last throughout the individual's lifetime.

The new GI bill differs from the education program which preceded it in several important points. It provides a significantly greater monthly amount to the student in training. Thus, it is more likely to be successful in attracting recruits whose future plans include postsecondary education. Participation requires accepting a reduced rate of pay rather than making refundable contributions. Thus, the benefit is more likely to be used, providing both the individual and the Nation with the benefits of postsecondary education. In contrast with earlier programs it is voluntary; only those who want it will get it.

The new GI bill has been in operation since July 1985. It is successful. Representatives of the Armed Forces responsible for recruiting cite it as one of their most valuable tools in recruiting the high quality young men and women they need to ensure our Armed Forces will continue to be able to meet the challenges of the eighties. In addition to its success in this short-term goal, the new GI bill will also, as I have already mentioned, provide the long-term benefits of education to both the participants and the Nation.

I expect to see another, more subtle benefit accrue to the Nation and the Armed Forces as a result of the continued availability of the new GI bill. In his book, "The Straw Giant," Arthur Hadley describes what he calls the Great Divorce between those who make the decisions that guide all segments of our society and those who have served in the Armed Forces. In short, he is describing the costs that we all pay when decisionmakers have no military experience. Since education is a basic prerequisite for those who would seek decisionmaking positions; failure to provide an education benefit to former servicemembers would only perpetuate a condition which threatens to weaken our society and Armed Forces. The new GI bill is an important step in the necessary process of ensuring that those who have served in our Armed Forces will be able to obtain the education necessary to participate in the decisions that shape American life; not just at the highest levels of national power but also on the shop floor, in small businesses, in school, church, labor, and fraternal organizations, in the media and on the street. It is critical for the Nation's understanding of the capabilities and limits of military power that the graduates of America's higher education include those who have served in the Armed Forces.

Mr. President, it is clear the new GI bill should be a permanent program. The time to act is now. Under current law, individuals who enter the Armed Forces on or after July 1, 1988, will have no veterans' education program available to them. This year, Congress will be making decisions on the 1988 budget. This year, recruiting officers will be making decisions on their plans and strategies for recruiting the young men and women they will need to continue to meet the defense challenges of the eighties and nineties. This year, the young men and women of America will be making decisions about their future. If Congress fails to act quickly, these decisions will be made to fit a world in which, on July 1, 1988, there will be no veterans' education program.

Mr. President, I have discussed the reasons why failure to provide a veterans' education program would ill serve the Nation. I ask my colleagues to note that the joint introduction of this bill by my distinguished colleague Senator CRANSTON, the new chairman of the Committee on Veterans' Affairs, and myself as ranking minority member, is a strong signal that support for this measure is not a partisan issue. The new GI bill enjoys strong support on both sides of the aisle and in both bodies of Congress. I am confident this body will soon have an opportunity to make this important program a permanent one. I urge my colleagues to join with Senator CRANSTON and myself in supporting this important step toward providing the veterans' readjustment and education benefit needed by the Nation, the Armed Forces, and by individual veterans.●

By Mr. CRANSTON (for himself and Mr. WILSON):

S. 13. A bill to amend the Export Administration Act of 1979 to require the establishment and operation of the western regional export licensing office; to the Committee on Banking, Housing, and Urban Affairs.

WESTERN REGIONAL EXPORT LICENSING OFFICE ACT

Mr. CRANSTON. Mr. President, I am reintroducing today a bill to create a western regional Office of Export Administration. Our current export licensing policy is a significant and major impediment to our country's overall competitiveness. At a time of record high trade deficits, we must take action to make our businesses and our workers more competitive. We must look especially hard at those areas in which the Federal Government hampers export activities. U.S. export licensing practices is one of these areas.

I propose establishing a second export licensing office in the western region to alleviate the enormous administrative burdens the current licensing system places upon American businesses. There is presently one office, located in Washington, DC, which is responsible for issuing all export licenses. The second proposed office will also operate under the jurisdiction of the U.S. Department of Commerce and will have the authority to issue export licenses for all controlled products and commodities for export as designated by the Export Administration Act.

This proposal deals with only part of the export licensing problem: The administrative procedures businesses

must contend with to obtain an export license. The source of many licensing problems stems from U.S. export control policy—the statutes and regulations that govern U.S. products for export. Export control policy has a major impact on U.S. competitiveness. Over the past decade, the Federal Government has increased the administrative and competitive burden on exporters through stricter licensing requirements, export controls and total embargoes. It is alarming to me to see reports that leading foreign electronic equipment manufacturers are beginning to redesign their products to incorporate fewer U.S. components. They cite the administrative complexity of the controls for increasing the cost of U.S. technology exports, delaying deliveries and creating business uncertainty.

Our costly and restrictive export licensing practices are mortgaging our future.

I support export controls on commercial goods and technologies when these items have critical military significance and are not otherwise available to controlled countries. But I vigorously oppose controls that impair our ability to compete in worldwide markets and do not provide a comparable national security benefit. Some of my colleagues and I are exploring changes to the Export Administration Act that will address the substantive concerns of U.S. exporters. We are seeking the advice and suggestions of those most knowledgeable about the situation and intend to embody the results in subsequent legislation.

The administrative burdens we place upon U.S. exporters is substantial. In fiscal year 1985, the Department of Commerce's Office of Export Administration received 125,000 license requests. Twenty-five percent came from my home State of California. The fastest growing markets for high-technology products are the newly industrializing economies on the Pacific Rim. California and other Western States can be expected to be on the leading edge of capturing those markets. The export potential in this area is enormous. Demand from the modernizing Asian countries for electronic technology is expected to grow for the foreseeable future. These facts alone justify a Department of Commerce export licensing presence on the west coast.

The President's Commission on Industrial Competitiveness estimated that the combined export licensing costs of the Departments of Commerce, Defense, State, and Energy was $30 million in 1984. It estimated that industry's annual expenditure was $35 to $40 million. One-third of this expenditure was due to controls imposed upon U.S. business with respect to our Cocom partners—a group of 15 countries that cooperate in restricting strategic exports to the Soviet Union and other Eastern bloc or controlled countries. The Commission also noted that licensing delays for exports of generally allowable technology to non-Cocom nations averaged 4 to 6 months in the United States. That delay was 2 months in France and the United Kingdom, and 1 month in Japan. As these numbers show, the competitive disadvantage to the United States is clear.

With a staff of only 280 individuals, the Office of Export Administration is required to handle not only tens of thousands of licensing requests—a number that is steadily increasing—but, in addition, is required to issue and monitor multiple-transaction licenses, issue commodity classification rulings and provide interpretive advice on a complex regulatory scheme. Although the staffing level has increased at the Office of Export Administration, I do not believe it is adequate to meet the demands we have placed upon it.

The Department of Commerce is aware of many of the deficiencies in the licensing process and has made considerable improvements in the processing time for license applications—even in the wake of budget costs. In testimony before the House Foreign Affairs Subcommittee on International Economic Policy and Trade, Dr. Paul Freedenberg, Assistant Secretary of Commerce for Trade Administration, testified that in the second quarter of fiscal year 1986, the average processing time for a free world case was 21 days. For exports to Cocom member countries, the cases are being processed on average in 2 weeks. I note, however, that these time periods do not reflect either the time to log in an application or the time to mail a license after it has been validated. This adds days—even weeks—to the total processing time. If a referral to the Department of Defense is required or there are questions about the classification of an item, for example, this can add months to the processing time. My intent in pointing this out is not to undercut the achievements and real improvements at the Department of Commerce, but to emphasize that the improvements may be overstated and highlight the need to make further inroads in expediting the licensing process. Although it is true that we have reduced the time it takes for businesses to obtain a routine license, we still must compete with nations like Japan, Canada, France, or Great Britain that have virtually no waiting period.

Other hidden delays arise when applications are returned for incomplete information. When licensing personnel determine a license application is deficient in any respect, for example, that a form lacks one or more required details, the license is not held until the applicant is notified and asked to submit corrected documentation. Instead, the entire license application is returned without action to the applicant by mail. The application may have been lodged at the Office of Export Administration for weeks before any review, and it may take several more weeks for the rejected application to be processed, mailed and received by an applicant in the United States. The situation for a foreign application for a reexport request can be much worse. Licensing documents destined for foreign applicants generally are sent by diplomatic pouch to the U.S. Embassy, which then mails them to the applicant—a process that can take an additional 5 or 6 weeks.

Unfortunately, these delays occur all too frequently. In fiscal year 1986, for example, the Department of Commerce returned without action 20,673 licenses—or in 1 out of 7 cases. We often fail to recognize the costs involved in handling incomplete applications in this way—costs accrue to both the exporter and to the Commerce Department. The loss of several months time to a business in this rejection process can create a commercial emergency where one did not otherwise exist. And since the Office of Export Licensing treats the resubmitted license as a new license, it must incur startup costs for that application all over again. Better communication and better access to licensing officials could help improve efficiency.

There are many other cases in which the exporter is often unable to establish meaningful contact with the reviewing agency to obtain guidance about either the prospects for a favorable licensing decision or the manner in which an application should be prepared.

I believe a west coast licensing office could improve public access to licensing officials so that businesses that want to export can receive timely advice on whether an item can be exported. As a general policy, the Office of Export Administration does not issue what it calls hunting licenses. By this it means a license to export based merely on a business inquiry or a person's desire to obtain foreign business. There must be an order from a foreign person or firm for a particular product or technical data before the export licensing office will consider any business' application. I find this attitude astounding. We should be welcoming potential exporters with open arms and make it convenient for U.S. businesses that want to make money overseas. Yet we ask business to spend considerable time and resources to obtain orders overseas when they do not even know if they will be permitted to export their goods.

Mr. President, I sympathize with the limited resources of the Commerce Department, but I find this lack of access

unacceptable. The Federal Government should be aggressively helping our exporters. We must recognize how much we hurt U.S. exporters by these actions and the numerous ways we undermine our own competitiveness. I am talking about an attitude. I am talking about providing a disincentive to U.S. exporters that want to do business overseas. I am talking about making it almost impossible for small- and medium-sized high-technology businesses to export. In the long run, Mr. President, we are talking about the global competitiveness of the U.S. high-technology industries.

In part, the Commerce Department's closed-door policy represents an attempt to preserve the scarce time of its limited number of licensing officers and other policy personnel for actual review of license applications. The end result of this policy, however, is often inefficiency and delay. Exporters have difficulty in negotiating satisfactory conditions for approval of a license and in determining what supporting technical or other information is required for speedy evaluation of an application. If we would foster communication and a front door approach to the problems, we could reduce these delays.

All of the difficulties I have described are aggravated by an overloaded licensing system that creates problems for applicants and licensing officials alike. I believe that maintaining a west coast office of export licensing would improve the office's review function for western exporters. It would certainly improve public access to licensing officials so that businesses that want to export can receive timely advice on whether an item can be exported.

The Federal Government's attitude toward its exporters and potential exporters is inexcusable. We should be doing everything possible to help our exporters produce wealth. But we constantly throw obstacles before our competitive businesses when they try to export overseas. Mr. President, we shoot ourselves in the foot every step of the way. We are strangling exporters with redtape, bureaucracies, inconsistent policies, and a stubborn unwillingless to support our own people. We tell businesses they must fill out numerous forms, get the approval of the Department of Commerce, that may, in turn, need the approval of the Department of Defense, the Department of State, or the Department of Energy. Not only that, but should the company that received the U.S. product want to export to another company, it must ask the permission of the U.S. Government. We are the only Cocom member that legally enforces export controls over a licensed item after it has been exported.

Because trade has never been a central part of our domestic economic policy, we do not look at the problems from the viewpoint of the exporter. We do not look at the problems from the vantage point of the competitor. More often than not, trade takes a backseat behind every other consideration.

My proposal is straightforward: tell our businesses that we are with them. Provide them with the bare essential—decent access to a licensing process that the U.S. Government requires of them. We can send business a message that we want them to succeed and that we will help in any way possible.

To a California business executive the message is just the opposite. Washington is light years away. Not only does it often fail to recognize that the Pacific has surpassed the Atlantic in terms of trade, but it must be forced to respond to the business needs of the west coast. Last year, for example, as part of the Export Administration Act update, we had to require that the Office of Export Licensing remain open to accommodate the time difference between the east and the west coasts. We should not have to legislate these changes. The Federal Government should work for the good of the entire Nation.

When an eastern-based business runs into a licensing snag, it takes half a day to fly down to Washington to resolve it. That is often prohibitive for someone from California. It is expensive, it is time consuming, and it is unfair. It particularly hurts small- and medium-size businesses that cannot afford to hire a Washington attorney to resolve those snags.

I believe a western regional office can be established using existing resources and the existing Commerce regional office structure. In fact, I believe many time-saving efficiencies could be implemented now to decrease processing times for licenses. As world leaders in the field of technology we should use some of this technology for our own good. When a license has been granted, for example, a Commerce district office could be notified electronically within minutes and the paperwork released at the other end. This could save days of delay and thousands of dollars for the business involved. Unfortunately, the Federal Government does not think of the bottom line in this way.

I urge other Senators to join me in cosponsoring this initiative to create an export licensing office in the western region. It is a step we can take to reverse a closed-door export policy and one that could make a real difference in the way Americans do business overseas.

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

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

S. 13

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Western Regional Export Licensing Office Act of 1987".

(b) Section 15 of the Export Administration Act of 1979 (50 U.S.C. App. 2414) is amended by adding at the end thereof the following:

"(d) WESTERN REGIONAL OFFICE.—The Secretary shall establish and maintain a western regional office which shall have the authority to issue licenses for the export of goods and technology from the United States.".

By Mr. BYRD (for Mr. BIDEN (for himself, Mr. ROCKEFELLER, Mr. KERRY, and Mr. BUMPERS)):

S. 14. A bill to amend the Energy Reorganization Act of 1974 to create an independent Nuclear Safety Board; to the Committee on Environment and Public Works.

INDEPENDENT NUCLEAR SAFETY BOARD

● Mr. BIDEN. Mr. President, today I am pleased to be joined by Senators ROCKEFELLER, KERRY, and BUMPERS in introducing a bill to establish an independent Nuclear Safety Board. The need for independent reviews of nuclear accidents, along with the policies and practices that may have led to them, has been demonstrated repeatedly in this country over the past decade. It is time to reform the Nuclear Regulatory Commission [NRC] so these critical and credible reviews can take place.

S. 14 will establish a three-member board to take the lead in investigations of accidents at facilities licensed by the NRC. Allowing an independent board to lead investigations of accidents will correct a number of deficiencies in the existing structure that have hindered the effectiveness of the NRC, to the long-term detriment of the American nuclear energy industry. Studies of the NRC have found that there is the potential for conflict when the Commission looks into accidents in which it may bear partial responsibility. An independent review of serious problems at reactors and other nuclear power-related facilities removes any hint of conflict and assures all of us that nothing is overlooked or swept aside.

In the last year, the NRC has established "independent investigatory teams" [IIT] to study accidents at commercial nuclear powerplants. Unfortunately, the independent label is misleading because the teams are still under the control of the Commission, so the conditions for a less than forthright investigation remain. In fact, the instructions for the first IIT investigation did not direct the team to look for NRC responsibility in the accident. Even without that instruction, it is contrary to common sense to expect a group of NRC employees, who presumably would like to stay happily em-

ployed at the agency, to consistently develop the critical assessment that is needed for public credibility.

A safety board will have the additional benefit of concentrating investigatory experience in a single office. The existing IIT approach has the drawback of establishing an ad-hoc team for each accident. There is no development of accident investigation abilities through the IIT; the system ensures that inexperienced investigators will lead probes into the most serious situations. This is not an acceptable solution. An independent safety board allows vastly improved investigative practices and results.

To complement the accident investigation authority, S. 14 also grants the safety board the authority to look into operational glitches that may be precursors to larger problems. This will not be the most noticed responsibility of the safety board, but it will be the most challenging and important. For the safety board to live up to its potential, it is imperative to grant it the widest possible latitude in what it can study. The safety board should not be called on just to "clean up the mess" after an accident, but should also be able to prevent them from happening in the first place.

The safety board called for in S. 14 will not require any increase in either the Federal budget or the Federal bureaucracy. Staff and financial resources devoted to the safety board will be offset by reductions in the NRC. Most of these will come from the elimination of the office of analysis and evaluation of operational data [AEOD]. Shifting the responsibilities of this office to the independent safety board brings the benefits of critical analysis and avoids a duplication of effort.

This proposal is based on the repeated recommendations of numerous commissions that have analyzed the NRC and its operations. Time after time, when the NRC has been studied by outside groups, the conclusion is reached that a safety board is needed. These findings date back to the Kemeny Commission, looking into the accident at Three Mile Island in 1979, which found the need for "An Oversight Committee on Nuclear Reactor Safety * * * to examine on a regular basis the performance of the agency and the nuclear industry." The need was restated as recently as 1985 when a report prepared for the NRC by Brookhaven National Laboratory found that a safety board would be a major improvement in accident investigations.

Mr. President, as I have pointed out, there is a basic problem in the structure of the NRC that needs to be corrected. Under the current system, the NRC leads the investigation of accidents at most nuclear powerplants. A check of the NRC's record in this area shows the risk of a conflict of interest to be more than a hypothetical problem. Investigations of several accidents and mishaps at nuclear powerplants have raised the possibility of partial responsibility on the part of the NRC. But the reports filed by the NRC have failed to critically analyze the agency's own role. The facts that led to the accident may be spelled out, but the question of "Where was the NRC during all this?" begs to be answered.

Last year, I brought to the Senate's attention the results of the NRC's investigation of an accident at the Davis-Besse nuclear powerplant in Ohio. This accident was termed by experts the nearest we have come to a meltdown in this country since Three Mile Island. The investigation of the accident detailed the events that led to the failure of feedwater pumps at the plant.

But the report omitted any criticism of the fact that the NRC knew about problems with the feedwater pumps for 6 years, considered the problem to be serious, and still failed to see the shortfalls corrected. It would seem to be important, for the safety of all nuclear powerplants as well as Davis-Besse, to find out why the NRC was unable or unwilling to bring about the needed changes during those 6 years. If the NRC cannot critically review its own practices and take corrective action, as its record at Davis-Besse shows, an independent safety board should be established to ensure that this is done.

The demands placed on the NRC have changed since it was created in 1974. The early focus was on getting nuclear powerplants on line, an area which is no longer active. Congress should not be the last to recognize that the nuclear energy industry has changed in this country, and that the Federal regulatory structure also needs to evolve. The public needs greater assurance that the safe operation of nuclear powerplants is the No. 1 priority in action as well as word.

Mr. President, the infamous explosion and fire at the Soviet Union's Chernobyl nuclear powerplant clearly demonstrated what the risks are in nuclear energy. While the international nuclear community seems to be taking the lessons of Chernobyl to heart, the American industry seems to put most of its resources toward explaining the differences between the Chernobyl plant and American ones. Clearly, they are missing the point. Although the exact circumstances would be different, the record for American nuclear plants is not one that should let us assume that the same result could never happen here. There have been too many events that came dangerously close to going out of control to allow business as usual to continue.

We must strive for the highest level of excellence in the operation of our nuclear powerplants. It is disheartening to find that steps other countries willingly take to improve safety are so strongly opposed in this country. It should be unacceptable to the American public that foreign reactors are able to achieve better performance standards using technology that was largely invented or developed here. An independent nuclear safety board is a vital step toward seeing not only that our standards are raised, but also that they are met day in and day out.

Mr. President, I ask unanimous consent that the text of S. 14 be printed in the RECORD.

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

S. 14

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Independent Nuclear Safety Board Act of 1987".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that there is a great need for—

(1) vigorous investigation of events at facilities, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission; and

(2) continual review and assessment of licensing and other regulatory practices of the Nuclear Regulatory Commission, which assessment may result in conclusions critical of the Nuclear Regulatory Commission or its officials.

(b) The purpose of this Act is to establish an Independent Nuclear Safety Board which shall promote nuclear safety by—

(1) conducting independent investigations of events at facilities, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission;

(2) reviewing and assessing the licensing and other regulatory practices of the Nuclear Regulatory Commission;

(3) recommending to the Nuclear Regulatory Commission improvements in licensing and related regulatory practices; and

(4) informing the Congress of its investigation findings and recommendations.

ESTABLISHMENT OF NUCLEAR SAFETY BOARD

SEC. 3. Title II of the Energy Reorganization Act of 1974 (Public Law 93-438; 42 U.S.C. 5841 et seq.) is amended by adding at the end thereof the following new section:

"INDEPENDENT NUCLEAR SAFETY BOARD

"SEC. 212. (a) There is established an Independent Nuclear Safety Board (hereafter in this section referred to as the 'Board').

"(b)(1) The Board shall be composed of 3 members appointed by the President, by and with the advice and consent of the Senate, from among respected experts in the field of commercial nuclear energy with a demonstrated competence and knowledge relevant to the independent investigative and prescriptive functions of the Board. No more than 2 members of the Board shall be of the same political party. Not later than 90 days after the date of the enactment of this section, the President shall submit such nominations for appointment to the Board.

"(2) Any vacancy in the membership of the Board shall be filled in the same

manner in which the original appointment was made.

"(3) No member of the Board shall have any significant financial relationship in any firm, company, corporation, or other business entity engaged in activities regulated by the Commission either as licensee or contractor, or have such a relationship within the two years preceding his appointment.

"(c)(1) The Chairman and Vice Chairman of the Board shall be designated by the President. The Chairman and Vice Chairman may be reappointed to such offices.

"(2) The Chairman shall be the chief executive officer of the Board and shall, subject to such policies as the Board may establish, exercise the functions of the Board with respect to—

"(A) the appointment and supervision of personnel employed by the Board;

"(B) the organization of any administrative units established by the Board; and

"(C) the use and expenditure of funds.

The Chairman may delegate any of the functions under this paragraph to any other member or to any appropriate employee or officer of the Board.

"(3) The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman.

"(d)(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of 6 years. Members of the Board may be reappointed.

"(2) Of the members first appointed—

"(A) one shall be appointed for a term of 2 years;

"(B) one shall be appointed for a term of 4 years; and

"(C) one shall be appointed for a term of 6 years;

as designated by the President at the time of appointment.

"(3) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office.

"(4) Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(e) Two members of the Board shall constitute a quorum, but a lesser number may hold hearings.

"(f) The Board shall have the following functions and authorities:

"(1)(A)(i) The Board shall investigate those events at any facility, or involving any materials, licensed or otherwise regulated by the Commission, which the Board determines to be significant because of possible adverse effects on the health or safety of the public or because such events could be the precursors of events that may adversely affect the health or safety of the public.

"(ii) The Board may request the Commission to make an investigation of the events described in division (i) and to report its findings to the Board in a timely fashion. Whenever the Commission concludes such an investigation, the Board may analyze the findings of the Commission for the purpose of making its own conclusions and recommendations.

"(B) The purpose of any Board investigation under this paragraph shall be—

"(i) to ascertain information concerning the circumstances of the event involved, and its implications for the public health and safety;

"(ii) to determine whether such event is part of a pattern of similar events at facilities, or involving any materials, licensed or otherwise regulated by the Commission which could adversely affect the public health or safety or which could be the precursor of events which could adversely affect the public health or safety; and

"(iii) to provide such recommendations to the Commission for changes in licensing, safety regulations and requirements, and other regulatory policy as may be prudent or necessary.

"(C) For the purpose of this paragraph, the term 'event' shall include an action or failure to act by any person, including the Commission as an organization and its staff, or a continuing series of actions or failures to act by any such person, including operational failures, that the Board determines to have a potentially adverse effect on public health as provided in this paragraph.

"(2) The Board shall have access to and may systematically analyze—

"(A) operational data from any facility, or involving any materials, licensed or otherwise regulated by the Commission to determine whether there exist certain patterns of events that indicate safety problems; and

"(B) operational data of the Commission including personnel and files.

"(3) The Board may conduct special studies pertaining to the nuclear safety at any facility, or involving any materials, licensed or otherwise regulated by the Commission.

"(4) The Board may evaluate suggestions received from the scientific and industrial communities, and from the interested public, on specific measures to improve safety at facilities, or involving materials, licensed or otherwise regulated by the Commission.

"(5)(A) The Board shall recommend to the Commission those specific measures that should be adopted to minimize the likelihood that events will occur at any facility, or involving materials, licensed or otherwise regulated by the Commission which could adversely affect the public health or safety. The Commission shall respond in writing to the recommendations of the Board within 120 days of receipt of such recommendations. Such written response shall detail specific measures adopted by the Commission in response to such recommendations, and explanations for its inaction on recommendations it chose to reject.

"(B) The recommendations of the Board made pursuant to subparagraph (A) shall also be sent to Congress.

"(6)(A) For purposes of investigations, the Board shall establish reporting requirements which shall be binding upon—

"(i) persons who operate, design, supply, maintain, or are otherwise involved with the operation or construction of, facilities licensed or otherwise regulated by the Commission; and

"(ii) persons who process, store, transport, use, or possess materials licensed or otherwise regulated by the Commission.

"(B)(i) The information which the Board may require to be reported under this paragraph may include any materials designated as classified material pursuant to the Atomic Energy Act of 1954, or any materials designated as safeguards information and protected from disclosure under section 147 of the Atomic Energy Act of 1954.

"(ii) Information received by the Board shall be made available to the public in accordance with the applicable provisions of subsections (a) and (b) of section 306 of the Independent Safety Board Act of 1974 (49 U.S.C. 1905).

"(7)(A) The Board or, on the authorization of the Board, any member thereof, may, for the purpose of carrying out the provisions of this section, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

"(B)(i) Subpenas may be issued only under the signature of the Chairman or any member of the Board designated by him and shall be served by any person designated by the Chairman or any member. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

"(ii) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

"(iii) Any person who willfully neglects or refuses to qualify as a witness, or to testify, or to produce any evidence in obedience to any subpena duly issued under the authority of this paragraph shall be fined not more than $5,000, or imprisoned for not more than 6 months, or both. Upon certification by the Chairman of the Board of the facts concerning any willful disobedience by any person to the United States attorney for any judicial district in which the person resides or is found, the attorney may proceed by information for the prosecution of the person for the offense.

"(8) The Board shall issue periodic reports which shall be made available to the Congress, and to Federal, State, and local government agencies concerned with safety at facilities, or involving materials, licensed or otherwise regulated by the Commission. Upon request, such reports shall be made available to other interested persons. Such reports shall contain recommendations of specific measures to reduce the likelihood of occurrence of nuclear events similar to those investigated by the Board and of corrective steps to enhance or improve safety conditions at such facilities investigated by the Board and other facilities as considered appropriate by the Board.

"(9) In accordance with the Civil Service laws and regulations, the Chairman of the Board is authorized to hire staff and employ consultants for the purpose of carrying out the functions and duties of the Board.

"(g)(1) There are hereby transferred to the Board—

"(A) all functions of the Office for the Analysis and Evaluation of Operational Data relating to the functions of the Board described in subsection (f); and

"(B) such personnel from the Office for the Analysis and Evaluation of Operational Data as the Director of the Office of Management and Budget determines are necessary to carry out the functions described in subsection (f).

"(2) There are hereby authorized to be appropriated for each of the fiscal years 1988, 1989, 1990, 1991, 1992, and 1993 the sum of $5,000,000.

"(3) The Board shall terminate at the end of fiscal year 1993.".●

By Mr. BYRD (for Mr. BIDEN):

S. 15. A bill to provide the framework necessary to pursue a coordinated and effective national and international narcotics control policy; to the Committee on Governmental Affairs.

NARCOTICS LEADERSHIP ACT

● Mr. BIDEN. Mr. President, no general would send an army into battle without a commander. No corporation would undertake massive investment and restructuring without a plan. Unfortunately, that is what we continue to do in our struggle against drug traffickers and drug abuse in America.

Just 3 months ago, we passed the most sweeping revision of the Federal Drug Control Program in almost two decades, providing new criminal laws, new funds for law enforcement, and new programs for education and treatment. But we will need more than money to carry the fight against drug abuse into the next decade.

What we need most of all is a new dimension of leadership. Today, I come before this body to introduce legislation that would provide one person with the full authority and responsibility for leading this Nation's struggle against drug abuse. This proposal, dubbed the "Drug Czar," has previously passed both Houses of Congress with overwhelming majorities. We have all recognized that leadership is a sorely missing link in our Drug Control Program.

I am introducing this bill on the first day of the 100th Congress to emphasize the critical need for leadership in this area, and I can assure my colleagues that it will receive swift and thorough review in the Judiciary Committee.

The need for action is clear. The price that this Nation pays for its seemingly insatiable demand for drugs is staggering:

Drug traffickers make more each year than the profits of all the Fortune 500 companies combined.

Drug abuse costs this Nation almost $60 billion per year in lost productivity, unemployment, health costs, and the like.

This year, the Federal Government alone will spend $2.4 billion on drug control, with billions more spent by State and local governments.

Of course, the costs that this Nation pays for its drug habit cannot be measured in economic terms alone. The price we pay must be measured in terms of the lost lives, broken families, and the dreams forsaken from drug abuse.

Despite the best efforts of this body, and this Congress, and even this administration—which has done a great deal in this area—we have not turned the corner on seriously reducing the supply of, or demand for, illicit drugs.

Five to six million Americans regularly use cocaine; one-half million Americans are addicted to heroin; over 20 million Americans abuse marijuana.

From 1975 to 1984, the amount of cocaine smuggled into the country quadrupled, and in 1986 it's estimated that 12 tons of heroin and up to 60,000 tons of marijuana will enter our borders.

And in the latest survey of graduating high school seniors, 61 percent—almost two-thirds—had tried an illicit drug, and over 17 percent used cocaine, the highest percentage ever reported.

Clearly, drug abuse is a national catastrophe. It poses a direct threat to the social and economic fabric of our cities and communities, and threatens our most precious resource—our children.

And many of the Members of this body must wonder why our efforts have not been more successful. I know the American people are wondering. In 1984, we passed the most massive revision of the Federal criminal code in history, with major changes to the organized crime and drug laws. And we have devoted an unprecedented amount of resources to this struggle. In fact, we've doubled the drug control budget in the last 5 years.

Yet, as the statistics I cited reveal, we are not winning this struggle.

That is because we are fighting a battle against well-armed and well-equipped drug traffickers and yet we have no commander. We are investing billions of dollars to protect our streets and families, and yet we have no national strategy.

Simply put, we have no leadership. I am not speaking of the personal and moral leadership that the President has devoted to the drug issue. Nor am I speaking about the part-time leadership to the Attorney General, the Vice President, or the White House Drug Abuse Adviser, who periodically announce their leadership on such high-profile initiatives as the Bolivia military operation or drug testing. Instead, I am speaking about the day-to-day leadership, over the long haul, that is sorely missing from our drug control efforts.

The problem lies in that several officials are in charge of the Federal Drug Control Program, each with his own agenda and agency turf to defend. As a result, no one is really in charge. Since no single official is held accountable for the success or failure of the Nation's drug policy, some officials are more interested in advancing their own political agenda than they are in working constructively with other agencies in a united fight against drug trafficking and abuse in America.

The lack of clear lines of authority and accountability, and the absence of a single, comprehensive strategy has undermined our drug control effort, both domestically and abroad.

The recent United States military assisted cocaine raids in Bolivia were plagued from the outset by poor planning, inadequate intelligence information, and press leaks that jeopardized the whole operation. The first two raids turned up a few bewildered peasants, but no cocaine. And almost immediately, our Defense, Justice, and State Departments were squabbling over who was responsible for what went wrong.

The United States Embassy in Mexico was directed by the State Department not to accept names from DEA for the lookout system, because DEA has refused to give State access to their sources. DEA retaliated, and has refused to submit names of known and suspected traffickers. As a result, visas have undoubtedly been issued to known drug traffickers.

Recently, the Customs Service has sought authority to fly "hot pursuit" missions in the Bahamas. The Coast Guard and State Department have opposed this change, citing Customs' primary role for protecting our borders. The Bahamian Government sided with Customs and hired a high-priced Washington, DC, public relations firm to persuade Congress to side with Customs. DEA officials were furious that they had to compete against big-name P.R. firms. In defense, the Prime Minister of the Bahamas said that the United States agencies often can't decide who should assist the local police, and in the meantime the smugglers escape.

For over 5 years, I have called for the creation of a single, Cabinet-level official who would be responsible for leading the Federal Drug Control Program. Vesting this person with Cabinet-level rank is essential if he is to have the clout necessary to end bureaucratic infighting and petty agency turf battles.

This official would be responsible for developing a long-range national and international drug strategy, with our priorities explicitly spelled out. Along these lines, this official would have the responsibility to plan program budgets. Giving this official this type of budget authority is essential if we are to ensure that every $1 of the $2.4 billion we will spend this year is spent wisely and efficiently in achieving the goals of our national plan.

In addition, this official would be responsible for leading this country's drug initiatives on both the supply and demand side of the drug abuse equation. For too long, we've placed too much reliance on law enforcement to solve this problem. But despite the tireless commitment of this Nation's law enforcement community, we need to recognize that the answer to solving the drug problem lies in a comprehensive approach, combining rigorous law enforcement with efforts aimed at the demand side, through education and prevention. Under my proposal, this recognition would become explicit, and our national strategy would be a comprehensive, unified plan, including all the necessary elements of a truly effective plan of action.

In 1982, I introduced a similar proposal, which quickly became titled the "Drug Czar." This bill was passed by both Houses of Congress with overwhelming majorities. The President, however, refused to take on the bureaucracy and, succumbing to the excuses of agency officials, vetoed the bill.

In 1983, Congress passed this legislation again. In the Senate it passed easily on a vote of 63 to 33. The President threatened to veto the bill again, and a compromise was reached, creating the National Drug Enforcement Policy Board. The Policy Board, chaired by the Attorney General, was charged with developing a national and international strategy, reviewing agency budgets, and overseeing implementation of the Federal drug control strategy.

To date, the Policy Board has simply failed to meet its mandate. Two years after the Board's creation we have no strategy. The Board has failed to develop a drug control budget. And when I say the Board has failed, I am not the only one who has recognized the Board's poor performance. The President's own Organized Crime Commission recently called the Board's performance "ambiguous" and declared that the Board has "failed to assert a clear leadership role." In the meantime, the Attorney General, the Vice President, and the White House Drug Adviser continue to lead this country's efforts, often in conflicting directions.

Two years is enough for this experiment. I believe it is time to place this enormous responsibility with one Cabinet level official who the Congress and the American people can look to as the leader in the struggle against drug abuse in this Nation.

I hope the President will now see the need for this very important piece of legislation, so that we can move this country toward our ultimate goal: a drug-free America. Thank you.

I ask unanimous consent that the text of the National Narcotics Leadership Act of 1987 be printed in the RECORD.

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

S. 15

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 "National Narcotics Leadership Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby makes the following findings:

(1) The flow of narcotics into the United States is a major and growing problem.

(2) The problem of illegal drug activity and drug abuse falls across the entire spectrum of Federal activities, both nationally and internationally.

(3) Illegal drug trafficking is estimated to be a $100,000,000,000 a year industry in the United States.

(4) The annual consumption of heroin in the United States remains in the range of four metric tons, sustaining one-half a million addicts, while cocaine consumption has increased sharply, with approximately five million to six million Americans using cocaine regularly.

(5) Drug abuse poses a threat to our most precious resource, our young people; with almost two-thirds of the graduating high school class of 1985 having used an illicit drug and 17 percent having used cocaine, the highest rate ever recorded since the survey has been taken.

(6) Such significant indicators of the drug problem as drug-related deaths, emergency room visits, hospital admissions due to drug-related incidents, and addiction rates are soaring.

(7) Increased drug trafficking is strongly linked to violent, addiction-related crime and studies have shown that over 90 per centum of heroin users rely upon criminal activity as a means of income.

(8) Much of the drug trafficking is handled by syndicates which results in increased violence and criminal activity because of the competitive struggle for control of the domestic drug market.

(9) Any effective solution to the Nation's drug problem must involve a comprehensive approach from all levels of government, combining rigorous law enforcement and supply reduction initiatives with efforts to reduce the demand for drugs through education, research, and treatment.

(10) The magnitude and scope of the problem requires a Director of National Drug Control Policy with the responsibility for the coordination and direction of all Federal efforts by the numerous agencies.

(11) Such a director must have broad authority and responsibility for making management, policy, and budgetary decisions with respect to all Federal agencies involved in attacking this problem so that a unified and efficient effort can be made to eliminate the illegal drug problem.

(b) PURPOSE.—It is the purpose of this Act to ensure—

(1) the development of a national policy with respect to drug abuse and control;

(2) proper direction and coordination of all Federal agencies involved in the effort to implement such a policy; and

(3) that a single, competent, and responsible high-level official of the United States Government, who is appointed by the President, by and with the advice and consent of the Senate, and who is accountable to the Congress and the American people, will be charged with the responsibility of coordinating the overall direction of United States policy, resources, and operations with respect to drug control and abuse.

SEC. 3. ESTABLISHMENT OF OFFICE.

(a) ESTABLISHMENT OF OFFICE.—There is established in the executive branch of the Government an office to be known as the "Office of the Director of National Drug Control Policy" (hereafter in this Act referred to as the "Office of the Director").

(b) DIRECTOR AND DEPUTY DIRECTORS.—(1) There shall be at the head of the Office of the Director, a Director of National Drug Control Policy (hereafter in this Act referred to as the "Director").

(2) There shall be two deputy directors of the Office of Director (hereafter in this Act referred to as the "Deputy Directors") as follows:

(A) A Deputy Director for Demand Reduction to be responsible for prevention, treatment, research, and private sector initiatives; and

(B) A Deputy Director for Drug Law Enforcement to be responsible for domestic drug law enforcement, border interdiction, and international narcotics control programs.

The Deputy Directors shall assist the Director in carrying out the Director's functions under this Act.

SEC. 4. APPOINTMENT AND DUTIES OF THE DIRECTOR AND DEPUTY DIRECTORS.

(a) APPOINTMENT.—(1) The Director and the Deputy Directors shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Director and the Deputy Directors shall each serve at the pleasure of the President. No person may serve as Director or a Deputy Director for a period of more than four years unless such person is reappointed to that same office by the President, by and with the advice and consent of the Senate. No person shall serve as Director or a Deputy Director while serving in any other position in the Federal Government.

(3) The Director shall be entitled to the compensation provided for in section 5312 of title 5, United States Code. The Deputy Directors shall be entitled to the compensation provided for in section 5314 of title 5, United States Code.

(b) FUNCTION OF DIRECTOR.—The Director shall serve as the principal director and coordinator of United States operations and policy on drug control and abuse.

(c) RESPONSIBILITIES OF DIRECTOR.—The Director shall have the responsibility, and is authorized to—

(1) develop, review, implement, and enforce United States Government policy with respect to drug control and abuse;

(2) direct and coordinate all United States Government efforts to halt the importation, manufacture, distribution, and use of illicit drugs within the United States;

(3) direct and coordinate all United States Government efforts and programs to reduce the demand for illicit drugs through education, prevention, research and treatment;

(4) develop in concert with other governmental entities budgetary priorities and budgetary allocations of entities of the United States Government with respect to drug control and abuse;

(5) prepare a National and International Drug Control Strategy as provided in section 5; and

(6) coordinate the collection and dissemination of information necessary to implement United States policy with respect to drug control and abuse.

(d) POWERS OF DIRECTOR.—In carrying out his responsibilities under subsection (c) the Director is authorized to—

(1) direct, with the concurrence of the Secretary or Director of the Cabinet level agency employing such personnel, the temporary reassignment of Government personnel within the United States Government in order to implement United States policy with respect to drug control and abuse;

(2) procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the grade of GS-18 of the General Schedule;

(3) accept and use donations of property from all Government agencies; and

(4) use the mails in the same manner as any other department or agency of the Executive Branch.

(e) AUTHORITY OF DIRECTOR.—Notwithstanding any other provision of law, the Director shall have the authority to direct each department or agency with responsibility for drug control to carry out the policies established by the Director consistent with the general authority of each agency or department.

(f) INTELLIGENCE AUTHORITY.—Notwithstanding any other provision of law, the Director shall undertake no activities inconsistent with the authorities and responsibilities of the Director of Central Intelligence under the provisions of the National Security Act of 1947, as amended, or Executive Order 12333.

(g) GENERAL SERVICES ADMINISTRATION SUPPORT.—The Administrator of General Services shall provide to the Director on a reimbursable basis such administrative support services as the Director may request.

SEC. 5. PREPARATION AND SUBMISSION OF NATIONAL AND INTERNATIONAL DRUG CONTROL STRATEGY

(a) DEVELOPMENT AND SUBMISSION OF THE DRUG STRATEGY.—(1) The Director shall submit to the Congress, within 180 days after the date of enactment of this Act, and on February 1st of each year thereafter, a full and complete National and International Drug Control Strategy (hereafter in this section referred to as the "Drug Control Strategy"). If necessary, sections of the Drug Control Strategy that involve classified information may be presented to Congress in closed proceedings.

(2) The Drug Control Strategy shall be a forward looking blueprint for the Federal Government and the Nation to follow in reducing drug abuse, and shall contain projections for program and budget priorities and realistic and achievable projections for drug seizures, availability, purity, and drug usage for the next five years.

(3) Commencing with the second report, the Drug Control Strategy shall include a full and complete report reflecting accomplishments with respect to the United States policy and priorities in the previous year.

(b) GOALS AND PRIORITIES.—The Drug Control Strategy developed pursuant to subsection (a) shall include a full and complete list of goals and priorities in the areas of—

(1) international narcotics control;

(2) domestic and border drug law enforcement;

(3) reducing the demand for drugs, through education, prevention, treatment, and research; and

(4) cooperative efforts between the Federal and State and local governments in the area of drug control.

In addition, the Drug Control Strategy shall contain a full and complete assessment of how the budget priorities developed pursuant to subsection (a) reflect and implement the Federal drug control strategy.

SEC. 6. TERMINATION OF THE NATIONAL DRUG ENFORCEMENT POLICY BOARD.

(a) TERMINATION.—The National Drug Enforcement Policy Board is terminated 90 days after the appointment of the Director. Upon such termination, all records and property of the National Drug Enforcement Policy Board shall be transferred to the Office of the Director. The Director of the Office of Management and Budget shall take such actions as are necessary to facilitate such transfer.

(b) REPEAL.—(1) Chapter XIII of title II of the Comprehensive Crime Control Act of 1984 (Public Law 98-473) is repealed.

(2) Sections 103, 201, 202, 203, 204, and 206 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1103, 1111, 1112, 1113, 1114, and 1116) are repealed. Section 205 of such Act is redesignated as section 201.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated $1,000,000 for fiscal year 1988, and such sums as may be necessary for each of the four succeeding fiscal years, to be available until expended.

SEC. 8. COORDINATED BUDGET SUBMISSION FOR FEDERAL DRUG CONTROL AND ENFORCEMENT AGENCIES.

Section 1105(a) of title 31, United States Code, is amended by adding at the end thereof the following:

"(26) a detailed request, in consultation with the Director for National and International Drug Operations and Policy, for Federal agencies responsible for drug abuse prevention and treatment and drug law enforcement.".

SEC. 9. EFFECTIVE DATE.

This Act and the amendments made by this Act shall be effective 90 days after the date of enactment of this Act.●

By Mr. D'AMATO:

S. 17. A bill to provide additional funding for comprehensive drug law enforcement, prevention, and treatment; to the Committee on the Judiciary.

COMPREHENSIVE DRUG LAW ENFORCEMENT, PREVENTION, AND TREATMENT ACT

● Mr. D'AMATO. Mr. President, one of the greatest accomplishments of the last Congress was enactment of the Anti-Drug Abuse Act of 1986. With the new resources and powers this bill makes available, we have the opportunity to mount the beginnings of a meaningful attack on the drug epidemic that plagues this Nation.

Drug and alcohol abuse constitutes a $200 billion annual drain on the American economy. In the workplace, it causes massive absenteeism, safety hazards, and losses in productivity. In the schools, substance abuse makes it impossible for teachers to teach and for students to learn. This epidemic is responsible for more than half of all crimes committed today.

Such an enormous problem will not be solved by one bill. So, while the Anti-Drug Abuse Act is an important beginning, it is only a beginning. The Comprehensive Drug Law Enforcement, Prevention, and Treatment Act will enable us to expand the campaign against substance abuse with the full commitment necessary.

Despite all the claims made on its behalf, and all its excellent provisions, the law we enacted in the fall is a very limited one. For example, it provides less than $200 million in new money to State and local drug abuse agencies for treatment and rehabilitation programs. That is enough for a year of residential treatment for fewer than 20,000 young people. Even with this new law, tens of thousands more who need help will not receive it.

As H.R. 5484 moved back and forth between the House of Representatives and the Senate during the month of October, it underwent several revisions. Unfortunately, not all of these changes improved the bill.

One of the unfortunate changes is the deletion of the provisions establishing a new Drug Asset Forfeiture Fund. Sections 1151 and 1152 providing for this special fund were contained in the version of H.R. 5484 that was printed in the CONGRESSIONAL RECORD on September 30, 1986. They can be found on page 27196.

Had these sections not been deleted, forfeited drug assets would be available for the following key purposes:

First. Federal drug law enforcement programs;

Second. Federal programs relating to education, prevention, treatment, rehabilitation, and research;

Third. State, local and nonprofit agencies with drug abuse responsibilities; and

Fourth. State and local law enforcement agencies for drug law enforcement efforts.

The bill I introduce today restores the deleted provisions. As the sponsor of S. 1583, the original Comprehensive Drug Law Enforcement, Prevention and Treatment Act introduced on August 1, 1985, I am pleased to note that two of the reforms contained in that bill were incorporated into H.R. 5484: The Justice and Customs forfeiture funds have been extended beyond fiscal year 1987 and made a permanent part of our antidrug arsenal; and the limitation on the authorized amount of the Customs Forfeiture Fund has been removed.

Each year, Federal drug law enforcement agents seize hundreds of millions of dollars in drug money and the proceeds of drug sales. As we make better use of our drug forfeiture laws, this amount is continuing to increase dramatically.

The bill I am introducing today will permit us to make all forfeited drug assets available for a sustained national war on drugs. It strengthens our support for the law enforcement purposes already established by law, and provides additional support for other drug law enforcement purposes, as well as for underfunded drug prevention, treatment, and research programs.

As our forfeiture efforts attain their full potential, this bill will enable us to hire hundreds of additional drug law enforcement agents, inspectors, investigators, and prosecutors. It will enable our drug law enforcement agencies to modernize their communications networks and investigative capabilities, to expand their money laun-

dering and financial investigations against drug kingpins, to mount a more effective campaign against crack, heroin, designer drugs and other dangerous drugs, and to tend to a host of other law enforcement needs that are not now being met.

With the funds this bill makes available for effective education and prevention programs, we will be able to teach millions more children to say no to drugs while in the earliest grades when they are still reachable, and we will be able to counter the peer pressure to use drugs that develops as early as the fifth grade and continues throughout junior high school and high school.

We cannot ignore the long waiting lists of those already abusing drugs who now seek treatment. I urge my colleagues to support this bill to reach more people who need help in recovering from drug dependency.

Mr. President, we need massive reinforcements of people and resources, sustained over many years, to win the war on drugs. Welcome as the Anti-Drug Abuse Act of 1986 is, we cannot permit it to mark the height of our achievement. Millions of Americans who live in fear because of drug-related crime, millions of those who are drug and alcohol dependent, and millions of children who hope one day to attend drug-free schools, are telling us that we can, and we must, do better.

Whether we do so, and whether the drug bill we passed in October marks a historic turning point, or a short-lived moment of enthusiasm, depends on the actions we take in this Congress.

The Comprehensive Drug Law Enforcement, Prevention, and Treatment Act enables us to sustain the momentum begun in October. At no additional cost to the taxpayer, it can provide a much-needed new source of revenue and new resources for drug law enforcement, prevention, and rehabilitation. It can help make our homes, streets, schools, and workplaces safe again. It can help remove from the American economy the hundreds of billions of dollars in costs under which it is now straining.

In order to ensure a sustained and strengthened antidrug abuse campaign that is equal to the enormous challenges we face, I urge my colleagues to cosponsor this legislation and to give it their full support.

Mr. President, I ask that the full text of this bill be printed in the RECORD in its entirety 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. 17

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

SECTION 1. The Act may be cited as the "Comprehensive Drug Law Enforcement, Prevention, and Treatment Act."

FUNDING FOR DRUG LAW ENFORCEMENT, PREVENTION, AND TREATMENT PROGRAMS UNDER THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE, FUND

SECTION 2. (a) Paragraph (1) of section 524(c) of Title 28, United States Code, is amended by—

(1) striking out "the following purposes of the Department of Justice";

(2) striking out "and" at the end of subparagraph (F);

(3) striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; and"; and

(4) adding after subparagraph (G) the following:

"(H) disbursements to—

"(i) the Attorney General for transfer, through the Office of Justice Programs, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Education, to enhance the following efforts:

"(a) Federal drug law enforcement agencies and programs;

"(b) Federal drug abuse agencies and programs relating to drug abuse education, prevention, treatment, rehabilitation, and research;

"(c) State, local, and nonprofit agencies with drug abuse responsibilities; and

"(d) State and local law enforcement agencies for drug law enforcement efforts.

Funds disbursed under this subparagraph shall not be used to supplement existing funds, but shall be used to supplement the amount of funds that would be otherwise available. Any funds appropriated under this subparagraph shall be divided into fourths and distributed on a basis of one-fourth for the purposes provided in clause (a), one-fourth for the purposes provided in clause (b), one-fourth for the purposes provided in clause (c), and one-fourth for the purposes provided in clause (d)."

FUNDING FOR DRUG LAW ENFORCEMENT, PREVENTION, AND TREATMENT PROGRAMS UNDER THE CUSTOMS FORFEITURE FUND

SECTION 3. (a) Subsection (a) of section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) is amended—

(1) by striking out "the following purposes of the United States Customs Services";

(2) in clause (3) by striking out "and" after the semicolon;

(3) in clause (4) by striking the period and inserting in lieu thereof "; and" ; and

(4) adding after clause (4) the following:

"(5) disbursements to—

"(A) the Secretary of the Treasury for transfer, after consultation with the Commissioner of Customs, the Attorney General, the Secretary of Health and Human Services, and the Secretary of Education, to enhance the following efforts:

"(i) Federal drug law enforcement agencies and programs;

"(ii) Federal drug abuse agencies and programs relating to drug abuse education, prevention, treatment, rehabilitation, and research;

"(iii) State, local, and nonprofit agencies with drug abuse responsibilities; and

"(iv) State and local law enforcement agencies for drug law enforcement efforts.

Funds disbursed under this subparagraph shall not be used to supplement existing funds, but shall be used to supplement the amount of funds that would be otherwise available. Any funds appropriated under this subparagraph shall be divided into fourths and distributed on a basis of one-fourth for the purposes provided in clause (i), one-fourth for the purposes provided in clause (ii), one-fourth for the purposes provided in clause (iii), and one-fourth for the purposes provided in clause (iv)."

SECTION 4. The provisions of this Act shall become effective on October 1, 1987.●

By Mr. MOYNIHAN:

S. 18. A bill to repeal the Balanced Budget and Emergency Deficit Control Act of 1985; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other has 30 days of continuous session to report or be discharged.

GRAMM-RUDMAN REPEAL ACT

● Mr. MOYNIHAN. Mr. President, I rise on this first day of the 100th Congress to introduce legislation to repeal the Gramm-Rudman-Hollings law, except for those provisions which affect restoration of moneys disinvested from the Social Security Security trust funds, and that section of the law which moves Social Security off budget.

During October, November, and December of 1985, and throughout the second session of the 99th Congress, I urged Congress first to oppose the original legislation, and subsequently to repeal it. There were 24 votes against GRH to begin with. By August 1986 there were 30 votes for repeal.

With the passage of Gramm-Rudman-Hollings, Congress attempted to give up its responsibility to set priorities and make decisions about how to spend Federal moneys. A series of declining deficit ceilings was enacted, along with a mechanism to automatically cut spending if Congress and the President could not agree on a more appropriate fiscal plan.

Eight months later, in July of 1986, the Supreme Court ruled that the process leading to the issuance of the sequester order by the President was unconstitutional—Congress would have to pass a law to enact reductions in spending. The next month, the original sponsors attempted to fix the law by amending it with a new process, one which they hoped would pass constitutional muster, for achieving automatic spending cuts. This effort received less support in the Senate than had the original legislation, but still it passed. The House of Representatives rejected the proposal, which would have given the Director of the Office of Management and Budget significant discretion over the content of future sequester orders.

I expect that in May, when Congress must once again increase the statutory limit on the Federal debt, we will revisit the question of whether or not to fix Gramm-Rudman-Hollings. Again,

backed up against the disaster of the potential default of the Federal Government, the House and Senate will have to vote on a measure to force unelected officials to do our job: to solve our current fiscal crisis.

One thing is clear. The Gramm-Rudman-Hollings law has not lived up to the promises of its sponsors. The deficit ceilings have not been met: the deficit for fiscal year 1986 was $221 billion, not $172 billion as contemplated by the law in December 1985, or even $208 billion as expected in March 1986. For fiscal year 1987, the deficit will be greater than the $144 billion ceiling established in the law. The administration now reports an estimated fiscal year 1987 deficit of $174.5 billion, and the Congressional Budget Office's estimate is likely to be similar.

Several times last fall, I stated that Congress was not doing what it claimed. I predicted the fiscal year 1987 deficit would be $170 to $180 billion. The economy was growing slower than what we assumed.

Even earlier, on November 6, 1985, the day the Senate voted 74 to 24 in favor of the Gramm-Rudman-Hollings proposition, I warned that we would not hit the GRH targets because Gramm-Rudman-Hollings:

> . . . assumes we know what we're talking about, that we can predict when a recession is coming. We can't, and neither, in this matter, can anyone else. . .
>
> Economists do not know the future—they study, and barely know, the past. This is really an adventure in mad scientism, pretending to know what cannot be known.

Contained in the deficit ceilings of the original law were implicit assumptions about the performance of the United States and world economies. Real GNP growth would be about 3.5 percent for the foreseeable future. Interest rates, oil prices, and unemployment rates would fit in with such a growth pattern. In fact, economic growth has averaged closer to 2 or 2½ percent. Some predicted that; but nobody knew it. And assumptions about the cost of farm programs, and other entitlements are similarly imprecise, and have similarly large effects on estimates of what the deficit 6 months, 1 year, or 5 years away might be. We must make informed guesses about such matters, but we cannot rely on those judgments to the degree required by the Gramm-Rudman-Hollings formula.

We ought to stop this adventure in mad scientism. We should employ our energies and ingenuity to solving the deficit problem instead of creating new automatic cutting mechanisms, or inventing new accounting games, reducing the deficit by shifting expenditures back and forth between fiscal years. That is what happens when Congress makes promises that it cannot keep.

And that is perhaps the most troubling aspect of the law. In a moment of seeming passion, Congress passed a bad law—"a bad law whose time," according to some, "had come." Instead of repealing the law, Congress has felt obligated to at least appear to follow through. In so doing, we announce that we have met the requirements of the law. When the fiscal years end, and it becomes clear that we have not done what we said we did, we damage the integrity of Congress as an institution. And for that reason, if no other, we ought to repeal the law.

We ought not have a law on the books that assumes the disappearance of the business cycle, for we will have downturns in the economy during the next 4 years. We ought not have a law that assumes a predictive capacity about the economy that we simply do not have. We ought not have a law that gives incentives to Congress to invent accounting gimmicks, rather than address the structural deficit. And we ought not have a law that will, in the long run, cause the public to lose its trust in Congress.

In this, our 200th year of constitutional Government, let us return to operating as a Congress willing to take on its constitutional responsibilities, and capable of making choices. Let us move swiftly to repeal the Gramm-Rudman-Hollings law.

I ask unanimous consent that the text of S. 18 appear in the RECORD.

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

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

SECTION 1. THIS ACT MAY BE CITED AS THE "GRAMM-RUDMAN REPEAL ACT".

SEC. 2. REPEAL.

Except as provided in section 3, the Balanced Budget and Emergency Control Act of 1985 (title II of Public Law 99-177) is repealed.

SEC. 3. EXCEPTION.

Section 272 of the Balanced Budget and Emergency Deficit Control Act of 1985 (relating to restoration of trust fund investments), the amendments made by section 261 of such Act (relating to budgetary treatment of social security trust funds), section 310(g) of the Congressional Budget Act of 1974 (relating to point of order against reconciliation measures providing for changes in the OASDI program), and section 275 of such Act (to the extent that it relates to section 272 of such Act and to section 310(g) of the Congressional Budget Act of 1974) shall not be included in or affected by the repeal of such Act and shall be effective as if this Act had not been enacted.

SEC. 4 EFFECTIVE DATE; EFFECT OF REPEAL.

(a) EFFECTIVE DATE.—The repeal made by section 2 of this Act shall become effective on January 6, 1987.

(b) EFFECT OF REPEAL.—Provisions of law amended or repealed by the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby restored or revived and shall be effective as if such Act not been enacted.●

By Mr. MOYNIHAN:

S. 19. A bill to amend the Elementary and Secondary Education Act of 1965 to provide grants to State and local educational agencies for dropout prevention programs; to the Committee on Labor and Human Resources.

EDUCATIONAL ACHIEVEMENT INCENTIVE ACT

● Mr. MOYNIHAN. Mr. President, I rise today to introduce the Educational Achievement Incentive Act of 1987. The purpose of this bill is to prevent the young people of this country from leaving school before completing a high school education and to create incentives for students who have left school to return.

The high school dropout problem in America is more pervasive than many realize. There is estimated to be 4.3 million individuals, 16 to 24, who have failed to complete high school—approximately 9 percent of all persons in this age group. In some areas of this country, the dropout rate is as high as 48 percent. We simply can't afford not to address this problem.

The value of educating our young people transcends the immediate benefit to individual students and their families. A society is collectively strengthened by an educated work force. Economically, national productivity and international competitiveness are greatly enhanced. Politically, an educated electorate ensures an enlightened vote and thus, greater accountability by our elected officials.

Moreover, an educated individual is much more likely to be an employed and self-sufficient individual. Education means opportunity in the job market; without it, the ability to support oneself and family is severely limited, and the likelihood of needing public assistance greatly increased.

A high school dropout is more than twice as likely to be unemployed as a high school graduate. Of the approximately 3 million high school dropouts who could be employed in the civilian labor force—they are not disabled and don't have immediate family responsibilities—25.9 percent are unemployed.

But of the estimated 8.8 million people who have completed high school the unemployment rate is 12.7 percent. Thus, simply finishing the last 2 years of high school, can reduce the chance of unemployment by 50 percent.

Education also has a direct bearing on earning capacity. According to a study of families in poverty issued by the House Ways and Means Committee entitled "Children in Poverty," fathers who have completed a high school education earn more than 50 percent more than those who have not. Single mothers who received a high school diploma earn almost 90 percent more than those who did not.

Perhaps the most telling statistic: Almost half—48 percent—of all poor

families receiving public assistance are headed by a person who failed to complete high school. The bill I introduce today, the Educational Achievement Incentive Act of 1987 deals with this problem by creating a program based on several of the most successful dropout prevention programs in the country. The bill authorizes $75 million to be distributed by the Secretary of Education to local educational agencies to implement dropout prevention programs, with $250,000 distributed to each State educational agency. In addition, special funds will be set aside for large urban areas with dropout rates higher than 35 percent, where the number of students affected is greatest.

This bill begins to provide the resources to give those students who are identified as potential dropouts the attention and guidance necessary to increase their chances of remaining in school to complete their high school education. By requiring applicants for funding to identify the primary reasons why students drop out, and structuring academic programs to address those problems, I believe we can increase their chance of staying in school, and if they have already left, returning to school.

For example, the most often cited reasons by dropouts for leaving school are poor grades, lack of attention from teachers and administrators, economic pressures, and family responsibilities. This bill requires that the applicant for funding identify the primary reasons for students dropping out within their district—with special emphasis on those individual problems which eventually cause a student to leave school. In the case of a dropout or potential dropout who cites the need to work as a reason for leaving school, that need should be taken into consideration when structuring that student's academic schedule. This bill encourages school districts to structure programs which allow flexibility for the student to meet these demands.

In my own State of New York, the New York City Board of Education is sponsoring programs which try to encourage students to attend school more often through individual counseling and flexible academic schedules which allow those that have to work the ability to do so while still enrolled in school. These programs also establish connections between elementary and secondary schools to aid students in making the change from one environment to the other. Last, there is a special counselor in the school system responsible for monitoring the academic progress of students to ensure that each student receives the necessary services and guidance to prevent them from dropping out.

With this type of program in place, New York City has been able to reduce its dropout rate for the first time in years—down 2.4 percent from 1984. This bill will enable school systems across the country to initiate similar programs and share in their success.

Therefore, I urge my colleagues to support this essential legislation. I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 19

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Educational Achievement Incentive Act of 1987".

PROGRAM AUTHORIZED

SEC. 2. The Elementary and Secondary Education Act of 1965 is amended—

(1) by redesignating title X as title XI,

(2) by redesignating sections 1001 through 1006 as sections 1101 to 1106, respectively; and

(3) by inserting the following new title after title IX:

"FINDINGS

"SEC. 1001. The Congress finds that—

"(1) there is estimated to be 4,300,000 individuals between the ages of 16 and 24 who have failed to complete high school in the United States, approximately 9 percent of all individuals in this age group;

"(2) in the academic year 1984-85, 612,000 students dropped out of school;

"(3) 35.6 percent of individuals who drop out of school, 147,000 youths, are unemployed;

"(4) nearly 50 percent of all families living in poverty are headed by an individual who has failed to complete high school; and

"(5) the most often cited reasons by dropouts for leaving school are poor grades, lack of attention from teachers and administrators, and economic and family responsibilities.

"PURPOSE

"SEC. 1002. It is therefore the purpose of this title to provide Federal support for programs and projects which seek to prevent elementary and secondary students from failing to complete a high school education by providing funds for local educational agencies to expand existing programs and establish new programs modeled after ongoing programs in New York, Los Angeles, Atlanta, Dade County, San Antonio, and Washington, District of Columbia, that have been recognized for high success rates in reducing the dropout rate among students.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1003. (a) There are authorized to be appropriated $75,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991 to carry out this title.

"(b) The Secretary shall reserve from amounts appropriated in each fiscal year such amounts as may be necessary to allocate $250,000 to each State educational agency. The funds allocated under this subsection shall be used for the development of innovative programs which address the student dropout problem across the State, technical assistance, and data collection.

"(c) Not more than 15 percent of any grant made under this title shall be used for administrative and clerical expenses.

"GRANTS TO LOCAL EDUCATIONAL AGENCIES

"SEC. 1004. A local educational agency may receive a grant under this title only if the local educational agency has demonstrated that the agency has cooperated with the appropriate State and local educational agencies within the area to use all existing resources to identify students at risk of dropping out of school and devise appropriate programs for such students.

"GRANT DISTRIBUTION; SPECIAL NEEDS RECIPIENTS; SPECIAL CONSIDERATION

"SEC. 1005. (a)(1) From 75 percent of the amount remaining in each fiscal year for distribution after meeting the requirements of section 1003(b), the Secretary shall distribute grants under this title, on a competitive basis, to local educational agencies which demonstrate the greatest need for assistance under this Act, based on the criteria set forth in subsection (b).

"(2)(A) The Secretary shall set aside the remaining 25 percent of the funds for a Special Needs Fund. The Secretary shall distribute grants from the Special Needs Fund to local educational agencies containing schools which—

"(i) have an enrollment of 250,000 or more elementary and secondary school students, and

"(ii) have a system-wide dropout rate in excess of 35 percent, based on the dropout rate for the year preceding the date of enactment of this Act.

"(B) The funds available to a local educational agency under this paragraph shall be in addition to any funds which the local educational agency receives under paragraph (1).

"(C) The Secretary shall allot amounts available under this paragraph to local educational agencies having an application approved under section 1006, including meeting the requirements of paragraph (5), based upon the number of students constituting the dropout rate calculated for the purpose of such paragraph (5).

"(b) The Secretary shall give special consideration—

"(1) in distributing grants under this title to applicants with very high numbers of school dropouts or very high percentages of school dropouts within the area of jurisdiction of the local educational agency;

"(2) to applicants which identify the primary reasons for dropping out, with special emphasis on attendance rates, discipline problems and marked low levels of reading and writing skills, beginning at the elementary school level; and

"(3) to applicants which address the individual needs of students and structure programs to provide the necessary attention, advice, and guidance to students who exhibit tendencies toward dropout, including assigning extra personnel, providing extra-curricular counseling and offering equivalent educational programs to encourage dropouts to return to school.

"(c) The minimum grant from funds available under subsection (a)(1) to a local educational agency under this title shall be $25,000 for each fiscal year.

"APPLICATION

"SEC. 1006. (a) IN GENERAL.—A grant under this title may be made only to a local educational agency which submits an application to the Secretary containing such in-

formation as may be required by the Secretary by regulation.

"(b) CONTENTS OF APPLICATIONS.—Each such application shall—

"(1) document the number of children who have been enrolled in the school system of the local educational agency that have failed to complete the elementary or secondary education;

"(2) set forth the rate of dropout per year among students by age level, as well as an estimate of the young individuals who are of school age but are not enrolled in school;

"(3) set forth a plan by which the local educational agency will ensure that the progress of each at-risk youth will be closely monitored and any relevant information about the youth will be recorded, together with a detailed outline of a system designed to ensure that the records of a student served under the program assisted under this title will be forwarded to any educational institution to which that student may transfer;

"(4) describe an ongoing program or proposal for a new program which will—

"(A) identify and reach out to potential school dropouts in all grade levels,

"(B) describe outreach activities designed to draw students back to school who have dropped out and are able to return to school on a part-time or full-time basis, and

"(C) analyze the cost-effectiveness of the dropout prevention program and return to school program, specifying how assistance under this title will be used by the local educational agency; and

"(5) set forth, in the case of a local educational agency which meets the requirements of paragraph (2) of section 1005(a), enrollment in the elementary and secondary schools of the agency for the year prior to the year for which the application is made, and the system-wide dropout rate for such year.

"AUTHORIZED ACTIVITIES

"SEC. 1007. Programs eligible for consideration for a grant under this title shall include—

"(1) early intervention programs beginning at the earliest point at which a child enters the school system, which address the factors which might cause a child to drop out of school, including poor attendance, discipline problems, low reading achievement, repeated grades, drug and alcohol abuse, and language barriers;

"(2) placement of one or more trained counselors who are solely responsible for the monitoring and counseling of at-risk youth at each school level, elementary and secondary, who meet regularly with such students both in and out of school;

"(3) contact with student and parents in the home to ensure attendance and parental involvement in student's progress, including personal visits to home and frequent calls to track the student's attendance;

"(4) tutorial services both during and after regular school hours to increase student's overall academic abilities;

"(5) encourage coordination with local institutions of higher education to provide exposure and utilization of facilities, including libraries, computers, scientific equipment and gyms, to at-risk high school students as an incentive and encouragement for high school students to continue their education;

"(6) provide students who exhibit a desire to enter vocational and technical employment fields a "Career Choice" curriculum which combines training for this field and basic high school academic skills, including the option of scheduling part-time work with their studies;

"(7) build communication networks with business and professional organizations within the community to enable students to receive guidance and career advice;

"(8) provide referral to community programs which address the noneducational needs of the dropout or potential dropout;

"(9) develop model high school equivalent education programs which will encourage dropouts to return to school by enabling them to attend courses on a flexible basis during the day or at night to finish their education; including targeting such programs to teenagers who have dropped out for reasons of economic and family responsibilities; and

"(10) such any other projects as the Secretary determines are designed to carry out the purpose of this title.

"GENERAL PROVISIONS

"SEC. 1008. (a) REVIEW OF PROGRAMS AND PROJECTS.—In any application from a local educational agency for a grant to continue a program or project for the second and third fiscal year following the first year for which the grant was awarded, the Secretary shall review the success and speed at which the program or project is meeting its stated objectives in its application as well as the general purpose of this title.

"(b) WITHHOLDING PAYMENTS.—Whenever the Secretary, after reasonable notice (at least 30 days), and opportunity for a hearing to any local educational agency, finds that the local educational agency has failed to comply substantially with the provisions set forth in its application approved under this title, the Secretary shall withhold payments under this title until the Secretary is satisfied that there is no longer any failure to comply.

"(c) ANNUAL REPORT.—The Secretary shall prepare and submit to Congress an annual report on January 1 on the activities assisted under this title during the preceding fiscal year.

"(d) AUDIT.—The Comptroller General shall have access for the purpose of audit and examination to any books, documents, papers, and records of any local educational agency receiving assistance under this title that are pertinent to the sums received and disbursed under this title.

"(e) REPORTING REQUIREMENT.—Each State and local educational agency receiving assistance under this title shall file an annual report with the Secretary detailing how the assistance was spent and illustrating any change in the school dropout rate in their area which is attributable to the implementation of the programs assisted under this title.

"(f) GRANTS MUST SUPPLEMENT, NOT SUPPLANT, OTHER FUNDS.—A local educational agency receiving funds under this title shall use the Federal funds only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for activities to prevent students from dropping out of elementary and secondary schools and to persuade dropouts to return to school and finish their education.

"DEFINITIONS

"SEC. 1009. As used in this title—

"(1) the term 'dropout' means an individual of school age who is not enrolled in school and who is not a high school graduate;

"(2) the terms 'State educational agency', 'local educational agency', 'elementary school', and 'secondary school' have the same meanings given those terms in section 198 of this Act; and

"(3) the term 'Secretary' means the Secretary of Education.".●

By Mr. MOYNIHAN (for himself, Mr. BURDICK, Mr. MITCHELL, Mr. BAUCUS, and Mr. LAUTENBERG):

S. 20. A bill to provide for the protection of ground water through State standards, planning, and protection programs; to the Committee on Environment and Public Works.

GROUNDWATER PROTECTION ACT

● Mr. MOYNIHAN. Mr. President, I rise today with my distinguished chairman, Senator BURDICK, and members of the Committee on Environment and Public Works, Senators MITCHELL, BAUCUS and LAUTENBERG in sponsoring "The Groundwater Protection Act of 1987." I share my colleagues hope that this bill will focus greater attention on ground water resources, a subject in which I have been interested for many years.

I first introduced the Sole Source Aquifer Protection Act, designed to protect underground sources for drinking water, in 1982. Many provisions of that aquifer protection bill are now incorporated in the Safe Drinking Water Act Amendments, which, I am happy to report, was passed by the 99th Congress.

In addition to the Safe Drinking Water Act, a number of Federal laws affect ground water management, including the Clean Water Act, Superfund, and the Resource Conservation and Recovery Act [RCRA]. These laws overlay a complex of State statutes, which differ markedly in their treatments of ground water resources. The Groundwater Protection Act would define the role of Federal Government, in terms that will most help the States develop ground water strategies tailored to their individual needs. For example, many Eastern States have shallow aquifers with indistinct boundaries, while in the West, many States have deep and distinct aquifers. Some States rely heavily on ground water for drinking supplies, others less so.

On Long Island, 3 million New Yorkers rely on one aquifer for their drinking water, and this aquifer is now threatened by toxic chemicals. In Nassau County alone, 119 of 389 public wells have detectable levels of synthetic organic chemicals. These chemicals come from diverse sources—solvents from industries and residents' homes, pesticides from farms, nitrates from lawn fertilizers, and numerous chemicals which have leached from landfills. Officials of the State of New York and of Long Island have made significant progress in protecting this ground water resource. In 1978, the New York State Legislature stated that prevent-

ing the pollution of ground waters and protecting ground waters for use as potable water, would be the State's ground water quality goals, to guide the department of envirionmental conservation in establishing and updating water quality standards and classifications. Long Island has since been designated a sole source aquifer by the U.S. Environmental Protection Agency, and is developing a ground water management plan.

This bill would recognize that different States have different needs and find themselves at different stages in ground water planning and management. We have heard repeatedly from State officials, asking that EPA provide basic research into ground water contaminants, so States can determine how to classify their waters. Our bill would direct EPA to establish criteria for 100 contaminants and provide States with documents specifying the physical, chemical, biological and radiological properties of contaminants risk to human health at various concentrations in ground water. Our bill directs the EPA Administrator, whenever possible, to make use of research developed under other environmental statutes and cooperate with other agencies that hold toxicological data.

Armed with a common set of federally developed data, the States will set their own ambient ground water standards. In general, ambient ground water standards must be at least as stringent as those for drinking water in the Safe Drinking Water Act. But the States are free to designate "special ground water systems" with standards more or less stringent, depending on the use of the water and the threat to human health and the environment.

The bill also would require that States develop an assessment or inventory of ground water resources, in consultation with the U.S. Geological Survey. And finally, the Ground Water Protection Act would mandate that States develop management strategies to ensure Federal, State, and local coordination to protect ground water resources and guarantee compliance with State regulations.

This legislation would authorize $25 million a year for 3 fiscal years, on a 75-percent Federal, 25-percent State cost-sharing basis, for States to undertake ground water assessment. In addition, the bill would provide $50 million over 5 fiscal years, on a 50-percent matching basis, to assist States in setting States standards, developing State management strategies, and operating protection and monitoring programs.

I enthusiastically support this legislation, as a reasoned balance of Federal and State roles in ground water management. I urge my colleagues to support this bill.

As chairman of the Subcommittee on Water Resources, Transportation and Infrastructure, I will make national ground water legislation a priority for the 100th Congress. I am aware that there are different approaches to the task of protection of ground water. It is my hope that this bill be a starting point for a bipartisan approach to ground water legislation. I, and my cosponsors welcome the advice and suggestions from other members of our committee, and from other Members of Congress.●

● Mr. LAUTENBERG. Mr. President, I rise in support of S. 20 the Ground Water Protection Act of 1987. I commend Senator MOYNIHAN for introducing this legislation, and am pleased to join Senators MITCHELL, BAUCUS, and others as an original cosponsor. This bill would establish a comprehensive program to protect the quality of vital resources: this Nation's ground water.

Ground water pollution is a significant national problem. A study by the Office of Technology Assessment found that ground water contamination has occurred in every State and is being detected with increasing frequency. Yet we lack sufficient information on this type of pollution. This contamination has adverse health, social, environmental, and economic impacts, which are likely to increase, if we do not act.

Ground water pollution is often found near heavily populated industrial areas, which are increasingly dependent on such water for their water supplies. Serving as a source of drinking water for about half of the Nation's population, ground water also accounts for some 40 percent of all agricultural irrigation supplies, and about 26 percent of industrial withdrawals.

My State of New Jersey has experienced a growing problem with ground water contamination. Over 60 percent of the drinking water in the State comes from ground water supplies. In southern New Jersey, it is as much as 90 percent. And droughts make these reserves and their protection even more critical.

Organic compounds, pesticides, and heavy metals are found in virtually all areas of the State. Hundreds of wells in New Jersey have been restricted or closed because of chemical contamination. Yet my State's efforts to respond to this contamination have been hampered by lack of comprehensive Federal legislation addressing this threat.

Mr. President, there are numerous Federal and State programs for detecting, correcting, and preventing ground water contamination. But these measures are limited in their ability to provide the necessary protection. They typically focus on sources of pollution, contaminants, or users.

The bill before us today, however, responds to the need for a comprehensive approach to coordinate and protect the quality of our ground water. OTA recommended that the Federal Government provide sustained financial and technical assistance to States for addressing the ground water problem. This legislation would establish such a comprehensive approach. The bill does this by requiring EPA to establish ground water quality criteria for ground water contaminants. States would then use these criteria to establish ground water contamination standards. States also would develop ground water resource assessments, monitoring programs, and protection strategies. EPA and the U.S. Geological Survey would be required to provide guidance to States for these activities. In addition, the bill directs EPA to assess State programs to assure they are consistent with the act, and to issue grants to States to carry out the purposes of the legislation.

Mr. President, this bill is meant to contribute to the process of achieving comprehensive ground water legislation. As the Environment and Public Works Committee reviews it, we will undoubtedly refine and strengthen the measure. Areas needing attention include the allocation formula for grants, the criteria to be used in setting water quality contaminant standards, and the extent to which the ground water program should be enforceable. The general structure and goals of the bill are sound, however. And I look forward to working with my colleagues on the Environment and Public Works Committee to address the problem at hand.●

● Mr. MITCHELL. Mr. President, I am today joining Senator MOYNIHAN in introducing a bill to provide for the protection of our ground water resources.

This bill is very similar to legislation which I introduced in the last Congress. I am pleased to join Senator MOYNIHAN in reintroduction of the bill and look forward to working with him on this and related issues before the Water Resources Subcommittee of the Environment and Public Works Committee.

Ground water is a natural resource of tremendous value. More than half of all Americans rely on it for drinking water. Three-quarters of our cities get their water supplies, totally or in part, from ground water.

Ninety percent of rural households have no source other than ground water for drinking water. In my home State of Maine, fully one-third of the entire population is served by private wells drawing on ground water.

Nationally, the demand for ground water is growing. Between 1950 and 1980 Americans increased their use of ground water from 34 to 89 billion gallons a day. In 1980, that amounted to a quarter of our Nation's total water use. And the trend continues. Ground

water use is expected to reach 100 billion gallons a day this year.

This crucial resource is threatened with contamination on a wide scale. Ground water pollution problems have been documented by a number of recent, major studies from both public and private sources.

One study, conducted by the nonpartisan Congressional Office of Technology Assessment, found that ground water contamination "has occurred in every State and is being detected with increasing frequency." It concluded that: "the potential effects of contamination are significant and warrant national attention."

The Academy of Natural Sciences, in a report called "Ground Water Contamination in the United States," cited a wide range of contamination sources. It warned of threats to public health from both microbial and chemical contamination.

A major review of ground water pollution by the Environmental Protection Agency concluded that: "sufficient information is available to raise concerns that a widespread problem may exist."

The State of Maine has not escaped ground water pollution. Throughout the State, there are an increasing number of reports of ground water pollution problems associated with leaking underground storage tanks, waste disposal sites, and subsurface sewage disposal.

These are serious warnings. They ought not to be disregarded. Given the enormous importance of the resource, we have a duty to act before the problem is out of control.

Despite the importance of ground water, despite the clear and growing evidence of serious problems, no single, comprehensive Federal statute protects this resource.

We need a full and complete discussion of the best approach to protecting ground water. We need to hear the views of a wide range of interested parties including States, environmental groups, industry groups, technical experts, the administration and others.

When we have heard from interested groups and the public, we can consider the various approaches to ground water pollution control and address the many issues involved in developing comprehensive ground water legislation.

I hope that the bill we are introducing will help foster this much needed debate. I do not believe that it answers all the questions that can be raised. And, it may be that, after we have held hearings and discussed the issues, we will find that we want to adjust our approach.

While I consider this legislation preliminary in many ways, I believe it is valuable to provide an outline of an approach to the problem as a basis for comment and discussion.

The bill we are introducing would establish a comprehensive frame work within which ground water could be protected from pollution. While existing Federal and State programs provide needed protection of ground water from some specific sources of pollution, they offer only limited and uncoordinated protection of the overall resource.

The bill gives State governments a major role in ground water protection. They would define the ground water resources of their State. They would adopt standards for contaminants found in ground water. They would identify sources of contamination and monitor ground water quality. And, they would develop the various pollution control programs needed to assure that standards are met.

The Federal Government would be a partner with the States in protection of ground water. The Federal Government would conduct research, oversee State programs, and provide grant assistance to States.

The bill does not attempt to install the Federal Government as the single party responsible for comprehensive protection of ground water. It does seek to coordinate and focus the existing efforts of the Federal Government and the States.

Whether or not this partnership of Federal and State agencies is the best way to proceed is part of the debate I hope this legislation will encourage.

While part of the debate will focus on who should protect ground water, we will also need to consider how to protect it.

One suggested approach is to establish national or State programs containing performance standards for a series of specific pollution sources. Another approach is to establish ground water quality standards at the national or State level, much as we have done under the Clean Water Act.

Our legislation includes elements of both these approaches. The bill would provide for expansion of existing pollution source specific controls where needed, while setting out a procedure for development and adoption of scientifically sound standards for ground water contaminants.

A major issue associated with the concept of ground water quality standards is whether such standards should be established at the national or State level. The bill provides that States make the final decisions about how stringent ground water standards should be. State standards for ground water, however, would need to be at least as stringent as Federal drinking water standards in most cases.

In addition, the bill provides that standards adopted by States would establish the level of cleanup or control under Federal programs relating to protection of ground water quality.

My colleagues and others may have varying perspectives on this issue. I look forward to discussion and further development of this aspect of the bill.

Will States set standards which are sufficiently protective of ground water quality? I believe they will. The bill provides that EPA will assist States in setting standards.

Under the structure of this legislation, State decisions on standards would be based on a common set of Federal information documents for each ground water contaminant.

And the bill provides that the Environmental Protection Agency review, but not be required to approve, State standards, and provides for public participation in the process. States would revise and upgrade standards on a regular basis.

Once States establish ground water standards, they would develop an overall ground water program designed to assure that those standards are met.

The existing ground water programs, addressing several specific sources of contamination, would form the core of the overall State program. States would develop additional programs addressing other pollution sources as necessary to achieve ground water standards.

In addition, the bill recognizes that some sources of ground water pollution are of national concern. These sources include hazardous waste sites, undergound injection, solid waste disposal, subsurface sewage disposal, and pesticide use. Some of these sources, such as hazardous waste sites and underground injection, are already regulated under Federal statutes.

Most of the others are not. The bill would require each State to establish programs addressing these sources within 4 years, unless it can demonstrate that ground water quality standards can be reached without a program for that specific source.

In developing an overall control program, a State would have the flexibility to tailor its program to the most serious pollution sources in that State. And States would have the flexibility to balance the level of protection provided by standards, the effectiveness of programs, and the cost of programs. This provision for State flexibility is an essential element of our approach to protection of ground water.

Flexibility is especially important for States which have already taken some steps to assure the high quality of ground water. The State of Maine, for example, recently established a State ground water policy and has adopted innovative programs addressing ground water pollution from leaking underground storage tanks and disposal of pesticide containers.

Nothing in the legislation we are proposing would override such State initiatives. Indeed, this legislation is intended to foster and support individual State responses to ground water pollution.

Finally, States cannot take on major new responsibilities for ground water protection without assistance from the Federal Government. The bill includes a basic grant to provide States with $50 million a year to carry out ground water programs. This is about the level of assistance we provide to States under clean air and clean water programs.

Also, States would get short term assistance to help support ground water mapping and related work.

Mr. President, I believe this bill includes all the necessary building blocks of a comprehensive approach to protecting ground water. It sets up a workable partnership of Federal and State governments. And it offers a balance between the flexibility States need to tailor programs to their needs and the minimum standards and programs necessary to adequate protection of ground water throughout the country.

This bill is a beginning and the time to begin is now. Ground water pollution is an emerging problem on which we cannot turn our backs.

I look forward to working with my colleagues in the development of this legislation.●

By Mr. MOYNIHAN:

S. 21. A bill entitled the Service Sector Data Collection Act of 1987; to the Committee on Commerce, Science, and Transportation.

SERVICE SECTOR DATA COLLECTION ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill of utmost importance to our understanding of the U.S. economy. The bill would require improved data collection of the service sector which, considering its growing dominance in the U.S. economy, is inadequately measured.

The service sector includes the services industry; finance, insurance, and real estate; wholesale and retail trade; government; and transportation, communications, and utilities. The service industry—a subset of the service sector—includes such fields as hotels, automotive repair, motion pictures, health services, business services, legal services, and private education.

By contrast, the goods producing sector generally includes manufacturing, mining, and construction. Agriculture, forestry, and fishing are also sometimes grouped in the goods producing sector, but are more frequently treated as a separate category.

The service sector dominates the U.S. economy as it accounted for 69 percent of GNP and 75 percent of employment in 1985.

The service sector is also the fastest growing sector in the economy and is providing the greatest number of new jobs. From 1960 to 1985, the service sector's share of employment has risen from 62 to 75 percent. From January 1980 to May 1986, almost 90 percent of the 9.2 million jobs created were in the service sector.

In addition, service sector trade now accounts for 25 percent of world trade, with the United States holding the largest share of services trade—21 percent in 1983.

And at a time when the United States is running record merchandise trade deficits—$148 billion in 1985—U.S. trade in services ran a $21 billion surplus.

Trade in services is also one of the key issues on the agenda of the new round of GATT talks.

However, despite the fact that the service sector dominates the U.S. economy, detailed information on services is lacking and available information is often inaccurate.

For example, a September 10, 1986, Office of Technology Assessment [OTA] report found that trade in services was $51 billion in surplus over the years 1982 to 1984—three times the official Federal Government figure.

And while the Federal Government collects trade statistics for about 10,000 categories of goods, it does do for only 40 categories of services.

As employment in the United States shifts substantially from the goods sector to the service sector, there is a major debate as to the desirability of that shift; that is, the quality of these new service jobs.

Some analysts claim that as employment shifts toward services, good jobs are being lost in exchange for inferior ones. A recent study prepared for the Joint Economic Committee finds that 58 percent of all net new employment between 1979 and 1984 paid annual wages of less than $7,000, compared with 20 percent during the period from 1973 to 1979.

Others argue that we are moving in the direction of promising skilled managerial and technical job opportunities. The question remains: Are we cooking each other's hamburgers and taking in each other's laundry or are we providing services in areas of U.S. international competitive advantage like banking and insurance?

I believe that we must study the service sector at least as carefully as the goods sector in order to fully understand the constant change that is characteristic of our economy and the ramifications of that change. After all, one can't know about a problem, much less do anything about it, until one learns to measure it.

The OTA report found that substantial improvements in data collection were possible at little or no additional cost—requiring as few as 2 person-years of effort to make significant progress.

My bill would direct the President to collect and disseminate information on service sector economic activity that is at least as complete and timely as information on the goods sector of the economy.

The Secretary of Commerce would be required to issue a new benchmark survey of unaffiliated service transactions including banking, computer software, brokerage, transportation, travel, tourism, engineering, and construction services. He would also be required to develop an index of leading indicators which includes measurement of service sector activity in more direct proportion to the service contribution to GNP.

Finally, the Bureau of Economic Analysis, the Census Bureau, and the Bureau of Labor Statistics would be directed to develop and implement a program to collect and disseminate a broader base of monthly information on the service sector.

My proposal would greatly enhance our data collection in a vital sector that has long been neglected and I urge my colleagues to support this legislation.

● I ask that the text of the bill be printed in the RECORD.

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

S. 21

SECTION 1. SHORT TITLE.

This title may be cited as "The Service Sector Data Collection Act of 1987".

SEC. 2. PURPOSE.

The President shall direct the appropriate agencies of the Federal Government to collect and disseminate information on service sector economic activity that is at least as complete and timely as information on the goods sector of the economy.

SEC. 3. IMPROVED SERVICE SECTOR DATA COLLECTION.

In furtherance of the objective set forth in Section (2), upon enactment of this Act—

(a) The Secretary of Commerce shall, within three months, issue a new benchmark survey, such as the BE-20 survey proposed by the Bureau of Economic Analysis, of unaffiliated service transactions, including but not limited to banking, computer software, brokerage, transportation, travel, engineering and construction services;

(b) The Secretary of Commerce and the Secretary of Labor shall immediately direct the Bureau of Economic Analysis, the Census Bureau, and the Bureau of Labor Statistics, to develop and implement a program to collect and disseminate a broader base of monthly information on the service sector; and

(c) The Secretary of Commerce shall, within one year, develop an index of leading indicators which includes measurement of service sector activity in more direct proportion to the services contribution to the Gross National Product account of the United States.●

By Mr. PROXMIRE:

S. 22. A bill to amend the Communications Act of 1934 in order to recognize, strengthen, and further the objectives of the first amendment in relationship to radio and television broadcasting stations; to the Committee on Commerce, Science, and Transportation.

FIRST AMENDMENT CLARIFICATION ACT

Mr. PROXMIRE. Mr. President, today I am introducing the First Amendment Clarification Act of 1987.

This bill is similar to a measure I first introduced in 1975 and then again in each subsequent Congress thereafter.

The major goal of this legislation is to give fuller meaning to our first amendment's guarantee of freedom of the press by abolishing the so-called fairness doctrine and the equal time rule.

FREE PRESS RIGHTS

The first amendment forbids the Congress from passing any law that might diminish our right to have a free press.

But, unfortunately, Congress has enacted a law which does just that. I refer, of course, to the Communications Act, which has abridged the rights of a part of the free press.

Other means of mass communication—newspapers, magazines, pamphlets, books, and motion pictures—have kept their free press rights. But not broadcasting.

In the most recent Roper poll released by the Television Information Office, 64 percent of the respondents said their main source of news was television while 14 percent cited radio. Clearly, television and radio are the dominant suppliers of news for the American people. Yet, because of government controls like the fairness doctrine and the equal time rule, broadcasters are second-class citizens when it comes to first amendment rights.

Freedom of the press is for the benefit of all Americans. If television and radio, the most popular disseminators of news and opinion, continue to be tied down by stifling Government regulation, the people of this Nation will continue to be the losers.

Mr. President, my bill aims to change this situation by giving broadcasters more of the first amendment freedom they deserve.

PURPOSE DEFINED

The first section of my bill defines its purpose: To recognize and confirm the applicability of the first amendment to broadcasting and to strengthen and further the objectives of the first amendment.

This purpose is to be accomplished by removing certain statutory and regulatory restrictions placed on broadcasters operating under the Communications Act of 1934.

Section 2 of my bill deals with the definition of "public interest, convenience, and necessity" under which broadcasters operate.

That phrase in the Communications Act is currently used to make broadcasters accountable to the Federal Communications Commission, after the fact, for everything they put on the air.

My proposal makes it clear that the term "public interest, convenience, and necessity" cannot be construed to give the FCC jurisdiction to require that any person be provided broadcast time, or to require that any viewpoint be given broadcast time.

Section 3 of my bill repeals that part of the Communications Act which permits the FCC to revoke the license of any station that willfully refuses or fails to allow a candidate for Federal office to buy reasonable amounts of broadcast time.

SECTION 315 REPEALED

Section 4 repeals section 315 of the Communications Act of 1934. Section 315 contains both the equal time rule and the basis for the FCC's fairness doctrine.

The equal time rule requires that when a candidate for public office is given or sold time, any other candidate for that same office must be given an equal opportunity.

That sounds great. But the equal time rule is an abridgment of the first amendment. It is governmental control over a part of the free press.

The fairness doctrine of the FCC requires that broadcasters afford reasonable opportunities for the presentation of contrasting viewpoints on controversial issues of public importance.

Unlike the equal time requirement, the fairness doctrine does not call for each viewpoint to receive the same amount of air time. Nor does it require that the other viewpoint be given in the same program.

Again, that sounds fine. But the fairness doctrine, like the equal time rule, violates the first amendment. Once more, a segment of the free press is being regulated by the Government.

PUBLIC BROADCASTING

Section 5 deals with a first amendment problem contained in section 396(g)(1)(A) of the Communications Act of 1934, which authorizes the Corporation for Public Broadcasting to "facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities. * * *" But this must be done "with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature."

Such a Government-imposed standard is inappropriate and undesirable. Trying to enforce it can result in a chilling effect on the free play of ideas, which public broadcasting should help promote.

By simply deleting this standard, section 5 of my bill is designed to solve the first amendment problem it poses.

Mr. President, why is this legislation necessary and, indeed, crucial? There are many reasons.

First, these governmental controls on the free press are unconstitutional. They violate the first amendment's guarantee of freedom of the press.

UNNECESSARY REGULATION

Second, this kind of governmental regulation is unnecessary. Newspapers, operating without Government control, have improved vastly in fairness, objectivity, accuracy, and relevance over the years. Broadcasters deserve that same opportunity to be free.

Third, denying broadcasters their first amendment rights is self-defeating. The fairness doctrine, for example, does not stimulate the free expression of diverse ideas. Rather, it promotes the "sameness" of ideas. Stations avoid the airing of controversial issues because they fear a challenge to their license renewal or expensive litigation resulting from a fairness complaint.

Fourth, governmental controls like the fairness doctrine and the equal time rule are dangerous. Letting government be the final arbiter of "fairness," for example, confers immense power. This is especially true when that same government decides on the granting of broadcast licenses.

OBSOLETE ARGUMENT

Finally, those who favor continuing governmental regulation of the broadcasting media rely on an argument that is fast becoming obsolete: The so-called "scarcity rationale." In almost every city in America—regardless of size—there are more television signals available than daily newspapers. If radio stations are counted, as they must be, general audience broadcasting stations far outnumber general circulation newspapers. Moreover, economic pressures make it nearly impossible to establish a daily newspaper in a community where one already exists.

Mr. President, I ask unanimous consent that the text of my bill be printed at this point in the RECORD.

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

S. 22

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

SHORT TITLE AND STATEMENT OF PURPOSE

SECTION 1. (a) This act may be cited as the "First Amendment Clarification Act of 1987".

(b) It is the purpose of this Act to recognize and confirm the applicability of and to strengthen and further the objectives of the first amendment of the Constitution of the

United States by removing statutory and regulatory restrictions on broadcasters operating under the Communications Act of 1934.

DEFINITION OF PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

SEC. 2. Section 309 of the Communications Act of 1934 is amended by adding at the end thereof the following:

"(j) Notwithstanding any other provision of this part, effective on and after the date of the enactment of this subsection for the purposes of this part, the term 'public interest, convenience, and necessity' may not be construed to give the Commission jurisdiction to require the provision of broadcast time to any person or for the expression of any viewpoint.".

REPEAL OF LICENSE OR CONSTRUCTION PERMIT REVOCATION POWER RELATING TO FACILITIES FOR CANDIDATES FOR FEDERAL PUBLIC OFFICE

SEC. 3. Section 312(a) of the Communications Act of 1934 is amended by inserting "or" at the end of clause (5), striking out the semicolon and "or" at the end of clause (6) and inserting in lieu thereof a period, and striking out clause (7).

REPEAL OF SECTION 315 RELATING TO FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

SEC. 4. Section 315 of the Communications Act of 1934 is repealed.

REPEAL OF CERTAIN LIMITATIONS ON CORPORATION FOR PUBLIC BROADCASTING

SEC. 5. Section 396(g)(1)(A) of the Communications Act of 1934 is amended by striking out all beginning with the comma following "telecommunications entitles" to the semicolon at the end thereof.

By Mr. ROTH (for himself, Mr. MOYNIHAN, Mr. HEINZ, and Mr. BRADLEY):

S. 23. A bill to make changes in the Trade Adjustment Assistance Program; to the Committee on Finance.

TRADE ADJUSTMENT ASSISTANCE

Mr. ROTH. Mr. President, I rise to introduce, along with my distinguished colleague, Senator MOYNIHAN of New York, a bill to extend and reform the Trade Adjustment Assistance Program.

This is the same proposal which we proposed and which passed the Senate and the House several times in the 99th Congress as part of the budget reconciliation process. It is a bill that has received overwhelming bipartisan support on Capitol Hill, passing the Finance Committee in September 1985 without objection and accepted by the House Ways and Means Committee in the budget reconciliation discussions.

The essential point of all this support is that in this Congress there is very broad recognition of the importance of the Trade Adjustment Assistance Program—or put more directly—of the need to help workers who lose their jobs to imports.

Why do Members, Republicans and Democrats alike, feel so strongly about helping workers hurt by trade?

The answer to this question requires a broader look at what is happening in trade and trade policy today.

In the 1970's this country, and many others, experienced an "energy shock." In the 1980's we—and we alone—are experiencing a second shock, a "trade shock." I say this not only because of the mind-boggling size of the global U.S. trade deficit and the fact that imports have hurt the full range of American industries from textiles to semiconductors. I characterize the American trade situation as a "shock" because underlying these figures is a profound anxiety about the unevenness of the international playing field for trade, what many call the erosion of the postwar international trading system. And if this weren't bad enough, this is all taking place in a world economy characterized by rapid and constant change—the appearance of new products and services and rapidly shifting comparative advantage.

We need a comprehensive trade policy to confront the trade shock. A comprehensive trade policy would be aimed at opening foreign markets to U.S. products, assuring fair competition in the U.S. market, improving U.S. competitiveness, and helping those hurt by trade. It is this latter point that the bill we are introducing today addresses.

Some may say that the U.S. trade deficit is finally going down, so there is no need to take special Government action now. The November trade statistics, which show an increase in the deficit, however, call the assumption that the trade deficit is going down into question. But even if the deficit is going down, it is expected to remain quite high for the next couple of years. The need for effective Government assistance for workers hurt by trade remains very compelling.

In fact, the Trade Adjustment Assistance Program was established in 1962 because it has long been recognized that even when there is a favorable balance of trade there will be losers, individuals whose jobs will be lost to import competition. With an unfavorable balance of trade, the number of losers multiplies. Today, the trade shock has driven this point home.

As I mentioned earlier, in the 99th Congress I pressed for this kind of assistance and with the strong support of my colleagues we did save the Trade Adjustment Assistance Program by incorporating an extension of the program and some improvements into the Consolidated Omnibus Budget Reconciliation Act (Public Law 99-272, April 7, 1986). Our efforts assured that workers who lose their jobs to imports would continue to receive cash benefits to help them and their families. We restored these benefits as well to workers who had been abruptly cut-off from the program in December, 1985. We extended the program for 6 years and we began to turn the program into a real "adjustment" program by providing for participation of workers in job search programs.

Enactment of these changes was clearly a victory.

But it is critical to remember that broad Congressional support for TAA in the 99th Congress did not emerge because the basic TAA Program was so good. Actually, support for the basic TAA Program was severely floundering at the beginning of that session.

It was the TAA reforms which I introduced in January 1985, as a part of a comprehensive trade bill, (S. 234) and later that year with Senator MOYNIHAN as a separate TAA proposal (S. 1544) which I believe rallied deep support for a continuation of the program.

Unfortunately, the final Budget Reconciliation Act did not include these key reforms: One, the use of a small import fee to fund the program, two, provision of up to $4,000 for retraining each worker hurt by trade, three, the requirement that in most instances, workers be in training to receive cash benefits and four, the proposal, particularly pressed by Senator BRADLEY, to expand the program to include workers in independent firms. That is why it is necessary to reintroduce today our TAA legislation as conferenced and that is why it is again necessary to make the case clear for the TAA Program.

I believe there are two basic reasons for reforming trade adjustment assistance.

First, as everyone knows, money is tight. Second, the program as currently structured has not achieved its principal purpose—adjustment by individuals and firms to import competition.

The bill we are introducing today corrects each of these problems.

A creative approach is proposed for funding the reformed program. A small fee—an adjustment fee—would be placed on imports to finance TAA. In effect, it would be a users fee for trade; those who benefit from trade would pay for the costs of trade. The bill puts a cap on this fee of 1 percent of the value of imports, but I would estimate that it would cost only one-tenth of a percent to finance the program set up in the bill.

The bill directs the President to obtain GATT approval as soon as possible for countries to be able to impose such a small fee on trade to fund adjustment programs. At the end of 2 years, the fee is imposed in any case.

Make no mistake, this is not a proposal for an import surcharge. The fee is small and the fee is capped by statute. I got this idea from a similar program that has been in place in Hong Kong for some time. Everyone thinks of Hong Kong as a totally free port, but in fact, Hong Kong assesses a small fee—one-twentieth of 1 percent—on all imports and exports. In the case of Hong Kong the fee is used to finance trade promotion programs.

The adjustment fee would be a small cost to trading nations to keep trade open and expanding, and I think America's traders are ready to pay it. The National Retail Merchants Association endorsed this idea soon after I introduced it in January 1985 as part of S. 234.

Internationally, the timing is also right. We are not the only country having trouble adjusting to new trade conditions and we are not the only country that is having budget problems. Other nations would have a clear national interest in signing onto this proposal in the GATT and that is the key ingredient for a successful negotiation.

But there is no point in placing a fee on trade to promote adjustment if the program in place is not designed to assure that objective. This is why this bill also includes a proposal for reform of the current program.

The changes are few, but they are critical. The bill does not propose a complete revamping of the TAA Program. In fact, all benefits now available to workers under TAA—additional unemployment compensation known as a "trade readjustment allowance," job search and job relocation allowances—would continue, but there is a key new eligibility requirement and an important new benefit.

The new eligibility requirement—any worker receiving benefits under the reformed program must be enrolled in or have completed a retraining program.

The new benefit—to pay for this training, each worker would be given a $4,000 job retraining voucher redeemable for training. Individuals would have a wide choice of training options: Programs under the Job Training Partnership Act, such as State training programs and private programs approved by the private industry councils established by that act; programs approved by the Secretary of Labor as well as training by private firms. This last option—training by private firms—I believe, in particular, will open up many new opportunities.

This legislation also removes an unfair anomaly in existing law which permits workers producing components parts or providing services in integrated manufacturing companies to receive TAA benefits, but precludes certification of workers in independent companies providing the same components or services by contract.

As far as the firms program is concerned, the bill would leave in place the Technical Assistance Program. This program has proved its usefulness. For example, in House hearings on TAA, testimony on benefits of technical assistance to the textile and footwear industries was submitted. The assistance is used not only for management and marketing advice, but also for research and development, for example, for automated apparel equipment. Importantly, this money is also used to help firms prepare petitions for help under this statute.

How much would this reformed program cost? Since TAA has already been extended in budget reconciliation, there would be no additional outlays until the program reforms come into effect.

The program reforms do not come into effect until 1 year after the import fee is imposed. During that year money would begin to build up in a trust fund set up to finance the program. The funding would continue to come from general revenues for up to 3 years depending on the timing of the GATT negotiations.

When the program changes are in effect CBO estimates prepared for the 99th Congress show that the cost of the program would be about $300 million a year. This $300 million would be entirely funded by revenues raised the previous year by the import fee.

The U.S. trade situation is very difficult. As a number of members have pointed out recently, this is a time for open minds, for unconventional proposals.

Today more than ever our workers need meaningful help in the fact of the trade-related dislocation. Imports now compete with nearly the full range of U.S. production. The proposal in this bill for the first time offers these workers a total package of relief—unemployment compensation, job search and relocation help and significant financing and options for retraining. A complete package is not available under any other Federal program.

And today more than ever the international trading system—the GATT—needs to be brought back to life. Trade intellectuals in the OECD and elsewhere have for some time now decried the need for "positive adjustment policies"—policies that facilitate the movement of people and resources from declining to growing industries—as the underlying problem dragging the trading system down. This proposal for a GATT-sanctioned import fee to finance adjustment provides a new tool to promote positive adjustment by GATT members.

I believe it offers, as well, a new tool for getting meaningful multilateral trade negotiations underway in the Uruguay round. It is traditional for nations to signal their seriousness about a new round of trade negotiations by taking a trade liberalizing action for example, lowering some tariffs. Agreement to the imposition of a small fee on imports would be an unconventional, even ironic, way to signal a strong commitment to the new round. But this fee could very well be the catalyst for movement on the issue that is central to establishing a fair and effective international trading system and to the success of any new negotiations, a new multilateral agreement on safeguards—situations in which countries can legally enact temporary trade restrictions. In these times I think a GATT agreement on this adjustment fee would perhaps more than any other simple action signal a renewed worldwide commitment to make the trading system work.

As you can see, I introduce this bill with great hopes. But I want to make it clear as well that I agree with the AFL-CIO comments on the Trade Adjustment Assistance Program included in a letter to Congressman GIBBONS, the chairman of the Ways and Means Committee.

The AFL-CIO does not view trade adjustment assistance as a substitute for a fair and effective trade policy. Nevertheless, the United States is faced with the tragic reality of devastated communities and wasted human resources due to imports. A Trade Adjustment Assistance Program that includes income support, training, and job search and relocation allowances is a first and necessary step to restoring and revitalizing the industrial strength of our country.

This bill has broad support in the Congress. It is time to make it law.

At this time, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 23

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

SECTION 1. ELIGIBILITY OF WORKERS AND FIRMS FOR TRADE ADJUSTMENT ASSISTANCE.

(a) WORKERS.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended to read as follows:

"SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

"(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

"(1) a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

"(2) sales or production, or both, of such firm or subdivision have decreased absolutely, and

"(3) increases of imports of articles like or directly competitive with articles—

"(A) which are produced by such workers' firm or appropriate subdivision thereof, or

"(B) to which such workers' firm, or appropriate subdivision thereof, provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"(b) For purposes of subsection (a)(3), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.".

(b) FIRMS.—Subsection (c) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341(c)) is amended to read as follows:

"(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

"(A) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

"(B) that—

"(i) sales or production, or both, of such firm have decreased absolutely, or

"(ii) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

"(C) increases of imports of articles like or directly competitive with articles—

"(i) which are produced by such firm, or

"(ii) to which such firm provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"(2) For purposes of paragraph (1)(C), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.".

SEC. 2. CASH ASSISTANCE FOR WORKERS.

(a) Participation in Training Program Required.—

(1) Paragraph (5) of section 231(a) of the Trade Act of 1974 (19 U.S.C. 2291(a)(5)) is amended to read as follows:

"(5) Such worker—

"(A) is enrolled in a training program approved by the Secretary under section 236(a),

"(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

"(C) has received a written statement certified under subsection (c) after the date described in subparagraph (B).".

(2) Subsection (b) of section 231 of the Trade Act of 1974 (19 U.S.C. 2291(b)) is amended to read as follows: "(b) If the Secretary determines that—

"(1) the adversely affected worker—

"(A) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

"(B) has ceased to participate in such training program before completing such training program, and

"(2) there is no justifiable cause for such failure or cessation,

no trade adjustment allowance may be paid to the adversely affected worker under this part on or after the date of such determination until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).".

(3) Subsection (c) of section 231 of the Trade Act of 1974 (19 U.S.C. 2291(c)) is amended to read as follows:

"(c)(1) If the Secretary finds that it is not feasible or appropriate to approve a training program for a worker under section 236(a), the Secretary shall submit to such worker a written statement certifying such finding.

"(2) If a State or State agency has entered into an agreement with the Secretary under section 239 and the State or State agency finds that it is not feasible or appropriate to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall—

"(A) submit to such worker a written statement certifying such finding, and

"(B) submit to the Secretary a written statement certifying such finding and the reasons for such finding.

"(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of workers who received certifications under this subsection during the preceding year.".

(4) Paragraph (3) of section 239(a) of the Trade Act of 1974 (19 U.S.C. 2311(a)(3)) is amended to read as follows:

"(3) will make any certifications required under section 231(c)(2), and".

(b) WEEKLY AMOUNTS OF READJUSTMENT ALLOWANCES.—Section 232 of the Trade Act of 1974 (19 U.S.C. 2292) is amended by striking out "under section 231(c) or 236(c)" in subsection (c) and inserting in lieu thereof "under section 231(b)".

(c) LIMITATION.—

(1) Paragraph (1) of section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)(1)) is amended by striking out "52" and inserting in lieu thereof "78".

(2) Paragraph (3) of section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)(3)) is amended to read as follows:

"(3) If the adversely affected worker has received a written statement certified under section 231(c) after the date the worker became totally separated, or partially separated, from adversely affected employment, paragraph (1) shall be applied with respect to such worker by substituting '52' for '78'.".

(3) Section 233 of the Trade Act of 1974 (19 U.S.C. 2293) is amended—

(A) by striking out subsection (b), and

(B) by redesignating subsection (e) as subsection (b).

SEC. 3. JOB TRAINING FOR WORKERS.

(a) APPROVAL REQUIRED; LIMITATION ON COSTS.—Section 236 of the Trade Act of 1974 (19 U.S.C. 2296) is amended.

(1) by striking out "is available" in subsection (a)(1)(D) and inserting in lieu thereof "is reasonably available",

(2) by striking out "(to the extent appropriated funds are available)" in the first sentence of subsection (a)(1),

(3) by inserting "directly or through a voucher system" after "by the Secretary" in the second sentence of subsection (a)(1),

(4) by redesignating paragraphs (2), (3), and (4) of subsection (a) as paragraphs (3), (4), and (5), respectively, of subsection (a),

(5) by inserting after paragraph (1) of subsection (a) the following new paragraph:

"(2)(A) The aggregate amount of payments that may be made under paragraph (1) for any worker shall not exceed $4,000 for each partial separation or total separation.

"(B) The Secretary may issue more than one voucher under paragraph (1) to a worker with respect to any partial separation or total separation, but the aggregate value of such vouchers shall not exceed the amount of the limitation imposed by subparagraph (A) with respect to such separation.",

(6) by striking out subsection (c), and

(7) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(b) AGREEMENTS WITH THE STATES.—Subsection (f) of section 239 of the Trade Act of 1974 (19 U.S.C. 2311(f)) is amended to read as follows:

"(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

"(1) advise each adversely affected worker to apply for training under section 236(a) at the time the worker makes application for trade readjustment allowances, and

"(2) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.".

SEC. 4. TERMINATION OF TRADE ADJUSTMENT ASSISTANCE.

Subsection (b) of section 285 of the Trade Act of 1974 (19 U.S.C. 2271, preceding note) is amended to read as follows:

"(b) No assistance, vouchers, allowances, or other payments may be provided under chapter 2, no technical assistance may be provided under chapter 3, and no duty shall be imposed under section 287, after September 30, 1991.".

SEC. 5. FUNDING OF TRADE ADJUSTMENT ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended by striking out "1989, 1990, and 1991" and inserting in lieu thereof "and 1989".

(2) Subsection (b) of section 256 of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by striking out "1989, 1990, and 1991" and inserting in lieu thereof "and 1989".

(b) ESTABLISHMENT OF TRUST FUND.—Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391, et seq.) is amended by inserting after section 285 the following new section:

"SEC. 286. TRADE ADJUSTMENT ASSISTANCE TRUST FUND.

"(a) There is hereby established within the Treasury of the United States a trust fund to be known as the Trade Adjustment Assistance Trust Fund (hereinafter in this section referred to as the 'Trust Fund'), consisting of such amounts as may be transferred or credited to the Trust Fund as provided in this section or otherwise appropriated to the Trust Fund.

"(b)(1) The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty imposed by section 287.

"(2) The amounts which are required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

"(c)(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the financial

condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted and on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

"(2)(A) The Secretary of the Treasury shall invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

"(i) on original issue at the issue price, or

"(ii) by purchase of outstanding obligations at the market price.

"(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

"(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

"(d) Amounts in the Trust Fund shall only be available—

"(1) for the payment of drawbacks and refunds of the duty imposed by section 287 that allowable under any other provision of Federal law, and

"(2) to the extent and in such amounts as may be provided by appropriation Acts, for making expenditures to carry out the provisions of chapters 2 and 3.

None of the amounts in the Trust Fund shall be available for the payment of loans guaranteed under chapter 3 or for any other expenses relating to financial assistance provided under chapter 3.".

(c) CONFORMING AMENDMENTS.—The table of contents for the Trade Act of 1974 is amended by inserting, after the item relating to section 285, the following new items:

"Sec. 286. Trade Adjustment Trust Fund.
"Sec. 287. Imposition of additional duty.".

SEC. 6. IMPOSITION OF SMALL UNIFORM DUTY ON ALL IMPORTS.

(a) NEGOTIATIONS.—

(1) The President shall undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform duty on all imports to such country for the purpose of using the revenue from such duty to fund any program which assists adjustment to import competition.

(2) On the date that is 6 months after the date of enactment of this Act, the President shall submit to the Congress a report on the progress of negotiations conducted under paragraph (1).

(3) On the first day after the date of enactment of this Act on which the General Agreement on Tariffs and Trade allows any country to impose a duty described in paragraph (1), the President shall submit to the Congress a written statement certifying that the General Agreement on Tariffs and Trade allows such a duty.

(b) IMPOSITION OF DUTY.—Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391, et seq.), as amended by the preceding section of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 287. IMPOSITION OF ADDITIONAL DUTY.

"(a) In addition to any other duty imposed by law, there is hereby imposed a duty on all articles entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

"(b)(1) The rate of the duty imposed by subsection (a) shall be a uniform ad valorem rate proclaimed by the President at least 30 days prior to the date such rate takes effect which is equal to the lesser of—

"(A) 1 percent, or

"(B) a percentage that is sufficient to provide the funding necessary to carry out the provisions of chapters 2 and 3.

"(c)(1) Except as otherwise provided in this subsection, duty-free treatment provided with respect to any article under any other provision of law shall not prevent the imposition of duty with respect to such article by subsection (a).

"(2) No duty shall be imposed by subsection (a) with respect to—

"(A) any article (other than an article provided for in item 870.40, 870.45, 870.50, 870.55, or 870.60 of the Tariff Schedules of the United States) that is treated as duty free under schedule 8 of the Tariff Schedules of the United States, or

"(B) any article which has a value of less than $1,000.".

SEC. 7. TAXATION OF TRADE READJUSTMENT ASSISTANCE.

Section 85(c) of the Internal Revenue Code of 1954 is amended by inserting ", but not including payments of training costs, or training vouchers, provided under section 236 of the Trade Act of 1974 (19 U.S.C. 2296)" after "nature of unemployment compensation".

SEC. 8. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided by this section, the amendments made by this Act shall take effect on the earlier of—

(1) the date that is 3 years after the date of enactment of this Act, or

(2) the date that is 1 year after the date that is 30 days after the date on which the President submits to the Congress the written statement described in section 6(a)(3).

(b) ADDITIONAL DUTY AND TRUST FUND.—

(1) The amendment made by section 6(b) shall apply to any article entered, or withdrawn from warehouse, for consumption after the earlier of—

(A) the date that is 2 years after the date of enactment of this Act, or

(B) the date that is 30 days after the date on which the President submits to the Congress the written statement described in section 6(a)(3).

(2) The amendments made by subsections (b) and (c) of section 5 shall take effect on the earlier of—

(A) the date that is 2 years after the date of enactment of this Act, or

(B) the date that is 30 days after the date on which the President submits to the Congress the written statement described in section 6(a)(3).

(c) NEGOTIATIONS.—The provisions of section 6(a) shall take effect on the date of enactment of this Act.

(d) INCOME TAX AMENDMENT.—The amendment made by section 7 shall apply to taxable years ending on or after the earlier of—

(1) the date that is 3 years after the date of enactment of this Act, or

(2) the date that is described in subsection (a)(2) of this section.

Mr. MOYNIHAN. Mr. President, today I rise to introduce legislation to extend the Trade Adjustment Assistance [TAA] Program, reform the program to emphasize worker retraining, and fund the revised TAA Program with a small fee on imports.

The TAA Program is the only Federal program specifically intended to assist workers who lose their jobs to imports. All told, since 1981, more than 3.4 million job opportunities have been lost to foreign imports. In the last decade TAA has provided extended unemployment and job retraining benefits to 1.5 million workers, including 114,000 in New York.

The bill I introduce today with Senator ROTH contains the same provisions that were passed by both Houses of Congress twice in the fall of 1985, but which failed to be enacted at that time. Permit me to explain.

Our bill is essentially the same as legislation introduced on July 31, 1985 (S. 1544) and which was cosponsored by 10 members of the Finance Committee, unanimously passed the committee as an amendment in September 1985 as part of the fiscal year 1986 budget reconciliation bill, and was included in the final reconciliation bill that passed the Senate in November. In July, the House had included a 4-year extension of the TAA Program in its Budget Reconciliation Act.

During the subsequent conference, the House agreed to the Senate's provisions—with some minor changes—to reform and extend the program for 6 years. However, the House and Senate could not resolve all their differences on other reconciliation issues. And although each House twice passed reconciliation bills including TAA provisions, Congress did not send reconciliation legislation to the President during the 1st session of the 99th Congress.

When Congress resumed consideration of the bills in February 1986, the administration threatened to veto any bill that included the provision funding the TAA Program through the import fee. Since the fee was an integral part of the program's reform, Congress instead agreed to include a simple 6-year extension of the existing program—as I had proposed on the 1st day of the 99th Congress in S. 23—as part of the Consolidated Omnibus Reconciliation Act of 1985—Public Law 99-272.

We are reintroducing this legislation today because the need to reform and establish a secure source of funding for the TAA Program is more urgent than ever. The most recent monthly trade statistics show a November merchandise trade deficit of $19.2 billion—the worst ever. In 1986, the trade deficit will exceed $170 billion: more than quadruple the deficit in 1980. Since the administration took office, the cumulative trade deficit is approximately $600 billion.

Assisting workers to adjust in the face of this tidal wave of imports is the least we can do. I have always appreciated the benefits of an open trad-

ing system, but we must assist our workers in the pain of transition if we expect their support in preserving open markets.

Our legislation would provide $4,000 tax-free vouchers for retraining, give workers a wider choice of training programs, and expand eligibility for TAA to secondary workers—workers dislocated from independent firms that depend on supplying essential parts or service to firms that produce import impacted products. It would also require a worker to agree to retraining in order to receive a trade adjustment allowance, unless the State agency and Secretary of Labor agree that no training program is reasonably available or suitable for the displaced worker.

Finally, this bill would fund the program through a small fee on imports of up to 1 percent, although we estimate that funding the program would probably only require a duty of 0.1 to 0.25 percent. The President would be directed to obtain approval from the GATT members to impose this small duty, and he would be required to apply the duty as soon as the GATT approved it or after 2 years even without GATT approval. The resulting trust fund would be used to pay for TAA beginning in 3 years, and extend the current program until the revised program took effect—1 year after the fee is imposed.

The TAA Program is essential in our increasingly global economy whereby comparative advantage dictates the growth and decline of national industries.

By empasizing working retraining, a reformed TAA Program would more effectively assist displaced workers in their transition to new growth industries that require different skills. But workers who will have to be in retraining, understandably desire a secure source of funding for the TAA Program. A small import duty would ensure that this vital program continues to meet urgent needs.

I have heard much criticism of the import fee, especially from the President himself. But unlike the recently enacted 0.22 percent customs user fee which is to accure as general revenue, a TAA duty would be designated specifically for the purpose of funding the TAA Program. This linkage between imports and the workers that imports displace is an important aspect of this provision which distinguishes it from other general revenue measures. It is only fair that those who benefit from our open trade policy share in the costs of that policy. A secure TAA Program could even benefit importers by blunting support for more restrictive—indeed protectionist—trade measures.

I urge my colleagues to support this important legislation to extend and reform the Government's vital role in the international system of trade.

By Mr. MOYNIHAN:

S. 24. A bill to amend title II of the Social Security Act to waive, for 5 years, the 24-month waiting period for Medicare eligibility on the basis of a disability in the case of individuals with acquired immune deficiency syndrome [AIDS], to require the Secretary of Health and Human Services to make grants to State and local governments for the establishment of programs to test blood to detect the presence of antibodies to the human T-cell lymphotropohic virus and to make grants to eligible State and local governments to support projects for education and information dissemination concerning acquired immune deficiency syndrome, and for other purposes; to the Committee on Finance.

COMPREHENSIVE AIDS LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation that contributes to the battle against one of the worst health crises our Nation has ever faced—acquired immune deficiency syndrome, more commonly known as AIDS. The current administration, Congress and concerned health groups across the country have made it clear that the fight against AIDS is urgent and regrettably, only beginning.

AIDS poses a threat to all sectors of our society; men and women, homosexuals and heterosexuals, adults and children. For each of these groups, the number of those dying from the disease is growing at a startling rate. According to the Centers for Disease Control [CDC], as of December 31, 1986, there have been 29,003 cases of full-blown AIDS reported in this country and of those 29,003, 16,301 have died. Because of the danger to so many, Mr. President, I am offering comprehensive legislation that addresses the needs of all these individuals.

To begin with, we must assess our current Federal programs as to their effectiveness in handling the special needs of those stricken with AIDS. Part of the legislation I propose today will facilitate the availability of Medicare coverage on the basis of a disability—under title II of the Social Security Act—for those affected with AIDS.

Currently, there is a 24-month waiting period for disabled individuals before receiving Medicare benefits. This waiting period was established in order to ensure that only those who were truly disabled, enough so that they receive benefits for a full 2 years, would be eligible for additional health care coverage.

The AIDS patient simply cannot wait 24 months to receive this coverage. The average life expectancy of an AIDS patient, from the date of diagnosis, is between 11.2 and 13 months. Sadly enough, there is no hope that AIDS patients will overcome their disability, hence there is no reason to delay granting them Medicare coverage. These individuals have worked and contributed to society—by removing the current waiting period for Medicare coverage, we are simply giving AIDS patients the health care coverage they have earned and are in need of at once.

It is not just the individual who suffers as a result of AIDS, society suffers as well. AIDS is not only costly in terms of treatment but also in terms of lost human potential. The majority of AIDS patients are between the ages of 30 to 39, a time in life which is often viewed as the most promising. Every time AIDS takes the life of one of these individuals, society is robbed of their valuable contributions.

In order to avoid these losses, we must take steps to prevent the further spread of AIDS. This bill provides $20 million to State and local governments for the establishment of blood testing programs to detect the presence of antibodies to the HTLV-III virus. The purpose of these programs is to inform those who might be carrying the virus that they have it so that they can take active measures against spreading it.

Normally, these tests are used for screening blood in blood banks and hospitals. Alternative sites are necessary to provide the opportunity for confidential and voluntary testing while limiting the chance of infecting a community blood supply. Congress has already recognized the need for such sites by providing some funding for them. These have been successful programs, but still more are needed in certain parts of the country. In order to increase the number of sites, and maintain the programs operating now, additional funding is necessary.

Importantly, this legislation would provide confidentiality for those who receive this blood test. The great social stigma attached to having the AIDS virus is often unwarranted; the presence of the virus does not always lead to full-blown AIDS. Once infected, there is only a 25- to 50-percent chance of contracting the disease. Without this guarantee of confidentiality, those who are in the most need will not come forward. We must recognize that only after those individuals that have developed antibodies to the HTLV-III virus are informed of their presence, can they take steps to minimize the risk of passing it on to others.

In addition, this legislation provides funding for public information about AIDS. The Institute of Science and National Academy of Sciences recently recommended, in a report entitled "Confronting AIDS" that, "for at least the next several years, the most effective measure for reducing the spread of HIV infection is education of the

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public." This legislation authorizes $75 million toward that effort by making grants available to State and local governments for education and information dissemination projects concerning the prevention and treatment of AIDS.

Altering the course of the epidemic demands that those in high risk groups be informed on ways to protect themselves and seek assistance. Public education can dispel dangerous misconceptions about AIDS—such as the idea that AIDS can be spread through casual contact, which it cannot—which lead to discrimination against those carrying the virus. Above all, those at risk of infection should be informed of those behaviors and practices that minimize the danger.

Finally, this legislation directs the Secretary of Health and Human Services to conduct a survey on infants with AIDS. By 1991, it is estimated that a cumulative total of 3,000 newborn infants will have contracted AIDS. Already, hospitals in certain parts of the country have reported that as much as 15 percent of pediatric beds are already occupied by AIDS cases. The survey required by this legislation would determine the number of children living in hospital environments and those who have been placed in foster care as well as recommendations for improved care of those children stricken with AIDS who lack ongoing parental care and support. Though it may be the most tragic of all AIDS cases, clearly a great deal is unknown concerning the proper care of these stricken infants.

Mr. President, with no cure for this dread disease, we must care for those cruelly stricken, and take measures to assure others will not suffer. We do what simply must be done.

I urge all my colleagues to support this necessary legislation in our fight against AIDS. I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 24

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

SECTION 1. 5-YEAR WAIVER OF 24-MONTH WAITING PERIOD FOR MEDICARE ELIGIBILITY FOR INDIVIDUALS WITH AIDS.

(a) IN GENERAL.—Section 226 of the Social Security Act (42 U.S.C. 426) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h)(1) Subject to paragraph (2), in the case of an individual who is medically determined to have acquired immune deficiency syndrome (AIDS) and who files an application for hospital insurance benefits under part A of title XVIII pursuant to this subsection, subsection (b) shall be applied as if—

"(A) in paragraph (2)(A), ' and has for 24 calendar months been entitled to,' were deleted;

"(B) in paragraph (2)(B), ', and has been for not less than 24 months,' were deleted;

"(C) in paragraph (2)(C)(ii), ', including the requirement that he has been entitled to the specified benefits for 24 months,' were deleted;

"(D) in the matter in the first sentence following subparagraph (C), 'first month' were substituted for 'twenty-fifth month'; and

"(E) in the second sentence, 'twenty-fourth' were deleted.

"(2) Paragraph (1) shall not result in an individual becoming entitled to hospital insurance benefits under part A of title XVIII for any month before the first month in which the individual both—

"(A) is medically determined to have acquired immune deficiency syndrome, and

"(B) has filed an application under paragraph (1).

"(3) For purposes of this subsection, an individual will be presumed to have acquired immune deficiency syndrome (AIDS) if the individual has been diagnosed, in accordance with standards established by the Secretary after consultation with the Director of the Centers for Disease Control, as having such disease.".

(b) EFFECTIVE DATE AND 5-YEAR SUNSET.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins more than 45 days after the date of the enactment of this Act and shall apply to services furnished during the five-year period beginning on that first day.

SEC. 2. ESTABLISHMENT OF GRANT PROGRAM.

Part B of title III of the Public Health Service Act is amended by inserting after section 314 the following new sections:

"GRANTS FOR PROGRAMS TO TEST BLOOD FOR THE PRESENCE OF ANTIBODIES TO THE HTLV-III VIRUS

"SEC. 315. (a) The Secretary shall make grants to State and local governments to establish programs to test blood to detect the presence of antibodies to the human T-cell lymphotrophic virus (hereinafter referred to as the 'HTLV-III virus'). Programs supported with grants under this section shall—

"(1) provide for the conduct of such tests at locations other than blood banks and other sites where blood and plasma are collected for use for medical transfusions;

"(2) provide for the conduct of such tests with a method of testing blood for the presence of antibodies to the HTLV-III virus which has been certified by the Secretary;

"(3) provide for the conduct of such tests without charge to any individual requesting such tests; and

"(4) provide referral services for any such individual to—

"(A) community agencies and health care providers qualified to evaluate the results of such a test; and

"(B) counseling services for such individuals, including mental health, financial, and legal services.

"(b) Any grant received by a State or local government under this section may be used by such government to—

"(1) conduct the blood tests referred to in this section directly or through grants to, or contracts with, public or private hospitals, clinics, or health care organizations;

"(2) purchase appropriate materials and kits for the conduct of such tests;

"(3) provide training for personnel who will conduct such tests;

"(4) pay the costs of hiring and compensating personnel to conduct such tests;

"(5) process the results of such tests; and

"(6) carry out such other activities relating to the conduct of such tests as the Secretary may permit by regulation.

"(c) No grant may be made to a State or local government under this section unless an application therefor is submitted to the Secretary. Each such application shall contain—

"(1) a description of the populations or geographical areas which will be tested; and

"(2) such other information as the Secretary may by regulation prescribe.

"(d) No individual who conducts a blood test supported by a grant under this section may disclose, or may be compelled to disclose, the identity or any identifying characteristics of any individual who has been a subject of such a test unless authorized by an appropriate order of a court of competent jurisdiction to disclose such identity or characteristics. Such an order may only be granted after application showing that a clear and imminent danger to the public safety will result if such identity or characteristics are not disclosed. An individual who has been such a subject shall be afforded a reasonable opportunity to participate in, or object to, the application. In assessing such an application, the court shall weigh the public interest and the need for disclosure of the identity or identifying characteristics of such individual against the injury to such individual that will result from such disclosure. Upon granting of such an order, the court shall impose appropriate safeguards against unauthorized disclosure of such individual's identity or identifying characteristics.

"(e)(1) No part of a grant made under this section may be used to supplant State or local funds that would be available to such State or local government to carry out the testing program supported under this section in the absence of such grant.

"(2) Not more than 5 percent of a grant under this section may be used for costs incurred to administer such grant.

"(f) The total amount of a grant under this section shall be obligated by a State or local government not later than 2 years after such grant is received by such government. Any part of such grant which is not obligated within such 2-year period shall be repaid to the Secretary by the State or local government immediately after the expiration of such 2-year period.

"(g)(1) Each State or local government which receives a grant under this section shall keep such records as the Secretary may require by regulation to facilitate an effective audit.

"(2) The Secretary and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of each State or local government which receives a grant under this section, if, in the opinion of the Secretary or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"(3) No books, documents, or records kept under the provisions of this section may be used—

"(A) to initiate or substantiate any criminal charges against an individual who has been the subject of a test supported with a grant under this section; or

"(B) to conduct any investigation with respect to such an individual; or

"(C) as evidence in any civil action or proceeding against such an individual.

"(h) Within 30 days after the end of each fiscal year, each State or local government which receives a grant under this section shall prepare and transmit a report to the Secretary which describes the activities conducted by the State or local government with such grant. Within 90 days after the end of each fiscal year, the Secretary shall prepare and transmit a report to the Congress which summarizes the reports prepared by State or local governments under the preceding sentence and which contains such recommendations and additional information as the Secretary considers appropriate.

"(i) To carry out this section, there are authorized to be appropriated $20,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990.".

"GRANTS FOR EDUCATION AND INFORMATION PROJECTS CONCERNING ACQUIRED IMMUNE DEFICIENCY SYNDROME

"SEC. 315A. (a)(1) The Secretary shall make grants to eligible State and local governments to support—

"(A) projects of education and information dissemination concerning acquired immune deficiency syndrome and the prevention and treatment of such syndrome; and

"(B) projects to facilitate the transfer and communication of information concerning acquired immune deficiency syndrome among agencies of State and local governments.

"(2) A State or local government which receives a grant to support a project described in paragraph (1) may carry out such project through grants to community organizations or local chapters of national organizations concerned with acquired immune deficiency syndrome.

"(b) For purposes of this section, the term 'eligible State or local government' means a State or local government to which, during the six month period immediately preceding the date on which an application under this section is made, a number of cases of acquired immune deficiency syndrome has been reported which exceeds by 20 percent the number of such cases reported to such government during the preceding six month period.

"(c) No grant may be made to a State or local government under this section unless an application therefor is submitted to the Secretary. Each such application shall contain—

"(1) a description of the project to be conducted with the grant; and

"(2) such other information as the Secretary may by regulation prescribe.

"(d) No individual who carries out a project supported by a grant under this section may disclose, or may be compelled to disclose, the identity or identifying characteristics of any individual who receives services from such project unless the individual who receives such services consents to such disclosure or the individual carrying out such project is authorized by an appropriate order of a court of competent jurisdiction to disclose such identity or characteristics. Such an order may only be granted after application showing that a clear and imminent danger to the public safety will result if such identity or characteristics are not disclosed. An individual who has received services from such a project shall be afforded a reasonable opportunity to participate in, or object to, the application. In assessing such an application, the court shall weigh the public interest and the need for disclosure of the identity or identifying characteristics of such individual against the injury to such individual that will result from such disclosure. Upon granting of such an order, the court shall impose appropriate safeguards against unauthorized disclosure of such individual's identity or identifying characteristics.

"(e)(1) No part of a grant made under this section may be used to supplant State or local funds that would be available to such State or local government to carry out the project supported under this section in the absence of such grant.

"(2) Not more than 5 percent of a grant under this section may be used for costs incurred to administer the project supported with such grant.

"(3) The Federal share of the costs of any project supported under this section shall be 100 percent.

"(f) The total amount of a grant under this section shall be obligated by a State or local government not later than 2 years after such grant is received by such government. Any part of such grant which is not obligated within such 2-year period shall be repaid to the Secretary by the State or local government immediately after the expiration of such 2-year period.

"(g)(1) Each State or local government which receives a grant under this section shall keep such records as the Secretary may require by regulation to facilitate an effective audit.

"(2) The Secretary and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of each State or local government which receives a grant under this section, if, in the opinion of the Secretary or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"(3) No books, documents, or records kept under the provisions of this section may be used—

"(A) to initiate or substantiate any criminal charges against an individual who receives services from a project supported with a grant under this section; or

"(B) to conduct any investigation with respect to such an individual; or

"(C) as evidence in any civil action or proceeding against such an individual.

"(h) Within 30 days after the end of each fiscal year, each State or local government which receives a grant under this section shall prepare and transmit a report to the Secretary which describes the activities conducted by the State or local government with such grant. Within 90 days after the end of each fiscal year, the Secretary shall prepare and transmit a report to the Congress which summarizes the reports prepared by State or local governments under the preceding sentence and which contains such recommendations and additional information as the Secretary considers appropriate.

"(i) To carry out this section, there are authorized to be appropriated $75,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990.".

SEC. 3. SURVEY ON CHILDREN WITH ACQUIRED IMMUNE DEFICIENCY SYNDROME.

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.

By Mr. MOYNIHAN:

S. 25. A bill to amend chapter 44 of title 18, United States Code, to prohibit the manufacture, transfer, or importation of .25 caliber and .32 caliber ammunition; to the Committee on the Judiciary.

VIOLENT CRIME PREVENTION ACT

● Mr. MOYNIHAN. Mr. President, "Children Killing Children" the headline reads. The Washington Post tells the story of an 11-year-old boy killed with a handgun for want of a $20 shirt. "Check in" (hand over) the young shootist said.

The Nation's sixth largest city has a population of 1.1 million and a gun supply of 1.5 million. That is over one gun per man, per woman, and per child. Reporter Bill McAllister tells us, "handguns are considered by many to be an essential household appliance and the diploma of manhood on the streets." The result: 479 fatal shootings in Detroit during the first 11 months of 1986, 38 of the shootings, children under 17 killed with handguns. Detroit leads the Nation in murders, but they are not alone.

On November 19, 1986, Larry Davis, wanted for five drug-related murders in New York City shot his way through a police cordon. Six officers were wounded. Davis had with him an arsenal of crime: shotgun, .45 automatic pistol, and .32-caliber revolver.

I have supported handgun control, and will continue to do so. But, to date, it has not been allowed to work. Therefore, a proposition: if we cannot do something about those 60 million handguns out there, let us do something about the ammunition they shoot. A handgun is of no use without bullets. While we have a two-century supply of handguns, we have a mere 4-year supply of ammunition. Defang the cobra. Impossible? No. We just did it with armor-piercing cop killer bullets.

On October 16, 1986, the next to last day of the 99th Congress, I introduced S. 2929, the Violent Crime Prevention Act, prohibiting the manufacture, import, and sale of .25 and .32 caliber ammunition. I do so again today.

These are murderous rounds; rounds for small concealable guns; cop killer

rounds. Two examples: In 1981, Cox Newspapers did a survey of 14,268 crime guns seized by police in 18 metropolitan areas during the first 9 months of 1979. Cox found that of the 15 most popular crime guns, 4 were of .25 or .32 caliber.

More to the point, of handguns fired at New York City police officers, 1975–85, one-quarter were .25 or .32 caliber. These are the choice weapons of criminals. They are not the choice weapons of hunters or marksmen. So let's get on with it. I do not propose to do away with all guns or all ammunition, only those which are obviously the criminal's choice.

Would this end the problem, the awful problem of handgun killings? No. It would reduce it. It would take one weapon out of the hands of a Larry Davis. And it might just save the lives of a few children who are not yet ready to check in.

Mr. President, I ask unanimous consent that the text of the bill, as well as an article appearing in the Washington Post on December 4, 1986, be printed in the RECORD at this point.

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

[From the Washington Post, Dec. 4, 1986]

CHILDREN KILLING CHILDREN

(By Bill McAllister)

DETROIT, Dec. 3.—Jeffrey Hilson, 11, was wearing the new, dark purple silk shirt—the one he had begged his mother to buy—when he and a friend were confronted by two teen-age boys.

A 14-year-old flashed a small, .38-cal. revolver and, in the lingo of Detroit's streets, demanded that Jeffrey "check in"—hand over—the $20 shirt.

Jeffrey and his companion raised their hands, but Jeffrey, who had just entered the 6th grade, never had a chance to remove the shirt. His would-be robber fired a single bullet into his upper abdomen and dashed off.

Two hours and 49 minutes later, Jeffrey Hilson died on an operating table, one of 38 Detroit residents under 17 to be killed this year with handguns.

Those deaths and the handgun shootings of 333 other children here have stirred a sharp, racially tinged debate that has placed popular and powerful Mayor Coleman A. Young on the defensive.

"Our children are killing our children," said Elnora Arrington, whose 19-year-old son, Keith, was killed this summer by a high school classmate who pulled a .25-cal. silver pistol from a belt and shot him four times.

Arrington and others charge that these killings—part of what the Federal Bureau of Investigation says is the highest murder rate in the nation—could be stopped, or at least slowed, if Young would act. He has not, and his critics allege that Young, who runs City Hall with an iron hand and an acerbic tongue, has only inflamed the issue.

Asked recently on Canadian television what he thought of a proposed handgun freeze for the city, Young snapped:

I'll be damned if I'm going to collect guns in the city of Detroit while we're surrounded by hostile suburbs and the whole rest of the state who have guns and where you have vigilantes or practicing Ku Klux Klan in the wilderness with automatic weapons."

The mayor's characteristically blunt statement not only infuriated many suburban residents, but it put Young, long regarded as one of the nation's most successful big-city mayors, at odds with the city's chief prosecutor, its two daily newspapers, gun-control advocates and many of his fellow big-city mayors.

Most of the nation's large cities have lower handgun crime rates, and many have chief executives, such as Washington's Marion Barry and New York's Edward I. Koch, who long have championed tough gun laws.

No one here disputes that Detroit—the nation's sixth-largest city, with 1.1 million residents—is a tough town. Police estimate that there are 1.5 million guns in private hands.

FBI statistics show that Detroit's murder rate last year was almost double that of its closest rival, Dallas, and that the use of handguns in murders was well ahead of the rates in other major cities.

City officials point out that the overall crime rate here has dropped and that the number of murders peaked in 1974 at 714. They attribute the improvement to Young's restoration of 1,000 laid-off officers to the police force. But the murder rate this year is running slightly ahead of 1985, and police specifically declined to discuss why so many children are being killed with handguns.

The 479 fatal-shooting victims this year include five police officers, one of whom was killed the morning of Sept. 27, the mayor's proclaimed "No Crime Day." The officer was shot by a gun owner who mistook him for a prowler.

A bill narrowly passed by the City Council last week mandates a 60- to 90-day sentence for anyone using a handgun while committing a misdemeanor, extending a state law that requires a two-year sentence for the use of a handgun in a felony.

Facing mounting pressure from a vocal but small group of activists and a Monday deadline to act on the bill, Young indicated this week that he will not sign it, saying Michigan's jails are too crowded already. But he said he would announce by Christmas an anticrime package focusing on the problem of youths shooting each other.

The only element of it to be made public so far is an increase in the police department's gang squad.

"He believes that even if you could take away every gun in the city, you would still have crime here," said Young spokesman Bob Berg, who describes the 68-year-old mayor as a "no-nonsense, tough anticrime person."

Young's willingness to act could be decisive, said Neal Shine, senior managing editor of the Detroit Free Press, because "the only thing you have to understand about this city is that power absolutely and singularly rests in the hands of the mayor. . . . If he decides to ignore an issue, he's got a constituency that won't call him on it.

"The people here think so much of him that they'll avoid doing anything that smacks of divisiveness."

"Until Young indicated a willingness to address the issue, some people were furious that the city government appeared less concerned about the slaying of Detroit children than it did six years ago when Young dispatched a ranking detective to Atlanta to help investigate the serial murders of children there.

"Somehow, nobody in Detroit is alarmed," said the Rev. Walter E.W. Skerritt, a Baptist minister and head of a Young-appointed committee on youth. "There is a fear of something here. I don't know what it is. Maybe the people are waiting for their leaders."

"It is an incredible phenomenon," said John O'Hair, the city's Democratic prosecutor, who has broken with Young over the issue. "I don't know what the answer is, but something has to be done.

"The people in this city are poor," said Sister Angela M. Hibbard, a Catholic nun who this week arranged a prayer vigil for 41 children killed by handguns. It attracted only 100 people. "They don't know how to do anything for themselves. They don't know how to bitch and push.

The mayor's opponents say his views are a throwback to an era when a predominantly white police force ran Detroit as if it were, in Berg's words, "a white army of occupation."

The city's 1967 riots, which involved 43 deaths and $500 million in property damage, marked the end of that era and, some say, provided Young with a mandate for political and social change unseen in many major cities. The glistening towers of the Renaissance Center along the downtown waterfront are a monument to Young's political tenacity and economic influence.

At night, however, Young's well-lit downtown may be the safest place in a city where, according to chief juvenile court prosecutor Ron Schigar, many young people grow up believing that "If it's mine, it's mine, and if it's yours, it's mine if I can get it."

It is a deadly attitude in a city where handguns are considered by many to be an essential household appliance and the diploma of manhood on the streets.

"People are not coming into the city from the suburbs and killing us," said Charles Harper, a black psychologist who works with many juvenile criminals here. "We are killing ourselves."

The mayor's comments on guns have fueled the impression, said Hibbard, that "he perceives the black community as a community that needs to be armed and wants to be armed. Like Reagan on Star Wars, no amount of reason will shake that belief."

"Detroit is like a large, southern country town in many ways," said Skerritt, whose 19-year-old daughter survived a gunshot head wound inflicted by another teen-ager last year. "There is a love affair with the handgun here."

Despite Michigan's tough gun laws, many residents say handguns are available for the asking on some street corners. Police said the 14-year-old who shot Jeffrey Hilson paid $20 for his gun—the same price as the shirt he wanted. Arrington said her son's death so angered her that she went out on the street and 45 minutes later had purchased an Uzi automatic weapon for $45.

Young has said he would support a national law like the one in force across the narrow Detroit River in Windsor, Ontario, where handguns are outlawed—even for Detroit police officers accompanying Young on a visit there.

Police in that city of 200,000 have recorded one handgun murder in the past 15 months, and have posted warnings about Canada's strict gun laws at major crossings.

In Detroit, where murders occur at the rate of more than one a day, gunplay is almost random and children frequently are caught in the crossfire—some of it linked to

the soaring trafficking in "crack," the concentrated form of cocaine.

Tanisha Baldwin, 8, of Houston, was visiting relatives when she was killed by shots fired into a family member's house in August. Police told reporters they thought the assailants fired into the wrong house in a dispute over drug territories.

Melody Rucker, 16, was gunned down this summer as she stood outside a friend's house saying goodbye to some of the 50 youngsters who had attended a chaperoned party there. Her assailants were thought to be party-crashers turned away earlier.

Prosecutors say that assaults over expensive running shoes and certain types of jackets are so frequent that many parents worry about the clothes their children wear to school. One jacket style, popularized by a defunct gang called "Good Boys Inc.," proved so attractive to robbers that its maker withdrew it from the Detroit market.

The gun problem is gang-related, according to psychologists and prosecutors who work in the city's juvenile courts.

"These kids are not sophisticated enough to form that type of relationship and friendships," said Schigar, the juvenile court prosecutor. For the most part they are loners, convinced "that everybody has to have a gun.

Prosecutors cite the remorselessness of the two teen-agers charged in Jeffrey Hilson's killing as typical of many young criminals here. The two suspects, age 14 and 15, allegedly continued on a mini-crime spree, attempting to steal a car and rob two other people at gunpoint while police, two blocks away, came to Jeffrey's aid.

The Rev. Orris Walker, speaking at the prayer vigil this week, blamed television for making "violence an acceptable way of life."

Others cited deterioration of the family and teen-age pregnancies. "A child can't teach a child," said Delores Dumas, grandmother of victim Keith Arrington.

While Detroit residents, including Young, have long prided themselves on their ability to overcome adversity, life here used to be easier for the poor and ill-educated.

"For years you could either finish high school or drop out and then sign up for a job on the [auto assembly] line and have a good job for life," Berg said. With robots replacing workers at the plants, "those jobs, if not all gone, are almost all gone," he said.

One-fourth of all workers here are unemployed, reflecting what officials say is the true extent of the "hopelessness" Young sees among many here. City officials note that 70 percent of Detroit's population is black, and they estimate that 62 percent of the city's black teen-agers have no jobs. Economist say further layoffs planned by the auto industry are likely to drive unemployment higher.

Even if unskilled jobs open in the auto industry, they are claimed by senior workers bumped from jobs that were eliminated.

Law enforcement officials say that the only high-paying jobs for unskilled laborers now are in the city's rampant illegal drug industry, running or selling drugs at wages of $100 a day or more. Any youngster with a legitimate job—at a fast-food restaurant, for instance—is ridiculed as working for "chump change," Schigar said.

As a result, nighttime Detroit can feel like a ghost town. "You don't want to go out in the streets and confront these kids," psychologist Harper said. "They're dangerous."

DETROIT'S 'HOSTILE SUBURBS'

YOUNG CITES STUDY, GOVERNMENT ACTIONS

DETROIT, Dec. 3.—Mayor Coleman A. Young's assertion that his city is surrounded by "hostile suburbs" is based on a recent University of Michigan study and the action of some area governments, according to his spokesman.

Sociologist Reynolds Farley, in a recently published study, found that Detroit and Chicago had the most racially segregated housing patterns in the nation. Detroit; which is 70 percent black, was ranked as the most segregated community by census tract, according to the study.

That survey, coupled with recent actions by some of Detroit's largely white suburbs, provide the foundation for Young's statement, according to Bob Berg, the mayor's press secretary.

Berg noted these recent actions by Detroit's neighboring localities:

Warren, a city of 161,134 residents, was sued by the Justice Department for having no blacks on its payroll of 924. According to the 1980 census, Warren, which abuts Detroit to the north, had 297 black residents.

Dearborn, a community of 86,544 southwest of downtown Detroit, has long had a reputation for being a whites-only enclave, and this year fought an unsuccessful battle to keep non-residents out of its public parks.

Grosse Pointe Park, a community of 13,761 east of Detroit, recently discussed building an earthen wall, partly to protect its Lake St. Clair shoreline but also to separate it from the city.

"If you try to build a wall and try to keep me out of your parks, he [Young] will consider that you're hostile to him," Berg said.—Bill McAllister

S. 25

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 "Violent Crime Prevention Act".

SEC. 2. Section 922(a) of title 18, United States Code, is amended by—

(1) striking out "and" at the end of paragraph (7);

(2) striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following:

"(9) for any person to manufacture, transfer, or import .25 or .32 caliber ammunition, except that this paragraph shall not apply to—

"(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof; and

"(B) any manufacture or importation for testing or for experimenting authorized by the Secretary; and

"(10) for any manufacturer or importer to sell or deliver .25 or .32 caliber ammunition, except that this paragraph shall not apply to—

"(A) the sale or delivery by a manufacturer or importer of such ammunition for the use of the United States or any department, agency, or political subdivision thereof; and

"(B) the sale or delivery by a manufacturer or importer of such ammunition for testing or for experimenting authorized by the Secretary.".

SEC. 3. Section 923(a)(1)(A) of title 18, United States Code, is amended to read as follows:

"(A) of destructive devices, ammunition for destructive devices, armor piercing ammunition, or .25 or .32 caliber ammunition, a fee of $1,000 per year;".

SEC. 4. Section 923(a)(1)(C) of title 18, United States Code, is amended to read as follows:

"(C) of ammunition for firearms other than destructive devices, or armor piercing or .25 or .32 caliber ammunition for any firearm, a fee of $10 per year.".

SEC. 5. Section 923(a)(2) of title 18, United States Code, is amended to read as follows:

"(2) If the applicant is an importer—

"(A) of destructive devices, ammunition for destructive devices, or armor piercing or .25 or .32 caliber ammunition for any firearm, a fee of $1,000 per year; or

"(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing or .25 or .32 caliber ammunition for any firearm, a fee of $50 per year.".

SEC. 6. Section 923 of title 18, United States Code, is amended by adding at the end thereof the following:

"(1) Licensed importers and licensed manufacturers shall mark all .25 and .32 caliber ammunition and packages containing such ammunition for distribution, in the manner prescribed by the Secretary by regulation.".

SEC. 7. Section 929(a)(1) of title 18, United States Code, is amended by—

"(1) inserting ", or with .25 or .32 caliber ammunition," after "possession of armor piercing ammunition"; and

"(2) inserting ", or .25 or .32 caliber ammunition," after "armor-piercing handgun ammunition".

SEC. 8. This Act and the amendments made by this Act shall take effect on the first day of the first calendar month which begins more than 90 days after the date of enactment of this Act.

By Mr. MOYNIHAN:

S. 26. A bill to extend authorization of the Federal Crime Insurance Program under the National Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

EXTENSION OF FEDERAL CRIME INSURANCE PROGRAM

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill which extends authorization for the Federal Crime Insurance Program [FCIP] under the National Housing Act through September 1991. The continuation of this program is essential for the protection of residential and commercial property in those areas which are plagued by high crime rates.

Congress established the Federal Crime Insurance Program under the Housing and Urban Development Act in 1970, and last extended the program through September 30, 1987 as part of the Federal Housing Administration Reauthorization Act of 1986 (P.L. 99-430).

The program provides affordable insurance against robbery, theft, burglary and vandalism to tens of thousands of businesses and residents of high crime areas—insurance not otherwise affordable in the private insurance markets. In 1986, more than 30,000

FCIP policies were held by businesses and homeowners in over 23 States, at a total value of more than $350 million. Roughly one-third of FCIP beneficiaries are small businesses located in areas engulfed by crime and vandalism. Many of these businesses, absent support from the FCIP, might abandon their neighborhoods to further decay, taking with them jobs and eroding the tax base.

The Federal Crime Insurance Program is particularly important to New York State. More than 18,000 New York residents and businesses hold FCIP policies—57 percent of all policies issued—worth more than $200 million, in neighborhoods which vitally need continued support and investment. Between October 1985 and October 1986, $5.5 million in claims were paid to New Yorkers, comprising 68 percent of all claims paid during that time.

The FCIP serves an important segment of the population—no less important than similar programs which provide crop and flood insurance. The Federal Crime Insurance Program is an effective means to protect and encourage business investment in high-crime areas. I strongly urge my colleagues to reauthorize it for the next 4 years. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 26

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

SECTION 1. EXTENSION OF FEDERAL CRIME INSURANCE PROGRAM.

Section 1201(b)(1) of the National Housing Act (12 U.S.C. 1749bbb) is amended—

(1) by striking out "parts C and D shall terminate on September 30, 1987" in the matter preceding subparagraph (A), and inserting in lieu thereof "parts C and D shall terminate on September 30, 1991", and

(2) by striking out "September 30, 1986" in subparagraph (A) and inserting in lieu thereof "September 30, 1992".

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

S. 27. A bill to establish the American Conservation Corps, and for other purposes; to the Committee on Energy and Natural Resources.

AMERICAN CONSERVATION CORPS ACT

Mr. MOYNIHAN. Mr. President, today I rise—for the fourth time in 6 years—to introduce legislation to create an American Conservation Corps [ACC]. I have pledged to keep at this until we get it right, and I intend to fulfill that commitment.

The ACC is a program that will employ thousands of youth to perform much needed conservation and rehabilitation work on Federal, State, local, and Indian lands. Patterned after the highly successful Civilian Conservation Corps [CCC] of the New Deal era, the ACC would provide year-round and summer employment opportunities for disadvantaged youths between the ages of 16 and 25.

As we are all painfully aware, two elements of the Great Depression still linger: youth unemployment and deterioration of our national resources. In my own State of New York, 90,000 youths aged 16 to 19 were unemployed in the first 6 months of 1986. More than 20 percent of New York's unemployed are teenagers, and this reflects a pattern of youth unemployment that plagues the country. Nationwide, in November 1986—December's figures are not available until Friday—18.4 percent of Americans 16 to 19 were unemployed; 35.1 percent of black teenagers were unemployed. Of the 8.3 million unemployed Americans in November, 36.3 percent were under the age of 25.

The legislation I introduce today is the same as passed the Senate during the final week of the 99th Congress as part of a bill to establish the Cuyahoga Valley National Recreation Area (H.R. 4645). The bill authorizes $75 million annually for fiscal years 1987-89; 80 percent of the funds are administered by the Department of the Interior—Park Service lands, 25 percent; Indian lands, 5 percent; and State grants, 50 percent—and 20 percent by the Department of Agriculture—Forest Service lands, 15 percent; and other Federal agencies, 5 percent. Fifty percent of the funds would be awarded to States and localities in the form of competitive grants. Awards would be based on: the size of the State's unemployed youth population; the conservation, rehabilitation and improvement needs of the State's public lands; and local support for the program. States would be required to match the Federal funds, dollar to dollar.

Mr. President, I earlier referred to the ACC's tortuous legislative history. Permit me to explain. The measure was first introduced as the Public Lands Rehabilitation, Conservation and Improvement Act of 1981 (H.R. 4861). This bill was passed by the House on June 9, 1982, by a vote of 291 to 102. The House voted again, in December 1982, to approve the ACC, but the Senate did not act. Nor did the Senate act on S. 2061, a companion bill that Senator Mathias and I had introduced on February 3, 1982.

Thereafter, on the first day of the 98th Congress, Senator Mathias and I reintroduced the ACC legislation as S. 27. Our measure attracted bipartisan support from 22 cosponsors. The House overwhelmingly approved a companion bill on March 1, 1983, by a vote of 301 to 87. On May 13, 1983, the Senate Energy and Natural Resources Committee voted 18 to 1 to report H.R. 999 as a shell authorization bill, and Senator Mathias and I set about working with committee members to draft a compromise agreement to be offered as a substitute. Negotiations on the amendment, which was to delineate program details, required more than 1 year.

On October 3, 1984, the amendment was agreed to in the Senate by unanimous consent; 6 days later the Senate amendment was concurred to, and H.R. 999, as amended, was passed by the House by vote of 296 to 75. Yet despite such persistent support, President Reagan pocket vetoed the measure.

On January 3, 1985, this bill was again introduced in the House, (H.R. 99) and was passed by a vote of 193 to 191 on July 11, 1985. On October 17, an amended version of S. 27 was offered as part of a floor amendment to H.R. 4645, a bill to establish the Cuyahoga Valley National Recreation Area. The amendment, and the bill as amended, were passed by unanimous consent. Unfortunately, Senator MCCLURE's amendment also included the provisions of a controversial bill to provide for competitive oil and gas leasing, provisions which the House found unacceptable. And so, Mr. President, the ACC once again failed to be enacted, despite the support of both Houses of Congress.

The bill I introduced today—Representative UDALL is introducing identical legislation in the House—is the same text which passed the Senate during those waning hours of the 99th Congress. This time, I hope, we can finally do it right.

We have estimated that the ACC would provide jobs for approximately 28,000 youths annually. The legislation specifically directs the Secretaries of Interior and Agriculture to make special efforts in recruiting and employing economically, socially, educationally and physically disadvantaged youths at an hourly salary just below minimum wage.

The array of available work includes wildlife habitat and conservation, rehabilitation and improvement; urban revitalization; recreational area development and maintenance; road and trail maintenance and improvement; erosion, flood, drought and storm damage control; insect, disease, rodent and fire prevention and control; and improvement of abandoned railroad beds and rights of way; and energy conservation projects.

Mr. President, it is not often we have the ability to enact legislation that will unequivocally produce successful results. The Young Adult Conservation Corps returned $1.20 in appraised conversation work for each $1 expended. The YCC returned $1.04. State programs have done even better. The budget deficit looms, yes, but so does the future of the youth of this country. Which will be with us longer? I

urge my colleagues to choose the latter.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 27

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 "American Conservation Corps Act of 1987".

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) conserving or developing natural and cultural resources and enhancing and maintaining environmentally important lands and waters through the use of the Nation's young men and women is beneficial not only to the youth of the Nation by providing them with education and work opportunities but also for the Nation's economy and its environment; and

(2) through this work experience opportunity, the Nation's youth will further their understanding and appreciation of the natural and cultural resources in addition to learning basic and fundamentl work ethics including discipline, cooperation, understanding to live and work with others, and learning the value of a day's work for a day's wages.

(b) PURPOSE.—It is the purpose of this Act to—

(1)(A) enhance and maintain conservation, rehabilitation, and improvement work on public lands and Indian lands,

(B) improve and restore public lands and Indian lands, resources, and facilities,

(C) conserve energy, and

(D) restore and maintain community lands, resources, and facilities;

(2) establish an American Conservation Corps to carry out a program to improve, restore, maintain, and conserve these lands and resources in the most cost-effective manner;

(3) assist State and local governments and Indian tribes in carrying out needed public land and resource conservation, rehabilitation, and improvement projects;

(4) provide for implementation of the program in such manner as will foster conservation and the wise use of natural and cultural resources through the establishment of working relationships among the Federal, State, and local governments, Indian tribes, and other public and private organizations; and

(5) increase (by training and other means) employment opportunities for young men and women including, but not limited to, those who are economically, socially, physically, or educationally disadvantaged and who may not otherwise be productively employed.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) The term "public lands" means any lands or waters (or interest therein) owned or administered by the United States or by any agency or instrumentality of a State or local government.

(2) The term "program" means all activities carried out under the American Conservation Corps established by this Act.

(3) The term "program agency" means any agency designated by the Governor to manage the program in that State, and the governing body of any Indian tribe.

(4) The term "Indian tribe" means any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior. Such term also includes any Native village corporation, regional corporation, and Native group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) The term "Indian lands" means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes which is subject to restrictions on alienation imposed by the United States.

(7) The term "employment security service" means the agency in each of the several States with responsibility for the administration of unemployment and employment programs, and the oversight of local labor conditions.

(8) The term "chief administrator" means the head of any program agency as that term is defined in paragraph (3).

(9) The term "enrollee" means any individual enrolled in the American Conservation Corps in accordance with section 5.

(10) The term "crew leader" means an enrollee appointed under authority of this Act for the purpose of supervising other enrollees engaged in work projects pursuant to this Act.

(11) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) The term "economically disadvantaged" with respect to youths has the same meaning given such term in section 4(8) of the Job Training Partnership Act.

SEC. 4 AMERICAN CONSERVATION CORPS PROGRAM.

(a) ESTABLISHMENT OF AMERICAN CONSERVATION CORPS.—There is hereby established an American Conservation Corps.

(b) REGULATING AND ASSISTANCE.—Not later than 120 days after the enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture, after consultation with the Secretary of Labor, shall jointly promulgate the regulations necessary to implement the American Conservation Corps established by this Act. Within 30 days after the enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall establish procedures to give program agencies and other interested parties, including the public, adequate notice and opportunity to comment upon and participate in the formulation of such regulations. The regulations shall include provisions to assure uniform reporting on the activities and accomplishments of American Conservation Corps programs, demographic characteristics of enrollees in the American Conservation Corps, and such other information as may be necessary to prepare the annual report under section 10.

(c) PROJECTS INCLUDED.—The American Conservation Corps established under this section may carry out such projects as—

(1) conservation, rehabilitation, and improvement of wildlife habitat, rangelands, parks, and recreational areas;

(2) urban revitalization and historical and cultural site preservation;

(3) fish culture and habitat maintenance and improvement and other fishery assistance;

(4) road and trail maintenance and improvement;

(5)(A) erosion, flood, drought, and storm damage assistance and controls,

(B) stream, lake, and waterfront harbor and port improvement, and

(C) wetlands protection and pollution control;

(6) insect, disease, rodent, and fire prevention and control;

(7) improvement of abandoned railroad bed and right-of-way;

(8) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(9) reclamation and improvement of strip-mined land; and

(10) forestry, nursery, and silvicultural operations.

(d) PREFERENCE FOR CERTAIN PROJECTS.—The program shall provide a preference for those projects which—

(1) will provide long-term benefits to the public;

(2) will instill in the enrollee involved a work ethic and a sense of public service;

(3) will be labor intensive; and

(4) can be planned and initiated promptly.

(e) LIMITATION TO PUBLIC LANDS.—Projects to be carried out by the American Conservation Corps shall be limited to projects involving other lands will provide a documented public benefit as determined by the Secretary of the Interior or the Secretary of Agriculture. The regulations promulgated under subsection (b) shall establish the criteria necessary to make such determinations.

(f) CONSISTENCY.—All projects carried out under this Act for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with the provisions of law and policies relating to the management and administration of such lands, will all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of the area.

(g) APPLICATION PROCEDURES.—(1) Each program agency may apply for approval to participate in the American Conservation Corps under this Act.

(2) Applications for participation in the American Conservation Corps on Federal public lands shall be submitted to the Secretary of the Interior or the Secretary of Agriculture in such manner as is provided for by the regulations promulgated under subsection (b). Applications for participation in the American conservation Corps on non-Federal public lands or Indian Lands shall be submitted to the Secretary of the Interior. Applications for participation in the American Conservation Corps on projects on lands described in subsection (e) shall be submitted to the Secretary of Agriculture or the Secretary of the Interior as the case may be. No application may be submitted to the Secretary of the Interior or the Secretary of Agriculture before the 30-day period for review and comment by the Appropriate State Job Training Coordinating Council (established under the Job Training Partnership Act), if any, which shall consult with the appropriate Private Industry Council, or Councils, in the area in which a project is carried out. Comments of the State Job Training Coordinating Council and private Industry Council shall be forwarded to the Secretary at the time the grant application is submitted.

(3) Each application under this section must be approved by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, and shall contain—

(A) a comprehensive description of the objectives and performance goals for the program, a plan for managing and funding the program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided;

(B) a plan to make arrangements for certification of the training skills acquired by enrollees and award of academic credit to enrollees for competencies developed from training programs or work experience obtained under this Act;

(C) an estimate of the number of enrollees and crew leaders necessary for the proposed projects, the length of time for which the services of such personnel will be required, and the services which will be required for their support;

(D) a description of the location and types of facilities and equipment to be used in carrying out the programs; and

(E) such other information as the Secretary of the Interior and the Secretary of Agriculture shall prescribe.

(4) In approving the location and type of any facility to be used in carrying out the program, the Secretary of the Interior and the Secretary of Agriculture shall give due consideration to—

(A) the proximity of any such facility to the work to be done;

(B) the cost and means of transportation available between any such facility and the homes of the enrollees who may be assigned to that facility;

(C) the participation of economically, socially, physically, or educationally disadvantaged youths;

(D) the cost of establishing, maintaining, and staffing the facility.

Every effort shall be made to assign youths to facilities as near to their homes as practicable.

(5)(A) Every program shall have sufficient supervisory staff appointed by the chief administrator which may include enrollees who have displayed exceptional leadership qualities.

(B) No project shall be undertaken without the on-site presence of knowledgeable and competent supervision, and all projects undertaken shall be documented in advance in an approved written project plan.

(h) LOCAL PARTICIPATION.—Any State carrying out a program under this Act shall provide a mechanism under which local governments and nonprofit organizations within the State may be approved by the State to participate in the American Conservation Corps.

(i) AGREEMENTS.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(j) JOINT PROJECTS.—

(1) DEPARTMENT OF LABOR.—The Secretary of the Interior and the Secretary of Agriculture are authorized to develop jointly with the Secretary of Labor regulations designed to allow, where appropriate, joint projects in which activities supported by funds authorized under this Act are coordinated with activities supported by funds authorized under employment and training statutes administered by the Department of Labor (including the Job Training Partnership Act). Such regulations shall provide standards for approval of joint projects which meet both the purposes of this Act and the purposes of such employment and training statutes under which funds are available to support the activities proposed for approval. Such regulations shall also establish a single mechanism for approval of joint projects developed at the State or local level.

(2) DEPARTMENT OF DEFENSE.—The Secretary of the Interior, the Secretary of Agriculture, and program agencies may enter into agreements, jointly or separately, with the Secretary of Defense to assist the military by carrying out projects under this Act. Such projects may be carried out on a reimbursable basis or otherwise.

SEC. 5. ENROLLMENT, FUNDING, AND MANAGEMENT.

(a) ENROLLMENT IN PROGRAM.—(1)(A) Enrollment in the American Conservation Corps shall be limited to individuals who, at the time of enrollment, are—

(i) unemployed;

(ii) not less than 16 years or more than 25 years of age (except that programs limited to the months of June, July, and August may include individuals not less than 15 years and not more than 21 years of age at the time of their enrollment); and

(iii) citizens or nationals of the United States (including those citizens of the Northern Mariana Islands as defined in Public Law 98-213 (97 Stat. 1459)) or lawful permanent residents of the United States.

(B) Special efforts shall be made to recruit and enroll individuals who, at the time of enrollment, are economically disadvantaged.

(C) In addition to recruitment enrollment efforts required in subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall make special efforts to recruit enrollees who are socially, physically, and educationally disadvantaged youths.

(D) Notwithstanding subparagraph (A), a limited number of special corps members may be enrolled without regard to their age so that the corps may draw upon their special skills which may contribute to the attainment of the purposes of the Act.

(2) Except in the case of a program limited to the months of June, July, and August, individuals who at the time of applying for enrollment have attained 16 years of age but not attained 19 years of age, and who are no longer enrolled in any secondary school shall not be enrolled unless they give adequate written assurances, under criteria to be established by the Secretary of the Interior and the Secretary of Agriculture, that they did not leave school for the express purpose of enrolling. The regulations promulgated under section 4(b) shall provide such criteria.

(3) The selection of enrollees to serve in the American Conservation Corps shall be the responsibility of the chief administrator of the program agency. Enrollees shall be selected from those qualified persons who have applied to, or been recruited by, the program agency, a State employment security service, a local school district with an employment referral service, an administrative entity under the Job Training Partnership Act, a community or community-based nonprofit organization, the sponsor of an Indian program, or the sponsor of a migrant or seasonal farmworker program.

(4)(A) Except for a program limited to the months of June, July, and August, any qualified individual selected for enrollment may be enrolled for a period not to exceed 24 months. When the term of enrollment does not consist of one continuous 24-month term, the total of shorter terms may not exceed 24 months.

(B) No individual may remain enrolled in the American Conservation Corps after that individual has attained the age of 26 years, except as provided in subsection (a)(1)(D) of this section.

(5) Within the American Conservation Corps the directors of programs shall establish and stringently enforce standards of conduct to promote proper moral and disciplinary conditions. Enrollees who violate these standards shall be transferred to other locations, or dismissed, if it is determined that their retention in that particular program, or in the Corps, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees. Such disciplinary measures will be subject to expeditious appeal to the appropriate Secretary.

(b) SERVICES, FACILITIES, SUPPLIES.—The program agency shall provide facilities, quarters, and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, and other appropriate services, supplies, and equipment. The Secretary of the Interior and the Secretary of Agriculture may provide services, facilities, supplies, and equipment to any program agency carrying out projects under this Act. Whenever possible, the Secretary of the Interior and the Secretary of Agriculture shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment. Basic standards of work requirements, health, nutrition, sanitation, and safety for all projects shall be established and enforced.

(c) REQUIREMENT OF PAYMENT FOR CERTAIN SERVICES.—Enrollees shall be required to pay a reasonable portion of the cost of room and board provided at residential facilities into rollover funds administered by the appropriate program agency. Such payments and rates are to be established after evaluation of costs of providing the services. The rollover funds established pursuant to this section shall be used solely to defray the costs of room and board for enrollees. The Secretary of the Interior and the Secretary of Agriculture and the Secretary of Defense are authorized to make available to program agencies surplus food and equipment as may be available from Federal programs.

SEC. 6. FEDERAL AND STATE EMPLOYMENT STATUS.

Enrollees, crew leaders, and volunteers are deemed as being responsible to, or the responsibility of, the program agency administering the project on which they work. Except as otherwise specifically provided in the following paragraphs, enrollees and crew leaders in projects for which funds have been authorized pursuant to section 13 shall not be deemed Federal employees and should not be subject to the provisions of law relating to Federal employment:

(1) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, enrollees and crew leaders serving American Conservation Corps program agencies shall be deemed employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 6, United States Code, and the provi-

sion of that subchapter shall apply, except—

(A) the term "performance of duty" shall not include any act of an enrollee or crew leader while absent from his or her assigned post of duty, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee's or crew leader's employment is terminated.

(2) For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, enrollees and crew leaders on American Conservation Corps projects shall be deemed employees of the United States within the meaning of the term "employee of the Government" as defined in section 2671 of title 28, United States Code.

(3) For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, enrollees and crew leaders shall be deemed employees of the United States within the meaning of the term "employee" as defined in that section.

SEC. 7. USE OF VOLUNTEERS.

Where any program agency has authority to use volunteer services in carrying out functions of the agency, such agency may use volunteer services for purposes of assisting projects carried out under this Act and may expend funds made available for those purposes to the agency, including funds made available under this Act, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, subsistence, recruiting, training, and supervision. The use of volunteer services permitted by this section shall be subject to the condition that such use does not result in the displacement of any enrollee.

SEC. 8. TENNESSEE VALLEY AUTHORITY.

The Board of Directors of the Tennessee Valley Authority may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Tennessee Valley Authority except policymaking or law or regulatory enforcement. Such volunteers shall not be deemed employees of the United States Government except for the purposes of chapter 81 of title 5 of the United States Code, relating to compensation for work injuries, and shall not be deemed employees of the Tennessee Valley Authority except for the purposes of tort claims to the same extent as a regular employee of the Tennessee Valley Authority would be under identical circumstances.

SEC. 9. SPECIAL RESPONSIBILITIES.

(a) PAY.—(1) The rate of pay for enrollees shall be the equivalent of 95 percent of the pay rate for members of the Armed Forces in the enlisted grade E-1 who have served for four months or more on active duty, from which a reasonable charge for enrollee room and board shall be deducted by the program agency.

(2) Enrollees shall receive $50 cash incentive stipends for every three months of enrollment in the program.

(3) The rate of pay for crew leaders shall be at a wage comparable to the compensation in effect for grades GS-3 to GS-7.

(b) COORDINATION.—The Secretary of the Interior and the Secretary of Agriculture and the chief administrators of program agencies carrying out programs under this Act shall coordinate the programs with related Federal, State, local, and private activities.

(c) CERTIFICATION AND ACADEMIC CREDIT.—Pursuant to the provisions of subparagraphs (B) and (C) of section 4(g)(3), the Secretary of the Interior and the Secretary of Agriculture shall provide guidance and assistance to program agencies in securing certification of training skills or academic credit for competencies developed under this Act.

(d) RESEARCH AND EVALUATION.—The Secretary of the Interior shall provide for research and evaluation to—

(1) determine costs and benefits, tangible and otherwise, of work performed under this Act and of training and employable skills and other benefits gained by enrollees, and

(2) identify options for improving program productivity and youth benefits, which may include alternatives for—

(A) organization, subjects, sponsorship, and funding of work projects;

(B) recruitment and personnel policies;

(C) siting and functions of facilities;

(D) work and training regimes for youth of various origins and needs; and

(E) cooperative arrangements with programs, persons, and institutions not covered under this Act.

(e) CCC SITES.—The Secretary of the Interior, after consultation with the Secretary of Agriculture, shall study sites at which Civilian Conservation Corps activities were undertaken for purposes of determining a suitable location and means to commemorate the Civilian Conservation Corps. Not later than one year after the date of the enactment of this Act, the Secretary of the Interior shall submit a report to the Congress containing the results of the study carried out under this section. The report shall include cost estimates and recommendations for any legislative action.

(f) STUDY.—(1) Program agencies shall not use more than 10 percent of the funds available to them to provide training and educational materials and services for enrollees and may enter into arrangements with academic institutions or education providers, including local education agencies, community colleges, four-year colleges, area vocational-technical schools and community based organizations, for academic study by enrollees during nonworking hours to upgrade literacy skills, obtain a high school diploma or its equivalency, or college degrees, or enhance employable skills. Enrollees who have not obtained a high school diploma or its equivalency shall have priority to receive services under this subsection. Whenever possible, an enrollee seeking study or training not provided at his or her assigned facility shall be offered assignment to a facility providing such study or training.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under paragraph (1) shall be consistent with the requirement of applicable State and local law and regulations.

(g) GUIDANCE AND PLACEMENT.—Program agencies shall provide such job guidance and placement information and assistance for enrollees as may be necessary. Such assistance shall be provided in coordination with appropriate State, local, and private agencies and organizations.

SEC. 10. ANNUAL REPORT.

The Secretary of the Interior and the Secretary of Agriculture shall prepare and submit to the President and to the Congress at least once each year a report detailing the activities carried out under this Act in the preceding fiscal year. Such report shall be submitted not later than December 31 of each year following the date of enactment of this Act.

SEC. 11. LABOR MARKET INFORMATION.

The Secretary of Labor shall make available to the Secretary of the Interior and the Secretary of Agriculture and to any program agency under this Act such labor market information as is appropriate for use in carrying out the purposes of this Act.

SEC. 12. EMPLOYEE APPEAL RIGHTS.

(a) FEDERAL EMPLOYEES.—In the case of—

(1) the displacement of a Federal employee (including any partial displacement through reduction of nonovertime hours, wages, or employment benefits) or the failure to reemploy an employee in a layoff status, contrary to a certification under section 13(c) (1) or (2), or

(2) the displacement of such a Federal employee by reason of the use of one or more volunteers under section 7 of this Act.

such employee is entitled to appeal such action to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

(b) OTHER INDIVIDUALS.—In the case of—

(1) the displacement of any other individual employed (either directly or under contract with any private contractor) by a program agency or grantee, or the failure to reemploy an employee in layoff status, contrary to a certification under section 13(c) (1) or (2), or

(2) the displacement of such individual by reason of the use of one or more volunteers under section 7 of this Act,

the requirements contained in section 144 of the Job Training Partnership Act (Public Law 97-300) shall apply, and such individual shall be deemed an interested person for purposes of the application of such requirements.

(c) DEFINITION.—For purposes of this section, the term "displacement" includes, but is not limited to, any partial displacement through reduction of nonovertime hours, wages, or employment benefits.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) DISTRIBUTION OF FUNDS.—Of the sums appropriated pursuant to subsection (g) to carry out this Act for any fiscal year—

(1) not less than 50 percent shall be made available to the Secretary of the Interior for expenditure by State program agencies which have been approved by the Secretary of the Interior for participation in the American Conservation Corps;

(2) not less than 15 percent shall be made available to the Secretrary of Agriculture for expenditure by agencies within the Department of Agriculture, subject to the provisions of subsection (e);

(3) not less than 5 percent shall be made available to the Secretary of Agriculture, under such terms as are provided for in regulations promulgated under section 4(b), for expenditure by other Federal agencies;

(4) not less than 25 percent shall be made available to the Secretary of the Interior for expenditure by agencies within the Department of the Interior, subject to the provisions of subsection (e), and for demonstration projects or projects of special merit carried out by any program agency or by any nonprofit organization or local government which is undertaking or proposing to undertake projects consistent with the purposes of this Act;

(5) not less than 5 percent shall be made available to the Secretary of the Interior for expenditure by the governing bodies of participating Indian tribes.

(b) AWARD OF GRANTS.—Within 60 days after enactment of appropriations legislation pursuant to subsection (g), any program agency may apply to the Secretary of the Interior for funds under this Act. In determining the allocation of funds among the program agencies, the Secretary shall consider each of the following factors:

(1) The proportion of the unemployed youth population of the State.

(2) The the conservation, rehabilitation, and improvement needs on public lands within the State.

(3) The amount of other support for the program and the extent to which the size and effectiveness of a program will be enhanced by the use of the Federal funds.

Any State receiving funds for the operation of any program under this Act shall be required to provide not less than 50 percent of the cost of such program.

(c) NON-DISPLACEMENT.—The Secretary of the Interior and the Secretary of Agriculture shall not fund any program or enter into any agreement with any program agency for the funding of any program under this Act unless the Secretary concerned or such agency certifies that projects carried out by the program will not—

(1) result in the displacement of individuals currently employed (either directly or under contract with any private contractor) by the program agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the program agency concerned;

(3) impair existing contracts for services; or

(4) result in the inability of persons who normally contract with the agency for carrying out projects involving forestry, nursery, or silvicultural operations on commercial forest land to continue to obtain contracts to carry out such projects.

For purposes of paragraph (4), the term "commercial forest land" means land in the National Forest System or land administered by the Secretary of the Interior through the Bureau of Land Management which is producing, or is capable of producing, 50 cubic feet per acre per year of industrial wood and which is not withdrawn from timber utilization by statute or administrative decision.

(d) STATE SHARE TO LOCAL GOVERNMENTS.—If, at the commencement of any fiscal year, any State does not have a program agency designated by the Governor to manage the program in that State, then during such fiscal year any local government within such State may establish a program agency to carry out the program within the political subdivision which is under the jurisdiction of such local government. Such local government program agency shall be in all respects subject to the same requirements as a State program agency. Where more than one local government within a State has established a program agency under this subsection, the Secretary of the Interior shall allocate funds between such agencies in such manner as he deems equitable.

(e) PROGRAMS ON FEDERAL LANDS.—Funds provided under this section to any Federal agency shall be used to carry out projects on Federal lands and to provide for the Federal administrative costs of implementing this Act. In utilizing such funds, the Federal agencies may enter into contracts or other agreements with program agencies and with local governments and nonprofit organizations approved under section 4(h).

(f) PAYMENT TERMS.—Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary of the Interior or the Secretary of Agriculture, as appropriate, finds necessary.

(g) USE OF FUNDS.—Contract authority under this Act shall be subject to the availability of appropriations. Funds provided under this Act shall only be used for activities which are in addition to those which would otherwise be carried out in the area in the absence of such funds. Not more than 10 percent of the funds made available to any program agency for projects during each fiscal year may be used for the purchase of major capital equipment.

(h) ADMINISTRATIVE EXPENSES.—The regulations under section 4(b) shall establish appropriate limitations on the administrative expenses of Federal agencies and program agencies carrying out programs under this Act. Such limitations shall insure that administrative expenses of such programs shall be minimized to the extent practicable taking into consideration the purposes of this Act and the nature of the programs carried out under this Act.

(i) APPROPRIATION LEVELS.—There is authorized to be appropriated for the purposes of carrying out this Act $75,000,000 for each of the fiscal years 1988 through 1990. Funds appropriated under this Act shall remain available until expended.

By Mr. MOYNIHAN:

S. 28. A bill to limit the grounds and improve the process for excluding aliens from the United States; to the Committee on the Judiciary.

REVISION OF ALIEN EXCLUSION ACT

● Mr. MOYNIHAN. Mr. President, for the past 35 years, legislation to bar nonimmigrant aliens on ideological grounds has exposed our Nation to needless ridicule and undermined the respect for free speech we hope to promote around the world. The bill I offer today would enable us to preserve our Nation's security without eroding our principles.

Two basic problems surround the denial of nonimmigrant visas under the Immigration and Nationality Act of 1952, widely referred to as the McCarran-Walter Act. The first is that McCarran-Walter provides grounds for exclusion that are overly broad, and in some cases wholly unrelated to the needs of U.S. security and foreign policy. Subsection 212(a)(28) of that act bars the entry of aliens who are members of anarchist, Communist or other proscribed organizations, or who advocate such proscribed beliefs. No evidence is required under this subsection that an alien would engage in activities endangering U.S. security or that admitting the alien would undermine U.S. foreign policy; the alien's purported ideology is alone sufficient to exclude him from entering the United States.

Choichiro Yatani recently discovered this in a most unpleasant fashion. A Japanese national who had been in the United States on a student visa since 1977, and who for the past 4 years was teaching and pursuing a Ph.D. at the State University of New York at Stony Brook, Mr. Yatani returned to the United States on July 7, 1986, after visiting the Netherlands (where he had obtained a new student visa at the U.S. Consulate in Amsterdam). But Mr. Yatani was detained upon his return to Kennedy Airport—and kept in detention away from his family for over a month, during which time his visa was revoked and he was threatened with deportation. The reason: according to the New York Times of August 22, 1986, Mr. Yatani was accused of being a member of a Japanese Communist student organization nearly 20 years ago.

And there have been dozens of other foreigners just as unlikely to threaten our security, who, nevertheless, have been slated for exclusion. Pierre Trudeau; Graham Greene; Gabriel-Garcia Marquez; the list goes on and on.

But the fact that such exclusions can seem almost laughably unjustified must not blind us to the damage they do. By excluding aliens on ideological grounds, we behave as if we were afraid of their ideas, lending those ideas a credence that might evaporate under proper scrutiny. Noting that several journalists were kept out or expelled from the United States in 1986, a global survey of press freedom published this month by the Freedom House states:

> Far better to have allowed them to enter and face their accusers. Invoking the [McCarran-Walter] act confounded friends and pleased adversaries who branded as hypocritical U.S. concerns for human rights.

We should limit the grounds for exclusion to cases where reasons of national security or foreign policy make such exclusions truly necessary, not merely exercises in self-humiliation.

The second major problem surrounding McCarran-Walter is that even when the Government claims such necessary grounds for exclusion, under subsections (212)(a) (27) or (29), current provisions for reviewing those claims are wholly inadequate. The Departments of State and Justice are usually reluctant to release the evidence they believe justifies their claims, particularly when disclosure of that evidence might compromise sensitive intelligence sources and methods. And this is a legitimate concern.

But in the absence of prior review outside the executive branch for visa denials, and with the reluctance of that branch to admit that U.S. citizens have the right to challenge such visa denials after the fact, abuses have occurred. Some visa denials made on the basis of alleged threats to security

have been downright ludicrous. Farley Mowat, Canadian naturalist and author of "Never Cry Wolf", was denied entry into the United States on April 23, 1985. The primary reason: according to the New York Times of April 25, 1986, Mr. Mowat was deemed to pose a violent threat to U.S. Armed Forces, based on a report that he once claimed to have fired a .22 caliber rifle at a B-52 flying overhead.

By invoking McCarran-Walter where no threat exists to our security, we open our country and our most fundamental principles to unnecessary ridicule. When solid reasons do exist for excluding aliens, public support for such exclusions can be undermined by the perception—all too well-founded—that visa denials are frequently unjustified. And as demonstrated by the case of Patricia Lara, the lack of a viable means for reviewing exclusion evidence outside the executive branch can foster persistent doubts as to the justification for visa denials.

I stated on October 15, 1986, that "in the 100th Congress, we ought to examine the statute and see how it can be made to reflect what is best in our country, and not what comes from us in the legacy from a past which is as little honored in the present time as was the period of the Alien and Sedition Acts in the last decade of the 18th century. We are perfectly capable of protecting our security interests without embarrassing our Nation."

The legislation I propose today will help us do just that. This legislation addresses both of the problems surrounding McCarran-Walter: the need to limit grounds for exclusion to bonafide national security and foreign policy requirements, and the need to improve the process by which exclusion requests are reviewed.

Eliminating subsection 212(a)(28) of McCarran-Walter, which provides the basis for excluding aliens on ideological grounds, will go far toward resolving the first problem. Many more visa denials are made on the basis of subsection (28) than of (27) or (29); in fiscal year 1986, a total of 559 visas were denied under subsection (28) after the review process provided by the so-called McGovern amendment. Only 33 visa denials were made during the same period on the basis of subsection (27), and 13 on the basis of (29).

But while relatively few denials are made on the basis of subsections (27) and (29), we still need the grounds provided by those subsections to exclude aliens who would undermine U.S. foreign policy or endanger our security. In particular, given the threat to foreign policy goals that could be posed by members of the PLO or other terrorist organizations, we must retain the basis for denying entry to such aliens under subsection (27), which provides for the exclusion of aliens who would "engage in activities prejudicial to the public interest."

However, we must also take measures to improve the process by which requests for such visa denials are reviewed. The legislation I propose today would do this by requiring that before any alien is denied a visa under subsections (27) or (29), the Attorney General (in consultation with the Secretary of State) shall apply for an order approving that denial to the special court established by the Foreign Intelligence Surveillance Act of 1978. This court is well-suited for considering the relatively small number of such applications that would be made; it already reviews over 500 requests each year for foreign intelligence wiretaps, and does so in a manner specifically designed to protect sensitive information.

Applications for orders to exclude aliens would need to include the factual basis for the Attorney General's knowledge or reasonable grounds for belief that permitting entry to the United States would violate subsections (27) or (29) (which would be redesignated (27) and (28) after amending McCarran-Walter to strike current subsection (28)). Applications would be denied if the court concluded that the Attorney General did not have such knowledge or reasonabie gounds for believing that entry of an alien would violate those subsections. A review process similar to that already established for wiretap requests would be initiated if the court denied a visa request. And as with the consideration of wiretap requests, my legislation would require that the court's proceedings be both expeditious and consistent with the security measures deemed necessary by the Attorney General and other officials.

This legislation also clarifies the standing of U.S. citizens to bring civil action when they had hoped to communicate with or listen to an alien, whose visa they allege was wrongfully denied on the basis of subsections (27) or (29). Together with the elimination of McCarran-Walter's exclusion of aliens on ideological grounds, and the requirements that exclusion requests be granted prior approval by a special court, this clarification of standing for civil action should do much to promote free speech while preserving national security.

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

There being no objection, the bill was ordered to be printed in the RECORD, as follows: To limit the grounds and improve the process for excluding aliens from the United States.

S. 28

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 "Revision of Alien Exclusion Act of 1987."

SEC. 2. (a) Section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—

(1) by striking out paragraph (28); and

(2) by redesignating paragraphs (29) through (33) as paragraphs (28) through (32), respectively.

(b) Section 235(c) of the Immigration and Nationality Act is repealed.

SEC. 3. (a) Before any alien is denied a visa to the United States or is otherwise excluded from admission to the United States under paragraphs 27 or 28 of the Immigration and Nationality Act, as amended, the Attorney General (in consultation with the Secretary of State) shall apply for an order approving such denial to the court described in section 103 (a) of the Foreign Intelligence Surveillance Act of 1978. Such application shall include the factual basis for the Attorney General's knowledge or reasonable grounds for belief that issuing a visa permitting admission to the United States would violate paragraphs 27 or 28.

(b) An application for an order shall be denied by such court if the court concludes that the Attorney General does not have knowledge or reasonable grounds for belief that issuing a visa or permitting admission to the United States would violate paragraphs 27 or 28 of the Immigration and Nationality Act, as amended.

(c)(1) If any judge designated under section 103(a) of such Act denies an application for an order described in subsection (3)(a), such judge shall provide immediately for the record a written statement of each reason for his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in section 103(b) of such Act.

(c)(2) If the court of review established in section 103(b) of such Act affirms the denial of the application for an order described in subsection (3)(a), then the Secretary of State shall promptly issue a visa to the alien or the Attorney General shall promptly admit the alien to the United States, as the case may be.

(d) In considering and reviewing applications to deny visas or exclude aliens from admission to the United States, the court and court of review described in section 103(a) and 103(b) of such Act shall conduct those proceedings as expeditiously as possible. The record of such proceedings, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General, Secretary of State and the Director of Central Intelligence.

SEC. 4. Any citizen of the United States or other person within the jurisdiction thereof who intends to communicate in person with, including attending a function for purposes of listening to, an alien who is denied a visa or excluded from admission into the United States on the basis of paragraphs 27 and 28 of Section 212(a) of the Immigration and Nationality Act, as amended, may bring a civil action on his or her own behalf against any official of the United States Government who is alleged to have wrongfully denied a visa to the alien or wrongfully excluded the alien from the United States. Any civil action under this section may be brought in the district in which the intended communication was to have occurred, in the district of the plaintiff's residence or principal place of business, in the district in which any defendant in the action resides,

or in the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to grant legal or equitable relief.●

By Mr. MOYNIHAN:

S. 29. A bill to authorize the procurement and installations of cryptographic equipment at satellite communications facilities within the United States, and for other purposes; to the Committee on Armed Services.

SATELLITE COMMUNICATIONS SECURITY

● Mr. MOYNIHAN. Mr. President, "the massive Soviet surveillance efforts from Cuba and elsewhere demonstrate * * * that the Soviet intelligence payoff from interception of unsecured communications is immense." This is the conclusion of the Senate Select Committee on Intelligence. In spite of a number of important communications security initiatives, such as the Secure Telephone Unit III Program, the Soviets continue to target critical communications paths within the United States from their diplomatic facilities in New York, San Francisco, and Washington, as well as from their satellite listening facility at Lourdes, Cuba. At risk is the Nation's telephone system which carries voice, facsimile, and teleprinter traffic for the U.S. military, civilian government agencies, defense conractors, and private citizens.

The military, government employees, and our constituents should know—must know—that more than half of all telephone calls in the United States made over any distance are vulnerable to interception. Moreover, calls the caller believes to be on less vulnerable circuits may be automatically switched to more vulnerable ones. Nevertheless, the Senate Select Committee on Intelligence found in their October 1986 review of U.S. counterintelligence that current plans do not fully respond to the threat to long-distance communications relayed over satellite links and intercepted from sites like the one in Cuba.

The Soviet facility at Lourdes, Cuba, is the largest and most sophisticated Soviet listening facility outside its national territory. Started in the mid-1960's, Lourdes has grown by 60 percent in the past decade alone. The facility is manned by 2,100 technicians—sometimes equivalent to half the Foreign Service officers in the State Department. Its ground station allows instant communication and relay with Moscow. This facility is a communications security threat.

The low-cost secure equipment developed under NSA's leadership will address the problem; I speak here of the STU-III Program. But efforts to neutralize the Soviet intercept operations should not depend so heavily on the marketplace. The pace is too slow, and some sources may choose simply not to buy the units at all, or not in sufficient quantity at $2,000 a copy. Moreover, there is the continued, human, problem of officials failing to follow strict security rules—"talking around" sensitive subjects on open lines. The initiative I introduce today is particularly user friendly. It is automatic and does not require any effort on the part of the user.

There are two ways to counter the Soviet threat to telecommunications: reroute circuits to more secure means, for example cable, or encrypt the substance of transmissions making them unintelligible to eavesdroppers. Although we are actively pursuing both countermeasures, there are still communications links which carry unclassified, but sensitive information, which also need protecting. Computers can sift through this wash of unclassified information and select key words or, perhaps, names for further analysis. National Security Decision Directive 145, which defines the President's telecommunications security policy states: "Such information, even if unclassified in isolation, often can reveal highly classified and other sensitive information when taken in aggregate."

In the past year the public has learned only too well the central role communications security and interception can play in the formulation of national policy. In an editorial, "The Russians are Listening" the New York Daily News called attention to an incident during the hijacking of the *Achille Lauro* in October 1985. The President was aboard Air Force One when he decided to order the Navy to force down the Egyptian airliner. The President's order was overheard by a ham radio operator. "And," the News asks, "who else?" A near miss.

The bombing of the Berlin nightclub in April 1986 was no miss. Communications intercepts, as reported in the New York Times, demonstrated a direct link between the bombing and Libyan fanatic Qadhafi. As a result, the President ordered United States forces to bomb targets in Libya. And there are other examples, but they remain classified, and justifiably so.

Today I introduce, for a second time, the Satellite Communications Security Act. This measure, as modified, will provide funding to encrypt selected sensitive domestic satellite communications. By this I mean those selected circuits carried over domestic commercial satellites having the greatest impact on the national defense and foreign policy of the United States. Such circuits will be selected by the Secretary of Defense with the review and concurrence of the Congress through the authorization and appropriations process.

I do not intend such an earmark of "sensitive" to prohibit information from ourselves. That is not the answer. The free exchange of information is one of our strengths. This legislation bars only information from the Soviets and their allies by making it unintelligible. Let me highlight that again—this legislation will not prohibit the access of the American public to information they are already entitled to.

A more expansive, and expensive, proposal in the 99th Congress received support. Although the Senate Defense authorization bill included $129 million to begin implementation of certain communications security enhancements and other programs, this sum was pared down to $44 million in conference. We did even less well with the appropriations process.

A major problem is that communications security has no constituency. It is often a stepchild in the defense budget process. There is no product involved. There are few jobs involved. You can never really be sure the Soviets did not get the message. But it is our national policy to "assure the security of sensitive Government national security information, and offer assistance in the protection of certain private sector information. . . ." NSDD-145 signed by President Reagan in September 1984 says just that. It will cost us some money, approximately $560 million over 5 years, but it would cost us so much more not to do so.

May I leave you with a thought. The New York Times reported on Novermber 27, 1986, that Government agencies had received intercepts linking the sale of arms to Iran with the transfer of funds to the Contras. Similar intercepts from Lourdes or another site could provide the Soviets, and others, an advance look inside our decisionmaking we dare not give them.

Mr. President, I ask unanimous consent that the full text of the bill be printed at this point.

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

S. 29

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) This Act may be cited as the "Satellite Communications Security Act of 1987".

(b) The purpose of this Act is to provide further for the security of satellite communications transmissions between facilities within the United States and to prevent the interception of, or access to, such transmissions by foriegn governments or other unauthorized parties.

(c)(1) To carry out the purposes of subseciton (b), the Secretary of Defense, acting through the National Security Agency and acting in cooperation with private enterprises engaged in satellite communications within the United States, is authorized to procure and install cryptographic equipment at satellite communications facilities within the United States.

(2) Any private enterprise owning a satellite communications facility at which equipment was installed under paragraph (1) shall be reimbursed by the Secretary of De-

fense for the costs incurred in operating and maintaining such equipment.

(d) The Provisions of subsections (b) and (c) shall apply only to any communications system utilizing direct satellite transmissions which—

(1) on reception, are switched through a common carrier system;

(2) have greatest impact on the national defense or foreign policy of the United States; and

(3) are carried on a circuit or service which—

(A) is leased by the United States Government;

(B) is related to national security, including any circuit leased by a private corporation or organization having a contract with the United States Government, particularly a contract with the Department of Defense; or

(C) is leased by any organization concerned with large financial transactions, commodities, stock transactions, or economic forecasts.

(e)(1) There are authorized to be appropriated to the Secretary of Defense for use by the National Security Agency such sums as may be necessary to carry out the provisions of this Act.

(2) Amounts appropriated under this subsection are authorized to remain available until expended.

(f) For purposes of this Act—

(1) the term "common carrier" has the same meaning as such term is defined in section 3(h) of the Communications Act of 1933 (47 U.S.C. 153(h)); and

(2) the term "United States" refers to the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.●

By Mr. MOYNIHAN:

S. 30. A bill entitled the "Exchange Rate Adjustment Act of 1987"; to the Committee on Banking, Housing, and Urban Affairs.

EXCHANGE RATE ADJUSTMENT ACT

Mr. MOYNIHAN. Mr. President, today I rise to introduce a bill to address a problem that has plagued this Nation's economy for 6 years: the continuing high value of the U.S. dollar.

A year and a half ago I introduced a bill containing several of the provisions of this bill—S. 1548—at a time when the problem of the "overvalued" dollar and its detrimental effect on U.S. trade balances occupied much congressional attention.

Since that time there have been developments that have led some to believe that our exchange rate woes are over. According to the Federal Reserve Board trade weighted basket of the currencies of 10 major trading nations, the dollar has depreciated 33 percent since its peak in February 1985 including a 37-percent drop against the yen and a 39-percent drop against the mark. The Fed figure weighs the dollar value of the 10 currencies of the Group of 10 nations by their shares of total world trade using trade data from 1972 to 1976.

These are important developments, indeed, but let me suggest that these figures are a bit misleading and that, in fact, the value of the U.S. dollar remains at an historically high level. According to that same Federal Reserve Board measure, the trade weighted value of the dollar remained 22 percent higher in October 1986 then the average level in 1980.

Moreover, if we look at a new measure of the dollar developed by the Dallas Federal Reserve Bank the evidence that the overvalued dollar program persists is even more startling. According to that measure—the X-131, which weighs the currencies of all 131 U.S. trading partners by their total bilateral trade with the U.S. (exports plus imports) using current trade data, the dollar was 82 percent higher in October 1986 than during 1980. And between its peak in February 1985 and October 1986, the dollar depreciated only 3 percent according to the X-131 currency index.

The tax on American exports and subsidy of foreign imports implicit in the dollar's high exchange rate since 1980 has contributed to a cumulative trade deficit of approximately $600 million in the last 6 years.

Under the floating exchange system prevailing since 1973, such deficits should depreciate the dollar, since foreign exchange must be bought with dollars to pay for the imports, and the increased supply of dollars should reduce the price of the dollar against foreign currencies.

But this has not happened. Instead the price of the dollar has risen sharply because of an extraordinary foreign demand for dollars to invest in this country. Relatively high U.S. interest rates, due to a great extent to unprecedented Federal budget deficits (a cumulative $1,030 billion since the beginning of 1981), have attracted foreign investment and hence a great demand for dollars to make those investments.

The price of the dollar is now largely determined by international investment flows, not trade flows. Foreign exchange transactions for investment purposes are estimated to be at least 10 times the amount needed to finance international trade transactions. And rapid and large scale capital flows are possible as a result of liberalized and computerized international financial markets.

In addition, international foreign exchange markets, like any market, are subject to numerous market imperfections. Decisions may be based on dated, erroneous, incomplete, or noneconomic information. Decisions may also be made in anticipation of the continuation of market trends—a "bandwagon effect."

The combination of large international capital flows and market imperfections have led to excessive short-term fluctuations and have contributed to the market overshooting a dollar price that reflects underlying trade realities.

There are also those who believe, and fear, that the combination of continuing merchandise trade and current account deficits, reduced expectations of economic growth in the United States, and market imperfections could produce a sharp drop in the demand for dollars to invest in the United States. Such a run on the dollar would lead to a sudden and sharp drop in the dollar's price, and a corresponding sudden rise in the cost of imported goods that could reignite inflation, causing a painful adjustment process and serious damage to the economy.

And so we have a volatile and overpriced currency that is inextricably linked to production and employment in this country. The time has come to develop a policy to contain this situation.

What, then, can we do to achieve a gradual and lasting reduction in the dollar's price, while guarding against the potential crisis of a precipitous fall in that price?

To begin with, we must take action to reduce the Federal budget deficit in order to reduce the high interest rates that attract foreign capital. In addition, the governments of all industrialized nations representing the major trading currencies must coordinate their macroeconomic policies.

The U.S. Government could also supplement and complement these actions through intervention in the foreign exchange markets to purchase substantial amounts of major foreign currencies with dollars thereby developing a "Strategic Foreign Currency Reserve." The acquisition of such a reserve could correct market imperfections, reduce the extent and slow the pace of exchange rate movements, resist further increases in the dollar's price, and assist its gradual decline in price.

A "Strategic Foreign Currency Reserve" would also provide the Treasury and Federal Reserve Board with the means to resist any sudden large drop in the dollar's price by selling foreign currencies in the Reserve and purchasing dollars thereby helping to support the dollar's price.

Of course, to be most effective, intervention by the Department of the Treasury or Federal Reserve Board should be coordinated, whenever possible, with intervention by the central banks of the countries constituting the Group of Ten.

The legislation I am proposing would direct the Department of the Treasury and the Federal Reserve Board to acquire such a Strategic Foreign Currency Reserve by exchanging at least $30 billion for the currencies of the Group of Ten countries within a 3-year period, and to coordinate that intervention wherever possible.

The Federal Government must also develop a policy regarding the price of the U.S. dollar against specific currencies.

Since February 1985, the currencies of several major U.S. trading partners have depreciated significantly against the dollar, particularly the yen and the mark.

The Secretary of the Treasury, apparently satisfied by this turn of events, agreed to abandon efforts to induce a further decrease in the value of the yen as part of an agreement of economic cooperation with Japan announced on October 31, 1986.

This concession was made in exchange for promises by Japan to stimulate its economy. However, the prospect of Japanese economic expansion is uncertain, and even with such an expansion there is a need for further appreciation of the yen against the dollar.

In addition, the currencies of several major U.S. trading partners have not adjusted significantly against the dollar. Since February 1985 the value of the South Korean won increased 4 percent; the Taiwan dollar decreased 7 percent; the Hong Kong dollar has not changed; and the Canadian dollar has increased 2 percent. These four countries alone account for about 30 percent of U.S. trade.

These currencies have not moved significantly with respect to the value of the dollar because those countries appear to formally tie or informally peg their currencies to the value of the U.S. dollar. This is certainly having an adverse effect on the U.S. balance of trade, as South Korea, Taiwan, Hong Kong, and Canada account for almost one-third of this year's U.S. trade deficit. (The 1986 U.S. trade deficit with these countries increased by over 10 percent over 1985.)

Exchange rates must be allowed to adjust to underlying economic fundamentals so that the United States may compete fairly in foreign trade and the Federal Government must negotiate with countries which formally or informally peg or tie their currencies to the U.S. dollar to ensure that this adjustment occurs.

The legislation I am introducing today would require the President to enter into negotiations on a priority and expedited bilateral basis with countries which formally tie or informally peg their currencies to the United States dollar (including Hong Kong, South Korea and Taiwan) to ensure that these countries regularly and promptly adjust the exchange rate between their currencies and the United States dollar to accurately reflect underlying economic fundamentals.

This bill would also require the President to issue a report that contains a discussion of exchange market developments over the previous 6 months, including the magnitude of changes in the values of the major currencies—and those currencies pegged or tied to the U.S. dollar—and the reasons for those changes.

Finally, I fear that the disparate appreciation—and depreciation—of the dollar against the currencies of U.S. trading partners is inadequately and possibly inaccurately reflected in commonly cited indices of changes in the exchange rate of the dollar.

The Federal Reserve System calculates the value of the dollar in the two ways I discussed earlier. In addition to those measures, the Department of Commerce calculates the value of the dollar against the currencies of the G-10 countries plus Austria, Denmark and Norway and weighs those currencies by their country's share of bilateral merchandise trade with the United States in 1983. The Morgan Guaranty Bank measures the dollar against a total of 15 currencies— adding Australia and Spain—and weighs those currencies by their country's share of bilateral merchandise trade with the United States in 1980. Merrill Lynch & Co., Inc. measures the dollar against the currencies of the 25 countries that were the biggest exporters to, and importers from the United States in 1985.

This bill would direct the Secretary of the Treasury and Chairman of the Federal Reserve Board to develop a more accurate index of the U.S. dollar's exchange rate and issue a report explaining their methodology in calculating the index.

In addressing our tremendous trade problem, we need to take action on a range of issues that are contributing to the malaise. The high price of the U.S. dollar is a key factor in this situation and I urge my colleagues to support these measures as a step toward maintaining U.S. economic prosperity.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 30

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

SEC. 1. SHORT TITLE.—This Act may be cited as the "Exchange Rate Adjustment Act of 1987."

SEC. 2. FINDINGS.—

The Congress finds and declares that:

(1) Between January 1981 and February 1985, the exchange rate of the dollar against US trading partners appreciated 81% to 88% over its average 1980 level according to the Federal Reserve Bank of Dallas and the Federal Reserve Bank in Washington.

(2) Between February 1985 and October 1986, the exchange rate of the dollar depreciated only 3% to 33% according to the Federal Reserve measures.

(3) The current exchange rate of the dollar remains too high. According to the Federal Reserve measures, in October 1986 the average value of the dollar was 22% to 82% higher than in 1980.

(4) The overvalued dollar is a problem, not a source of pride. Administration officials have estimated that during the last few years the high price of the dollar was the single largest factor contributing to the US trade deficit.

(5) The high price of the dollar makes American goods more expensive in foreign markets, while foreign produced goods become cheaper in the Americans markets. Thus, the high price of the dollar acts as a tax on American exports and subsidy of foreign imports.

(6) The high price of the dollar has resulted in much of the growth in domestic demand being satisfied with foreign imports, not domestically produced goods, to the detriment of industrial production and employment in the US.

(7) The appreciation of the dollar has contributed to the "de-industrialization" of the United States. United States companies have: established plants abroad and imported finished products; imported major components and assembled the finished product in the US; and abandoned foreign markets. Foreign companies have been able to build distribution networks in the US and their increased export volume has permitted those companies to realize economies of scale and take advantage of state-of-the-art technology.

(8) These effects are not easily or quickly reversed by a subsequent depreciation in the value of the dollar. They occur, if at all, only after a protracted period of time.

(9) The value of the dollar has lost its relationship to international trade flows and is higher than is warranted by underlying factors such as relative productivity and inflation. The increase in the value of the dollar since 1980 occurred despite the existence of record merchandise trade and current account deficits totalling an estimated $600 billion and $410 billion respectively.

(10) The dollar's appreciation since 1980 occurred because foreign demand for dollars was so great that it exceeded the available supply, even taking into account the supply of dollars resulting from the need to pay for imports. This demand for dollars has been investment, not trade, generated.

(a) Foreign investors who have bought dollars with their currencies to directly and indirectly invest in the US have been attracted by higher real interest rates in the US than abroad (resulting from the administration's unprecedented budget deficits—a cumulative $1,030 billion since 1981), as well as expectations of greater economic growth and political stability.

(b) Foreign exchange transactions for investment purposes are estimated to be at least ten times the amount needed to finance international trade transactions. Rapid and large scale capital flows are possible as a result of liberalized and computerized international financial markets.

(11) The international foreign exchange market is subject to numerous market imperfections. Decisions may be based on dated, erroneous or noneconomic information or in anticipation of the continuation of market trends (often referred to as "speculative bubbles" or "bandwagon effects"). Such market imperfections have led to excessive short term fluctuations ("volatility") in the dollar's price and have contributed to

the market overshooting the correct dollar price ("misalignment").

(12) At some point in the future, the combination of continuing merchandise and current account deficits, reduced expectation of economic growth in the US, and market imperfections could lead to a sharp drop in the demand for dollars to invest in the US and a corresponding sharp drop in the value of the dollar. Such a sudden sharp drop in the value of the dollar would lead to a sudden and sharp rise in the cost of imported goods and could reignite pervasive inflation, causing a painful adjustment process and serious damage to the economy.

(13) The costs to the US economy associated with the dollar's persistent overvaluation and possible sudden drop in price in the future are, and would be, significant and should be avoided.

(14) In order to achieve a gradual, and lasting, reduction in the price of the dollar—

(a) the US Government must reduce the Federal budget deficit in order to reduce the high interest rates that are attracting foreign capital;

(b) the governments of foreign countries with underpriced currencies must stimulate economic growth in order to improve the desirability of investing in those countries; and

(c) the governments of the industrialized nations representing the major trading currencies must coordinate their macroeconomic policies.

(15) These actions can be complemented and supplemented by U.S. Government intervention in the foreign exchange markets. To be most effective, intervention by the Department of the Treasury or Federal Reserve Board should be coordinated, whenever possible, with intervention by the central banks of the countries constituting the Group of Ten.

(16) Intervention by the US Government in the foreign exchange markets to purchase substantial amounts of major foreign currencies with dollars, thereby developing a "Strategic Foreign Currency Reserve", could: correct market imperfections; influence the extent and pace of exchange rate movements; resist increases in the dollar's price; and assist its gradual decline in price. (A "Strategic Foreign Currency Reserve" would also provide the Treasury and Federal Reserve Board with the means to resist any sudden large drop in the dollar's price by selling foreign currencies in the Reserve and purchasing dollars, thereby helping to support the dollar's price.)

(17) Between 1973 and 1981 the US and all other G-10 nations used foreign exchange market intervention (to varying degrees) as a tool of exchange rate policy. During this period, the US Government bought or sold a total of $39.9 billion.

(18) From January 1, 1981 until September 22, 1985, however, the current administration pursued a "clean float" policy of intervening only in rare instances to calm disorderly markets (acquiring only approximately $4 billion in foreign currencies during this period).

(19) The administration maintained this policy despite:

(a) an unprecedented rise in the value of the dollar; and

(b) passage by the Senate in April 1985 of a Resolution urging the Secretary of the Treasury and the Chairman of the Federal Reserve Board to take steps, including intervention, to gradually lower the value of the dollar and the introduction of bills in the Senate in July 1985 requiring them to do so.

(20) On September 22, 1985, the United States joined with the other G-5 countries (Britain, France, West Germany and Japan) in announcing a coordinated program to reduce the value of the dollar, including intervention in foreign exchange markets.

(21) Since September 22, 1985, the G-5 Governments, including the United States, have taken action to reduce interest rate differentials and have intervened on a more extensive basis. However, such actions have been sporadic and partial.

(22) These efforts have assisted the dollar's significant depreciation against the German Mark (31%) and the Japanese Yen (32%). However, further depreciation of the dollar against the Yen is uncertain as a result of the October 31, 1986 agreement between the United States and Japanese Governments, under which the US Government indicated it would cease efforts to induce a further decrease in the value of the Yen in exchange for the Japanese Government's agreement to stimulate its economy.

(23) Neither the "Plaza Agreement," nor other action by the US Government, addressed the problem of countries which formally or informally peg their currencies to the dollar at exchange rates inconsistent with the underlying economic fundamentals.

(24) As a result, the dollar has depreciated minimally or not changed against the currencies of other countries (e.g. 7% against the New Taiwan Dollar and no change against the Hong Kong Dollar since February 1985) and has appreciated against other currencies (e.g. 2% against the Canadian Dollar and 4% against the South Korean Won since February 1985).

(25) The disparate appreciation (and depreciation) of the dollar against the currencies of US trading partners is inadequately and possibly inaccurately reflected in commonly cited indices of changes in the exchange rate of the dollar.

(a) The Federal Reserve system calculates the value of the dollar in two ways (those figures are used in this Section). The most commonly cited figure—prepared by the Federal Reserve Board in Washington—is calculated by comparing the dollar against the currencies of the G-10 countries and weights those currencies by their country's share of total world trade during 1972-1976. The Federal Reserve Bank of Dallas measures the dollar against the currencies of all US trading partners and weights those currencies by their share of total bilateral trade with the US (exports plus imports) using current trade data.

(b) Other organizations calculate the value of the dollar in different ways and obtain different estimates of the dollar's value. The Department of Commerce calculates the value of the dollar against the currencies of the G-10 countries plus Austria, Denmark and Norway and weights those currencies by their country's share of bilateral merchandise trade with the US in 1983. The Morgan Guaranty Bank measures the dollar against a total of 15 currencies (adding Australia and Spain) and weights those currencies by their country's share of bilateral merchandise trade with the US in 1980. Merrill Lynch & Company, Inc. measures the dollar against the currencies of the 25 countries that were the largest exporters to, and importers from, the US in 1985.

SEC. 3. Purpose.—

It is the purpose of this Act to require the United States Government to:

(1) intervene in foreign exchange markets to (a) purchase substantial amounts of major foreign currencies with dollars to resist and moderate increases in the dollar's price and to assist its gradual decline in price and (b) purchase substantial amounts of dollars with major foreign currencies to prevent sudden large drops in the dollar's price;

(2) negotiate with countries which formally or informally peg their currencies to the US dollar to ensure that those countries regularly and promptly adjust the exchange rate between their currencies and the US dollar to accurately reflect underlying economic fundamentals;

(3) develop a more accurate and timely index of the US dollar's exchange rate.

SEC. 4. STRATEGIC FOREIGN CURRENCY RESERVE.

(1) Acquisition.

(a) The Secretary of the Treasury and the Chairman of the Federal Reserve Board shall immediately acquire a Strategic Foreign Currency Reserve consisting of the currencies of the United States' major trading partners. The Secretary and the Chairman shall, as soon as possible but not later than three years from the date of enactment of this Act, exchange not less than $30 billion for such currencies.

(b) The Secretary and the Chairman: (i) shall purchase foreign currencies at those times that such action would be most effective in resisting and moderating increases in the dollar's price or in assisting its gradual decline; (ii) shall coordinate such purchases whenever possible with the central banks of the Group of Ten; and (iii) may take action to offset any effect of such purchases on the domestic money supply.

(c) In the event that the Secretary and the Chairman agree that fulfilling the requirements of subsection (a) with the time period set forth therein would be contrary to the purposes of this Act as set forth in Section 3, then they shall so notify Congress. Following receipt of such notice, Congress may, by joint resolution, extend the time within which the Secretary and Chairman shall complete acquisition of the Strategic Foreign Currency Reserve by one year.

(2) Use.

The Secretary of the Treasury and the Chairman of the Federal Reserve Board:

(a) shall use foreign currencies in the Reserve to purchase dollars in order to prevent sudden large drops in the price of the dollar;

(b) shall coordinate such purchases whenever possible with the central banks of the Group of Ten; and

(c) may take action to offset any effect of such purchases on the domestic money supply.

(3) Replenishment.

The Secretary of the Treasury and the Chairman of the Federal Reserve Board shall, at their discretion, subject to the provisions of subsection (1)(b) and notwithstanding the provisions of subsection (1)(a), purchase foreign currencies with any dollars acquired under subsection (2).

SEC. 5. NEGOTIATIONS.

(1) The President shall, immediately upon enactment of this Act, enter into negotiations on a priority and expedited basis with countries which formally or informally peg or tie their currencies to the US dollar (including Hong Kong, Korea and Taiwan) to ensure that those countries regularly and promptly adjust the exchange rate between their currencies and the US dollar to accurately reflect underlying economic fundamentals.

(2) The President shall, within 90 days of enactment of this Act, submit a report to

Congress listing the countries with which the United States entered into negotiations and detailing the results of those negotiations.

SEC. 6. INDEX OF EXCHANGE RATE MOVEMENTS.

(1) The Secretary of the Treasury and the Chairman of the Federal Reserve Board shall, within 90 days of enactment of this Act, develop an index of exchange rate movements for the US dollar which accurately reflects changes in the dollar's value and which is capable of being reported on a daily basis.

(2) The Secretary of the Treasury and the Chairman of the Federal Reserve Board shall, within 90 days of enactment of this Act, submit to Congress a report describing an index of exchange rate movements of the US dollars, including the reasons for:

(a) selecting certain countries, if all US trading partners are not included;

(b) weighting those countries' currencies by their share of total world trade or bilateral trade with the US;

(c) choosing a particular year for trade data, if not the most recent year;

(d) adjusting, if at all, for inflation in each country.

By Mr. MOYNIHAN:

S. 31. A bill entitled the Increased Market Access Promotion Act of 1987; to the Committee on Finance.

INCREASED MARKET ACCESS PROMOTION ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce the Increased Market Access Promotion Act of 1986. This legislation is identical to title II of S. 1860, the Trade Enhancement Act of 1985, introduced on November 20, 1985, by Senator DANFORTH, myself, and others and was cosponsored by one-third of the Senate in the 99th Congress. The same language was introduced on that day as a separate bill, S. 1862, by Senators CHAFEE, BRADLEY, DOLE, myself, and others.

The provisions of these bills, in tern, adopted many of the ideas set forth in my bill, S. 1505, the Increased Market Access Promotion Act of 1985, introduced on July 25, 1985.

The purpose of this bill is quite simple: To increase access for U.S. products, services, and investments in foreign markets by using the leverage inherent in denying access to the U.S. market.

Trade barriers in foreign countries which limit exports of U.S. goods, services, and investment present a serious problem for the United States. Japan is the nation most frequently cited for such practices, but other countries in the Far East and other areas of the world are guilty of acts, policies, and practices that constitute significant trade barriers.

For the second year, the Office of the U.S. Trade Representative [USTR] has issued a report of foreign trade barriers to U.S. exports. The 1986 report identifies barriers in 41 countries costing U.S. producers billions of dollars. For example, USTR estimates that United States firms lose $340 to $450 million each year in informatics hardware and software sales due to Brazilian restrictions. Future losses of such sales could reach $12 billion from 1985 to 1992.

Our representatives have tried to remove these barriers to U.S. exports through negotiations—too often to no avail. In part, this reflects the fact that foreign countries have little incentive to reduce their trade barriers because they believe correctly that the United States will do nothing in response. Which is to say, they believe that the President will not exercise his discretionary authority under section 301 of the Trade Act of 1974, as amended.

This has to change. We need to convince foreign countries that it is in their interest to eliminate their trade barriers.

I believe that requiring the President to use his existing authority under section 301 of the Trade Act of 1974, as amended, to retaliate against a country that persists in maintaining trade barriers by limiting that country's access to our markets can provide the leverage needed to convince that country to open its markets to U.S. exports of goods and services.

I might note, Mr. President, that I offer this bill today, as I offered my legislation in 1985, in part as an alternative to those who would restrict imports from foreign countries with large trade surpluses with the United States—without regard to the extent of those countries' trade barriers.

The message of those bills is "enough is enough: from now on, you can't send us any more than we send you"—even if a country's trade surplus with the United States reflects such factors as relative competitiveness, economic growth, fiscal and monetary policies, savings behavior, or exchange rates rather than trade barriers.

I believe that what we should be saying instead is:

Unless you eliminate your trade barriers that keep out our exports, we will keep out of our markets as much as you keep out of your markets. However, if you eliminate your trade barriers and let our exports into your markets, then we will let your products into our markets—even if, as a result, you end up sending us more goods than we send you.

That is what my bill would do.

The bill would require:

First. Retaliation for all section 301 cases 15 to 18 months after an investigation is initiated, unless the unfair practice is eliminated or offset, or the USTR subsequently determines that the practice is not actionable under section 301.

Second. Self initiation of several section 301 cases. Under current law, the U.S. Trade Representative is required to compile an annual inventory of foreign unfair trade practices—the "National Trade Estimates." My bill would require USTR to estimate how much U.S. exports would increase absent those barriers and self-initiate several cases against the most onerous barriers which prevent a substantial amount of U.S. exports.

Third. Transfer of section 301 authority to USTR to enhance the leverage of those negotiating the elimination of unfair practices and to depoliticize the process given mandatory retaliation if those negotiations fail.

Fourth. Expansion of the definition of unfair trade practices to include a variety of government actions including targeting industries for special development and advancement, and actions that distort trade by giving that country's exports an unfair advantage, vis-a-vis U.S. exports, in third country markets.

Fifth. Termination of retaliation after 7 years unless the industry seeking access to the foreign market requests its continuation. In that case, since the retaliatory import restrictions had burdened consumers but had not convinced the foreign country to eliminate its unfair trade practice, USTR could substitute a different retaliatory measure to increase pressure on the foreign country.

Under current section 301 law, the President is authorized to "take all appropriate and feasible action within his power" to enforce U.S. rights under trade agreements and to eliminate trade barriers to U.S. exports if these barriers are "unjustifiable, unreasonable or discriminatory" and burden or restrict U.S. commerce.

This bill would build on existing law by requiring the President to take action in order to obtain the leverage necessary to eliminate foreign trade barriers, while blunting pressure to restrict imports without justification.

Finally, I would like to make the point that unfair foreign trade practices are only one reason for the poor U.S. trade performance. Others include, relatively poor productivity, the appreciation of the dollar from 1980 to 1985, slower growth in other developed countries, and reduced purchases by indebted LDC countries.

But eliminating such practices are important for two reasons: they result in lost U.S. exports, and unless and until the American public has confidence that its government is taking regular, swift and tough action to eliminate such practices, it will not be willing to address the other causes of our trade deficit.

As my colleagues know too well, we did not succeed in considering and passing trade legislation in the last Congress. I have little doubt that will change in the 100th Congress: I know that the new chairman of the Senate Finance Committee, Senator BENTSEN, and our Majority Leader, Senator BYRD, are committed to passing trade legislation as a top priority during the first session.

An important component of any such legislation must be the revision of section 301. The bill I introduce today is certainly not the only proposal that was made in the last Congress—H.R. 4800, and the staff draft prepared by the Senate Finance Committee staff, are two that come to mind. And I know that Senator BENTSEN is working with Finance Committee members to develop a bipartisan committee bill. But I believe that the provisions of S. 1860 represented a tough, workable, responsible approach to addressing unfair trade practices and should be considered in the formulation of trade legislation this Congress.

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

S. 31

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

SECTION 1. SHORT TITLE

This title may be cited as the "Increased Market Access Promotion Act of 1987".

SEC. 2. REPORT ON BARRIERS TO MARKET ACCESS.

(a) ESTIMATE OF IMPACT OF BARRIERS.—Subparagraph (B) of section 181(a)(1) of the Trade Act of 1974 (19 U.S.C. 2241(a)(1)(B)) is amended to read as follows:

"(B) make an estimate of the increase in the volume and value of United States exports that would result from the elimination of each act, policy, or practice identified under subparagraph (A) (actual and relative to the aggregate amount of such United States exports).".

(b) INTERNATIONAL COMPETITIVENESS TO BE CONSIDERED.—Subparagraph (A) of section 181(a)(2) (19 U.S.C. 2241(a)(2)(A)) is amended to read as follows:

"(A) the international competitiveness of the goods or services involved;".

SEC. 3. INITIATION OF INVESTIGATIONS IN RESPONSE TO REPORT ON BARRIERS TO MARKET ACCESS.

Subsection (c) of section 302 of the Trade Act of 1974 (19 U.S.C. 2412(c)) is amended—

(1) by inserting "or (2)" after "under paragraph (1)" in paragraph (2),

(2) by redesignating paragraph (2) as paragraph (3), and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) RESPONSE TO REPORT.—

"(A) IN GENERAL.—The Trade Representative shall initiate investigations on an annual basis under this chapter with respect to those acts, policies, and practices identified in each report submitted under section 181 which—

"(i) are likely to be acts, policies, or practices described in section 301(a)(1)(B), and

"(ii) constitute a barrier to, or distortion of, a significant portion of all the goods and services of the United States that the United States Trade Representative estimates would have been exported from the United States if all acts, policies, and practices identified in such report did not exist.

"(B) FACTORS TO BE CONSIDERED.—In determining which acts, policies, and practices should be the subject of an investigation initiated under subparagraph (A), the Trade Representative shall take into account—

"(i) the potential increase in United States exports that is estimated to occur from elimination of such act, policy, or practice, and

"(ii) the extent to which such act, policy, or practice nullifies or impairs any benefit to which the United States is entitled under any international trade agreement.".

SEC. 4. TRANSFER OF AUTHORITY TO THE UNITED STATES TRADE REPRESENTATIVE.

(a) IN GENERAL.—(1) Paragraph (1) of section 301(a) of the Trade Act of 1974 (19 U.S.C. 2411(a)(1)) is amended by striking out "President" and inserting in lieu thereof "United States Trade Representative (hereafter referred to in this chapter as the 'Trade Representative')".

(2) Paragraph (2) of section 301(a) of the Trade Act of 1974 (19 U.S.C. 2411(a)(2)) is amended by striking out "President" and inserting in lieu thereof "Trade Representative".

(3) Subsection (b) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411(b)) is amended by striking out "President" and inserting in lieu thereof "Trade Representative".

(4) Subsection (c) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411(c)) is amended—

(A) by striking out "President" each place it appears and inserting in lieu thereof "Trade Representative", and

(B) by striking out "United States Trade Representative (hereinafter in this chapter referred to as the 'Trade Representative')" in paragraph (2)(B) and inserting in lieu thereof "Trade Representative".

(5) Subsection (d) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411(d)) is amended to read as follows:

"(d) ACTION BY TRADE REPRESENTATIVE ON OWN MOTION.—If the Trade Representative decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the Trade Representative shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the Trade Representative shall provide an opportunity for the presentation of views concerning the taking of such action.".

(6) Section 301 of the Trade Act of 1974 (19 U.S.C. 2411) is amended by striking out "PRESIDENT" in the section heading and inserting in lieu thereof "UNITED STATES TRADE REPRESENTATIVE".

(b) CONFORMING AMENDMENTS.—

(1) Section 302 of the Trade Act of 1974 (19 U.S.C. 2412) is amended—

(A) by striking out "United States Trade Representative (hereinafter in this chapter referred to as the 'Trade Representative')" in subsection (a)(1) and inserting in lieu thereof "Trade Representative",

(B) by striking out "President" in subsection (a)(1) and inserting in lieu thereof "Trade Representative", and

(C) by striking out "in order to advise the President concerning the exercise of the President's authority under section 301" in subsection (c)(1).

(2) Section 303 of the Trade Act of 1974 (19 U.S.C. 2413) is amended—

(A) by adding at the end thereof the following new subsection:

"(c) INTERAGENCY TRADE ORGANIZATION.—The Trade Representative shall consult with the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872) regarding any determination which is required to be made by the Trade Representative under this chapter.", and

(B) by striking out "UPON INITIATION OF INVESTIGATION" in the section heading.

(3) The table of contents of the Trade Act of 1974 is amended by striking out "upon initiation of investigation" in the item relating to section 303.

(4) The table of contents of the Trade Act of 1974 is amended by striking out "President" in the item relating to section 301 and inserting in lieu thereof "United States Trade Representative".

SEC. 5. MISCELLANEOUS AMENDMENTS TO SECTION 301 OF THE TRADE ACT OF 1974.

(a) BURDEN ON COMMERCE.—Section 301 of the Trade Act of 1974 (19 U.S.C. 2411) is amended—

(1) by inserting "(or threatens to burden or restrict)" after "restricts" in subsection (a)(1)(B)(ii),

(2) by striking out "or instrumentality" each place it appears, and

(3) by striking out "purpose of this section" in subsection (e) and inserting in lieu thereof "purpose of this chapter".

(4) by adding at the end of subsection (e) the following new paragraphs:

"(7) BURDEN ON UNITED STATES COMMERCE.—Acts, policies, and practices of a foreign country which burden United States commerce include, but are not limited to—

"(A) acts, policies, and practices which have an adverse effect on trade between the United States and another foreign country,

"(B) the subsidization of exports of such foreign country that results in the displacement of United States exports to another foreign country,

"(C) the imposition of import restrictions or export performance requirements that result in the diversion of the exports of another foreign country to United States markets, and

"(D) the enforcement of trade restraining agreements that result in the diversion of the exports of another foreign country to United States markets.

"(8) FOREIGN COUNTRY.—The term 'foreign country' includes any foreign instrumentality.".

(b) NEGOTIATED SETTLEMENTS; DENIAL OF GENERALIZED SYSTEM OF PREFERENCES.—Subsection (b) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411(b)) is amended—

(1) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or", and

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

"(3) enter into binding agreements with such foreign country that fully offset or eliminate any burden or restriction on United States commerce resulting from the acts, policies, or practices of such foreign country described in subsection (a)(1)(B); or

"(4) withdraw, or refrain from proclaiming under title V—

"(A) the designation of such foreign country as a beneficiary developing country, or

"(B) the designation of any product of such foreign country as an eligible article.".

(c) UNREASONABLE PRACTICES.—Paragraph (3) of section 301(e) of the Trade Act of 1974 (19 U.S.C. 2411(e)(3)) is amended—

(1) by inserting "(or any combination thereof)" after "or practice" in the second sentence,

(2) by inserting "(including protection of any industry in its formative stages)" after "opportunities" in subparagraph (A),

(3) by striking out "or" at the end of subparagraph (B),

(4) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; or",

(5) by adding at the end thereof the following new subparagraph:

"(D) provision of adequate and effective protection against anti-competitive practices.".

(d) SERVICE SECTOR ACCESS AUTHORIZATION.—Paragraph (6) of section 301(e) of the Trade Act of 1974 (19 U.S.C. 2411(e)(6)) is amended by inserting ", or a foreign supplier of goods related to a service," after "supplier of services".

SEC. 6. ACTIONS IN RESPONSE TO INVESTIGATIONS UNDER TITLE III OF THE TRADE ACT OF 1974.

(a) IN GENERAL.—Section 304 of the Trade Act of 1974 (19 U.S.C. 2414) is amended to read as follows:

"SEC. 304. ACTIONS IN RESPONSE TO INVESTIGATIONS.

"(a) DETERMINATION OF UNFAIR PRACTICES.—

"(1) IN GENERAL.—By no later than 90 days after the date on which an investigation is initiated under section 302, the Trade Representative shall determine on the basis of such investigation whether—

"(A) the United States is being denied any rights to which the United States is entitled under any trade agreement, or

"(B) any act, policy, or practice of a foreign country is described in section 301(a)(1)(B).

"(2) PUBLICATION.—By no later than 90 days after the date on which an investigation is initiated under section 302, the Trade Representative shall publish in the Federal Register—

"(A) the determination made under paragraph (1) with respect to such investigation, and

"(B) if such determination is affirmative, a list of foreign goods and services (and their aggregate value) that could be subject to actions which the Trade Representative intends to take under subsection (b) or (c) of section 301 to enforce the rights and to offset or eliminate the acts, policies, and practices which were the subject of such affirmative determination.

"(b) ACTION REQUIRED TO BE TAKEN.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the Trade Representative shall, by no later than the date that is 15 months after the date any investigation is initiated under section 302, take whatever actions under subsections (b) and (c) of section 301 that are necessary to—

"(A) enforce all rights, and

"(B) offset or eliminate all acts, policies, and practices,

which were the subject of an affirmative determination made under subsection (a)(1) with respect to such investigation.

"(2) DELAY IN TAKING ACTIONS.—The Trade Representative may delay taking action under paragraph (1) for a period not to exceed 90 days if—

"(A) either—

"(i) in the case of an investigation initiated under section 302(b), the petitioner requests such delay, or

"(ii) in the case of an investigation initiated under section 302(c), such delay is requested by the domestic industry that would benefit from enforcement of the rights, or elimination of the acts, policies, and practices, that were the subject of the affirmative determination under subsection (a)(1), and

"(B) such request is based on a determination made by the person making such request that adequate progress is being made to enforce such rights or to eliminate or reduce such acts, policies, and practices.

"(3) EXCEPTIONS.—The Trade Representative shall not be required to take action under subsection (b) or (c) of section 301 by reason of paragraph (1) if—

"(A) after the affirmative determination has been made under subsection (a)(1), the Trade Representative subsequently determines such affirmative determination was incorrect or is no longer valid, or

"(B) an agreement is entered into with the foreign country involved and—

"(i) representatives of the domestic industry described in paragraph (2)(A)(ii) and the petitioner, if any, agree that such agreement adequately offsets or eliminates the acts, policies, and practices and enforces the rights which were the subject of such affirmative determination, or

"(ii) the Trade Representative and either—

"(I) the representatives of such industry, or

"(II) the petitioner,

agree that such agreement adequately offsets or eliminates the acts, policies, and practices and enforces the rights which were the subject of such affirmative determination.

"(4) CONSIDERATION OF GATT DETERMINATIONS.—If any determination made by the Contracting Parties under the dispute settlement procedures of the General Agreement on Tariffs and Trade conflicts with, or differs from, a determination made by the Trade Representative under subsection (a)(1), the Trade Representative shall review the determination made under subsection (a)(1) for purposes of paragraph (3)(A).

"(c) REVIEW OF NECESSITY.—

"(1) IN GENERAL.—If—

"(A) a particular action has been taken under subsection (b) or (c) of section 301 by reason of subsection (b)(1) continuously during any 7-year period, and

"(B) neither the petitioner nor any representative of the domestic industry described in subsection (b)(2)(A)(ii) has submitted to the Trade Representative during the last 60 days of such 7-year period a written request for the continuation of such action,

such action shall terminate at the close of such 7-year period.

"(2) NOTICE OF POTENTIAL TERMINATION.—The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in subsection (b)(3)(B) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.

"(3) FORMAL REVIEW.—If a request is submitted under paragraph (1)(B) to continue taking a particular action under subsection (b) or (c) of section 301, the Trade Representative shall conduct a review of—

"(A) the effectiveness of—

"(i) such action, and

"(ii) other actions that could be taken (including actions against other products or services),

in achieving the objectives described in subsection (b)(1), and

"(B) the effects of such actions on the United States economy, including consumers.

The Trade Representative shall submit a report on such review to the Congress and shall include in such report any modifications the Trade Representative has made, or intends to make, in the actions taken under subsections (b) and (c) of section 301 as a result of such review.".

(b) CONFORMING AMENDMENTS.—

(1) The table of contents for the Trade Act of 1974 is amended by striking out the item relating to section 304 and inserting in lieu thereof the following:

"Sec. 304. Actions in response to investigations.".

(2) Subsection (b) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411(b)) is amended—

(A) by inserting ", or upon the application of section 304(b)(1)" after "subsection (a)", and

(B) by striking out "in such subsection" and inserting in lieu thereof "in subsection (a)".

SEC. 7. COMPENSATION AUTHORITY.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133) is amended—

(1) by striking out "section 203" and inserting in lieu thereof "chapter 1 of title II or chapter 1 of title III", and

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

"(e) The provisions of this section shall apply by reason of action taken under chapter 1 of title III only if the President determines that action authorized under this section is necessary to meet the international obligations of the United States.".

By Mr. MOYNIHAN:

S. 32. A bill to establish a National Commission on Deficit Reduction; to the Committee on Governmental Affairs.

NATIONAL COMMISSION ON DEFICIT REDUCTION ACT

Mr. MOYNIHAN. Mr. President, I rise today, on the 1st day of the 100th Congress, to introduce legislation to create a National Commission on Deficit Reduction.

If the legislation appears to be familiar to some, it is. I introduced identical legislation in the 98th Congress, on November 18, 1983. It had become clear to me even then that broad bipartisan support for sensible and effective deficit reduction would not be forthcoming. Circumstances have not changed much.

In 1985, Congress passed the Gramm-Rudman-Hollings law, but that legislation, much as I predicted at the time, has not solved the problem. The deficit is now projected to be $175 billion for fiscal year 1987—$30 billion above the Gramm-Rudman-Hollings deficit ceiling, and only $10 billion below the deficit for fiscal year 1984.

Gramm-Rudman-Hollings has led to creative accounting gimmicks to be sure: shifts of expenditures from one fiscal year to another, unrealistic expectations for economic performance, and almost unbelievable assumptions about future revenue gains from increased tax compliance and enforcement activities. But this does not get at the structural deficit problem.

Making constitutional that part of Gramm-Rudman-Hollings which the Supreme Court found to be unconstitutional in the first place will not solve

the problem either. It will only lead to more gimmicks.

Today I once again offer a solution to our seeming inability to achieve comprehensive, thoughtful, and effective deficit reduction. If the problem is as complex and serious as I believe it is, it deserves the attention and best efforts of the Nation's economic and political leadership. And so this legislation would create a bipartisan National Commission on Deficit Reduction comprised of 17 members. Five members of the administration—the Chairman of the President's Council of Economic Advisers, the Director of the Office of Management and Budget, the Secretary of the Treasury, and two others selected at the President's discretion. Another five would be selected from the membership of the Senate—three by the majority leader, and two by the minority leader. In a similar fashion, five members would be chosen from the House of Representatives. Finally, the Director of the Congressional Budget Office and the Chairman of the Board of the Federal Reserve System would serve on the Commission.

The Commission would investigate and identify the sources of the unprecedented growth of the cyclical and structural deficits in the elements of fiscal and monetary policies. The legislation further directs the Commission to identify the effect of the elements of the deficit on employment, on real interest rates, on capital formation and investment, and on the propects for continued strong economic growth. If we do not reduce the deficits in ways that encourage, rather than undermine the health and growth of the Nation's economy, we have accomplished little indeed.

It is also clear that examination of tax and spending policies alone will not be sufficient. The Commission must also examine the more general management of the economy and how it relates to deficits and deficit reduction alternatives. Specifically, the Commission will examine the relationship between monetary and fiscal policies, and how the coordination of those policies might be reformed as part of a solution to the deficit crisis.

The American public are rightfully demanding that we set the Nation's fiscal house in order and that we do so in a fair and equitable way. The Commission, therefore, is directed to make recommendations that ensure that the burdens of deficit reduction are equitably distributed and not borne disproportionately by any economic or social group. The Nation's elderly and poor, or the Nation's farmers and small businessmen, or the Nation's homeowners and investors, cannot be expected to bear all the costs for this unprecedented problem. We must know the impact of different approaches to reducing the deficit, separately and in combination, on the different economic and social groups of the Nation.

This is a most serious proposal. Having been a member of both the Senate Budget and Finance Committees for the past 10 years, I am well aware that the setting the Nation's accounts in order is the task of several committees of this Congress and offices and departments of the executive branch. However, my experiences have left me with the thought that a special forum will have to be created if we are to successfully deal with the Nation's current fiscal crisis. Such a forum was created and was helped to achieve consensus in restoring the viability of the Social Security Trust Funds—an effort I am proud to have been a part of.

I urge my colleagues to join in this effort to respond to the deficits which jeopardize the Nation's economic future.

I ask unanimous consent that the full text of my proposal be printed in the RECORD.

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

S. 32

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

SHORT TITLE

SECTION 1. This Act may be cited as the "National Commission on Deficit Reduction Act".

ESTABLISHMENT OF COMMISSION

SEC. 2. (a) There is hereby established the National Commission on Deficit Reduction (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of seventeen members who shall be appointed by the President as follows:

(1) Five members from the executive branch of the Government, including the Chairman of the President's Council of Economic Advisors, the Director of the Office of Management and Budget, the Secretary of the Treasury, and two others;

(2) Five members from the Senate, three members to be named upon the recommendation of the majority leader, and two members to be named upon the recommendation of the minority leader;

(3) Five members from the House of Representatives, three to be named upon the recommendation of the majority leader and two to be named upon the recommendation of the minority leader;

(4) The Director of the Congressional Budget Office; and

(5) The Chairman of the Board of the Federal Reserve System.

(c) The Chairman of the Commission shall be the Director of the Congressional Budget Office.

(d) The Vice Chairman of the Commission shall be elected by the members of the Commission.

(e) The majority and minority leaders of the Senate, and the majority and minority leaders of the House of Representatives, shall make recommendations for the appointments to be made pursuant to subsection (b) of this section within fifteen days of the enactment of this Act.

(f) The President shall make all of the appointments in accordance with subsection (b) of this section after receiving the recommendations set forth in paragraphs (2), (3), and (4) of subsection (b) of this section, and such appointments shall be made no later than thirty days after the date of enactment.

(g) The first meeting of the Commission shall be called by the President within fifteen days following the date such appointments to the Commission are made.

(h) The term of office for members shall be for the term of the Commission.

(i) A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

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

PURPOSES OF THE COMMISSION

SEC. 3. (a) The Commission shall conduct a comprehensive study of the elements of fiscal and monetary policies, with particular emphasis on the sources of cyclical and structural budget deficits and their effect on employment, real interest rates, capital formation and investment, and the vigor and viability of economic growth. This study shall include recommendations to reduce these deficits in the manner and to the extent required to promote reductions in unemployment and real interest rates, to encourage capital formations and investment, and to sustain vigorous economic growth. These recommendations shall ensure that the burden of deficit reduction is equitably distributed and not borne disproportionately by any one economic or social group.

(b) The comprehensive study undertaken by the Commission shall specifically address—

(1) the current and prospective economic factors and developments, in both the United States and abroad, that should be taken into account in making fiscal and monetary policies;

(2) all potential options which would result in deficit reductions, including a statement of the impact of each on the Nation's economy;

(3) the impact of deficit reduction options, separately and in combination, on different income and social groups; and

(4) the institutional arrangements required to achieve the appropriate degree of coordination in the making and implementation of fiscal and monetary policies, to achieve reductions in the budget deficit.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 4. (a) Members of the Commission who are also Members of the Congress shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) Any Members of the Commission who are also in the executive branch of the Government shall serve without compensation in addition to that received for their services in the executive branch; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties in the Commission.

(c) Members of the Commission who are also current members of the Federal Reserve System, shall serve without compensa-

tion in addition to that received for their services as members of the Federal Reserve System; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(d) Members shall be appointed for the life of the Commission.

POWERS OF THE COMMISSION

SEC. 5. (a)(1) The Commission or, on the authorization of the Commission, any subcommittee thereof, may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee may deem advisable. Subpoenas may be issued to any person within the jurisdiction of the United States courts, under the signature of the Chairman or Vice Chairmen, or such members. In the case of failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the provisions of sections 102 through 104, inclusive, of the Revised Statutes (2 U.S.C. 192-194), shall apply to Congress.

(2) For purposes of section 552(e) of title 5, United States Code, the Commission shall not be considered to be an agency.

(b) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairmen, such information as the Commission deems necessary to carry out its function under this Act.

(c) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, 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 the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed $200 per day for individuals.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the discharge of its duties to such extent and in such amount as are provided in appropriations Acts.

FINAL REPORT

SEC. 6. The Commission shall transmit to the President and to the Congress not later than one hundred and eighty days after the first meeting of the Commission, a final report containing a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative, and legislative action which it deems advisable. Any formal recommendation made by the Commission to the President and to the Congress must have the majority vote of the Commission as present and voting.

EXPIRATION OF THE COMMISSION

SEC. 7. Sixty days after the submission to Congress of the final report provided for in section 6 the Commission shall cease to exist.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are hereby authorized to be appropriated such sums as may be necessary to carry out the activities of the Commission.

EFFECTIVE DATE

SEC. 9. The provisions of this Act shall take effect upon the date of enactment of this Act.

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

S. 33. A bill entitled the "Social Security Trust Funds Management Act of 1987"; to the Committee on Finance.

SOCIAL SECURITY TRUST FUNDS MANAGEMENT ACT

● Mr. MOYNIHAN. Mr. President, on this first day of the 100th Congress, I rise to offer the Social Security Trust Funds Management Act of 1987, legislation to reform current investment practices governing the Social Security trust funds. During the 99th Congress, the Senate twice accepted identical language, but it was neither time enacted into law. Upon reintroduction, I am happy to have the support of my distinguished colleague from Michigan, Senator RIEGLE.

The intent of this bill is to prevent from happening again what never should have happened at all: The redemption, in the past 2 years, of Social Security trust fund assets in order to keep the Federal Government running. The Government resorted to this practice during those times when its ability to borrow additional funds to pay for the budget deficit had temporarily expired.

This legislation clarifies that the invested assets of the Social Security—old-age, survivors, and disability insurance—trust funds may be redeemed and used only to pay Social Security benefits and never to fund, or temporarily "float," other Government expenses.

Mr. President, it became clear in 1985, and again last year, that the Department of the Treasury manipulated Social Security trust fund moneys, in the fall of 1985 and 1984, in order to avoid the debt limit ceiling. I am afraid this is a problem which, unless addressed by corrective legislation threatens public confidence in the security of the trust funds.

Most Members of the Senate are acquainted with what occurred. But as a matter of record, those events bear restating. During 1985, the Secretary of the Treasury, as managing trustee of the Social Security trust funds, redeemed $6.9 billion of Social Security's—OASDI's—long-term securities in September, another $4.8 billion in October and $13.7 billion in November, drawing down these trust funds from $37 billion at the end of August to about $11 billion by November 12—a level not sufficient to pay 1 month's worth of benefits. The interest that the trust funds could have lost by such premature redemptions was estimated by the Social Security Office of the Actuary to be some $875 million. Moreover, the Treasury Department took a similar step the previous year, during the September-October 1984 debt limit impasse. At that time, $5.1 billion of Social Security's long-term bonds were prematurely cashed in, which could have resulted in a $382 million loss of interest to the trust funds.

Disinvestment of this magnitude was unprecedented. So, equally, was the concealment. Neither the congressional committees with jurisdiction over the program nor the public trustees of the system received any notification of these extraordinary steps. In late 1985, Treasury officials defended themselves by citing an October 22, 1985, letter from Secretary Baker to the conferees on the debt limit bill. That letter warned that Treasury was prepared to take the "extraordinary" step of disinvesting trust fund assets if the debt limit impasse had not been resolved by October 31. But what of the large-scale—indeed "extraordinary"—disinvestment of over $11 billion in bonds that had already taken place in early September and again in early October? We were not told of these.

On September 10, 1985, John J. Niehenke, then Acting Assistant Secretary of the Treasury, testified before the Senate Finance Subcommittee on Taxation and Debt Management. In his testimony—given just after $6.9 billion in Social Security bonds had been redeemed—Mr. Niehenke stated:

> Our current cash and debt projections indicate that the present debt limit of $1,823.8 billion should be adequate to meet the Treasury's needs until September 30.

Such was adequate to meet the Treasury's needs only after raiding the Social Security trust funds for nearly $7 billion. Yet, Mr. Niehenke made no mention of that.

On November 7, after much difficulty, I was able to have the Finance Committee's Subcommittee on Social Security and Public Assistance hold a hearing on this matter. We were allowed only one witness: former Treasury Deputy Assistant Secretary John J. Niehenke.

I believe the exchange I had with Mr. Niehenke reflects an extraordinary lack of candor. The transcript of that hearing will reveal an episode wherein I attempted to secure from Mr. Niehenke one basic, but important piece of information: The long-term investments held by the trust funds as of November 7—the day of the hearing. Such information would have revealed the disinvestments of early November. I had to drag this basic information out of him. Nor was he forthright about admitting to the Septem-

ber-October 1984 disinvestment, let alone suggesting that the resultant loss of interest to the trust funds be refunded.

In the wake of these hearings, Congress did act to make the trust funds whole. On November 12, 1985, the Senate adopted an amendment I offered along with Senator RIEGLE to fully correct the situation. The long-term bonds cashed in during the fall of 1985 were consequently restored to the trust funds, as was the interest lost as a result of the 1984 disinvestment.

Both the General Accounting Office and the Congressional Research Service have since looked into Treasury's practices. The GAO found that the Secretary's actions were—

In violation of the Social Security Act,

but that—

we cannot say that the Secretary acted unreasonably given the extraordinary situation in which he was operating.

More interesting, the CRS report on Social Security disinvestment speaks to the fiduciary responsibility of the Secretary of the Treasury, stating:

[t]he conclusion seems inescapable that in enacting the Social Security Act Congress to a greater or lesser extent had certain features of private trust law in mind.

Comparing the Secretary's fiduciary responsibilities to those of private fiduciaries, CRS reasons that public officers who are responsible for holding, depositing, and investing public funds are properly held to an even higher standard than are private fiduciaries.

Mr. President, I am deeply disturbed by what has happened. Why weren't we informed in a timely manner of these disinvestments? Why were we left to our own devices to find out just what was being done with such large amounts of public moneys? Why weren't the other trustees, particularly the two public trustees, informed? Those of us who helped frame the 1983 Social Securities Amendments, which established the two public trustees, intended that they would act as public guardians of the funds. If recent events are any indication, these trustees may be completely ignored, unless we change the law.

In the wake of our revelations about past disinvestment practices, the Department of the Treasury tried to assure us that such covert disinvestment would cease. In a letter to me, Assistant Treasury Secretary Bruch Thompson stated:

. . . as a matter of policy, the Secretary has directed that both Congress and the trustees be kept informed on significant matters affecting the Trust Funds.

Well and good. Since that time, the Department has made a real effort to keep us better apprised of anticipated problems. Yet the systemic weakness which precipitated massive disinvestment in the first place has yet to be addressed. Characteristic of a pattern we know all too well, we were unable to pass a timely debt limit increase again in 1986, once again endangering a number of Federal trust funds. In a letter—September 22, 1986—to members of the Senate Finance Committee, Treasury Secretary Baker warned us that absent a debt limit extension, he would be unable to complete the regular investment policy for assets in the civil service retirement and disability fund, the defense military retirement fund, or the Social Security trust funds. Indeed, the first two did lose interest payments as a result. And, thanks only to an unusually large cash surplus in the Social Security fund toward the end of the fiscal year, the OASDI trust funds did not lose any earnings interest as a result of noninvestment.

Mr. President, the whole experience suggests to me that it is time, past time, to change the law. Put simply, Treasury should not be allowed to engage in creative financing schemes that are tantamount to using Social Security moneys to float the rest of Government.

For this reason, I am reintroducing the Social Security Trust Funds Management Act. This legislation would first prohibit disinvestment of OASDI trust fund assets during a debt ceiling crisis for anything other than the timely payment of benefits and administrative expenses.

Second, the proposal mandates that uninvested Social Security tax receipts be invested in interest bearing Government obligations as soon as the debt ceiling is increased. This provision would prohibit the Government from using such balances as a loan to pay for any other operating expenses.

Third, the Social Security Trust Funds Management Act also would make a permanent appropriation to restore the trust funds to the amount they would have been at had disinvestment not been necessary.

Fourth, the managing trustee would be required to notify the Social Security Board of Trustees and the Congress 15 days in advance of an anticipated disinvestment; he would also be required to carry out his Social Security investment duties, notwithstanding any other of his duties arising by reason of the debt limit.

Mr. President, the earlier disinvestment actions of the Treasury Department would not have withstood the scrutiny to which private fiduciaries are subject. Our proposal would require the managing trustee to exercise the same degree of care in managing the trust funds as would be required of a private fiduciary.

And finally, with respect to reporting requirements, our legislation would require the managing trustee to report monthly to the trustees on the operation and status of the trust funds. The Secretary ought to be required specifically to keep his fellow trustees informed so that they may all be held accountable for such actions. More frequent meetings of the trustees would also help. In the past, they have met only once a year to sign the annual trustees report. The Board of Trustees would be required to meet semiannually to review trust fund operations and report to Congress on that review. And finally, to avoid the temptation to manipulate trust fund moneys, the proposal would eliminate normalized tax transfers after June 30, 1990. All other provisions of the bill would be effective upon enactment.

In closing, Mr. President, I would like to point out that extremely large surpluses will be building up in the trust funds in the near future. The 1983 Social Security Amendments are working to restore the system to financial health. In fact, the funds are in better shape than we had anticipated—so much better that in January 1986, 2 years ahead of schedule, OASI was able to fully repay the moneys it had previously borrowed from the HI fund.

Recent estimates by the Social Security Office of the Actuary indicate that by the end of the calendar year 1991, OASDI will have accumulated a surplus of nearly one-quarter of a trillion dollars—$247.5 billion. The cumulative surpluses are indicated in a table which I ask unanimous consent be printed in the RECORD following my remarks.

Long-term projections indicate the OASDI trust funds will reach one-half of a trillion dollars by 1995 and more than $1 trillion by the year 2000.

If current trust funds assets of about $40 billion have proved tempting targets for the Treasury Department, just think how tempting $1 trillion of such assets would be. The building of trust fund assets makes it even more important that we approve the legislation I propose in order to preclude any future manipulation of those funds.

My colleagues in the State recognized the need for more careful oversight of investment practices when they accepted the language of this bill last year—first, as a provision of the debt limit increase—House Joint Resolution 669—and again on September 19, as an amendment to the Sixth Omnibus Budget Reconciliation Act—S. 2706.

The House, however, insisted on its proposal—H.R. 5050—to prohibit disinvestment for any purpose, even if this resulted in Social Security checks not being mailed during a debt limit impasse. By the end of the 99th Congress, no legislation to prevent further disinvestment had been enacted.

Mr. President, I urge my colleagues to again support this important legislation, and I ask unanimous consent

that the text of the bill, and a table be printed in the RECORD at this point.

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

ESTIMATED OPERATIONS OF OASI AND DI TRUST FUNDS
(ALTERNATIVE II–B ASSUMPTION)

[Calendar years 1986–2055]

Calendar year	Income excluding interest	Interest	Total income	Total outgo	Assets of end of year
Alternative II–B:					
1986	$211.6	$3.7	$215.3	$202.4	$44.4
1987	225.0	4.8	229.8	214.2	60.0
1988	253.6	6.6	260.2	229.1	91.1
1989	275.2	9.5	284.8	244.3	131.6
1990	304.7	13.2	318.0	263.2	186.4
1991	325.1	17.6	342.7	281.6	247.5
1992	348.2	22.0	370.2	299.9	317.8
1993	371.5	26.6	398.1	319.2	396.7
1994	397.2	31.7	428.9	339.8	485.8
1995	423.3	37.1	460.4	361.8	584.3
2000	578.6	72.6	651.2	465.1	1,329.2
2005	781.8	145.8	927.6	610.5	2,635.8
2010	1,048.1	258.7	1,306.8	862.0	4,616.4
2015	1,386.4	402.1	1,788.5	1,270.1	7,092.3
2020	1,819.1	552.4	2,371.5	1,883.8	9,639.4
2025	2,382.6	676.4	3,059.0	2,715.8	11,689.9
2030	3,134.3	743.4	3,677.7	3,761.5	12,738.6
2035	4,135.1	737.0	4,872.2	5,025.9	12,523.7
2040	5,446.0	647.5	6,093.5	6,544.9	10,890.1
2045	7,158.5	449.2	7,607.7	8,527.0	7,337.4
2050	9,403.0	61.8	9,464.8	11,225.3	409.9

Source: Actuarial Note, April 1986, Office of the Actuary Social Security Administration.

S. 33

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

SECTION 1. SHORT TITLE.

This title may be cited as the "Social Security Trust Funds Management Act of 1987".

SEC. 2. INVESTMENT AND RESTORATION OF TRUST FUNDS.

(a) Subsection (d) of section 201 of the Social Security Act (42 U.S.C. 401(d)) is amended—

(1) by striking out "(1) on original issue" and inserting in lieu thereof "(A) on original issue",

(2) by striking out "(2) by purchase" and inserting in lieu thereof "(B) by purchase";

(3) by striking out "It shall be" and inserting in lieu thereof "(1) It shall be", and

(4) by adding at the end thereof the following new paragraphs:

"(2) If—

"(A) any amounts in the Trust Funds have not been invested solely by reason of the public debt limit, and

"(B) the taxes described in clause (3) or (4) of subsection (a) with respect to which such amounts were appropriated to the Trust Funds have actually been received into the general fund of the Treasury of the United States,

such amounts shall be invested by the Managing Trustee as soon as such investments can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title.

"(3)(A) Upon expiration of any debt limit impact period, the Managing Trustee shall immediately—

"(i) reissue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical, with respect to interest rate and maturity, to public debt obligations held by such Trust Fund that—

"(I) were redeemed during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of standard investment procedures for such Trust Fund in effect on the day before the date on which the debt limit impact period began, would not have been redeemed if the debt limit impact period had not occurred, and

"(ii) issue to each of the Trust Funds obligations under chapter 31 of title 31, United States Code, that are identical with respect to interest rate and maturity, to public debt obligations which—

"(I) were not issued during the debt limit impact period, and

"(II) as determined by the Managing Trustee on the basis of such standard investment procedures, would have been issued if the debt limit impact period had not occurred.

"(B) Obligations issued or reissued under subparagraph (A) shall be substituted for obligations that are held by the Trust Fund, and for amounts in the Trust Fund that have not been invested, on the date on which the debt limit impact period ends in a manner that will ensure that, after such substitution, the holdings of the Trust Fund will replicate to the maximum extent practicable the obligations that would be held by such Trust Fund if the debt limit impact period had not occurred.

"(C) In determining, for purposes of this paragraph, the obligations that would be held by a Trust Fund if the debt limit impact period had not occurred, any amounts in the Trust Fund which have not been invested, and any amounts required to be invested under paragraph (2), shall be treated as amounts which were required to be invested upon transfer to the Trust Fund.

"(4) The Managing Trustee shall pay, on the first normal interest payment date that occurs on or after the date on which any debt limit impact period ends, to each of the Trust Funds, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Managing Trustee to be equal to the excess of—

"(A) the net amount of interest that would have been earned by such Trust Fund during such debt limit impact period if—

"(i) amounts in such Trust Fund that were not invested during such debt limit impact period solely by reason of the public debt limit had been invested, and

"(ii) resumptions and disinvestments with respect to such Trust Fund which occurred during such debt limit impact period solely by reason of the public debt limit had not occurred, over

"(B) the sum of—

"(i) the net amount of interest actually earned by such Trust Fund during such debt limit impact periods, plus

"(ii) the total amount of the principal of all obligations issued or reissued under paragraph (3)(A) at the end of such debt limit impact period that is attributable to interest that would have been earned by such Trust Fund during such debt limit impact period but for the public debt limit.

"(5) For purposes of this section—

"(A) The term 'public debt limit' means the limitation imposed by subsection (b) of section 3101 of title 31, United States Code.

"(B) The term 'debt limit impact period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States is sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit.".

(b) Subsection (a) of section 201 of the Social Security Act is amended by adding at the end thereof the following new sentence: "All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under any other provision of law directly related to the programs established by this title.".

SEC. 3. REPEAL OF NORMALIZED TAX TRANSFER.

(a) Subsection (a) of section 201 of the Social Security Act is amended by striking out the matter following clause (4) and inserting in lieu thereof the following: "The amounts appropriated by clause (3) and (4) shall be transferred from the general fund of the Treasury of the United States to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred from the general fund of the Treasury to the Federal Disability Insurance Trust Fund, upon receipt by the general fund of taxes specified in clauses (3) and (4) of this subsection (as estimated by the Secretary). Proper adjustments shall be made in amounts subsequently transferred to the extent amounts previously transferred were in excess of, or were less than, the taxes specified in such clauses (3) and (4). All amounts so transferred shall be immediately available exclusively for the purpose for which amounts in the Trust Fund are specifically made available under this title or under other provisions of law directly related to the programs established by this title.".

(b) The amendment made by subsection (a) shall take effect on July 1, 1990.

SEC. 4. FAITHFUL EXECUTION OF DUTIES BY MEMBERS OF BOARD OF TRUSTEES OF TRUST FUNDS.

Section 201(c) of the Social Security Act is amended by striking the last sentence and inserting the following: "A person serving on the Board of Trustees (including the Managing Trustee) shall not be considered to be a fiduciary, but each such person shall faithfully execute the duties imposed on such person by this section. A person serving on the Board of Trustees (including the Managing Trustee) shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.".

SEC. 5. REPORTS REGARDING THE OPERATION AND STATUS OF THE TRUST FUNDS.

Subsection (c) of section 201 of the Social Security Act is amended—

(1) by striking "once" in the fourth sentence and inserting "twice",

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(3) by redesignating paragraphs (3), (4), and (5) as subparagraphs (D), (E), and (F), respectively,

(4) by inserting after subparagraph (B) (as redesignated by paragraph (2) of this section) the following:

"(C) Report to the Congress as soon as possible, but not later than the date that is 30 days after the first normal interest payment date occurring on or after the date on which any debt limit impact period for which the Managing Trustee is required to take action under paragraph (3) or (4) of subsection (d) ends, on—

"(i) the operation and status of the Trust Funds during such debt limit impact period, and

"(ii) the actions taken under paragraphs (3) and (4) of subsection (d) with respect to such debt limit impact period;",

(5) by striking out "in paragraph (2) above" and inserting in lieu thereof "in subparagraph (B) above",

(6) by inserting "(1)" after "(c)", and

(7) by adding at the end thereof the following:

"(2) The Managing Trustee shall report monthly to the Board of Trustees concerning the operation and status of the Trust Funds and shall report to Congress and to the Board of Trustees not less than 15 days prior to the date on which, by reason of the public debt limit, the Managing Trustee expects to be unable to fully comply with the provisions of subsection (a) or (d)(1), and shall include in such report an estimate of the expected consequences to the Trust Funds of such inability.".

SEC. 6. ELIMINATION OF UNDUE DISCRETION IN THE INVESTMENT OF TRUST FUNDS.

(a) Section 201(d) of the Social Security Act is amended, in the first sentence—

(1) by inserting "immediately" after "to invest"; and

(2) by striking ", in his judgment,".

(b)(1) Paragraph (2) of section 201(d) of the Social Security Act, as added by section 2 of this Act, is amended to read as follows:

"(2) If any amount in either of the Trust Funds is not invested solely by reason of the public debt limit, such amount shall be invested as soon as such investment can be made without exceeding the public debt limit and without jeopardizing the timely payment of benefits under this title or under any other provision of law directly related to the programs established by this title."

(2) The amendment made by paragraph (1) shall take effect on July 1, 1990.

SEC. 7. SALES AND REDEMPTIONS BY TRUST FUNDS.

Section 201(e) of the Social Security Act is amended—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2)(A) The Managing Trustee may effect any such sale or redemption with respect to either Trust Fund only for the purpose of enabling such Trust Fund to make payments authorized by this title or under any other provisions of law directly related to the programs established by this title. If either of the Trust Funds holds any amounts which are not invested by reason of the public debt limit, the Managing Trustee is nevertheless directed to make such sales and redemptions if, and only to the extent, necessary to assure timely payment of benefits and other payments authorized by this title or by any other provisions of law directly related to the programs established by this title, but the principal amount of obligations sold or redeemed pursuant to this sentence shall not exceed the principal amount of obligations that would have been sold or redeemed under normal operating procedures in order to make such payments.".

SEC. 8. EFFECTIVE DATE.

Except as otherwise provided by this title, the amendments made by this title shall take effect on the date of enactment of this Act.●

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

S. 34. A bill to establish an independent agency, governed by a bipartisan board, to administer the Old-Age, Survivors, and Disability Insurance Program under title II of the Social Security Act, the Supplemental Security Income Program under title XVI of such act, and the Medicare Program under title XVIII of such act, and for other purposes; to the Committee on Finance.

SOCIAL SECURITY ADMINISTRATIVE REORGANIZATION ACT

Mr. MOYNIHAN. Mr. President, I rise today, the first day of the 100th Congress, to introduce legislation to reorganize the Social Security Administration as an independent agency, governed by a five-member, bipartisan board. I am pleased that my distinguished colleague from Michigan, Senator RIEGLE, with whom I introduced identical legislation in the 98th and 99th Congresses, is joining me to offer it again today.

Our bill would establish an independent agency to administer the Old-Age, Survivors, and Disability Insurance [OASDI] Program, the Medicare Program, and the Supplemental Security Income [SSI] Program. These programs comprise the core of America's social safety net. OASDI and SSI provide essential income support to families who have lost a bread winner, to aged and disabled individuals and their dependents, and to indigent aged and disabled adults, respectively. Medicare insures that all elderly individuals and Social Security beneficiaries have access to basic health care.

Why should the Social Security Administration, which administers these vital programs, be made an independent agency?

The reason is simple: The operations of the Social Security Administration would be improved, and public confidence in the system strengthened, by establishing Social Security as an independent agency.

This is not a new idea—just one lately forgotten. The original Social Security Act of 1935 established an independent Social Security Board to administer the programs. In 1939, Social Security programs were made a part of the independent Federal Security Agency, where they remained until 1953. Only at that time, nearly 20 years after passage of the Social Security Act, was the Social Security Administration made part of the newly formed Department of Health, Education and Welfare. There it has remained.

Almost 30 years later in 1981, the National Commission on Social Security urged the President and Congress to create an independent agency to administer the Old Age, Survivors, Disability, Medicare, SSI, and Medicaid Programs. In 1983, the President's Commission on Social Security Reform, on which I served, stated its support for the concept of an independent Social Security Administration. The time has come to act on these recommendations.

The size of these programs, and their importance to nearly every American, recommend an independent agency. Simply put, the Social Security Administration has outgrown the Department of Health and Human Services. The benefits paid through the Social Security, Medicare, and SSI Programs today account for more than 90 percent of the Department's entire budget. In 1953, 6 million Americans received monthly Social Security checks; 33 years later, that number has increased sixfold. More than 37 million Americans receive monthly Social Security checks today, and 30 million aged and disabled citizens receive Federal insurance for the costs of hospitalization and medical treatment. Another 4.2 million of our most needy blind, aged, and disabled citizens receive SSI assistance.

The independent agency established under this legislation would be governed by a bipartisan, five-member board of directors, appointed by the President for staggered 15-year terms. The appointment of the directors would be subject to the advice and consent of the Senate. The board would be responsible for administration policy, including annual budget and legislative recommendations, and would provide the President and Congress with research, policy and actuarial analysis. The Commissioner also would devise and administer plans to improve the effectiveness of the administration's programs, and advise the board and Congress on the impact of legislative changes.

A board whose members served 15-year terms would likely be more stable than the current administrative structure of Social Security. In addition, because the 15-year terms would span several Presidential administrations, the board would also help deter policy proposals and actions which are designed to meet the short-term goals of any single administration, rather than the long-term goals of the Social Security System.

By assuring millions of Americans a dependable retirement income, basic health insurance coverage during old age, and protection in the event of disability, our social insurance programs have won widespread public support. The system has also earned a well-deserved reputation for administrative efficiency, fairness and public responsiveness. Recently, however, this reputation has been tarnished. In the last few years, for example, hundreds of thousands of disability beneficiaries were wrongfully terminated. Moreover, the Social Security Administration's computer system has been al-

lowed to deteriorate, slowing administrative processes.

By establishing the Social Security Administration as an independent agency governed by a bipartisan board, we can help restore the high levels of efficiency and fairness for which SSA is deservedly famous, as well as insulate its vital programs from partisan politics.

I urge my colleagues to join me and Senator RIEGLE in support of this important initiative, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 34

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

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, with the following table of contents, may be cited as the "Social Security Administrative Reorganization Act".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Establishment of an independent Social Security Agency; Social Security Board.
Sec. 3. Commissioner of Social Security.
Sec. 4. Transfer of functions.
Sec. 5. Transitional rules.
Sec. 6. Budgetary and fiscal affairs of the Social Security Agency.
Sec. 7. Technical and conforming amendments; rules of construction.
Sec. 8. Reports assessing organizational changes.
Sec. 9. Effective date and interim rules.

ESTABLISHMENT OF AN INDEPENDENT SOCIAL SECURITY AGENCY; SOCIAL SECURITY BOARD

SEC. 2. (a) Section 701 of the Social Security Act is amended to read as follows:

"SOCIAL SECURITY AGENCY; SOCIAL SECURITY BOARD

"SEC. 701. (a) There is hereby established, as an independent agency of the executive branch of the Government, a Social Security Agency (hereafter in this title referred to as the 'Agency').

"(b)(1) The Agency shall be headed by a Social Security Board (hereafter in this title referred to as the 'Board').

"(2)(A) Except as provided in subparagraph (B), the Board shall be composed of five members appointed by the President, by and with the advice and consent of the Senate.

"(B) For the period ending January 31, 1989, the Board shall be composed of three members appointed by the President, by and with the advice and consent of the Senate.

"(C) The members shall be chosen, on the basis of integrity, impartiality, and good judgment, from among individuals who, by reason of education, experience, and attainment, are exceptionally qualified to serve on the Board.

"(3)(A) Except as provided in subparagraphs (B) and (C), members shall be appointed for terms of fifteen years. A member of the Board may be removed only pursuant to a finding by the President of neglect of duty or malfeasance in office. The President shall transmit any such finding to the Speaker of the House of Representatives and the Majority Leader of the Senate not later than five days after the date on which such finding is made.

"(B) Of the members first appointed—

"(i) one shall be appointed for a term ending October 1, 1989,

"(ii) one shall be appointed for a term ending October 1, 1992,

"(iii) one shall be appointed for a term ending October 1, 1995,

"(iv) one shall be appointed for a term beginning February 1, 1989, and ending October 1, 1998, and

"(v) one shall be appointed for a term beginning February 1, 1989, and ending October 1, 2001,

as designated by the President at the time of appointment. Such members shall be appointed after active consideration of recommendations made by the Chairman of the Committee on Ways and Means of the House of Representatives and of recommendations made by the Chairman of the Committee on Finance of the Senate.

"(C) Any member appointed for a term after the commencement of such term shall be appointed only for the remainder of such term. A member may, with the approval of the President, serve for not more than one year after the expiration of his or her term until his or her successor has taken office.

"(4)(A) Except as provided in subparagraph (B), not more than three members of the Board shall be of the same political party.

"(B) For the period ending January 31, 1989, not more than two members of the Board shall be of the same political party.

"(5) A member of the Board may not, during his or her term as member, otherwise serve as an officer or employee of any government. If any member of the Board becomes an officer or employee of any government, he or she may continue to serve as a member of the Board not more than 30 days after the date he or she becomes an officer or employee of such government.

"(6)(A) Except as provided in subparagraph (B), three members of the Board shall constitute a quorum.

"(B) For the period ending January 31, 1989, two members of the Board shall constitute a quorum.

"(C) A lesser number may hold hearings.

"(7) A member of the Board shall be designated from time to time by the President to serve as Chairperson of the Board.

"(8) The Board shall meet at the call of the Chairperson or a majority of its members.

"(c) The Board shall—

"(1) govern by regulation the old-age, survivors, and disability insurance program under title II, the supplemental security income program under title XVI, and the medicare program under title XVIII,

"(2) appoint a Commissioner of Social Security, as described in section 702, to act for the Board as the chief operating officer of the Agency responsible for administering such programs,

"(3) make annual budgetary recommendations relating to the Agency and defend such recommendations before the appropriate committees of each House of the Congress,

"(4) make recommendations to the Congress and the President as to the most effective methods of providing economic security through social insurance, and, in consultation with the Commissioner of Social Security, as to legislation and matters of administrative policy concerning such programs,

"(5) provide the Congress and the President with the ongoing actuarial and other analysis undertaken by the Agency with respect to such programs and any other information relating to such programs, and

"(6) conduct policy analysis and research relating to such programs.

"(d)(1) The Office of the Board shall include an Office of the Actuary, to be headed by a Chief Actuary appointed by the Board. To the extent provided by the Board, the Office of the Actuary shall assist the Board in carrying out its actuarial functions.

"(2) The Office of the Board shall include an Office of Policy and Legislation, to be headed by a Director of Policy and Legislation appointed by the Board. To the extent provided by the Board, the Office of Policy and Legislation shall assist the Board in carrying out its functions relating to policy analysis, research, and legislation.

"(3) The Office of the Board shall include an Office of General Counsel, to be headed by a General Counsel appointed by the Board. The General Counsel shall serve as the principal legal counsel in the Agency and shall provide necessary legal advice and services to the Board and the Commissioner.

"(4) The Office of the Board shall include an Ombudsman, to be appointed by the Board. The Ombudsman shall represent the concerns of the public, including beneficiaries, with respect to the old-age, survivors, and disability insurance program under title II, the supplemental security income program under title XVI, and the medicare program under title XVIII, to the Board and the Commissioner.

"(5)(A) The Board shall appoint such additional attorneys, actuaries, and other employees as it considers necessary to carry out its functions.

"(B) The Board may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such technical or professional employees as the Board considers appropriate, and such employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(C) The Board may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

"(D) Notwithstanding section 3133 of title 5, United States Code, the Director of the Office of Personnel Management shall authorize for the Agency a total number of Senior Executive Service positions equal to 150 percent of the number of such positions existing in the Social Security Administration of the Department of Health and Human Services on the day before the date of the enactment of the Social Security Administrative Reorganization Act, and the total number of such positions authorized for the Agency pursuant to such section 3133 shall not at any subsequent time be less than such number.

"(E) In addition to the positions of the Agency in the Executive Schedule specified in subchapter II of chapter 53 of title 5, United States Code, the Board may establish additional positions at levels IV and V of the Executive Schedule.

"(d)(1) The Board may establish, alter, consolidate, or discontinue such organizational units or components within the Agency as the Board considers necessary or appropriate to carry out its functions, except that this paragraph shall not apply with respect to any unit or component established by this Act.

"(2) The Board may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, with respect to the functions of the Board under this section. Within the limitations of such delegations, redelegations, or assignments to officers or employees of the Agency, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Board.

"(e) There shall be in the Agency an Office of the Inspector General, to be headed by an Inspector General appointed in accordance with the Inspector General Act of 1978.

"(f)(1) The Board, the Secretary, and the Secretary of the Treasury shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of titles II, XVI, and XVIII and the other provisions of this Act and the applicable provisions of the Internal Revenue Code of 1954, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden on beneficiaries and other persons of compliance with the provisions of this Act.

"(2) In order to avoid unnecessary expense and duplication of functions, the Board, the Secretary, and the Secretary of the Treasury may make such arrangements or agreements for cooperation or mutual assistance in the performance of their functions under titles II, XVI, and XVIII and the other provisions of this Act and the applicable provisions of the Internal Revenue Code of 1954 as they find to be practicable and consistent with law.".

(b)(1) Section 5313 of title 5, United States Code (relating to level II of the Executive Schedule), is amended by adding at the end thereof the following new item:

"Chairperson of the Social Security Board, Social Security Agency.".

(2) Section 5314 of such title (relating to level III of the Executive Schedule) is amended by adding at the end thereof the following new item:

"Members of the Social Security Board, Social Security Agency (4).".

(3) Section 5315 of such title (relating to level IV of the Executive Schedule) is amended by adding at the end thereof the following new items:

"Inspector General, Social Security Agency.

"Chief Actuary, Social Security Agency.

"Director of Policy Analysis and Legislation, Social Security Agency.

"General Counsel, Social Security Agency.

"Ombudsman, Social Security Agency.".

COMMISSIONER OF SOCIAL SECURITY

SEC. 3. (a) Section 702 of the Social Security Act is amended to read as follows:

"COMMISSIONER OF SOCIAL SECURITY

"SEC. 702. (a) There shall be in the Agency an Office of the Commissioner, to be headed by a Commissioner of Social Security (hereinafter in this title referred to as the 'Commissioner') appointed by the Board. The Commissioner shall be chosen from among individuals who are, by reason of experience and attainment, especially qualified to manage a large-scale organization of the Government.

"(b)(1) The Commissioner shall be appointed for a term of five years, except that—

"(A) an individual appointed Commissioner for a term after the commencement of such term shall be appointed only for the remainder of such term,

"(B) an individual may, with the approval of the Chairperson of the Board, serve as Commissioner after the expiration of his or her term for not more than one year until his or her successor has taken office, and

"(C) the individual first appointed to the Office of Commissioner shall serve for a term ending January 31, 1989.

An individual may be appointed as Commissioner for successive terms, and

"(2) An individual may be removed from the Office of Commissioner before completion of his or her term only upon the vote of a majority of the full membership of the Board, pursuant to a finding by the Board of neglect of duty or malfeasance in office. The Board shall transmit any such finding to the Speaker of the House of Representatives and the Majority Leader of the Senate not later than five days after the date on which such finding is made.

"(3) Except as provided in paragraph (6) of subsection (c), an individual serving as Commissioner may not, during his or her term as Commissioner, otherwise serve as an officer or employee of any government. If an individual serving as Commissioner becomes an employee of any government, he or she may continue to serve as Commissioner not more than 30 days after the date on which he or she becomes an officer or employee of such government.

"(c) The Commissioner shall—

"(1) constitute the chief operating officer of the Agency, responsible for administering, in accordance with applicable statutes and regulations, the old-age, survivors, and disability insurance program under title II, the supplemental security income program under title XVI, and the medicare program under title XVIII,

"(2) establish and maintain an efficient and effective operational structure for the Agency,

"(3) devise and implement long-term plans to promote and maintain the effective implementation of such programs,

"(4) make annual budgetary recommendations of the Agency for the ongoing administrative costs of the Agency and defend such recommendations before the Board and before the appropriate Committees of each House of the Congress,

"(5) advise the Board and the Congress of the effect on the administration of such programs of proposed legislative changes in such programs,

"(6) serve as Secretary of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and

"(7) report in December of each year to the Board and the Congress concerning the administrative endeavors and accomplishments of the Agency.

"(d)(1) The Commissioner may establish, alter, consolidate, or discontinue such organizational units or components within the Office of the Commissioner as the Commissioner considers necessary or appropriate to carry out his or her functions.

"(2) The Commissioner may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, with respect to the administration of the old-age, survivors, and disability insurance program under title II, the supplemental security income program under title XVI, and the medicare program under title XVIII to such officers and employees as the Commissioner may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Commissioner.

"(3)(A) The Commissioner shall appoint such additional employees as he or she considers necessary to carry out his or her functions.

"(B) The Commissioner may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such technical or professional employees as the Commissioner considers appropriate, and such employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(C) The Commissioner may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

"(D) The Commissioner may delegate such powers of appointment and procurement to any of the employees in the Office of the Commissioner as he or she determines appropriate.

"(4) To the extent requested by the Commissioner, the Director of the Office of Personnel Management shall delegate to the Commissioner, pursuant to section 1104 of title 5, United States Code, and subject to applicable limitations under such title relating to delegations under such section, functions relating to—

"(A) recruitment and examination programs for entry level employees, and

"(B) classification and standards development systems and pay ranges for those job categories identified by the Commissioner in assuming such delegation.

The Director of the Office of Personnel Management shall provide any assistance requested by the Commissioner in assuming any such delegation.".

(b)(1) Section 5313 of title 5, United States Code (relating to level II of the Executive Schedule) is further amended by adding at the end thereof the following new item:

"Commissioner of Social Security, Social Security Agency.".

(2) Section 5315 of such title is amended by striking out the following item:

"Commissioner of Social Security, Department of Health and Human Services.".

TRANSFER OF FUNCTIONS

SEC. 4. (a) There are transferred to the Social Security Agency all functions carried out by the Secretary of Health and Human Services with respect to the programs and activities the administration of which is vested in the Social Security Agency by reason of this Act and the amendments made thereby. The Social Security Board shall prescribe such regulations as are necessary to allocate such functions in accordance with sections 701 and 702 of the Social Security Act (as amended by this Act).

(b)(1) There are transferred from the Department of Health and Human Services to the Social Security Board, for appropriate allocation by the Board by regulation in the Social Security Agency—

(A) the personnel employed in connection with the functions transferred by this Act and the amendments made thereby, and

(B) the assets, liabilities, contracts, property, records, and unexpended balance of

appropriations, authorizations, allocations, and other funds employed, held, or used in connection with such functions, arising from such functions, or available, or to be made available, in connection with such functions.

(2) Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) The position of Commissioner of Social Security in the Department of Health and Human Services is abolished.

TRANSITIONAL RULES

SEC. 5. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, promulgated, granted, or allowed to become effective, in the exercise of functions (A) which were exercised by the Secretary of Health and Human Services (or his delegate), and (B) which relate to functions which, by reason of this Act, the amendments made thereby, and regulations prescribed thereunder, are vested in the Social Security Board or the Commissioner of Social Security (as the case may be), and

(2) which are in effect at the time this Act takes effect,

shall (to the extent that they relate to functions described in paragraph (1)(B)) continue in effect according to their terms until modified, terminated, suspended, set aside, or repealed by such Board or Commissioner (as the case may be).

(b) The provisions of this Act (including the amendments made thereby) shall not affect any proceeding pending at the time this Act takes effect before the Secretary of Health and Human Services with respect to functions vested (by reason of this Act, the amendments made thereby, and regulations prescribed thereunder) in the Social Security Board or the Commissioner of Social Security, except that such proceedings, to the extent that they relate to such functions, shall continue before such Board or Commissioner (as the case may be). Orders shall be issued under any such proceeding, appeals taken therefrom, and payments shall be made pursuant to such orders, in like manner as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or repealed by such Board or Commissioner (as the case may be), by a court of competent jurisdiction, or by operation of law.

(c) Except as provided in this subsection—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect; and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

No cause of action, and no suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Health and Human Services, shall abate by reason of the enactment of this Act. Causes of action, suits, actions, or other proceedings may be asserted by or against the United States and the Social Security Agency, or such official of such Agency as may be appropriate, and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of a party, enter an order which will give effect to the provisions of this subsection (including, where appropriate, an order for substitution of parties).

(d) This Act shall not have the effect of releasing or extinguishing any criminal prosecution, penalty, forfeiture, or liability incurred as a result of any function which (by reason of this Act, the amendments made thereby, and regulations prescribed thereunder) is vested in the Social Security Board or the Commissioner of Social Security.

(e) Orders and actions of the Social Security Board and the Commissioner of Social Security in the exercise of functions vested in such Board or Commissioner (as the case may be) under this Act (and the amendments made thereby) shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been taken by the Secretary of Health and Human Services in the exercise of such functions immediately preceding the effective date of this Act. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function so vested in such Board or Commissioner shall continue to apply to the exercise of such function by such Board or Commissioner (as the case may be).

(f) In the exercise of the functions vested in the Social Security Board or the Commissioner of Social Security under this Act, the amendments made thereby, and regulations prescribed thereunder, such Board or Commissioner (as the case may be) shall have the same authority as that vested in the Secretary of Health and Human Services with respect to the exercise of such functions immediately preceding the vesting of the same in such Board or Commissioner, and actions of such Board or Commissioner shall have the same force and effect as when exercised by such Secretary.

BUDGETARY AND FISCAL AFFAIRS OF THE SOCIAL SECURITY AGENCY

SEC. 6. Section 703 of the Social Security Act is amended to read as follows:

"BUDGETARY AND FISCAL AFFAIRS OF THE SOCIAL SECURITY AGENCY

"SEC. 703. (a) Appropriations requests of the Social Security Agency for staffing and personnel shall be based upon comprehensive work force plans. The entire amount of appropriations provided for the administrative costs of the Social Security Agency shall be apportioned in the time period provided in title 31, United States Code, for apportionment and shall be apportioned for the entire period of availability without restriction or deduction by the apportioning officer or employee of the Office of Management and Budget or any other entity within the executive branch of the Federal Government, except as otherwise provided in this section.

"(b)(1) Authority of the Social Security Agency for automated data processing procurement and facilities construction shall be provided in the form of contract authority covering the total costs of such acquisitions, to be available until expended.

"(2) Amounts necessary for the liquidation of contract authority provided pursuant to this section are hereby made available from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, Federal Hospital Insurance Trust Fund, and the Federal Supplemental Medical Insurance Trust Fund to the extent that the Social Security Board, with the concurrence of the Secretary of the Treasury, determines that any of such amounts to be provided from such Trust Fund are not necessary to meet the current obligations for benefit payments from such Trust Fund.

"(3) Funds appropriated for the Social Security Agency to be available on a contingency basis shall be apportioned only upon the occurrence of the stipulated contingency, as determined by the Social Security Board and reported to each House of the Congress.

"(c)(1) To the extent requested by the Commissioner, the Commissioner shall have—

"(A) all authorities permitted to be delegated under the provisions of Federal law codified under title 40 of the United States Code, that the Commissioner considers are necessary for the acquiring, operating, and maintaining of the facilities needed for the administration of programs for which the Commissioner is given responsibility under this Act,

"(B) all authorities permitted to be delegated under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), relating to the lease, purchase, or maintenance of automated data processing equipment, and

"(C) the authority to contract for any automated data processing equipment or services which the Commissioner considers necessary for the efficient and effective operation of such programs.

"(2) The Administrator of the General Services Administration shall provide any assistance requested by the Commissioner in assuming the delegations required under paragraph (1).".

TECHNICAL AND CONFORMING AMENDMENTS; RULES OF CONSTRUCTION

SEC. 7. (a) Title II (other than subsections (a), (b), and (c) of section 201), part B of title XI, title XVI (relating to supplemental security income for the aged, blind, and disabled), and title XVIII (other than subsection (b) of section 1817 and subsection (b) of section 1841) of the Social Security Act are each amended—

(1) by striking out, wherever it appears therein, "Secretary of Health and Human Services" or "Secretary of Health, Education, and Welfare" and inserting in lieu thereof "Commissioner",

(2) by striking out, wherever it appears therein, "Department of Health and Human Services" or "Department of Health, Education, and Welfare" and inserting in lieu thereof "Social Security Agency",

(3) by striking out, wherever it appears therein, "Department" (but only if it is used in reference to the Department of Health and Human Services or the Department of Health, Education, and Welfare) and inserting in lieu thereof "Social Security Agency", and

(4) by striking out, wherever it appears therein, each of the following words (but, in the case of any such word only if such word refers to the Secretary of Health and Human Services or to the Secretary of Health, Education, and Welfare): "Secretary", "Secretary's", "his", "him", and "he", and inserting in lieu thereof (in the case of the word "Secretary") "Commissioner", (in the case of the word "Secretary's") "Commissioner's", (in the case of the word "his") "the Commissioner's", (in the case of the word "him") "the Commissioner", and (in the case of the word "he") "the Commissioner".

(b)(1) Subsections (a) and (b) of section 201 of such Act are each amended—

(A) by striking out "Secretary of Health, Education, and Welfare" each place it ap-

pears and inserting in lieu thereof "Commissioner of Social Security", and

(B) by striking out "such Secretary" each place it appears and inserting in lieu thereof "the Commissioner of Social Security".

(2) Section 201(c) of such Act is amended—

(A) in the first sentence, by striking out "shall be composed of" and all that follows through "ex officio" and inserting in lieu thereof the following: "shall be composed of the Chairperson of the Social Security Board, and the Secretary of the Treasury, ex officio"; and

(B) by striking out "Social Security Administration" in the fourth sentence and inserting in lieu thereof "Social Security Agency".

(c)(1) Section 402 of such Act is amended by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary".

(2) Section 411 of such Act is amended—

(A) in subsection (a), by striking out "Secretary" and inserting in lieu thereof "Commissioner, at the request of the Secretary,", and by striking out "Social Security Administration" and inserting in lieu thereof "Social Security Agency"; and

(B) in subsection (b), by striking out "Secretary" each place it appears and inserting in lieu thereof "Commissioner".

(d)(1) Section 704 of such Act is amended—

(A) by inserting "and the Commissioner" after "Secretary" the first place it appears;

(B) by inserting "each" after "shall";

(C) by striking out "the functions with which he is charged" and inserting in lieu thereof "his or her functions"; and

(D) by striking out "of such" each place it appears and inserting in lieu thereof "of each such".

(2) Section 709(b)(2) of such Act is amended by striking out "(as estimated by the Secretary)" and inserting in lieu thereof "(as estimated by the Commissioner)".

(3) Title VII of such Act is further amended by adding at the end thereof the following new section:

"DUTIES OF SECRETARY

"SEC. 713. The Secretary shall perform the duties imposed upon him by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security and as to legislation and matters of administrative policy concerning the programs administered by the Secretary and related subjects; except that nothing in this section shall be construed to require the Secretary to make studies or recommendations with respect to programs administered by the Social Security Agency.".

(e)(1) Section 1101(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(10) The term 'Commissioner' means the Commissioner of Social Security.".

(2) Section 1102 of such Act is amended by striking out "and the Secretary of Health, Education and Welfare" and inserting in lieu thereof "the Secretary of Health and Human Services, and the Commissioner of Social Security".

(3) Section 1106(a) of such Act is amended—

(A) by inserting "(1)" after "(a)";

(B) by striking out "Federal Security Agency" and inserting in lieu thereof "applicable agency";

(C) by striking out "Administrator" and inserting in lieu thereof "head of the applicable agency"; and

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

"(2) For purposes of this subsection and subsection (b)—

"(A) the term 'applicable agency' means—

"(i) the Social Security Agency, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Agency,

"(ii) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department, or

"(iii) the Department of Labor, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department, and

"(B) the term 'head of the applicable agency' means, in the case of the Social Security Agency, the Commissioner of Social Security.".

(4) Section 1106(b) of such Act is amended—

(A) by striking out "Secretary" and inserting in lieu thereof "head of the applicable agency"; and

(B) by striking out "Department of Health, Education, and Welfare" and inserting in lieu thereof "applicable agency".

(5) Section 1106(c) of such Act is amended—

(A) by striking out "the Secretary" the first place it appears and inserting in lieu thereof "the Commissioner or the Secretary"; and

(B) by striking out "the Secretary" each subsequent place it appears and inserting in lieu thereof "such Commissioner or Secretary".

(6) Section 1106(d) of such Act is amended by inserting "the Commissioner and" after "this section".

(7) Section 1106(e) of such Act is amended—

(A) by striking out "by the Secretary" and inserting in lieu thereof "by the Commissioner, the Secretary,"; and

(B) by inserting "or the Commissioner" after "Secretary" the second and third places it appears.

(8) Section 1107(b) of such Act is amended by striking out "the Secretary of Health, Education, and Welfare" and inserting in lieu thereof "the Commissioner or the Secretary".

(9) Section 1110 of such Act is amended—

(A) by striking out "Secretary" each place it appears and inserting in lieu thereof "Commissioner";

(B) by striking out "he", "his", and "him" each place they appear and inserting in lieu thereof "the Commissioner", "the Commissioner's", and "the Commissioner", respectively; and

(C) by striking out "or makes them himself", in subsection (b)(1), and inserting in lieu thereof "or the Commissioner makes them".

(10)(A) Subsections (a), (b), and (i) of section 1122 of such Act are each amended by inserting "Commissioner and the" before "Secretary" each place it appears.

(B) Subsections (c), (d), (e), and (f) of such section are each amended—

(i) by striking out "the Secretary" each place it appears and inserting in lieu thereof "the Commissioner or the Secretary (as the case may be)"; and

(ii) by striking out "titles XVIII and XIX" each place it appears and inserting in lieu thereof "title XVIII or title XIX (as the case may be)".

(C) Subsection (j) of such section is amended by striking out "the Secretary" and inserting in lieu thereof "the Commissioner".

(11) Section 1123 of such Act is amended by striking out "Secretary" and inserting in lieu thereof "Commissioner".

(12)(A) Section 1124(a)(1) of such Act is amended—

(i) by inserting "(or, with respect to programs established under title XVIII, the Commissioner)" after "the Secretary";

(ii) by inserting ", the Commissioner," after "the Secretary" the first and second places it appears; and

(iii) by striking out "Secretary in" and inserting in lieu thereof "Secretary or the Commissioner, as the case may be, in".

(B) Section 1124(b) of such Act is amended by inserting "or the Commissioner, as the case may be" after "Secretary".

(13) Section 1126 of such Act is amended—

(A) by inserting ", the Commissioner," after "Secretary" each place it appears;

(B) by striking out "in the Department of Health, Education, and Welfare" and inserting in lieu thereof "in the Department of Health and Human Services, or the Inspector General in the Social Security Agency, as the case may be,"; and

(C) by striking out "notify the" and inserting in lieu thereof "notify such".

(14) Section 1127 of such Act is amended by striking out "Secretary" and inserting in lieu thereof "Commissioner".

(15)(A) Subsections (a) and (b) of section 1128 of such Act are each amended—

(i) by inserting "(or, with respect to title XVIII, the Commissioner)" after "Whenever the Secretary",

(ii) by striking out ", the Secretary";

(iii) by inserting "the Commissioner" after "(1)";

(iv) by inserting "the Secretary or the Commissioner (as the case may be)" after "(2)(A)";

(v) by inserting "the Secretary" before "may" in paragraph (2)(A);

(vi) by inserting "the Secretary" after "(B)"; and

(vii) in paragraph (3) of subsection (a) only, by inserting "the Secretary or the Commissioner (as the case may be)" after "(3)".

(B) Subsection (c) of such section is amended by inserting "or the Commissioner, as the case may be," after "Secretary" each place it appears.

(C) Subsection (d) of such section is amended—

(i) by inserting "or the Commissioners, as the case may be," after "Secretary" each place it appears; and

(ii) by striking out "Secretary's final decision" and inserting in lieu thereof "the final decision of the Secretary or the Commissioner, as the case may be,".

(16)(A) Subsection (a) of section 1128A of such Act is amended—

(i) in paragraph (1) by inserting "(or, with respect to claims under title XVIII, the Commissioner)" after "that the Secretary",

(ii) in paragraph (1)(B) by inserting "or the Commissioner" after "Secretary" the first place it appears, and

(iii) in paragraph (1)(B) by striking out "Secretary" the second and third places it appears and inserting in lieu thereof "Commissioner".

(B) Subsections (b) and (c) of such section are each amended by inserting "(or, with respect to claims under title XVIII, the Commissioner)" after "Secretary" each place it appears.

(C) Subsection (d) of such section is amended—

(i) by inserting "or the Commissioner" after "Secretary" each place it appears, and

(ii) by inserting "or the Commissioner's" after "Secretary's".

(D) Subsection (e) of such section is amended—

(i) by inserting "or the Commissioner (as the case may be)" after "the Secretary" the first place it appears, and

(ii) by inserting "or the Commissioner" after "Secretary" the second and third places it appears.

(E) Subsection (f) of such section is amended by inserting "or the Commissioner" after "Secretary" each place it appears.

(F) Subsection (g) of such section is amended by inserting "or the Commissioner's" after "Secretary's".

(17)(A) Section 1129 of such Act is amended by inserting "(in consultation with the Social Security Administration)" after "Secretary" in the second sentence of subsection (a) and in subsection (b)(1).

(B) Section 1129(b)(2) of such Act is amended by striking out "title XVIII or XIX" and inserting in lieu thereof "title XIX and the Commissioner may waive such requirements of title XVIII".

(18)(A) Section 1131 of such Act is amended by striking out "Secretary" each place it appears and inserting in lieu thereof "Commissioner".

(B)(i) Subsections (d) and (f) of section 6057 of the Internal Revenue Code of 1954 are each amended by striking out "Secretary of Health, Education, and Welfare" and inserting in lieu thereof "Commissioner of Social Security".

(ii) The caption of section 6057(d) of such Code is amended by striking out "Secretary of Health, Education, and Welfare" and inserting in lieu thereof "Commissioner of Social Security".

(f) Section 1817(b) of such Act is amended—

(1) by striking out "shall be composed of" and all that follows through "ex officio" and inserting in lieu thereof "shall be composed of the Chairperson of the Social Security Board and the Secretary of the Treasury, ex officio";

(2) by striking out "Administrator of the Health Care Financing Administration" and inserting in lieu thereof "Commissioner of Social Security"; and

(3) by striking out "Chief Actuarial Officer of the Health Care Financing Administration" and inserting in lieu thereof "Chief Actuary of the Social Security Agency".

(g) Section 1841(b) of such Act is amended—

(1) by striking out "shall be composed of" and all that follows through "ex officio" and inserting in lieu thereof "shall be composed of the Chairperson of the Social Security Board and the Secretary of the Treasury, ex officio";

(2) by striking out "Administrator of the Health Care Financing Administration" and inserting in lieu thereof "Commissioner of Social Security"; and

(3) by striking out "Chief Actuarial Officer of the Health Care Financing Administration" and inserting in lieu thereof "Chief Actuary of the Social Security Agency".

(h) The Inspector General Act of 1978 is amended—

(1) in section 2(1), by striking out "and the Veterans' Administration" and inserting in lieu thereof "the Veterans' Administration, and the Social Security Agency";

(2) in section 9(a)(1), by striking out "and" at the end of subparagraph (M), and by adding at the end thereof the following new subparagraph:

"(O) of the Social Security Agency, to the extent provided in the Social Security Administrative Reorganization Act, the functions of the Inspector General of the Department of Health and Human Services relating to the administration of the old-age, survivors, and disability insurance program under title II of the Social Security Act, the supplemental security income program under title XVI of such Act, and the medicare program under title XVIII of such Act; and";

(3) in section 11(1), by striking out "or" after "Transportation" and inserting in lieu thereof a comma, and by inserting after "Affairs," the following: "or the Commissioner of Social Security of the Social Security Agency,"; and

(4) in section 11(2), by striking out "or" after "Transportation", and by inserting after "Veterans' Administration," the following: "or the Social Security Agency,".

(i)(1) Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to the Department of Health and Human Services with respect to such Department's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act, the supplemental security income program under title XVI of such Act, or the medicare program under title XVIII of such Act, such reference shall be considered a reference to the Social Security Agency.

(2) Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary's functions under such programs, such reference shall be considered a reference to—

(A) the Social Security Board, with respect to functions described in section 701 of the Social Security Act (as amended by this Act), and

(B) the Commissioner of Social Security, with respect to functions described in section 702 of the Social Security Act (as amended by this Act).

(3) Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee's functions under such programs, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Agency.

REPORTS ASSESSING ORGANIZATIONAL CHANGES

SEC. 8. (a) Five years after the date of the enactment of this Act, the Social Security Board, the Comptroller General of the United States, and the Secretary of Health and Human Services shall each submit to each House of the Congress a report setting forth in detail an assessment of the organizational changes made by this Act and the amendments made by this Act.

(b) Not later than one year after the date of the enactment of this Act, the Social Security Board, the Comptroller General of the United States, and the Secretary of Health and Human Services shall submit to each House of the Congress their recommendations for further technical and conforming amendments necessary to effectively and efficiently carry out the purposes of this Act.

EFFECTIVE DATE AND INTERIM RULES

SEC. 9. (a)(1) Sections 2, 3, 4, 5, and 7 of this Act shall take effect one year after date of enactment of this Act.

(2) Notwithstanding the effective date set forth in paragraph (1), effective on the date of the enactment of this Act—

(A) the initial members of the Social Security Board may be appointed before such effective date, after the date of the enactment of this Act, and the Commissioner of Social Security, the Inspector General, the Chief Actuary, the Director of Policy Analysis and Legislation, and the General Counsel of the Social Security Agency may be appointed by such Board at any time after such initial members of the Social Security Board have been appointed,

(B) the persons appointed under subparagraph (A) shall be compensated from the date they first take office, at the rates provided for in the amendments to title 5, United States Code, made by sections 2(b) and 3(b) of this Act,

(C) such compensation and related expenses of such persons shall be paid from funds available in the Department of Health and Human Services for the functions vested in the Social Security Agency by this Act and the amendments made thereby, and

(D) the Social Security Board and the Commissioner of Social Security may each utilize, as appropriate, the services of such officers, employees, and other personnel of the Department of Health and Human Services, and funds appropriated to the functions of such Department to be transferred by this Act and the amendments made thereby, for such period of time as may reasonably be needed to facilitate the orderly implementation of this Act.

(b) The amendment made by section 6 of this Act shall apply with respect to fiscal years beginning one year after the date of enactment of this Act.

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

S. 35. A bill to charter the National Academy of Social Insurance.

NATIONAL ACADEMY OF SOCIAL INSURANCE

Mr. MOYNIHAN. Mr. President, on this 1st day of the 100th Congress, I rise to introduce a bill to grant a Federal charter to the National Academy of Social Insurance. I introduced identical legislation in the 99th Congress, but in the final rush of legislative action before the last Congress adjourned, we were unable to consider this worthy initiative.

The academy was established in May 1986 by a distinguished group of individuals from business, labor, Government, and the academic community. Although their professional backgrounds are diverse, each has achieved distinction in the field of social insurance. I am honored to serve as a member of the academy's organizing committee, together with my colleague, and the cosponsor of this bill, Senator HEINZ.

Mr. President, the Social Security Act of 1935 is perhaps the greatest piece of domestic legislation of this century. The original act and its subsequent amendments—including survi-

vors, disability, and health insurance—affect nearly every American family.

In 1986, our Social Security System will pay nearly $200 billion in benefits to an average of 37 million retired and disabled individuals, their spouses and children, and to survivors of deceased workers. Annual payroll tax contributions of some $210 billion will be collected this year from about 125 million workers and 6 million employers. Together, the Old Age, Survivors, Disability, and Health Insurance [OASDHI] programs account for approximately 48 percent of all domestic expenditures made by the Federal Government.

The Social Security Act, Mr. President, represents a deliberate Federal policy to strengthen American families. In the not-so-distant past, the family that lost a breadwinner through death, disability, or advanced age was left to fend for itself. The very fortunate might manage on their own savings or with the help of relatives and friends. Chartiable contributions and locally funded public assistance, if available, might help. But when these alternatives failed—as they too often did—families broke down and frequently broke up.

It was to these problems that the Social Security Act addressed itself. In the original act and in succeeding amendments, Congress sought to help insulate family members from the disruption caused by the loss of a worker's earned income. This objective is laudable. It deserves great effort. Our social insurance programs make that effort, Mr. President, and they succeed. How else can we explain the unprecedented public and bipartisan political support enjoyed by a system that raises Federal revenues in sums second only to those raised by the income tax?

But neither problems nor solutions remain static. Today, our social insurance programs operate in an environment vastly changed from that of 50 years ago: changes in our economy and labor market, changes in our expectations concerning women and work, and perhaps most dramatic, changes in the demography of our population. The "aging" of America has been much discussed, but less well understood is the fact that, some 14 years ago, the American birthrate dropped below the reproduction level. Well below. It does not take any great insight to realize that this phenomenon has profound implications for the aged. In a word: Who will provide for them? Clearly, all of these changes pose new and serious challenges to our Social Security System.

That is why, Mr. President, the National Academy of Social Insurance is long overdue. Until now, there has been no organization of scholars and experts to plan and carry out a long-term education and research agenda, to promote an exchange of ideas, or to develop informed policy proposals.

If we are to assure the future health of the Social Security System, we ought to bring together experts from diverse disciplines. We ought to provide a forum for unfettered and bipartisan debate. We ought to provide clear, objective information to the millions of Americans who contribute toward and benefit from our social insurance programs.

Finally, Mr. President, we have a group of distinguished individuals intending to do all these things. I ask my colleagues to join with me and Senator HEINZ in formally recognizing and granting a charter to the National Academy of Social Insurance. In doing so, we encourage serious and ongoing study of the maturation and evolution of our Social Security System, we increase the availability of essential information to the public, and we signal congressional resolve to continue our social insurance programs, on a sound basis, into the 21st century and beyond.

Mr. President, I hope that the Senate will act early in the 100th Congress to grant a charter to the National Academy of Social Insurance. I ask unanimous consent that a copy of the bill and a list of the academy's organizing committee members be printed in the CONGRESSIONAL RECORD at this point.

NATIONAL ACADEMY OF SOCIAL INSURANCE

MEMBERS OF ORGANIZING COMMITTEE

Robert M. Ball; Henry Aaron; William Arnone; Merton C. Bernstein; Lisle Carter, Jr.; Wilbur J. Cohen; John Heinz; Erwin Hytner; Eric Kingson; Lane Kirkland; Nancy Altman Lupu; Theodore Marmor; Daniel Patrick Moynihan; Alicia H. Munnell; Robert J. Myers; Bert Seidman; Lawrence H. Thompson; Alexander B. Trowbridge; Elizabeth Wickenden; Howard Young.

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

S. 35

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

SECTION 1. CHARTER.

The National Academy of Social Insurance, organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a charter.

SEC. 2. POWERS.

The National Academy of Social Insurance (in this Act referred to as the "Academy") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

SEC. 3. OBJECTS AND PURPOSES OF CORPORATION.

The objects and purposes for which the Academy is organized shall be those provided in its articles of incorporation and shall include—

(1) promoting an informed and nonpartisan study of, and education with respect to, social insurance,

(2) bringing together experts with diverse backgrounds to consider social insurance issues in an interdisciplinary way,

(3) assisting in the development of social insurance scholars and administrators,

(4) encouraging research and studies on topics of relevance to social insurance, and

(5) sponsoring seminars and other public meetings.

SEC. 4. SERVICE OF PROCESS.

With respect to service of process, the Academy shall comply with the laws of the State or States in which it is incorporated and the State or States in which it carries on its activities in furtherance of its corporate purposes.

SEC. 5. MEMBERSHIP.

Eligibility for membership in the Academy and the rights and privileges of members shall be as provided in the bylaws of the corporation.

SEC. 6. BOARD OF DIRECTORS; COMPOSITION; RESPONSIBLITIES.

The board of directors of the Academy and the responsibilities thereof shall be as provided in the articles of incorporation of the Academy and in conformity with the laws of the State or States in which it is incorporated.

SEC. 7. OFFICERS OF CORPORATION.

The officers of the Academy, and the election of such officers, shall be as is provided in the articles of incorporation of the Academy and in conformity with the laws of the State or States wherein it is incorporated.

SEC. 8. RESTRICTIONS.

(a) No part of the income or assets of the corporation shall inure to any member, officer, or director of the Academy or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers and members of the Academy or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) The Academy shall not make any loan to any officer, director, or employee of the corporation.

(c) The Academy and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The Academy shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The Academy shall not claim congressional approval or Federal Government authority for any of its activities, other than by mutual agreement.

(f) The Academy shall retain and maintain its status as a corporation organized and incorporated under the laws of the District of Columbia.

SEC. 9. LIABILITY.

The Academy shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SEC. 10. BOOKS AND RECORDS; INSPECTION.

The Academy shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the Academy involving any of its members, the board of directors, or any committee having authority under the board of directors. The Academy shall keep at its principal office a record of the names and addresses of all members having the right of vote. All books and records of such corporation may be inspected by any member having the right to

vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

SEC. 11. AUDIT OF FINANCIAL TRANSACTIONS.

The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal laws", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(71) National Academy of Social Insurance.".

SEC. 12. ANNUAL REPORT.

The Academy shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 11 of this Act. The report shall not be printed as a public document.

SEC. 13. RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER.

The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

SEC. 14. DEFINITION OF "STATE".

For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 15. TAX-EXEMPT STATUS.

The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code. If the corporation fails to maintain such status, the charter granted hereby shall expire.

SEC. 16. TERMINATION.

If the corporation shall fail to comply with any of the restrictions or provisions of this Act the charter granted hereby shall expire.

By Mr. MOYNIHAN:

S. 36. A bill to amend the Food Stamp Act of 1977 with respect to third party payments for certain temporary housing; to the Committee on Agriculture, Nutrition, and Forestry.

THIRD PARTY PAYMENTS FOR CERTAIN TEMPORARY HOUSING

● Mr. MOYNIHAN. Mr. President, I rise today to right a wrong: Poor children and their families who are housed on an emergency basis in welfare hotels, because they cannot find permanent affordable housing, are suffering severe reductions in their food stamp benefits. In many instances, food stamp benefits have been slashed by more than half. For example, in New York City, a mother with two children living in a welfare hotel has seen her food stamp allotment drop from $122 per month to only $49 per month.

Poor children, Mr. President, are going hungry because of the Department of Agriculture's [USDA] interpretation of a provision in the Food Security Act of 1985 (Public Law 99-198). That provision (section 5(k)(2)) requires that third-party vendor payments made for household living expenses under the Aid to Families With Dependent Children [AFDC] Program be counted as income available to the household for purposes of calculating food stamp benefits. An exception is allowed, however, when such payments are for emergency assistance.

One might think that local government vendor payments to welfare-hotel landlords—payments made for emergency shelter on behalf of homeless AFDC households—would be excluded by USDA for purposes of food stamp benefit calculations under the statutory exception for emergency assistance. For reasons that mystify me, Mr. President, the Department does not view such vendor payments for temporary housing for homeless families with children as emergency assistance.

Consequently, when a State or local government is obliged to shelter homeless families with children in welfare hotels, and pays the rental fee to the hotel landlords on behalf of these families, USDA requires that the portion of the monthly rent equal to the State's AFDC shelter allowance be counted as income available to the household for food stamp purposes. That is why, Mr. President, poor children living in households who have lost their homes and who have the misfortune of being temporarily warehoused in so-called welfare hotels have now also lost over half of the nutrition assistance they were receiving under the Food Stamp Program.

I suggest that this was not congressional intent, Mr. President. When we passed the Food Security Act of 1985, we did not suspect that poor children would be deprived of food because they were also deprived of decent, affordable, permanent housing. These poor families with children do not choose to be homeless and they certainly do not choose to live in welfare hotels. They are there only because the Reagan administration has succeeded in getting the Federal Government out of the business of providing low-cost housing and local governments cannot find anyplace else for these families to go.

In fiscal year 1981, Federal budget authority for low-income subsidized housing was $30 billion. By fiscal year 1987, budget authority had plummeted to only $8 billion. That represents a 73-percent reduction before adjusting for inflation. Does anyone still wonder why we have thousands of homeless families?

I am introducing separate legislation to address, at least in part, the crisis of homelessness we now face in this Nation. However, as we fight that battle on other fronts, we must not permit the families now housed in welfare hotels to go hungry.

The bill I am introducing today would merely make clear that housing assistance payments made on behalf of poor families being sheltered in temporary housing, such as hotels, could not be used to reduce food stamp benefits if the temporary housing provided the families lacks facilities for preparing and cooking hot meals and refrigerating stored food.

After all, the hotel rooms usually available to homeless families are not designed for food storage, meal preparation, and the cooking of hot meals. I hasten to add that I do not consider warming hot dogs under tap water or using a hot plate balanced on a radiator or toilet seat to be cooking.

Clearly, Mr. President, the plight of poor families sheltered in welfare hotels is not analogous to poor families who are living in their own apartments. Both may suffer serious hardships, but those families being temporarily housed in welfare hotels face additional problems. For example, when a family with children is living in a welfare hotel room, it has no stove, no sink outside of the bathroom, no space for food preparation. There may not be sufficient refrigerated storage, assuming refrigerators are available at all. By contrast, most poor households living in apartments do have some kitchen space and basic appliances in their dwellings.

Moreover, many urban welfare families do not have cars with which to drive to major shopping areas. But at least apartment-dwelling families living in residential areas are somewhat more likely to be near a supermarket. Most welfare families living in hotels find themselves located in commercial, rather than residential areas. They are unable to take advantage of the economies of sales offered by larger grocery stores. Instead, these welfare-hotel families depend on small "mom and pop" convenience stores located in the vicinity of their downtown hotels. Such stores usually charge higher prices to meet their overhead and to compensate for low-volume sales. That means that welfare families forced by circumstances to shop in such stores need more assistance with purchasing food, not less.

Although the phenomenon of homeless families with children is not unique to New York City, perhaps nowhere is the shortage of decent low-income housing more acute. As a result, according to State and local officials, there are currently 4,192 families in New York City living in welfare hotels and each of these families has lost, on average, $77 per month in food stamp benefits. Another 870 families in upstate New York are losing an estimated $65 per month in food stamp benefits. Statewide, poor families living in welfare hotel are losing some $5.3 million per year in food stamp benefits as a direct result of USDA's interpretation of the current statute.

Let us not forget, Mr. President, who suffers these reductions in nutrition assistance. State officials estimate that over 12,000 children and 200 preg-

nant women are adversely affected by these cuts. Although State officials are trying to make up the loss, they cannot completely do so. This is due, in part, to the fact that whenever the State increases its supplementary restaurant allowance to such households, USDA counts these special funds as new household income and further reduces the families' food stamp benefits. Such a catch 22 would almost be amusing if people were not going hungry because of it.

We cannot permit this to continue. I urge my colleagues to join with me in correcting the ambiguity in current law that has pawned this situation. Housing assistance payments, made on behalf of homeless families temporarily sheltered in rooms that do not allow for the preparation and cooking of hot meals and the refrigerated storage of perishable foods, should not be counted as income for purposes of calculating food stamp benefits. My bill will make this clear.

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

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

S. 36

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

SECTION 1. THIRD PARTY PAYMENTS FOR CERTAIN HOUSING.

Section 5(k)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2014(k)(2) is amended—

(1) in subparagraph (D) by striking out "or" at the end thereof.

(2) by redesignating subparagraph (E) as subparagraph (F), and,

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) housing assistance payments made on behalf of a household which is residing in temporary housing as defined by the state agency administering the assistance program, if such temporary housing lacks facilities for the preparation and cooking of hot meals and the refrigerated storage of food for home consumption; or".

SECTION 2. APPLICATION OF AMENDMENTS.

The amendments made by section 1 shall not apply with respect to allotments issued under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) to any household for any month beginning before the effective date of this Act.

SECTION 3. EFFECTIVE DATE.

The amendments made by this Act shall became effective 30 days after enactment.●

By Mr. MOYNIHAN:

S. 37. A bill to amend part A of title IV of the Social Security Act to reduce the need for emergency assistance payments to provide temporary housing for destitute families and homeless AFDC families, and the expense of such payments, by authroizing grants to States for the construction or rehabilitation of permanent housing that such families can afford with their regular AFDC payments; to the Committee on Finance.

PERMANENT HOUSING FOR HOMELESS FAMILIES ACT

Mr. MOYNIHAN. Mr. President, why does the city of New York pay $37,000 a year to house a homeless family in a "welfare hotel?" Many Americans, I am sure, recall this question posed by President Reagan during a press conference last fall. The President then went on to wonder aloud, "Why doesn't somebody build them a house for $37,000?"

Unfortunately, neither the President, nor many of his advisers, nor many Americans in general, know the answer. It is very simple. "Somebody" can't use Federal funds to build permanent homes for the homeless because current law prohibits it.

Astonishingly, the city of New York has spent up to $37,000 annually on temporary housing for homeless families, this amount representing the upper end on a scale of exorbitant and wasteful costs, and not an average cost per family. Such temporary housing generally consists of a small living area in one of some 61 private "welfare hotels" scattered about the city. The hotels are more often than not located in neighborhoods unfit for the many young children who live there; indeed, many of these exorbitant hotels can best be imagined as filthy, crime- and drug-infested tenements. Certainly, it would be both more cost effective and more humane to house these families in permanent residences. But, under current law, funds received under the emergency assistance section of the Federal Welfare Program may only be used to provide temporary shelter for the homeless.

Given the urgent need for safe, affordable housing for homeless families in every major city in this Nation, I think that's shameful. Therefore, today I wish to offer legislation, the Permanent Housing for Homeless Families Act, which will allow States and cities to spend the housing portion of their emergency assistance funds on up-front grants for the construction of permanent housing for the homeless. In addition, as the Emergency Assistance Program is operated on an entitlement basis, States may also continue to receive funds under the program to house their homeless families in shelters and hotels, while the construction of permanent facilities is underway. While far from an ideal solution, such temporary housing will need to be maintained for poor families with no alternative.

Instead of continuing to subsidize hotel landlords, the Federal Government may begin to work compassionately and cost effectively for a lasting solution to the tragedy of homelessness.

This legislation is also being introduced in the House by my colleague from New York, Representative CHARLES SCHUMER. It is similar to legislation he and I offered during the last Congress, S. 2879 and H.R. 5080 respectively.

Our bill will amend title IV—aid to families with dependent children—of the Social Security Act, to allow Federal matching funds under the existing Emergency Assistance Program to be used for the construction or renovation of permanent homes for poor families with children. Federal funds will only be made available, on an entitlement basis, to States and local governments meeting specified requirements.

Among these requirements, all units constructed or rehabilitated must be rented to an AFDC-eligible family that has been unable to obtain affordable housing, and would otherwise be left without shelter; before receiving funds the city and State would have to demonstrate that the permanent housing will reduce their total AFDC costs for the homeless over a 5-year period.

The Permanent Housing for Homeless Families Act is designed to ensure that the Federal Government actually saves money under the Emergency Assistance Programs after 5 years. And, as the burden for housing America's homeless cannot fall on the shoulders of Washington alone, this legislation requires participating State and local communities to contribute substantial resources of their own to any federally assisted construction. In brief, the State and local government's combined share of costs under this program must be 10 percentage points higher than their current share of AFDC payments. In the case of New York, then, the city and State would be required to contribute 60 percent, to the Federal Government's 40 percent of the cost.

As each of us knows all too well, our resources today are much too scarce to be squandered on short-term remedies to deep-seated problems. Whether $37,000 or not, the current use of funds under the Emergency Assistance Programs amounts to nothing more than that: a "quick fix" to the enormous problem of homelessness in our Nation's cities, a fix which helps put a roof over the heads of thousands of needy families, but offers nothing in the way of lasting solutions.

I believe this legislation offers a device through which the Federal, State, and local governments, with the indispensable assistance of the private sector, can begin to meet the long-term needs of America's homeless families and children. I urge my colleagues' support of this initiative early in the 100th Congress.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 37

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 "Permanent Housing for Homeless Families Act."

AUTHORIZATION OF GRANTS

SECTION 1. Part A of title IV of the Social Security Act is amended by adding at the end thereof the following new section:

"AUTHORIZATION OF GRANTS TO PROVIDE PERMANENT HOUSING FOR FAMILIES THAT OTHERWISE WOULD REQUIRE EMERGENCY ASSISTANCE

"SEC. 416. (a) The Secretary may make a grant to any State for the construction or rehabilitation of permanent housing to serve individuals and families who would otherwise require emergency assistance in the form of temporary housing, if the State makes application for such a grant in the manner and form prescribed by the Secretary, furnishes the assurances required by subsection (b), and satisfies such other terms and conditions as the Secretary may prescribe to assure that the purposes of this section are effectively carried out.

"(b) A grant may be made to a State under subsection (a) only if such State (along with or as a part of its application) furnishes the Secretary with satisfactory assurances that—

"(1) the proceeds of the grant will be used exclusively for the construction or rehabilitation of permanent housing to be owned by the State, a political subdivision of the State, an agency or instrumentality of the State or of a political subdivision of the State, or a nonprofit organization;

"(2) all units assisted with funds from the proceeds of the grant will be used exclusively for rental to families which are eligible (at the time of the rental) for aid under the State's plan approved under section 402, provided that a family with some members who meet this requirement shall not be deemed ineligible because one or more other family members receive aid under title XVI of the Social Security Act—

"(B) have been unable to obtain decent housing at rents that can be paid with the portion of such aid allocated for shelter, and

"(C) if such housing were not available to them, would be compelled to live in a shelter for the homeless or in a hotel, motel, or other temporary accommodations paid for with emergency assistance or would be homeless;

"(3) at least 40 percent of the units in any housing project containing units assisted under this section will be rented to families described in paragraph (2);

"(4) the local jurisdiction in which such housing will be located is experiencing a critical shortage of housing units that are available to families eligible for aid under the State plan at rents that can be paid with the portion of such aid allocated for shelter;

"(5) whenever units assisted under this section become available for occupancy, the State will discontinue the use of an equivalent number of units of the most costly accommodations it has been using as temporary housing paid for with emergency assistance, except to the extent that such accommodations are demonstrably needed—

(i) in addition to the units so assisted, to take account of increases in the caseload under that program; or

(ii) because, due to the condition or location of such accommodations, or other factors, discontinuing the use of such units would not be in the best interests of needy families, provided that the State discontinues the use of an equivalent number of other units it has been using as temporary housing paid for with emergency assistance;

and only if the State, along with or as a part of its application, includes provisions (to be added to the State plan) for carrying out the requirements of paragraph (5).

"(c)(1) GRANT AMOUNT.—The average cost to the Federal Government per unit of housing constructed or rehabilitated with a grant under this section shall be an amount no greater than the standard yearly payment of emergency assistance required to provide housing for a family in a shelter for the homeless, a hotel or motel, or other temporary quarters for one year, as such standard is defined in subsection (d).

"(2) FIVE-YEAR COST SAVINGS REQUIREMENT.—The total of Federal payments to the State under this part over five years with respect to families who will live in housing assisted by a grant provided under this section must be lower as a result of the construction or rehabilitation of permanent housing with the grant (the "total grant cost" as calculated according to the definition in subsection (d)) than it would be if the State made emergency assistance payments at the level of the standard yearly payment during such five years period. The Secretary may extend this five year period for calculating cost savings to any period of no more than seven years if he determines than unusual circumstances have delayed completion of housing to be constructed or rehabilitated pursuant to this section and that it would be inequitable to measure costs savings over a five year period.

"(3) MINIMUM STATE SHARE.—Any grant to a State under subsection (a) shall be made only on condition that such State (and the local jurisdiction in which the housing is to be located) pay a percentage of the total cost of the construction or rehabilitation of such housing equal at least to the percentage of the current non-Federal share of aid to families with dependent children under the State plan which is applicable to that State (as determined under section 403(a) or 1118), increased by 10 percentage points, and that such State not require its political subdivisions to pay a higher percentage of the total costs of the construction or rehabilitation of such housing than these political subdivisions pay for aid given pursuant to the State plan approved under section 402.

"(d) DEFINITIONS.—For the purposes of this section—

"(1) the term 'emergency assistance' means emergency assistance to needy families with children as described in section 403(e) or regular payments for costs of temporary housing authorized as special items under the State plan;

"(2) the term 'standard yearly payment' means the total amount paid to provide housing for a family in a shelter for the homeless, a hotel or motel, or other temporary quarters for one year which is greater than 75 percent of all of the temporary accommodations paid for with emergency assistance, and less than 25 percent of which of such accommodations paid for with emergency assistance in the jurisdiction in which a grant provided under this section is to be used (i.e., the 75th percentile in the range of all payments of emergency assistance for temporary accommodations). Such amount shall be based on the State's actual experience with emergency assistance in that jurisdiction or, if no such experience is available, on the basis of the best available information acceptable to the Secretary, including, but not limited to, local hotel costs, and the costs of emergency assistance in cities with similar characteristics);

"(3) the term 'total grant cost' means the sum of Federal payments during the five-year period beginning on the date that construction or rehabilitation on housing assisted by a proposed grant under this section will begin, including the grant provided under this section, the Federal share of payments of emergency assistance for temporary housing during construction or rehabilitation (at a level equal to the standard yearly payment), and the Federal share of regular payments of aid under the State plan to such families during the remainder of such five-year period (or any longer period established by the Secretary pursuant to subsection (c), subparagraph 2 of this section).

"(e) Whenever a grant is made to a State under this section, the assurances required of the state under paragraphs (1) through (5) of subsection (b) and any other requirements imposed by the Secretary as a condition of such grant shall be considered, for purposes of section 404, as requirements imposed by or in the administration of the State's plan under section 402.".

EFFECTIVE DATE

SEC. 2. The amendment made by section 1 shall become effective upon enactment.

By Mr. MOYNIHAN:

S. 38. A bill to increase the authorization of appropriation for the Magnet School Program for fiscal year 1987 to meet the growing needs of existing magnet school programs, and for the establishment of new magnet school programs; to the Committee on Labor and Human Resources.

MAGNET SCHOOL PROGRAMS

● Mr. MOYNIHAN. Mr. President, I rise today to introduce the Magnet School Expansion Act. This bill would add $75 million to existing levels for magnet school programs, currently funded at $75 million, to support existing and new magnet school programs across the country. Magnet schools are schools which seek to attract a desegregated student body by offering a specialized and focused academic program. The concept of the magnet school has gained recognition as one of the most successful means of achieving desegegation in our Nation's school system.

As my colleagues know, the mandate to desegregate public schools is a Federal one, imposed on school systems by the Supreme Court in its decision in Brown versus Board of Education. Although the local control of education is a well-established principle in this Nation, the Federal Government has assumed the responsibility of enforc-

ing this decision since it was handed down some 30 years ago.

We have tried many ways of accomplishing this goal: Both involuntary and voluntary with the latter certainly preferred in most cases. Magnet schools are almost universally recognized as an effective tool for desegregation. In cities where busing has drawn responses ranging from civil disobedience to violence, the creation of magnet schools has helped to bring about a level of integration and community support that was unthinkable 10 years previous.

Magnet schools are intended to attract students on a voluntary bsisis; thus, school boards shape the academic program to suit the needs of their local community in order to attract students of all races and backgrounds. By providing Federal assistance for such programs, as has been done since 1971, we are in fact trying to meet our constitutional obligation to end desegregation in our schools.

However, it appears that our current administration is less than fully committed to meeting this obligation. Since taking office, Ronald Reagan has succeeded in drastically reducing funding for desegregation programs in our public schools. In 1982, funding for magent schools was reduced by $124 million after being incorporated into a single block grant under chapter 2 of the Education Consolidation and Improvement Act of 1981. All of this while the President's representative in the Department of Justice argued in Federal court for the use of "voluntary incentives" rather than the use of mandatory busing. The irony of the administration's actions is inescapable—it is simply not possible to encourage voluntary desegregation without sufficient funds.

In response to the administration's actions, in 1982 and in 1983, I introduced the Emergency Aid Act to reestablish the program of special assistance for school desegregation activities which had existed prior to the Reagan administration. Later, in 1983, Senator Eagleton joined me in introducing a modified version of my earlier bill which would have provided $125 million annually to school districts implementing court ordered or voluntary school desegregation plans. Eventually, with the aid of Senators HATCH and STAFFORD, we succeeded in establishing a separate Magnet Schools Assistance Program under the Education for Economic Security Act, authorized at a level of $225 million for 3 years, in June 1984.

However, the administration failed to release the $75 million appropriated for the program for 1985 and asked for a rescission of the funds in the 1986 budget request. After 42 Senators joined me in sending Secretary Bennett a letter demanding the release of the funds, the program finally got underway. However, the delay in the release of funds meant that magnet schools were not able to use their money until the 1985-86 academic year, a full year after the legislation was enacted.

To underscore the need for an increased Federal commitment, I would point out that out of 126 school districts which applied for funding for this program in its first cycle, only 44 could be funded with existing funds. Not only does that leave 82 school districts, and countless individual schools, without means to implement desegregation programs but one must also consider all those districts that did not apply because of the limited funds available. My bill would raise the authorization of funding to $150 million, to ensure that more school districts can be funded and more students given equal educational opportunities.

I urge my colleagues to support this measure. Let us guarantee that every student will have equal opportunities to the best education possible and will enter adulthood free from discrimination in education based on race. Without Federal assistance for voluntary and court-ordered desegregation, local school districts across the country will, in all probability be unable to meet their obligation to prevent such discrimination. An obligation mandated by the Constitution—the foundation of the laws which each and every one of us has sworn to uphold. I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 38

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 701 of the Education for Economic Security Act, relating to Magnet schools assistance, is amended by striking out "1986, 1987, and 1988" and inserting in lieu thereof the following: "and 1986, 1987, and $150,000,000 for each of the fiscal years 1988 and 1989".●

By Mr. MOYNIHAN (for himself, Mr. HEINZ, Mr. BOREN, Mr. PRYOR, Mr. MATSUNAGA, and Mr. RIEGLE):

S. 39. A bill to amend the Internal Revenue Code of 1986 to make the exclusion from gross income of amounts paid for employee educational assistance permanent; to the Committee on Finance.

EMPLOYEE EDUCATIONAL ASSISTANCE ACT OF 1987

● Mr. MOYNIHAN. Mr. President, I rise today, along with five of my colleagues on the Senate Finance Committee, to introduce legislation to make permanent section 127 of the Internal Revenue Code, which permits employees to receive limited amounts of employer-provided educational assistance on a tax-free basis.

Since 1978, section 127 has made the benefits of educational advancement more readily available to working Americans. Section 127 permits an employee to exclude from income up to $5,250 in educational assistance provided by his or her employer, whether or not for education directly related to the employee's current job. Without this exclusion, the employee would owe taxes on an employer's reimbursement for education expenses unless the education maintains or improves skills required for the employee's current job or meets express conditions for holding such position. Thus section 127 is particularly important for employees in lower-skilled jobs that wish to undertake training to increase their skills.

Section 127 is scheduled to expire at the end of 1987, and the legislation that I introduce today would extend that section on a permanent basis.

Providing tax-free treatment of employer-provided educational assistance is a proven means of upgrading the skills of American workers. It is an incentive for enhancing productivity while helping workers to improve their job and career capabilities.

It is estimated that some 7 million American workers have furthered their education with employer-provided, tax-free educational assistance. The benefits of section 127 are used across a broad range of income groups, but the heaviest concentration of use is among middle- and lower-income employees. A recent survey conducted by the American Society for Training and Development found that 72 percent of recipients of section 127 educational assistance earn less than $30,000 annually. In fact, lower-income employees are more likely to participate in educational assistance programs: Employees earning less than $30,000 participate at a much greater rate, and participation rates decline as salary levels increase. Employees making less than $15,000 participate at almost twice the rate of those who earn over $50,000.

Section 127 has enabled working men and women who otherwise might not be able to afford a better education to further their studies without incurring additional income tax liabilities in the process. Section 127 has also fostered the retraining of American industrial workers whose jobs were threatened by rapidly changing technologies—keeping them employable without the added burden of additional taxes.

According to the American Electronics Association, the United States experienced a shortage of about 20,000 engineers between 1981 and 1985. To counter this troubling trend, almost half of America's largest electronic firms initiated section 127 educational assistance programs to encourage em-

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ployees to pursue advanced degrees in electronics.

Mr. President, this opportunity for firms to assist in the training of their employees is of great value to the American economy as a whole. American private enterprise must continue to advance technologically if we are to remain competitive in the international economy.

Section 127 has also enabled thousands of public school teachers to receive advanced degrees, augmenting the quality of instruction in our public schools. A 1984 survey undertaken by the National Education Association found that almost 45 percent of all American public school systems provide tuition assistance to teachers seeking graduate credits and degrees. Enhancing our education system is a public benefit of the highest order.

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

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

S. 39

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 "Employee Educational Assistance Act of 1987".

SEC. 2. EXCLUSION FOR EDUCATIONAL ASSISTANCE PROGRAMS MADE PERMANENT.

(a) IN GENERAL.—Section 127 of the Internal Revenue Code of 1986 (relating to educational assistance programs) is amended by striking out subsection (d).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986.●

By Mr. MOYNIHAN:

S. 40. A bill to amend section 1 of the Atomic Energy Act of 1954, as amended, to clarify that no nuclear plant should operate without assurance from the Federal Government's experts on emergency preparedness that the public health and safety can and will be protected; to the Committee on Environment and Public Works.

INTRODUCTION OF THE ATOMIC SAFETY ACT

● Mr. MOYNIHAN. Mr. President, I rise to offer something that we have not had, and that is much overdue: An Atomic Safety Act.

Congress enacted the Atomic Energy Act in 1954. It was a pioneering statute. It offered the revolutionary idea that there could be peaceful uses for the atom.

Mr. President, section 1 of that act is a declaration. It is not very long, but it says much about what we saw for the future of the atom some three decades ago, and I think it is important that we read it today:

Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

a. the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

All noble aims, but what about safety? Safety, of its own, is not mentioned in the declaration of the Atomic Energy Act.

That, Mr. President, is why an Atomic Safety Act is so necessary. In the world of 1987, a world that has learned of Three Mile Island and Chernobyl, nuclear safety must be the first thought, not an afterthought. As a priority, it must be second to none.

This bill goes beyond clarifying our intentions; it depends upon that clarity to change the way we assure that citizens who live near our nuclear powerplants are safe. It gives that assurance its proper place and priority.

To our credit, we did not wait for Chernobyl to demand emergency planning for areas outside of our nuclear plants; Three Mile Island was enough. After that vastly more modest disaster, Congress determined that real, substantive emergency plans needed to be in place for nearby communities. Our emergency planning experts in the Federal Emergency Management Agency would test them to assure us that they would work, and the Nuclear Regulatory Commission would be guided by their findings.

But we left a tremendous loophole, big enough for a nuclear powerplant. We left the Nuclear Regulatory Commission the discretion to approve some emergency plans regardless of whether FEMA reached a decision on whether they were adequate. This was a mistake, and we should undo it.

Perhaps the lofty language of the Atomic Energy Act misled us. And perhaps the more pragmatic language of the Atomic Safety Act will be better guidance.

There may be cases—in my State of New York, the Shoreham plant on Long Island is one—where State and local governments will not cooperate in planning for safe operation of a nuclear plant. This bill, the Atomic Safety Act, reminds us of what is most important: Our responsibility to assure that the public safety is protected. This case has brought confusion to what should be clear. Nothing is more important than the public health and welfare.

If the Federal experts on emergency planning can certify that a utility-produced emergency plan assures the public health and safety, so be it. But if they cannot tell, such a plant must not open. Period. No exceptions.

Mr. President, it is possible that there may be a future for nuclear fission in this country; it is possible, but I am far from sure. The economics of the enterprise seem rather bleak, and the political difficulties of choosing a suitable repository for the wastes most daunting. But if we cannot assure the public that the enterprise is being pursued responsibly—and that the necessary steps have been taken in every case to provide for their safety—then all the Atomic Energy Act's lofty prose will be for naught, and we shall have no nuclear power in this country.

I ask unanimous consent that the text of my bill be printed in the RECORD at this point.

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

S. 40

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

SECTION 1. This Act may be cited as the "Atomic Safety Act of 1987".

SEC. 2. (a) The Congress finds that further progress in the domestic nuclear programs of the United States will be difficult, at best, unless the Nation is assured of the safety of those programs.

(B) It is the intent of Congress that safety be an unsurpassed priority in matters pertaining to domestic nuclear power programs.

(C) It is the sense of the Congress that full and complete emergency planning is an essential element of the nuclear enterprise, and that no plant should operate without assurance from the Federal government's experts on emergency preparedness that the public health and safety can and will be protected.

SEC. 3. Subsection 1(a) of the Atomic Energy Act of 1954, as amended, is amended by striking the word "objective" and inserting in lieu thereof "objectives of protecting the public health and safety and".

SEC. 4. Notwithstanding any other provision of law, the Nuclear Regulatory Commission may not issue a license for the operation of any utilization facility unless there is an off-site emergency plan for that facility in place for which the Federal Emergency Management Agency has issued a finding regarding whether said plan will provide assurance that the public health and safety can and will be protected in an emergency. Any such finding made by the Agency after January 1, 1987 shall be made on the basis of an evaluation under criteria at least as protective of the public health and safety as those in use by the Agency and the Commission as of January 1, 1987 for the evaluation of state emergency plans. Any license issued by the Nuclear Regulatory Commission that is not based upon a finding made by the Federal Emergency Management Agency in accordance with the terms of this subsection shall be revoked upon enactment of this Act.●

By Mr. ROTH:

S. 41. A bill to establish a Commission on More Effective Government, with the declared objective of improving the quality of government in the United States and of restoring public confidence in government at all levels; to the Committee on Governmental Affairs.

COMMISSION ON MORE EFFECTIVE GOVERNMENT

Mr. ROTH. Mr. President, today I am introducing legislation to create a Commission on More Effective Government. It will be the purpose of this Commission to carry out a searching review of the organization and management of the executive branch of the Federal Government. Based on this analysis, the Commission will issue recommendations designed to improve the operation of government today and to help us meet the demands placed upon our public institutions in the coming decades.

This proposal is modeled after the very constructive reform commissions headed by former President Hoover in the late 1940's and early 1950's. Because of the nature of its mandate, its bipartisan composition, and its emphasis on implementation of reform recommendations, the Commission I am proposing today holds every promise of equaling the achievements of the two predecessor Hoover Commissions.

In the 32 years since the second Hoover Commission issued its final report, the Federal Government has grown enormously in the level of its expenditures, in the scope of its activities, and in the responsibilities it places on State and local governments and the private sector. With each incremental expansion of the Federal role, government has intruded further into the lives of our people and the operation of our private institutions.

Yet, while the Federal role has expanded during this period, the National Government's fiscal strength has deteriorated significantly, as we today face formidable annual deficits and a record-setting level of national debt. It is little wonder that citizen frustration with government is so high and confidence in the ability of government to perform adquately is so low.

These circumstances mandate a critical assessment of what new activities the Federal Government is capable of undertaking and an evaluation of how government can better carry out the duties that it currently performs. The Commission on More Effective Government, in a bipartisan, independent, and objective manner, will carry out this assignment. In its examination of the organization and management of the Federal executive branch, the Commission will not only identify long-needed improvements to be pursued but will help to create the awareness and desire for change that is crucial in overcoming the inertia and resistance that inevitably confront major reform.

Now, Mr. President, at some point before this legislation is enacted I know that someone will advance the argument that this idea duplicates the work of other commissions. The Grace Commission, for example, addressed some issues that fall within the mandate of the Commission on More Effective Government. I will anticipate this concern by saying now that the Commission I am proposing today possesses a far broader mandate than the Grace effort, which focused narrowly on cost-cutting in the Federal Government.

The elimination of needless expenditures in government is important and requires further attention. The Commission on More Effective Government should use the work product of the Grace Commission as a resource and build on this foundation for the implementation of reforms that receive bipartisan support.

Similarly, the Commission should review the fine work of the Ash Council of the early 1970's on matters of government organization and the comprehensive work of the U.S. Advisory Commission on Intergovernment Relations for recommendations in the realm of Federal-State-local government relations. Over the years the General Accounting Office has churned out libraries of reports chock full of reform recommendations, many of which have been ignored or only partially put in place. It would be the task of the Commission I am proposing to review this data base, consider which recommendations are worthy of action either in Congress or in the executive branch, and launch them off on the path toward implementation.

While the Commission members should be free to set their own agenda once they meet and organize, several issues stand out as important candidates for their consideration. In addition to the general organizational and management issues I have mentioned, the Commission should consider the emergence of what has been called third-party governance and assess what effect this development has had on our system. By third-party governance I mean the proliferation of government corporations and other quasi-governmental bodies that perform an ever-increasing number of public functions.

These organizations often operate outside of established procedures for hiring, firing, and paying personnel, and are only loosely accountable for their actions to the elected officials who create them and ostensibly oversee them. Of equal importance is the fact that we possess no clear and agreed-upon doctrine as to when the use of these organizations is appropriate. The Commission proposed by this legislation could make a substantial contribution by formulating criteria for the use of government corporations and guiding us toward a balance of flexibility and accountability in their operation.

Similarly, privatization is a much discussed but frequently misunderstood aspect of government service delivery. What is certain is that we have moved toward privatization of public functions in a major way. From 1970 to 1980 the size of the civilian executive branch work force decreased by 120,000 employees, as total Federal expenditures increased by 195 percent. In the same period expenditures for service contracts increased by 28 percent. This trend is further exemplified by the fact that the budgets of the Departments of Defense, Health and Human Services, and Education support four indirect workers for every person on the Federal payroll.

This process, however, like that of the use of government corporations, has developed willy-nilly with no clearly defined doctrine of when privatization is appropriate and when it is not, how to measure the quality of the goods and services thus received, and what the long-term costs are of this policy course. Here, too, the Commission on More Effective Government could do a great service to the Nation in developing a consensus theory of privatization in terms of when it should be used for and how its product should be measured.

The explosion of technology in recent decades has created great new opportunities as well as new challenges and sensitive public issues for our society. A good candidate for Commission review is the development of information, communication, and related technologies and how they can best be used to improve public sector performance without jeopardizing concerns such as our citizens' right to privacy.

The range of important issues for the Commission to address is expansive. In addition to those I have detailed could be added the shift toward heavy reliance on the administrative law process, the role of the Federal judiciary, the activities and the relationships of the multitude of independent Federal regulatory agencies and the nature of our legislated budgetary procedures. Each of these issues merits analysis and comment by the Commission and should be considered for inclusion on the agenda.

While the breadth of this mandate might appear to be too great for a single group, the key to the success of the Commission on More Effective Government will be in its composition and its work methods. The Commission will consist of 18 citizens with substantial records of accomplishment in government or in private life. The Commission will be strictly bipartisan, with six members appointed by the President, six appointed by the leadership in the Senate, and six appointed by the leadership of the House of Representatives. This collegiality and bipartisanship will provide the foundation for consensus in the development of a reform agenda.

If the Commission follows the successful pattern of the earlier Hoover

Commissions, it will rely on a small central staff and use task forces to examine the broad sweep of its subject areas. It will make great use of existing studies and writings—both public and private—to avoid duplication of effort. Public hearings will be used to ensure citizen participation, to focus attention on the work of the Commission, and to help build consensus support for its findings and recommendations. Coalition building must be one of the principle aims of the Commission from the outset in order to help ensure followthrough on the changes that it proposes.

As we begin the celebration of the 200th anniversary of the Constitution, I can think of no better way to strengthen the Government it undergirds than to create this review Commission and promptly let it begin its work. As one expert witness testified before the Committee on Governmental Affairs in 1981, in light of all of the changes that have occurred in government since the last comprehensive commission review, it is time to put down anchor and see where we are and where we ought to be. The Commission on More Effective Government will help us make these assessments and take the action steps required to implement needed reforms.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 41

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

DECLARATION OF POLICY

SECTION 1. It is the policy of the Congress to develop a blueprint for better government in the United States, to set in motion processes by which the Federal Government can more effectively and responsively serve the people for whom it was created and can more rationally meet its present and future challenges, both national and international, and to encourage and justify the full restoration of public confidence in government at all levels.

ESTABLISHMENT OF COMMISSION

SEC. 2. For the purpose of carrying out the policy set forth in section 1, there is hereby established a commission to be known as the Commission on More Effective Government (in this Act referred to as the "Commission").

IMPLEMENTATION OF POLICY BY COMMISSION

SEC. 3. (a) In carrying out the policy set forth in section 1, the Commission shall consider and study the management, operation, and organization of the executive branch and of the independent regulatory agencies of the Federal Government, including the relationships of such entities to each other, to the other branches of the Federal Government, to their State and local governmental counterparts, and to the private sector. Such study and consideration shall give particular attention to the extent to which such relationships and established patterns of action meet or fail to meet governmental responsibilities and are adequate to meet the challenges of the future. Where appropriate and necessary, the Commission's consideration and study shall include the extent to which the policies implemented by the executive branch and the independent regulatory agencies detract from or enhance governmental management, operation, and organization.

(b) On the basis of its considerations and study under subsection (a), the Commission shall make recommendations, including but not limited to specific proposals for changes in Federal Law, regulation and administrative practices, to promote economy, effectiveness, efficiency, and managerial and political accountability, and to improve services and management in the transaction of the public business. Such recommendations shall include, where appropriate, recommendations for altering the present distribution of functions and activities among the Federal agencies and among the Federal, State, and local governments.

(c) In carrying out its consideration and study under subsection (a), the Commission shall avail itself of relevant information and data gathered by such public and private organizations and individuals as it deems appropriate.

ORGANIZATION OF THE COMMISSION

SEC. 4. (a) The Commission shall be composed of eighteen members as follows:

(1) Six appointed by the President of the United States; a maximum of three from the executive branch, and the balance, persons who are not Federal officials.

(2) Six appointed by the Speaker of the House of Representatives; a minimum of two and a maximum of three from the House of Representatives, and the balance, persons who are not current Members of the House of Representatives.

(3) Six appointed by the President pro tempore of the Senate, upon the recommendations of the majority and minority leaders of the Senate; a minimum of two and a maximum of three from the Senate, and the balance, persons who are not current Members of the Senate.

Members of the Commission shall to the maximum extent possible be chosen from among persons who have particular knowledge and expertise in the major areas of the Commission's consideration and study. Of the members appointed by the President, one shall have had experience in government at the State or local level; of the members who are not Federal officials appointed by the Speaker of the House of Representatives, one shall have had governmental experience at the local level; and of the members who are not Federal officials appointed by the President pro tempore of the Senate, one shall have had governmental experience at the State level. In considering individuals for membership, preference shall be given to persons with a broad knowledge and understanding of the working of the Federal system of the United States of America.

(b)(1) Of the members appointed by the President from persons who are not Federal officials under subsection (a)(1), three shall be from the major political party which is not the party of the President, and at least two shall be persons not engaged in partisan political activity.

(2) Of the members appointed from the House of Representatives under subsection (a)(2), one shall be from the political party which is the majority party in the House and one shall be from the political party which is the minority party in the House. At his discretion, the Speaker may appoint either a second incumbent Representative from the majority party in the House or a former Representative from that same party. Of the remaining three members appointed under such subsection, two shall be persons not engaged in partisan political activity. Of these three remaining members one shall be from the political party which is the minority party in the House. In appointing members under subsection (a)(2) who are from the political party which is the minority party in the House, the Speaker shall obtain the advice and consent of the minority leader of the House.

(3) Of the members appointed from the Senate under subsection (a)(3), one shall be from the political party which is the majority party in the Senate and one shall be from the political party which is the minority party in the Senate. At his discretion, the President pro tempore of the Senate may appoint either a second incumbent Senator from the majority party in the Senate or a former Senator from that same party. Of the remaining three members appointed under such subsection, two shall be persons not engaged in partisan political activity. One of these three remaining members shall be from the political party which is the minority party in the Senate.

(4) For the purposes of this Act, the term "persons not engaged in partisan political activity" shall mean persons who for at least six months prior to appointment as a member of the Commission, have not occupied or sought elected public office, or have not served as an official of a State or national political party.

(c) The President shall select a Chairman from among the Commission members who are not Federal officials at the time of appointment. The selection by the President of the Chairman shall be subject to the approval of a majority vote of the members of the Commission, conducted by secret ballot. The Commission shall elect from among its members a Vice Chairman from the major political party which is not the party of the Chairman. The Commission shall adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of its operations, its organizations, and its personnel.

(d) Ten members of the Commission shall constitute a quorum.

(e) Any vacancy in the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment was made. Any individual appointed to fill a vacancy in the Commission shall be of the same political party as his predecessor.

(f) An individual who is appointed to the Commission in the status of a Member of Congress or in the status of a person in the executive branch of the Government, and who thereafter ceases to have such status, shall nevertheless continue as a member of the Commission and shall (if he has returned to private life except for his membership on the Commission) be treated as an individual appointed from private life for purposes of compensation under section 5.

COMPENSATION OF COMMISSION MEMBERS

SEC. 5. (a) The members of the Commission who are Members of Congress or who are in the executive branch of the Government shall serve on the Commission without any compensation in addition to that received for their services as Members of Congress or in the executive branch. The members of the Commission from private life shall each be paid compensation at a rate

equal to the rate of basic pay in effect for level IV of the Executive Schedule when engaged in the performance of the duties vested in the Commission.

(b) All members of the Commission shall be reimbursed for travel as authorized by section 5703 of title 5, United States Code, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

COMMISSION STAFF

SEC. 6. (a) The Commission shall have power to appoint, terminate, and fix the compensation of such personnel as it deems advisable to assist in the performance of its duties, without regard to the civil service laws and without regard to the provisions of title 5, United States Code (or of any other law) relating to the number, classification, or compensation of employees. The Commission may also procure, as authorized by section 3109 of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch but at rates not to exceed the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule. The Chairman and Vice Chairman shall select an executive director for the Commission contingent upon confirmation by the Commission members.

(b) Service of an individual as a member of the Commission (or of an advisory council or committee under section 7) or employment of an individual by the Commission as an attorney or expert in any business or professional field, on a part-time or full-time basis, 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 of such an advisory council or committee), 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.

ADVISORY COUNCILS AND COMMITTEES

SEC. 7. The Commission may establish (without regard to the Federal Advisory Committee Act) such advisory councils and advisory committees as it may deem appropriate to provide specialized assistance in the performance of the duties vested in the Commission by this Act. Members of such advisory councils and committees, while attending meetings of such councils or committees or while otherwise serving at the request of the Commission away from their homes or regular places of business (unless otherwise eligible for travel and subsistence expenses under chapter 57 of title 5, United States Code), may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

POWERS OF THE COMMISSION

SEC. 8. (a) The Commission or any member authorized by the Commission may, for the purpose of carrying out this Act, hold such hearings and sit and act at such times and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangements (with or without consideration or bond, to such extent or in such amounts as are provided in appropriations Acts, and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)), make such expenditures, and take such other actions as the Commission or such member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member. The provisions of the Federal Advisory Committee Act shall not apply to the Commission established under this Act.

(b) The Commission is authorized to secure directly from any officer, department, agency, establishment, or instrumentality of the Government such information, suggestions, estimates, and statistics as the Commission may require for the purpose of this Act; and each such officer, department, agency, establishment, or instrumentality is authorized and directed to furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman or Vice Chairman.

(c) Upon request of the Commission, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Commission or to detail any of the personnel of such agency to the Commission, on a reimbursable basis, to assist the Commission in carrying out its duties under this Act, unless the head of such agency determines that urgent, overriding reasons will not permit the agency to make such facilities, services or personnel available to the Commission and so notifies the Chairman in writing.

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

(e) No officer or agency of the United States shall require the Commission to submit any report, recommendation, or other matter to any such officer or agency for approval, comment, or review before submitting such report, recommendation, or other matter to the Congress or to the President.

MEETINGS, PUBLIC INVOLVEMENT, REPORTS, EXPIRATION

SEC. 9. (a) The Commission shall first convene no later than six months after the date of enactment of this Act, and shall meet from time to time thereafter, as its members deem appropriate.

(b) Consistent with other provisions of this Act, the Commission shall structure its operations and activities to assure the appropriate and meaningful involvement of the public in its deliberations. In doing so, the Commission shall consider the desirability of holding public hearings, particularly in locations outside of the District of Columbia and of establishing toll-free telephone lines or other mechanisms whereby members of the public can readily contribute suggestions for Commission consideration.

(c) The Commission shall from time to time submit to the Congress and the President such reports as it may deem appropriate with respect to its activities under this Act. One year after the date of enactment of this Act, the Commission shall report to the Congress and the President on its agenda and its progress. Twenty-four months after the date of enactment of this Act, the Commission shall submit to the Congress and the President its final report with respect to such activities, including all of its findings and recommendations.

(d) Ninety days after the submission to the Congress and the President of its final report under subsection (c), the Commission shall cease to exist, except as provided under section 11(b).

PREPARATION FOR THE COMMISSION

SEC. 10. Upon enactment of this Act, the Comptroller General of the United States, the Director of the Congressional Research Service, the Director of the Congressional Budget Office, the Director of the Office of Technology Assessment, and the Chairman of the Advisory Commission on Intergovernmental Relations shall begin to prepare briefing papers for the Commission. Such briefing papers shall catalog and synthesive any recent reports, analyses, and recommendations of the respective organizations, and shall contain such other information deemed by the head of each such organization to be pertinent to the work of the Commission. The briefing papers shall be completed no later than four months after the date of enactment of this Act.

MONITORING AND FOLLOWUP ON COMMISSION RECOMMENDATIONS

SEC. 11. (a) For a period of four years after the Commission ceases to exist, the Comptroller General of the United States shall monitor the implementation of the recommendations of the Commission, and shall report periodically to the Congress and the President on the actions being taken to implement such recommendations.

(b) For a period of eighteen months after the Commission ceases to exist, a portion of the staff of the Commission shall continue to seek the consideration and implementation of the recommendations of the Commission. During such period, such staff shall be under the supervision of and shall report to the Director of the Office of Management and Budget.

(c) Upon submission of the Commission's final report to the President under section 9(c), the Director of the Office of Management and Budget, in coordination with the executive agencies, shall take action to (1) formulate the views of the executive agencies on the recommendations of the Commission; (2) to the extent practicable within the limits of their authority and resources, carry out recommendations of the Commission in which they concur; and (3) propose legislation needed to carry out or to provide authority to carry out other recommendations of the Commission in which they concur. At least once every six months, the Director of the Office of Management and Budget shall report to the Congress and the President on the status of action taken or to be taken as provided herein. A final report on the final disposition of the recommendations shall be submitted within four years after the submission of the Commission's final report under section 9(c).

EXPENSES OF THE COMMISSION

SEC. 12. There are hereby authorized to be appropriated $10,000,000 to carry out this Act.

By Mr. ROTH:

S. 42. A bill to amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes; to the Committee on Governmental Affairs.

EARLY RETIREMENT PROGRAM FOR FEDERAL EMPLOYEES

Mr. ROTH. Mr. President, today I rise to introduce a bill that gives about 400,000 Federal civilian employees the opportunity to voluntarily retire in 1987, thus saving the taxpayers several hundred million dollars.

This bill will enable many Federal Employees to retire almost immediately if they desire. A number of older Federal employees, although they now lack the age and service needed to retire under current law, are ready, willing, and able to retire as soon as they get a reasonable opportunity.

At the same time, this bill offers new opportunities to younger Federal employees—especially women and members of minority groups—who may be concerned about the shortage of minority groups—who may be concerned about the shortage of career opportunities in the Federal Government. By providing older workers with the opportunity to retire, younger employees may now look forward to brighter and more secure Federal careers.

Given the current period of budget uncertainty, the early retirement option provides a positive way to reduce the Federal payroll. It is no secret that during the next several years Federal outlays must be reduced sharply, or at least held in check. Private companies that need to cut costs commonly open up an early retirement window to give their employees a temporary option to retire.

In fact, the catalyst for the early retirement legislation is the example set by many private companies that have offered such plans in order to prevent layoffs, provide promotion opportunities, and job security for younger workers, and to cut costs in times of financial problems. Many corporations, including some of the largest in our country—General Motors, IBM, and Du Pont, have recently instituted early retirement programs.

I first introduced an early retirement bill during the 99th Congress. Our original bill was introduced as a starting point for discussion and recommendations. On May 15, 1986, the Governmental Affairs Committee held a hearing on the legislation. Since that time, we have worked hard to meet the concerns expressed about the bill. The current version attempts to meet those concerns, and I feel, succeeds in its efforts.

With the current Federal deficit crisis, the ability of the Government to offer early retirement to its work force is a rational, voluntary, and humane method for reducing cost without harming the morale and efficiency of the Government. This is an active plan to reduce the deficit.

Employees may qualify for retirement under any of the following four standards: any age with 25 years of service; age 50 with 20 years of service; age 55 with 15 years of service; age 57 with 5 years of service.

Under the early retirement provisions, employee benefits are allocated according to two categories. Those employees who retire at age 55 or over get full benefits. Employees who retire below the age of 55 take a benefit reduction of 2 percent for each year they retire before age 55. The retirement window will open for 90 days following a 60-day period after the legislation is passed.

There has been a great deal of concern expressed that this bill would hurt the Government's ability to "do its work"—that we would lose the most skilled, experienced, and productive members of our work force and that the hiring freeze would damage the ability of the Government to fulfill its mission. The changes made to the original bill take these concerns into consideration and, I feel, address them positively.

It is critical for the Government to retain certain occupations and efficiently continue projects that are critical to the missions of the agencies. In response to this concern, the President, or his designee, has the authority to exempt up to 25 percent of the agencies eligible early retirees, by occupational category, project, or geographic location. Although every employee should be given the opportunity to retire early, certain activities are of extreme importance to on-going Government functions.

To ensure a smooth transition of responsibilities, the legislation allows managers to hold over an employee who has elected early out, for up to 6 months, if the manager deems that the individual's skills are crucial to the job responsibilities or a work project. In addition, some positions will need to be refilled in order to permit the efficient working of the Federal Government. Therefore, the legislation permits the President to waive the freeze for positions that are determined to be vital to the performance of the agency's mission, or to allow rehiring where the costs of the program are borne by user fees.

The original legislation contained a 5-year freeze limitation on the Government's ability to rehire. We have lowered this to a 3-year freeze. This method steers a middle course between imposing a total ban on hiring replacements and giving agencies free rein to hire despite the need to act regarding the Federal deficit. One of the goals of the legislation is to prevent involuntary loss of jobs by encouraging voluntary retirements. This legislation would help shrink the deficit and treat our Federal personnel as fairly as possible.

Mr. President, while this optional early retirement window is brand new for the Government, it follows a trail blazed over the past 5 years by many of America's leading employers. In times of financial stress, this bill provides an efficient, yet compassionate way of reducing costs.

I welcome the comments of my colleagues, administration officials, employee groups, and Federal workers with an interest in this idea, and I hope the Government Affairs Committee will meet soon on this legislation.

Mr. President, this legislation has a great deal to offer, both to Federal employees and to the Government. I hope that it will be given timely consideration by the Senate.

By Mr. MOYNIHAN:

S. 43. A bill to require that the positions of Director and Deputy Director of Central Intelligence be filled by career intelligence officers; to the Select Committee on Intelligence.

REQUIRING CAREER INTELLIGENCE OFFICERS AS DIRECTOR AND DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE

● Mr. MOYNIHAN. Mr. President, "The protection of our national security . . . is too important a mission to subject to the vagaries of the political process or the partisan purposes of either party." These are William Casey's words, but they speak to a sentiment, a belief, many of us share—there is no room for partisan politics in the Intelligence Committee or in the Intelligence Community.

My esteemed colleague Senator Goldwater and I were in total agreement on this when we served together as chairman and vice chairman of the Select Committee on Intelligence. From this premise we derived a corollary: That the intelligence mission of the Central Intelligence Agency and its sister intelligence agencies is best carried out by professional intelligence officers, officers who should be led by DCI's worthy of the best professional cadre they lead. We felt strongly enough about this, that after considerable reflection and consultation, we introduced legislation, S. 3019, during the 98th Congress, to require that the positions of Director of Central Intelligence [DCI] and Deputy Director of Central Intelligence [DDCI] be filled with career intelligence officers. Recent events suggest that it is time to do so again.

There is too much at risk to consign the intelligence mission to political appointments, campaign aides, or, even, military officers not trained as intelligence officers—officials who might not understand that even at its best, "all that intelligence can promise is to improve the odds a bit, in our favor." This is not to say that politically appointed DCI's have been uniformly good or uniformly bad. Nor is this legislation aimed at any one Director of Central Intelligence. As Senator Goldwater noted with characteristic candor in 1984, "We have lived through a

period of political appointments to the directorship of that body. Some have worked very well, some have worked badly, and some of them have been terrible."

A career intelligence officer with an institutional memory beyond one President and a strong interest in the long-term welfare of the Intelligence Community, I hope and expect, would help prevent such misadventures as: the mining of Nicaraguan harbors in 1983; and the arms transfers to Iran and cash transfers to the Contras in 1985 and 1986.

I think of John McMahon, Deputy Director of Central Intelligence, a career intelligence officer of 34 years, who having been asked by the National Security Council staff to provide transport for arms to Iran in November 1985, insisted that any further shipment be accompanied by a Presidential Intelligence Finding. And so it was on January 17, 1986, the President issued an intelligence finding and we have been hearing about the repercussions for some weeks now. I wonder, who did the President consult on this matter, career professionals with experience in the East, or political appointees?

As I told the first graduating class of the Defense Intelligence College in June 1984: "Just as democractic institutions require that a military profession be loyal to civil authority, so the profession of intelligence must see that the highest form of such loyalty is the exercise of independent professional judgment in the analysis of intelligence data. Call 'em as you see 'em." McMahon did so. Who will be next?

The legislation I introduce today, however, is more than a response to the Iran debacle, or mining of Nicaraguan harbors, it addresses the fundamental needs of the institutions and profession involved. The work of intelligence has become increasingly complex, requiring senior officials to master a vast array of highly sophisticated satellite and other technical collection systems as well as political, economic and military issues affecting virtually every country in the world. The most important development in the late 1970's, for example, was the replacement of our technical means of collection—the foundation for nuclear defense and the indispensable element of nuclear arms control. The positions of DCI and DDCI require more than a quick-study, they require career professionals.

Such a procedure does raise one concern that in a closed society—the intelligence community—it is crucial that outside civilian authority serve as both administrator and watchdog so that the abuse revealed to the Church and Pike Committees is not repeated. The key to oversight of the intelligence community, however, is not the Director of Central Intelligence, but the Congressional committees. The study of institutions tells us direction and oversight must not wear the same hat.

Finally, Mr. President, I believe this bill is a natural outgrowth of the task of institution building. During the 1970's the CIA and other intelligence agencies went through a difficult period of accusations and investigations. Resources, especially personnel, were significantly reduced. With the establishment of the Select Committee on Intelligence, we embarked upon a program to restore the strength and morale of these vital agencies. We may well have to do so again.

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

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

S. 43

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 102(a) of the National Security Act of 1947 (50 U.S.C. 403(a)) is amended by adding after the phrase "Provided, however," the following: "That the Director and Deputy Director of Central Intelligence shall be appointed from among career civilian or military intelligence officers, and Provided, further,"

By Mr. MOYNIHAN:

S. 44. A bill to amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident arising out of activities of Nuclear Regulatory Commission licensees or undertaken pursuant to the Nuclear Waste Policy Act of 1982 involving nuclear materials, and to reduce the likelihood of such an accident; to the Committee on Environment and Public Works.

PRICE-ANDERSON ENHANCEMENT ACT

Mr. MOYNIHAN. Mr. President, I rise to offer most necessary and timely legislation, a bill to reauthorize and improve the Price-Anderson Act, which establishes the unique liability and compensation structure for domestic nuclear power. Without prompt action from this body, Price-Anderson will expire on August 1 of this year. Neither the public nor the industry would be well served by such a lapse.

But it is also our duty to be absolutely certain that our work on this vital matter reflects all that we have learned from the last three decades of nuclear power. There are important matters that the present law does not address, and regardless of our opinions on the wisdom of nuclear fission as a power source in the future, we must deal with it wisely as a technology that must be managed now.

The legislation that I now offer draws much of its strength from the fine proposal made in the 99th Congress by my esteemed colleague from Vermont, Mr. STAFFORD. As chairman of the Committee on Environment and Public Works in the last Congress, he worked until its very waning hours to try to fashion a compromise that was acceptable to all; his effort nearly succeeded. This bill, however, hearkens back to the original proposals made by the Senator from Vermont in 1985. They were sound then, and they remain sound today.

Our first concern when contemplating the unlikely, though proven, possibility of colossal disaster at a nuclear powerplant, must be to do what we can to see that it does not occur. This singular fact has been conspicuous by its absence in the Price-Anderson debate; I propose a remedy with this bill.

I join with those who have started with the proposition that the nuclear industry must stand prepared to provide full compensation to the victims of a severe nuclear accident. The limit that now caps liability at a fraction of $1 billion is a disgrace. The Nuclear Regulatory Commission proposed, at one time, that an annual payment—in the event of disaster—of $10 million for each reactor would not be unreasonable. So did the Senator from Vermont, in the last Congress.

This stream of payments, in excess of $1 billion annually, would bring meaning to the phrase "full compensation" by assuring that truly massive sums would be available to compensate accident victims in the event of disaster. And my legislation, unlike previous proposals, provides specific authority for the NRC to borrow from the Treasury if payments do not come in as fast as claims. Advances would be fully repaid, with interest, by payments in future years.

This bill also includes a key provision, sorely lacking in the proposals circulated at the end of the last Congress: real protection against inflation. If the half-billion dollars of protection that we started with in 1957 had been indexed for inflation, present coverage would be some $2 billion; in 20 more years time, some $6 billion. Perhaps more. These numbers do not indicate more money; they indicate precisely the same amounts of money. Many recent proposals raise liability limits substantially; some, to the same levels that we would have had if we had thought things through in 1956. But as we plan for the decades to come, the only proper policy is to provide future citizens with at least the same protection that we provide ourselves.

But providing compensation to accident victims is something with which we have all too much experience. I am confident that this body will produce a workable scheme. The vastly harder, but vastly more rewarding effort, is to arrange for accidents not to occur.

The business of the Nuclear Regulatory Commission is nuclear safety. I, for one, am not terribly impressed with the way that business is being conducted. But even if, by some chance, the NRC should suddenly be reformed—by themselves, or by us—the Commission would remain a regulatory agency, and the questions that they consider matters of "good enough" or "not good enough." Lowest common denominator questions. Barebones questions.

It is not enough for us to sit back and say that the NRC provides all the protection we need. That barely passing is good enough.

Mr. President, this bill proposes a radical notion: that we can enhance nuclear safety by providing incentives to go beyond the bare minimum on safety and performance. Perhaps it is not such a radical concept, really. It sounds perfectly reasonable to me.

Beyond the $160 million of liability insurance that each nuclear plant is required to carry, the bulk of the financial protection under Price-Anderson is provided by payments made by all nuclear utilities, for each of their reactors, in the event of a nuclear disaster at any one of them. I propose that the size of these payments ought not to be the same.

We do not have the kind of information on risk—the probabilities and consequences of all the possible nuclear disasters—that conventional insurance relies on, and we never shall. That is the nature of the problem, and that is why we demand that the public and the industry be protected by special legislation.

What we can do is choose to reward those utilities who run their operations in exemplary fashion. We can have a body of experts determine who they are, have the NRC identify them, and promise that if an accident occurs at any plant across the country in the coming year, they will bear a lesser financial burden than most because they did the most they could to avoid catastrophe. And we can do the same for those who run their plants least well.

I propose that we single out the best 10 percent of our plants, and the worst. A panel of experts such as the Accrediting Board of the Institute for Nuclear Power Operations would provide such advice to the NRC. And the NRC would announce that these groups would pay 20 percent less, and 20 percent more, respectively, if a disaster should occur within the coming year.

No doubt there will be those who will complain about the difficulties such distinctions pose. All this complication will not substantially affect the amounts available to compensate victims in a disaster. No utility executive will look forward to being judged—unless he is very, very confident of his nuclear operations. Many will fear that a place in the bottom 10 percent will have a real cost to them in today's financial markets, if not in some unlikely accident next year.

That is exactly what I hope they will fear.

It is abundantly clear that the professionals who run our nuclear plants do not expect to experience disaster personally. They do not believe that disaster will strike—and if it does, it will not be at their plant.

They are probably right, but I am still not comfortable.

I will be a great deal more comfortable when I know that the Nation's nuclear plants are competing with each other to be recognized for running exemplary operations, rather than joining together to face lowest common-denominator regulations.

I am confident that the 100th Congress will reauthorize the Price-Anderson Act. The need to make the resources of the entire nuclear industry available to protect the public is well recognized.

I hope that this Congress will also recognize the need to build incentives into the Price-Anderson system to reduce the chances of putting those financial resources to the test.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S.44

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

SECTION 1. This Act may be cited as the "Price-Anderson Enhancement Act of 1987."

SEC. 2. Section 170 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licenses required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this Act, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for annually assessed premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of primary financial protection required of the licensee involved in the nuclear incident: *Provided further,* That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types of such financial protection: *Provided further,* That the maximum deferred premium which may be charged for all nuclear incidents under such a plan shall not be less than $10,000,000 per year or more than $15,000,000 per year for each facility required to maintain the maximum amount of financial protection except as provided further under this subsection: *Provided further,* That the above mentioned limits shall be in constant dollars as of January 1, 1987, and that the Commission shall adjust the maximum deferred premium for inflation as indicated by the Gross National Product deflator: *Provided further,* That the annual amount which may be charged a licensee shall not exceed the licensee's pro rata share, calculated on a yearly basis, of the aggregate public liability claims and costs rising out of nuclear incidents. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

"In order to establish the amount of the deferred premium established under this subsection, not later than one month after the date of enactment of the Price-Anderson Improvement Act of 1986, and every twelve months thereafter, the Commission shall collect and provide information relating to the operational performance and safety record of each licensed facility that is required to have the maximum amount of financial protection available pursuant to this subsection for the preceding twelve-month period, including (but not limited to) the reports prepared under the Systematic Assessment for Licensee Performance program, to the Institute for Nuclear Power

Operations or such other body of experts as the Commission deems appropriate and willing to undertake the evaluation required by this subsection. Based upon the information provided by the Commission, the Institute or such other body shall identify those facilities that constitute the 10 per centum of all facilities which have the best operational performance and safety record for the period for which information is available and those facilities that constitute the 10 per centum of all facilities which have the worst operational performance and safety record for the period for which information is available. Such identification shall be based on such safety-related aspects of operational performance as the number of abnormal occurrences, frequency of unscheduled maintenance, frequency of scheduled maintenance, and competence and training of operating personnel. Not later than three months after receipt of such information from the Commission, the Institute or such other body shall submit to the Commission such identification of facilities. The Commission, after notice and comment, including the opportunity for public hearing, and based on the identification of facilities submitted by the Institute or such other body, shall establish three classes of licensed facilities: the 10 per centum of all facilities which have the best operational performance and safety record for the period for which information is available, the 10 per centum of all facilities which have the worst operational performance and safety record for the period for which information is available, and the balance of all other facilities. Any petition for the judicial review of the placement of any facility in one of these three classes shall be filed within 90 days of the action of the Commission establishing such classes, and such action shall not be subject to judicial review in any proceeding involving the establishment or collection of any deferred premium. In the event of an accident for which deferred premiums are assessed, the deferred premium for a facility in the class of facilities with the best operational performance and safety record shall be one-fifth lower than that generally applicable to all facilities, notwithstanding the limits otherwise applicable under this subsection, and the deferred premium for a facility in the class of facilities with the worst operational performance and safety record shall be one-fifth higher than that generally applicable to all facilities, notwithstanding the limits otherwise applicable under this subsection. In the event that the Commission fails to establish the classes of facilities required by the preceding sentences prior to an accident for which deferred premiums are assessed, all facilities referred to in this subsection shall be assessed deferred premiums in an amount equal to the largest deferred premium that would otherwise be assessed for any such facility under this subsection."

"There are authorized to be appropriated in any fiscal year as repayable advances such sums as may be necessary to pay public liability claims from a nuclear incident that are in excess of the deferred premiums that will have been collected by the end of such fiscal year from such licensees. Advances made pursuant to the previous sentence shall be repaid to the general fund of the Treasury out of the deferred premiums received in subsequent fiscal years."

SEC. 3. Section 170 c. of the Atomic Energy Act of 1954, as amended, is amended by striking "August 1, 1987" wherever it appears, and inserting in lieu thereof "August 1, 2002".

SEC. 4. Section 170 d. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"d. (1)(A) In addition to any other authority the Secretary of Energy (hereinafter in this section referred to as the Secretary) may have, the Secretary is authorized until August 1, 2002, to enter into agreements of indemnification with the contractors of the Secretary for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident.

"(B) The authority conferred upon the Secretary pursuant to paragraph (A) to enter into agreements of indemnification with contractors shall include contracts entered into by the Secretary for the purpose of carrying out such activities as the Secretary is authorized to undertake, pursuant to this Act or any other law, involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to or from a storage or disposal site or facility, or test and evaluation facility, the treatment or packaging of such materials to be stored in, disposed of, or used in such a site or facility, and the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any such site or facility. For all such activities, the authority conferred upon the Secretary pursuant to subsection d. shall be the exclusive means of indemnification under this section.

"(C) With respect to such contractual activities for which the Secretary may make expenditures from the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222):

"(i) The Secretary shall enter into agreements of indemnification with each contractor of the Secretary carrying out such contractual activities under the risk of public liability for a nuclear incident. In such agreements of indemnification the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with such contractual activities, including the storage, disposal, and related transportation of high-level radioactive waste and spent nuclear fuel. The Secretary shall indemnify the persons indemnified against such claims above the amount of financial protection required. Such indemnification shall include the reasonable costs of investigating and settling claims and defending suits to the extent that such costs are not covered by the amount of financial protection required.

"(ii) The Secretary shall make any payments required under an agreement of indemnification entered into under this subparagraph from amounts available through the Nuclear Waste Fund. The Secretary shall include the costs incurred by the Nuclear Waste Fund under this section in any review of whether the fees established to generate revenue for the Nuclear Waste Fund are sufficient to offset the costs incurred by the Nuclear Waste Fund, including the annual review by the Secretary pursuant to section 302(a)(4) of the Nuclear Waste Fund Policy Act of 1982 (42 U.S.C. 10222(a)(4)).

"(2) In such agreements of indemnification other than specified in subsection d. (1)(C) the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity and shall indemnify the persons indemnified against such claims above the amount of financial protection required, in the amount of $500,000,000, excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000.

"(3) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary shall not exceed $100,000,000.

"(4) The provision of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

"(5) A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.".

SEC. 5. Section 170 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"e. (1) With respect to liability for one or more nuclear incidents covered by an industry retrospective rating plan required by subsection 170 b., the aggregate payments in any year by or on behalf of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not be required to exceed the amount of financial protection provided in that year under subsection 170 b. The funds provided by financial protection under subsection 170 b. in any year by or on behalf of such persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall be the exclusive source of payments of public liability claims.

"(2) With respect to all other nuclear incidents, except as provided in subsection d. (1)(C), the aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (a) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor, or (b) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever is greater: *Provided*, That in the event of a nuclear incident involving damages in excess of the amount of aggregate liability, Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: And *Provided further*, That with respect to any nuclear incident occurring

outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.".

SEC. 6. Section 170 h. of the Atomic Energy Act of 1954, as amended, is amended—

(1) by inserting after "Commission" wherever it appears the following: "or the Secretary, as appropriate,"; and

(2) by inserting at the beginning of the last sentence the following: "Except with respect to activities indemnified under subsection d. (1)(C),".

SEC. 7. Section 170 i. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"i. After any nuclear incident which will probably require payments by the United States under this section or after any extraordinary nuclear occurrence, the Commission or the Secretary, as appropriate, shall make a survey of the causes and extent of damage which shall forthwith be reported to the Congress, to the Congressmen of the affected districts, and to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission and the Secretary shall report annually to the Congress on the operations under this section.".

SEC. 8. Section 170 k. of the Atomic Energy Act of 1954, as amended, is amended by striking out "August 1, 1987" wherever it appears and inserting in lieu thereof "August 1, 2002".

SEC. 9. Section 170 n. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"n. (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

"(a) arises out of or results or occurs in the course of the construction, possession, or operation of a production or utilizaton facility, or

"(b) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, or

"(c) during the course of the contract activity arises out of or results from the possession, operation, or use by a Department of Energy contractor or subcontractor of a device utilizing special nuclear material or byproduct material, or

"(d) arises out of or results from or occurs in the course of construction, possession, or operation of any facility licensed under section 53, 63, or 81 of this Act, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection pursuant to subsection 170 a., or for which an indemnity agreement is executed pursuant to subsection 170 k., or

"(e) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81 of this Act, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection pursuant to section 170 a., or for which the indemnity agreement is executed pursuant to subsection 170 k., or

"(f) arises out of or results from or occurs in the course of activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of high-level waste, spent fuel, or transuranic waste, including the transportation of such materials to or from a storage or disposal site or facility or test and evaluation facility, the treatment or packaging of such materials to be stored in, disposed of, or used in such a site or facility, and the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any such site or facility,

and which does not arise out of or result from or occur in the course of an activity for which the Secretary may make expenditures from the Nuclear Waste Fund, the Commission, or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, and, with respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection applies and which arises out of or results from or occurs in the course of an activity for which the Secretary may make expenditures from the Nuclear Waste Fund, the Secretary shall incorporate provisions in indemnity agreements and shall require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than thirty years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability or limit of payment provisions of subsection 170e.

"(2) With respect to any public liability action arising out of or resulting from an extraordinary nuclear occurrence, the United States district court in the district where the extraordinary nuclear occurrence takes place, or in the case of an extraordinary nuclear occurrence taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission or the Secretary, as appropriate, any such action pending in any State court or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States.

"(3) With respect to any public liability action arising out of or resulting from any extraordinary nuclear occurrence, the Commission, or Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to the district court having original jurisdiction pursuant to subparagraph (2), a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary, as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.".

SEC. 10. Section 170 o. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States district court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed in any year the amount of financial protection available in that year under subsection 170 b., or the limit of liability under subsection 170 c. (2), as appropriate:

"(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 33⅓ per centum of such amount of financial protection, or 15 per centum of such limit of liability, as appropriate, without the prior approval of such court.

"(2) The court shall not authorize payments in excess of 33⅓ per centum of such amount of financial protection, or 15 per centum of such limit of liability, as appropriate, unless the court determines that such payments are or will be in accordance with a plan of distribution which has been

approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (3) of subsection (n).

"(3) In situations where public liability is limited by the provisions of subsection 170 e. (2), the Commission or the Secretary, as appropriate, shall, within ninety days after a court shall have made such determination, deliver to the Congress a supplement to the report prepared in accordance with subsection 170 i. of this Act, setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.".

SEC. 11. Section 170 p. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"p. In the event of two or more nuclear incidents for which public liability claims require payment from the industry retrospective rating plan under subsection 170 b., and for which there are outstanding public liability claims:

"(1) The maximum amount of private insurance available in any year for all nuclear incidents under the industry restrospective rating plan shall be apportioned equally, in the manner prescribed herein, among the nuclear incidents in that year to which the industry retrospective rating plan applies. The maximum amount of private insurance available in any year under the industry retrospective rating plan to satisfy the aggregate public liability claims resulting from a single nuclear incident shall be the quotient obtained by dividing the maximum amount of private insurance available in that year by the number of nuclear incidents to which the industry retrospective rating plan applies in that year. In the event that the aggregate public liability claims resulting from any single nuclear incident(s) in any year are less than the quotient for that year, the amount of private insurance constituting the difference shall be apportioned equally, in the same manner, among the remaining nuclear incidents for which the aggregate public liability claims exceed the quotient for that year.

"(2) In the event that the amount of insurance available in any year under the industry retrospective rating plan for public liability claims for a nuclear incident is reduced, pursuant to subparagraph (1) of this subsection, from the amount specified originally in the plan of the district court prepared pursuant to subsection 170 n. (3), such district court shall modify the original plan as necessary to insure the most equitable allocation of available funds. For purposes of such modifications, the district court shall have the same powers and authority as in adopting the original plan.".

SEC. 12. Section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new subsection at the end thereof:

"q. The Commission and the Secretary shall submit to the Congress by August 1, 1998, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.".

DEFINITIONS

SEC. 13. (a) Subsection s. of section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following: "For purposes of those activities that the Secretary of Energy is authorized or directed to undertake, pursuant to this Act or any other law, that involve the risk of public liability for a substantial nuclear incident as a result of the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to or from a storage or disposal site or facility, or test and evaluation facility, the treatment or packaging of such materials to be stored in, disposed of, or used in any such a site or facility, and the identification, development licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of such site or facility, the Secretary shall, to the extent that such activities are not undertaken by contract, be considered as if the Secretary were a contractor with whom an indemnity agreement has been entered into pursuant to subsection d. of this Act.".

(b) Subsection w. of section 11 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"w. The term public liability means any legal liability arising out of or resulting from a nuclear incident, except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; (iii) whenever used in subsection 170 a., c., and k., claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs; and (iv) claims for punitive damages. Public liability also includes damage to property of persons indemnified, *Provided*, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.".

(c) Section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new subsection at the end thereof:

"dd. The term Nuclear Waste Fund means the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).".

CONFORMING AMENDMENTS

SEC. 14. Subsections g., j., and m. of section 170 of the Atomic Energy Act of 1954, as amended, are amended by inserting after "Commission" wherever it appears the following: "or the Secretary, as appropriate,".

SEC. 15. Section 170. a. of the Atomic Energy Act of 1954, as amended, is amended by striking in the first sentence "the Commission" and inserting in lieu thereof "the Nuclear Regulatory Commission (hereinafter in the section referred to as "the Commission").

By Mr. PROXMIRE (for himself and Mr. GARN) (by request):

S. 45. A bill relating to recapitalization of FSLIC; to the Committee on Banking, Housing, and Urban Affairs.

RECAPITALIZATION OF THE FSLIC

Mr. PROXMIRE. Mr. President, I am today introducing, at the request of the administration, a bill relating to recapitalization of the FSLIC. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 45

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

TITLE I—RECAPITALIZATION OF FSLIC

SEC. 1001. SHORT TITLE.

This title may be cited as the "Federal Savings and Loan Insurance Corporation Recapitalization Act of 1986".

SEC. 1002. FINANCING CORPORATION ESTABLISHED.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 20 the following new section:

"SEC. 21. FINANCING CORPORATION.

"(a) ESTABLISHMENT.—Notwithstanding any other - provision of law, the Board shall charter a corporation to be known as the Financing Corporation.

"(b) MANAGEMENT OF FINANCING CORPORATION.—

"(1) DIRECTORATE.—The Financing Corporation shall be under the management of a directorate composed of 3 members as follows:

"(A) The Director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor to such office).

"(B) 2 members selected by the Chairman of the Federal Home Loan Bank Board from among the presidents of the Federal Home Loan Banks.

"(2) TERMS.—Each member appointed under paragraph (1)(B) shall be appointed for a term of 1 year.

"(3) VACANCY.—If any member leaves the office in which such member was serving when appointed to the Directorate—

"(A) such member's service on the Directorate shall terminate on the date such member leaves such office; and

"(B) the successor to the office of such member shall serve the remainder of such member's term.

"(4) EQUAL REPRESENTATION OF BANKS.—No president of a Federal Home Loan Bank may be appointed to serve an additional term on the Directorate until such time as the presidents of each of the other Federal Home Loan Banks have served as many terms on the Directorate as the president of such bank (before the appointment of such president to such additional term).

"(5) CHAIRPERSON.—The Chairman of the Federal Home Loan Bank Board shall select the chairperson of the Directorate from among the 3 members of the Directorate.

"(6) STAFF.—

"(A) NO PAID EMPLOYEES.—The Financing Corporation shall have no paid employees.

"(B) POWERS.—The Directorate may, with the approval of the Board, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation in such manner as may be necessary to carry out the functions of the Financing Corporation.

"(7) ADMINISTRATIVE EXPENSES.—

"(A) IN GENERAL.—All administrative expenses of the Financing Corporation shall be paid by the Federal Home Loan Banks.

"(B) PRO RATA DISTRIBUTION.—The amount each Federal Home Loan Bank shall pay shall be determined by the Board by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

"(i) the aggregate amount the Board required such bank to invest in the Financing

Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (d) (as computed without regard to paragraph (3) or (6) of such subsection); by

"(ii) the aggregate amount the Board required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

"(C) ADMINISTRATIVE EXPENSES DEFINED.—For purposes of this paragraph, the term 'administrative expenses' does not include—

"(i) issuance costs (as such term is defined in subsection (g)(5)(A));

"(ii) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; or

"(iii) custodian fees (as such term is defined in subsection (g)(5)(B)).

"(8) REGULATION BY BOARD.—The Directorate shall be subject to such regulations, orders, and directions as the Board may prescribe.

"(9) NO COMPENSATION FROM FINANCING CORPORATION.—Members of the Directorate shall receive no pay, allowances, or benefits from the Financing Corporation by reason of their service on the Directorate.

"(c) POWERS OF FINANCING CORPORATION.—The Financing Corporation shall have only the following powers, subject to the other provisions of this section and such regulations, orders, and directions as the Board may prescribe:

"(1) To issue nonvoting capital stock to the Federal Home Loan Banks.

"(2) To invest in any security issued by the Federal Savings and Loan Insurance Corporation under section 402(b) of the National Housing Act.

"(3) To issue debentures, bonds, or other obligations and to borrow, to give security for any amount borrowed, and to pay interest on (and any redemption premium with respect to) any such obligation or amount.

"(4) To impose assessments in accordance with subsection (f).

"(5) To adopt, alter, and use a corporate seal.

"(6) To have succession until dissolved.

"(7) To enter into contracts.

"(8) To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Financing Corporation in any State or Federal court of competent jurisdiction.

"(9) To exercise such incidental powers not inconsistent with the provisions of this section or section 402(b) of the National Housing Act as are necessary or appropriate to carry out the provisions of this section.

"(d) CAPITALIZATION OF FINANCING CORPORATION.—

"(1) PURCHASE OF CAPITAL STOCK BY HOME LOAN BANKS.—

"(A) IN GENERAL.—Each Federal Home Loan Bank shall invest in nonvoting capital stock of the Financing Corporation at such times and in such amounts as the Board may prescribe under this subsection.

"(B) PAR VALUE; TRANSFERABILITY.—Each share of stock issued by the Financing Corporation to a Federal Home Loan Bank shall have par value in an amount determined by the Board and shall be transferable only among the Federal Home Loan Banks in the manner and to the extent prescribed by the Board at not less than par value.

"(2) AGGREGATE DOLLAR AMOUNT LIMITATION ON ALL INVESTMENTS.—The aggregate amount of funds invested by all Federal Home Loan Banks in nonvoting capital stock of the Financing Corporation shall not exceed $3,000,000,000.

"(3) MAXIMUM INVESTMENT AMOUNT LIMITATION FOR EACH HOME LOAN BANK.—The cumulative amount of funds invested in nonvoting capital stock of the Financing Corporation by each Federal Home Loan Bank shall not exceed the aggregate amount of—

"(A) the sum of—

"(i) the reserves maintained by such bank on December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 16; and

"(ii) the undivided profits (as defined in paragraph (7)) of such bank on such date; and

"(B) the sum of—

"(i) the amounts required to be carried to reserves after December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 16; and

"(ii) the undivided profits of such bank accruing after such date.

"(4) PRO RATA DISTRIBUTION OF 1ST $1,000,000,000 INVESTED IN FINANCING CORPORATION BY HOME LOAN BANKS.—With respect to the first $1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by applying to the total amount of such investment by all such banks the percentage appearing in the following table for each such bank:

"Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

"(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF $1,000,000,000.—With respect to any amount in excess of $1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by multiplying such excess amount by the percentage arrived at by dividing—

"(A) the sum of the total assets (as of the most recent December 31) held by all insured institutions which are members of such bank; by

"(B) the sum of the total assets (as of such date) held by all insured institutions which are members of any Federal Home Loan Bank.

"(6) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

"(A) IN GENERAL.—If the amount any Federal Home Loan Bank is required to invest in capital stock of the Financing Corporation pursuant to a determination by the Board under paragraph (5) (or under subparagraph (B) of this paragraph) exceeds the maximum investment amount applicable with respect to such bank under paragraph (3) at the time of such determination (hereinafter in this paragraph referred to as the 'excess amount')—

"(i) the Board shall require each remaining Federal Home Loan Bank to invest (in addition to the amount determined under paragraph (5) for such remaining bank and subject to the maximum investment amount applicable with respect to such remaining bank under paragraph (3) at the time of such determination) in such capital stock on behalf of the bank in the amount determined under subparagraph (B);

"(ii) the Board shall require the bank to subsequently purchase the excess amount of capital stock from the remaining banks in the manner described in subparagraph (C); and

"(iii) the requirements contained in subparagraphs (D) and (E) relating to the use of net earnings available for dividends shall apply to such bank until the bank has purchased all of the excess amount of capital stock.

"(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING BANKS.—The amount each remaining Federal Home Loan Bank shall be required to invest under subparagraph (A)(i) is the amount determined by the Board by multiplying the excess amount by the percentage arrived at by dividing—

"(i) the amount of capital stock of the Financing Corporation held by such remaining bank at the time of such determination; by

"(ii) the aggregate amount of such stock held by all remaining banks at such time.

"(C) PURCHASE PROCEDURE.—The bank on whose behalf an investment in capital stock is made under subparagraph (A)(i) shall purchase, annually and at the issuance price, from each remaining bank an amount of such stock determined by the Board by multiplying the amount available for such purchases (at the time of such determination) by the percentage determined under subparagraph (B) with respect to such remaining bank until the aggregate amount of such capital stock has been purchased by the bank.

"(D) LIMITATION ON DIVIDENDS.—The amount of dividends which may be paid for any year by a bank on whose behalf an investment is made under subparagraph (A)(i) shall not exceed an amount equal to 1/2 of the net earnings available for dividends of the bank for the year.

"(E) TRANSFER TO ACCOUNT FOR PURCHASE OF STOCK REQUIRED.—Of the net earnings available for dividends for any year of a bank on whose behalf an investment is made under subparagraph (A)(i), such amount as is necessary to make the purchases of stock required under subparagraph (A)(ii) shall be placed in a reserve account (established in such manner as the Board shall prescribe by regulations, orders and directions) the balance in which shall be available only for such purchases.

"(F) NET EARNINGS AVAILABLE FOR DIVIDENDS DEFINED.—For purposes of this paragraph, the term 'net earnings available for dividends' means the net earnings of a bank for any period as computed after reducing the amount of earnings for such period by the amount required to be carried (for such

period) to reserves maintained by such bank pursuant to the first two sentences of section 16 of this Act.

"(7) UNDIVIDED PROFITS DEFINED.—For purposes of paragraph (3), the term 'undivided profits' means retained earnings minus the sum of—

"(A) that portion required to be carried to reserves maintained pursuant to the first two sentences of section 16 of this Act; and

"(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985 as determined under the following table:

"Bank	Dollar amount
Federal Home Loan Bank of Boston	$3.2 million
Federal Home Loan Bank of New York	7.7 million
Federal Home Loan Bank of Pittsburgh	5.2 million
Federal Home Loan Bank of Atlanta	12.3 million
Federal Home Loan Bank of Cincinnati	5.9 million
Federal Home Loan Bank of Indianapolis	37.4 million
Federal Home Loan Bank of Chicago	6.0 million
Federal Home Loan Bank of Des Moines	32.7 million
Federal Home Loan Bank of Dallas	45.0 million
Federal Home Loan Bank of Topeka	13.7 million
Federal Home Loan Bank of San Francisco	21.9 million
Federal Home Loan Bank of Seattle	33.6 million

"(e) OBLIGATIONS OF THE FINANCING CORPORATION.—

"(1) LIMITATION ON AMOUNT OF OUTSTANDING OBLIGATIONS.—The aggregate amount of obligations of the Financing Corporation which may be outstanding at any time (as determined by the Board) shall not exceed the greater of—

"(A) 5 times the amount of the nonvoting capital stock of the Financing Corporation which is outstanding at such time; or

"(B) the sum of the face amounts (principal payable at maturity) of securities described in subsection (g)(2) which are held at such time in the segregated account established pursuant to such subsection.

"(2) NET PROCEEDS TO BE INVESTED IN CAPITAL OF FSLIC.—Subject to such terms and conditions as may be approved by the Board, the net proceeds of any obligation issued by the Financing Corporation shall be used to—

"(A) purchase capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act; or

"(B) refund any previously issued obligation the net proceeds of which were invested in the manner described in subparagraph (A).

"(3) LIMITATION ON TERM OF OBLIGATIONS.—No obligation of the Financing Corporation may be issued which matures—

"(A) more than 30 years after the date of issue; or

"(B) after December 31, 2026.

"(4) INVESTMENT OF UNITED STATES FUNDS IN OBLIGATIONS.—Obligations issued under this section by the Financing Corporation with the approval of the Board shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

"(5) MARKET FOR OBLIGATIONS.—All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have the power to do so with respect to obligations of the Financing Corporation.

"(6) NO FULL FAITH AND CREDIT OF THE UNITED STATES.—Obligations of the Financing Corporation and the interest payable on such obligations shall not be obligations of, or guaranteed as to principal or interest by, the Federal Home Loan Banks, the United States, or the Federal Savings and Loan Insurance Corporation and the obligations shall so plainly state.

"(7) TAX EXEMPT STATUS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), obligations of the Financing Corporation shall be exempt from tax both as to principal and interest to the same extent as any obligation of a Federal Home Loan Bank is exempt from tax under section 13.

"(B) EXCEPTION.—The Financing Corporation, like the Federal Home Loan Banks, shall be treated as an agency of the United States for purposes of the first sentence of section 3124(b) of title 31, United States Code (relating to determination of tax status of interest on obligations).

"(8) OBLIGATIONS ARE EXEMPT SECURITIES.—Notwithstanding paragraph (6), obligations of the Financing Corporation shall be deemed to be exempt securities (within the meaning of laws administered by the Securities and Exchange Commission) to the same extent as securities which are direct obligations of the United States or are guaranteed as to principal or interest by the United States.

"(f) ASSESSMENT AUTHORITY OF THE FINANCING CORPORATION.—

"(1) IN GENERAL.—The Financing Corporation may assess, with the approval of the Board, on each insured institution an assessment for each semiannual period equal to ½ of an amount not to exceed 1/12th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution for the year in which such semiannual period occurs.

"(2) SUPPLEMENTAL ASSESSMENT AUTHORIZED.—Upon the unanimous vote of the Directorate that additional funds are needed to pay the interest on the obligations of the Financing Corporation because no other funds are available, the Financing Corporation may assess, with the approval of the Board and in addition to any assessment assessed under paragraph (1), on each insured institution an assessment for each semiannual period of ½ of an amount not to exceed ⅛th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution for the year in which such semiannual period occurs.

"(3) TOTAL AMOUNT OF ASSESSMENTS MAY NOT EXCEED INTEREST AND FINANCING COSTS.—The aggregate amount of assessments assessed under paragraphs (1) and (2) with respect to any semiannual period may not exceed—

"(A) the aggregate amount of—

"(i) issuance costs (as such term is defined in subsection (g)(5)(A)) incurred with respect to obligations issued during such semiannual period;

"(ii) interest paid on (and any redemption premium paid with respect to) obligations of the Financing Corporation during such semiannual period; and

"(iii) custodian fees (as such term is defined in subsection (g)(5)(B)) incurred during such period; minus

"(B) the aggregate amount of any payments under subsection (g)(4) during such semiannual period.

"(4) PAYMENT TO FINANCING CORPORATION.—All assessments assessed under paragraph (1) or (2) shall be paid to the Financing Corporation.

"(g) USE AND DISPOSITION OF ASSETS OF THE FINANCING CORPORATION NOT INVESTED IN FSLIC.—

"(1) IN GENERAL.—Subject to such regulations, restrictions, and limitations as may be prescribed by the Board, assets of the Financing Corporation which are not invested in capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act shall be invested in—

"(A) direct obligations of the United States,

"(B) obligations, participations, or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

"(C) mortgages, obligations, or other securities for sale by, or which have been disposed of by, the Federal Home Loan Mortgage Corporation under section 305 or 306 of the Federal Home Loan Mortgage Corporation Act; or

"(D) any other security in which it is lawful for fiduciary and trust funds to be invested under the laws of any State.

"(2) SEGREGATED ACCOUNT FOR ZERO COUPON INSTRUMENTS HELD TO ASSURE PAYMENT OF PRINCIPAL.—The Financing Corporation shall invest in, and hold in a segregated account, noninterest bearing instruments—

"(A) which are securities described in paragraph (1); and

"(B) the total of the face amounts (principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Financing Corporation,

to assure the repayment of principal on obligations of the Financing Corporation.

"(3) DOLLAR AMOUNT LIMITATION ON INVESTMENT IN ZERO COUPON INSTRUMENTS FOR SEGREGATED ACCOUNT—The aggregate amount invested by the Financing Corporation under paragraph (2) shall not exceed $2,200,000,000 (as determined on the basis of the purchase price).

"(4) EXCEPTION FOR PAYMENT OF ISSUANCE COSTS, INTEREST, AND CUSTODIAN FEES.—Notwithstanding the requirements of paragraph (1), the assets of the Financing Corporation referred to in paragraph (1) which are not invested under paragraph (2) may be used to pay—

"(A) issuance costs;

"(B) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; and

"(C) custodian fees.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ISSUANCE COSTS.—The term 'issuance costs'—

"(i) means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of any obligation of the Financing Corporation; and

"(ii) includes legal and accounting expenses, trustee and fiscal and paying agent

charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Financing Corporation in connection with issuing any obligation.

"(B) CUSTODIAN FEES.—The term 'custodian fee' means—

"(i) any fee incurred by the Financing Corporation in connection with the transfer of any security to, or the maintenance of any security in, the segregated account established under paragraph (2); and

"(ii) any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

"(h) MISCELLANEOUS PROVISIONS RELATING TO FINANCING CORPORATION.—

"(1) TREATMENT FOR CERTAIN PURPOSES.—The Financing Corporation shall be treated as a Federal Home Loan Bank for purposes of sections 13 and 23.

"(2) SUNSET PROVISION FOR BORROWING AUTHORITY.—No net new borrowing may be made by the Financing Corporation after December 31, 1996.

"(3) FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.—The Federal Reserve banks are authorized to act as depositaries for or fiscal agents or custodians of the Financing Corporation.

"(4) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO GOVERNMENT CORPORATION.—Notwithstanding the fact that no government funds may be invested in the Financing Corporation, the Financing Corporation shall be treated, for purposes of sections 9105, 9107, and 9108 of title 31, United States Code, as a mixed-ownership Government corporation which has capital of the Government.

"(i) FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE.—

"(1) ESTABLISHMENT.—There is hereby established the Federal Savings and Loan Insurance Corporation Industry Advisory Committee (hereinafter in this subsection referred to as the 'Committee').

"(2) MEMBERSHIP.—

"(A) APPOINTMENT.—The Committee shall consist of 13 members selected as follows:

"(i) 1 member appointed by the Chairman of the Board from among individuals who are officers of insured institutions and who are not members of the Board or employees of the Board, the Federal Savings and Loan Insurance Corporation, or the Board of Directors of any Federal Home Loan Bank.

"(ii) 1 member elected from each Federal Home Loan Bank district (by the members of the Board of Directors of each such bank who were elected by the members of such bank) from among individuals who are officers of insured institutions.

"(B) TERMS.—Members shall be appointed or elected for terms of 1 year.

"(C) CHAIRPERSON.—The member appointed under subparagraph (A)(i) shall be the chairperson of the Committee.

"(D) VACANCIES.—Any vacancy on the Committee shall be filled in the manner in which the original appointment was made.

"(E) PAY AND EXPENSES.—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed, in such manner as the Board may prescribe by regulation, by the Federal Home Loan Bank which elected such member (and, in the case of the member appointed by the Chairman of the Board, by the Board) for expenses incurred in connection with attendance of such members at meetings of the Committee.

"(F) MEETINGS.—The Committee shall meet from time to time at the call of the chairperson or a majority of the members.

"(3) DUTIES OF THE COMMITTEE.—The duties of the Committee are as follows:

"(A) To review the reports and budgets prepared pursuant to section 402(k) of the National Housing Act and any other matter which the Board may present for the Committee's consideration.

"(B) To confer with the Board on the reports, budgets, and other matters reviewed under subparagraph (A).

"(C) To prepare written comments and recommendations for the Board and the Federal Savings and Loan Insurance Corporation with respect the reports, budgets, and other matters reviewed under subparagraph (A) (which shall be submitted to the Board in a timely manner after each meeting).

"(4) ANNUAL REPORT.—

"(A) REQUIRED.—Not later than January 15 of each year, the Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) CONTENTS.—The report required under subparagraph (A) shall describe the activities of the Committee during the preceding year and the reports and recommendations made by the Committee to the Board and the Federal Savings and Loan Insurance Corporation during such year.

"(5) REGULATIONS.—The Board shall prescribe such regulations as the Board determines to be appropriate to avoid conflicts of interest with respect to the disclosure to and use by members of the Committee of information relating to the Board, the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Banks, and the Federal Asset Disposition Association.

"(6) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act shall not apply to the Committee.

"(7) TERMINATION.—The Committee shall terminate when the Financing Corporation terminates under subsection (j).

"(j) TERMINATION OF THE FINANCING CORPORATION.—

"(1) IN GENERAL.—The Financing Corporation shall be dissolved, as soon as practicable, after the earlier of—

"(A) the date by which all stock purchased by the Financing Corporation in the Federal Savings and Loan Insurance Corporation has been retired; or

"(B) December 31, 2026.

"(2) BOARD AUTHORITY TO CONCLUDE THE AFFAIRS OF FINANCING CORPORATION.—Effective on the date of the dissolution of the Financing Corporation under paragraph (1), the Board may exercise, on behalf of the Financing Corporation, any power of the Financing Corporation which the Board determines to be necessary to settle and conclude the affairs of the Financing Corporation.

"(k) REGULATIONS.—The Board may prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations defining terms used in this section.

"(l) DEFINITIONS.—For purposes of this section—

"(1) INSURED INSTITUTION.—The term 'insured institution' has the meaning given to such term by section 401(a) of the National Housing Act.

"(2) INSURED MEMBER.—The term 'insured member' has the meaning given to such term by section 401(b) of the National Housing Act.

"(3) DIRECTORATE.—The term 'Directorate' means the directorate established in the manner provided in subsection (b)(1) to manage the Financing Corporation.".

SEC. 1003. MIXED OWNERSHIP GOVERNMENT CORPORATION.

Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) The Financing Corporation.".

SEC. 1004. RECAPITALIZATION OF FSLIC.

Section 402(b) of the National Housing Act (12 U.S.C. 1725(b)) is amended to read as follows:

"(b) ISSUANCE AND SALE OF CAPITAL CERTIFICATES AND STOCK TO FINANCING CORPORATION.—

"(1) AUTHORIZATION TO ISSUE.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, the Corporation may issue—

"(i) nonredeemable capital certificates; and

"(ii) redeemable nonvoting capital stock.

"(B) REQUIREMENT RELATING TO AMOUNT OF STOCK.—The aggregate amount of stock issued by the Corporation under subparagraph (A)(ii) shall be equal to the aggregate amount of the investments made by the Federal Home Loan Banks in the capital stock of the Financing Corporation under section 21 of the Federal Home Loan Bank Act.

"(C) CERTIFICATES AND STOCK MAY BE SOLD ONLY TO FINANCING CORPORATION.—Capital certificates and stock issued under subparagraph (A) may be sold only to the Financing Corporation in the manner and to the extent provided in section 21 of the Federal Home Loan Bank Act and this subsection.

"(D) PROCEEDS OF SALE ARE PART OF PRIMARY RESERVE.—The proceeds of any sale of capital certificates or stock under this subparagraph shall be considered part of the primary reserve established by the Corporation pursuant to section 404(a).

"(E) NO DIVIDENDS.—The Corporation shall pay no dividends on any capital certificates or stock issued under this subparagraph.

"(2) EQUITY RETURN ACCOUNT.—

"(A) IN GENERAL.—The Corporation shall establish and maintain (until all capital certificates and stock issued under subparagraph (A) have been paid off and retired) an equity return account—

"(i) which shall consist only of amounts contributed in accordance with the requirements of subparagraph (B);

"(ii) which shall not be treated as reserves of the Corporation; and

"(iii) the earnings accruing in which shall be transferred in the manner provided in subparagraph (D).

"(B) CONTRIBUTIONS TO ACCOUNT.—

"(i) NO CONTRIBUTION IF RESERVES-TO-ACCOUNTS RATIO IS LESS THAN 0.5 PERCENT.—No contribution shall be made to the equity reserve account established pursuant to subparagraph (A) in any year in which the reserves-to-accounts ratio is less than 0.5 percent.

"(ii) ANNUAL CONTRIBUTIONS REQUIRED.—Except as provided in clause (i), the Corporation shall make contributions to the equity reserve account established pursuant to subparagraph (A)—

"(I) at the end of each year beginning after 1996 through the final payoff year (as defined in clause (vii); and

"(II) in amounts determined under clauses (iii), (iv), (v), and (vi) of this subparagraph.

"(iii) AMOUNT OF PRIMARY CONTRIBUTION.—The primary contribution to the equity return account for any year for which a contribution is required to be made shall be the amount determined by dividing—

"(I) the aggregate amount of capital stock issued by the Corporation and purchased by the Financing Corporation under paragraph (1)(A); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio is equal to or greater than 0.5 percent and the final payoff year (taking into account the first and last year described).

"(iv) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO DOES NOT EXCEED 1.25 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1 percent but less than 1.25 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount (as defined in clause (viii)) computed at an annual compound rate not to exceed 6 percent; by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1 percent and the final payoff year (taking into account the first and last year described).

"(v) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO DOES NOT EXCEED 1.75 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1.25 percent but less than 1.75 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount computed at an annual compound rate not to exceed 8 percent, minus the sum of any amounts contributed under clause (iv); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1.25 percent and the final payoff year (taking into account the first and last year described).

"(vi) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO EXCEEDS 1.75 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1.75 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount computed at an annual compound rate not to exceed 10 percent, minus the sum of any amounts contributed under clause (iv) or (v); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1.75 percent and the final payoff year (taking into account the first and last year described).

"(vii) FINAL PAYOFF YEAR DEFINED.—For purposes of this subparagraph, the term 'final payoff year' means the year of maturity of the obligation of the Financing Corporation which, on January 1, 1997, has the longest remaining term to maturity of all the obligations of the Financing Corporation (under section 21 of the Federal Home Loan Bank Act) which are outstanding on such date.

"(viii) INVESTMENT RETURN AMOUNT.—For purposes of clauses (iv), (v), and (vi), the term 'investment return amount' means the amount which would be realized on the aggregate amount invested by the Financing Corporation in capital stock issued by the Corporation under paragraph (1) over the period of the investment if the return on the investment is computed at the rate described in subclause (I) of the respective clauses.

"(C) INVESTMENT OF AMOUNTS IN ACCOUNT.—Amounts accumulating in the equity return account may be invested in such manner as the Corporation determines.

"(D) TRANSFER OF EARNINGS TO PRIMARY RESERVE.—Earnings accruing on any investment (under subparagraph (C)) of amounts in the equity return account shall be transferred to the primary reserve account of the Corporation established pursuant to section 404(a) as such earnings are realized by the Corporation and shall not be treated as amounts in the account.

"(E) RETIREMENT OF CAPITAL STOCK USING BALANCE IN ACCOUNT.—Upon maturity of all obligations of the Financing Corporation under section 21 of the Federal Home Loan Bank Act, the Corporation shall pay off and retire any capital stock issued under paragraph (1)(A)(ii) using only amounts accumulated in the equity return account.

"(F) RESERVES-TO-ACCOUNTS RATIO DEFINED.—For purposes of this paragraph, the term 'reserves-to-accounts ratio' means, with respect to any year, the amount determined by dividing—

"(i) the amount of reserves of the Corporation (determined as of December 31 of the preceding year); by

"(ii) the aggregate amount of all accounts of all of its insured members (determined as of such date).

"(3) FINANCING CORPORATION DEFINED.—For purposes of this subsection, the term 'Financing Corporation' means the Financing Corporation established under section 21 of the Federal Home Loan Bank Act.

"(4) NO REDUCTION OR SUSPENSION OF INSURANCE PREMIUMS WHILE STOCK IS OUTSTANDING.—Notwithstanding any other provision of law, the provisions of subsections (b)(2), (d)(1)(B), and (g) of section 404 shall not apply as long as any share of capital stock issued under paragraph (1)(A)(ii) is outstanding.".

SEC. 1005. FSLIC AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS.

Section 404 of the National Housing Act is amended by redesignating subsections (d) through (i) as subsections (e) through (j), respectively, and by inserting after subsection (c) the following new subsection:

"(d) AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS.—Notwithstanding any other provision of this section, the sum of—

"(1) the amount of any premium required to be paid by any insured institution under subsection (b)(1); and

"(2) the amount of any premium authorized to be assessed by the Corporation under subsection (c) with respect to such institution,

for any period shall be reduced by the amount of any assessment paid for such period by such insured institution to the Financing Corporation pursuant to section 21(f) of the Federal Home Loan Bank Act.".

SEC. 1006. MISCELLANEOUS PROVISIONS.

(a) FEDERAL HOME LOAN BANK DIVIDENDS.—Section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended by adding at the end thereof the following new subsection:

"(c) EXCEPTION IN CASE OF LOSSES IN CONNECTION WITH FINANCING CORPORATION STOCK.—

"(1) IN GENERAL.—Notwithstanding subsection (a) of this section, if—

"(A) a Federal Home Loan Bank incurs a chargeoff or an expense in connection with such bank's investment in the stock of the Financing Corporation under section 21;

"(B) the Board determines there is an extraordinary need for the member institutions of the bank to receive dividends; and

"(C) the bank has reduced all reserves (other than the reserve account required by the first 2 sentences of subsection (a)) to zero,

the Board may authorize such bank to declare and pay dividends out of undivided profits (as such term is defined in section 21(d)(7)) or the reserve account required by the first 2 sentences of subsection (a).

"(2) REQUIREMENTS OF SECTION 21 NOT AFFECTED.—Notwithstanding any payment of dividends by any Federal Home Loan Bank pursuant to an authorization by the Board under paragraph (1), the applicable provisions of section 21 shall continue to apply with respect to such bank, and to such bank's investment in the Financing Corporation, in the same manner and to the same extent as if such payment had not been made.".

(b) CONFORMING AMENDMENT.—Section 402(h) of the National Housing Act (12 U.S.C. 1725(h)) is amended—

(1) by striking out "After the effective date" and inserting in lieu thereof "(1) After the effective date"; and

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

"(2) The first three sentences of paragraph (1) shall not apply to stock issued by the Corporation to the Financing Corporation under subsection (b)(1)(A).".

(C) PRIORITY OF SECURED INTERESTS.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by adding at the end thereof the following new subsection:

"(e) PRIORITY OF CERTAIN SECURED INTERESTS.—Notwithstanding any other provision of law, any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member shall be entitled to priority over the claims and rights of any party (including any receiver, conservator, trustee, or similar party having rights of a lien creditor) other than the claims of secured parties that are secured by actual perfected security interests that would be entitled to priority under otherwise applicable law.".

(d) FSLIC REPORT REQUIREMENTS.—Section 402 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(k) REPORTS AND BUDGETS REQUIRED.—

"(1) QUARTERLY REPORTS AND BUDGETS.—Before the end of the 2-week period beginning on the first day of each calendar quarter, the Corporation shall complete a detailed written report and budget describing and explaining—

"(A) planned or anticipated activities and estimates of receipts and expenditures for such calendar quarter; and

"(B) the activities, receipts, and expenditures for the preceding calendar quarter.

"(2) SEMIANNUAL REPORT.—Before the end of the 30-day period beginning on the first day of each semiannual period, the Corporation shall complete a detailed written report and budget describing and explaining the activities, receipts, and expenditures for the preceding semiannual period.

"(3) SUBMISSION OF SEMIANNUAL REPORT TO CONGRESS.—The Corporation shall submit a copy of each semiannual report required under paragraph (2) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(4) ACTIVITIES, ETC., OF FEDERAL ASSET DISPOSITION ASSOCIATION.—Activities, receipts, and expenditures of the Federal Asset Disposition Association (or any successor thereto) shall be included in any report or budget required under this subsection.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ACTIVITIES.—The term 'activities' includes any activity engaged in with respect to any insured institution in financial difficulty.

"(B) SEMIANNUAL PERIOD.—The term 'semiannual period' means—

"(i) the period beginning on January 1 of any calendar year and ending June 30 of such year; and

"(ii) the period beginning on July 1 of any calendar year and ending December 31 of such year.".

By Mr. MOYNIHAN:

S. 46. A bill to disapprove of the President's proposed rescissions for the Community Development Block program and the Urban Development Action Grant program, and to require that funds withheld under the authority of the rescission requests be released immediately upon enactment; to the Committee on Appropriations.

DISAPPROVING RESCISSION OF COMMUNITY DEVELOPMENT BLOCK PROGRAM FUNDS

● Mr. MOYNIHAN. Mr. President, I rise today to introduce S. 46, legislation disapproving the proposed rescission of funding for the Community Development Block Grant [CDBG] and Urban Development Action Grant [UDAG] Programs, and requiring the release of the funds immediately upon enactment. The President's fiscal year 1988 budget proposes to rescind large amounts of budget authority—some $375 million from the CDBG program, and some $237.5 million from the UDAG program—in the current fiscal year.

During consideration of the fiscal year 1987 HUD appropriations bill, the House and Senate agreed to freeze the CDBG Program at $3 billion. Cities and communities in New York State, as well as the rest of the country, accepted this and planned accordingly. No city in my State, or anywhere in our Nation, can absorb the proposed reductions in Federal CDBG funding. Certainly, low-income housing initiatives, successful urban revitalization projects, and other economic development activities that are currently sponsored by CDBG funds are going to suffer—if they are not eliminated entirely.

Last year, New York State received approximately $360 million under the CDBG entitlement and Small Cities Program, the largest share in the Nation. I could not possibly list here all of the fine projects in New York State that have been supported with funding under the CDBG Program. Among them, the Village of Sag Harbor, on Long Island, will use their CDBG funds for flood and drainage control; while Liberty, NY, will create new housing units and increase services to village residents; and the village of Interlaken will construct a new well and extend water lines from Cayuga Lake. The city of Geneva can make necessary improvements in its Central Business District and the town of Van Etten—in Chemung County—can rehabilitate 106 substandard units of housing, with CDBG money. The city of New York uses their CDBG funds to provide day-care services, to rehabilitate residential housing, and other services for low-income families, the elderly and the homeless.

The administration's budget also included a rescission request for the Urban Development Action Grant [UDAG] Program, that was accompanied by a related proposal to terminate the program. To rescind funding for the UDAG Program now jeopardizes many of the proposals that are currently reviewed at the Department of Housing and Urban Development. Indeed the President's proposal will disrupt the annual January Metro UDAG round.

UDAG is a program that has helped create hundreds of thousands of jobs in severely distressed communities. UDAG's have provided the seed money on a partnership basis with local communities to stimulate private development. My own State of New York has benefited greatly from the UDAG Program. Over 63,000 jobs have been created and $2.8 billion in private investment has been generated since the UDAG Program's inception in 1977.

While we would do well to encourage our State and local governments to work toward greater independence, it is patently unfair to expect them to solve their multiple problems entirely on their own. By slashing Federal assistance under the CDBG Program, and terminating the UDAG funding, the Federal Government is pulling the rug out from under the progress already made. I strongly oppose the weakening of a Federal commitment to these important programs.

The community development block grant and urban development action grants have been important economic tools used by our cities and local governments. They've been successful. I urge my colleagues to join with me in opposition to these unfair requests that leave our local governments with a Hobson's choice: To reduce essential services or to increase taxes.

I ask unanimous consent that the text of my bill be printed in the RECORD as if read.

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

S. 46

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

SECTION 1. COMMUNITY DEVELOPMENT BLOCK GRANTS.

(a) The Congress disapproves of the proposed rescission of budget authority 87-46 for the Community Development Block Grant program set forth in the special message transmitted by the President to the Congress on January 5, 1987.

(b) Immediately upon enactment, $375,000,000 of Community Development Block Grant funds withheld under the authority of such rescission request shall be made available for obligation.

SEC. 2. URBAN DEVELOPMENT ACTION GRANTS.

(a) The Congress disapproves of the proposed rescission of budget authority 87-47 for the Urban Development Action Grant program set forth in the special message transmitted by the President to the Congress on January 5, 1987.

(b) Immediately upon enactment, $237,500,000 of Urban Development Action Grant funds withheld under the authority of such rescission request shall be made available for obligation.●

By Mr. MOYNIHAN:

S. 47. A bill to establish a grant program for the purpose of creating additional prison facilities or expanding existing facilities to alleviate the overcrowding resulting from the increase in drug crime convictions; to the Committee on Governmental Affairs.

DRUG OFFENDER INCARCERATION ACT

● Mr. MOYNIHAN. Mr. President, I rise today to introduce the Drug Offender Incarceration Act of 1987, which is an effort to reduce the overcrowding problem in American prisons.

That a link between the crackdown on drug crimes and prison overcrowding exists is clear. A bill I introduced on the first day of the last Congress, S. 15, the State and Local Law Enforcement Assistance Act—which was subsequently enacted into law as part of the antidrug abuse package—recognized that resources were needed both for enforcing drug laws and for incarcerating offenders apprehended in these enforcement efforts.

Since the introduction of that bill 2 years ago, the call to launch a frontal attack on drug trafficking has grown even stronger. This resurgence of interest was inspired by many factors, not the least of which was the tragic death of a young University of Maryland athlete in June of last year. And our law enforcement forces responded to that call, as well they should have.

Yet what was not planned for was the aggravation of an equally momentous problem: the critical shortage of adequate jail and prison space. In 1986, the number of people arrested by the Federal Drug Enforcement Administration for major drug crimes jumped 35.8 percent to 12,819. An effort truly to be commended, but has anyone considered where these individuals, if convicted, will be imprisoned?

New York City is experiencing this problem firsthand. The benefits of an expansion effort at the Rikers Island jail complex were more than offset by the dramatic increase in arrests resulting from a major police campaign against crack. A New York Times editorial commented that the new crack arrests have imposed crushing new demands on the courts and a new flood of inmates on the jails, compounding an already explosive situation. Part of the jail overcrowding problems stems from the delays in transferring convicts to prisons which cannot accommodate new inmates.

There are, of course, two options available. Either cut back on drug arrests or provide more prison facilities. Society would not, nor should it, accept the first alternative. The second option comes at a price, but a price we must pay for fulfilling our commitment to combat drug abuse.

At some point, this country will have to heed the administration's own Task Force on Violent Crime, which in 1981 called for a 4-year $2 billion Federal assistance program to finance the construction of State prisons.

However, until this country is financially able to embark on a venture of that magnitude, I offer a more modest proposal. To deal with the twin goals of fighting drug trafficking and reducing the prison population, I am introducing the Drug Offender Incarceration Act of 1987.

The bill provides $50 million for the Attorney General to distribute in grants for prison construction to the States with greatest need. The Attorney General must give priority to applications which provide evidence of greater demand for prison space resulting from an increase in the number of drug crime convictions, and can demonstrate the insufficiency of existing prison facilities. The Federal share for such grants would not exceed 50 percent.

The construction of new correctional facilities in States which are successfully combating drug crimes but which cannot meet the increased demand for prison space will create incentives for further crack downs on such crimes. In addition, new prison facilities will take the pressure off crowded jails which are now holding convicts pending transfers to prisons.

Arresting drug criminals and keeping them off the streets is the major strategy behind the war on drugs. This bill will enhance that effort, and therefore deserves the support of my colleagues.

Mr. President, I ask for unanimous consent that the text of this bill be printed in the RECORD at this point.

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

S. 47

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 "Drug Offender Incarceration Act."

SEC. 2. PURPOSE.

The purpose of this Act is to increase prison capacity to alleviate the overcrowding resulting from the increase in drug crime convictions in areas of the country which are experiencing the severest drug trafficking problems.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "unit of local government" has the meaning given to such term in section 901(3) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(3)); and

(2) the term "drug offense" means a State felony similar to a felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a).

SEC. 4. GRANT AUTHORITY; PRIORITY.

(a) GRANT AUTHORITY.—The Attorney General shall make grants in accordance with section 5 to eligible states or units of local government that can demonstrate the greatest need for increased prison capacity.

(b) PRIORITY.—In determining need under subsection (a), the Attorney General shall give priority to states or units of local government which—

(1) provide evidence of an increase in the demand for prison space resulting from an increase in the number of drug crime convictions in the State or locality of the applicant;

(2) demonstrate the insufficiency of existing prison facilities to accommodate that need; and

(3) provide evidence that convicted drug offenders who would otherwise be incarcerated are being released or are incarcerated in substandard conditions, due to the lack of sufficient prison space.

SEC. 5. APPLICATION.

(a) SUBMISSION OF APPLICATION.—Each governor or head of each unit of local government desiring to receive a grant under this Act shall submit an application to the Attorney General at such time and in such form as the Attorney General may require.

(b) CONTENTS OF APPLICATIONS.—Each application submitted under subsection (a) shall include—

(1) a detailed description of the need for additional facilities based on—

(A) an increase in the number of drug offense convictions,

(B) the current prison capacity, and

(C) the number of convicted drug offenders who are either not incarcerated or are incarcerated in substandard conditions due to a lack of sufficient prison space;

(2) an assurance that any grant received by such applicant will be used for construction of new prison facilities or for the expansion of existing facilities;

(3) a detailed description of the plan for construction or expansion, including an estimate of the total cost and the amount of assistance requested for such project;

(4) an assurance that not later than three years after receiving a grant under this Act such applicant will repay to the Attorney General, for deposit in the general receipts of the Treasury of the United States, any part of such grant that is not expended in accordance with this Act, or with the assurances required under this section, beginning on the date such grant is received;

(5) an assurance that assistance received under this Act will not exceed 50 percent of the cost of the construction or expansion project;

(6) an assurance that the remaining funds for the project have been committed to by the State or unit of local government; and

(7) such other information as the Attorney General may require by rule.

(c) AMENDMENT OF APPLICATION.—An amendment of any application under this section shall be subject to approval in the same manner as an original application.

(d) INITIAL SOLICITATION OF APPLICATIONS.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall solicit applications for grants to be made under this Act with funds appropriated for fiscal year 1988.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act $50,000,000 for fiscal year 1988.●

By Mr. MOYNIHAN:

S. 48. A bill to establish a demonstration program in New York City to offer voluntary departure from the United States to certain aliens arrested for narcotics-related offenses; to the Committee on the Judiciary.

CRIMINAL ALIEN DEPARTURE ACT

● Mr. MOYNIHAN. Mr. President, I rise to introduce the Criminal Alien Departure Act of 1987. The criminal justice system in this country is sinking under its own weight. To declare its resources taxed, personnel overburdened, and institutional capacity distended, is an understatement indeed. Many factors contribute to this sorry state; the proposal I offer today deals with only one such factor, but an important one nonetheless.

Illegal aliens arrested and convicted of crimes—all too often drug-related crimes—are putting an additional strain on our already crowded courts and prisons.

In New York City, for example, jail overcrowding has grown more acute with the spreading use of crack and cocaine. City jails presently house 13,524 inmates or 104.4 percent of capacity. The New York City Police Department estimates that between 2,200 and 2,500 illegal aliens are arrested annually for felony crimes, the majority of which are drug related.

As of August 1, 1986, a total of 3,371 inmates in New York State prisons re-

ported birth in a foreign country. This represents 9 percent of the total inmate population. The cost of incarcerating these offenders is estimated at $67 million.

Our overcrowded criminal justice system has resulted in many criminal suspects being released without prosecution or imprisonment, thereby frustrating the efforts to fight drug abuse.

The bill I am introducing, the Criminal Alien Departure Act of 1987 is a step toward creating more jail space by deporting drug crime suspects who are in this country illegally, and individuals who have already been convicted of such crimes.

Specifically, the bill establishes a $5 million pilot program for New York City for purposes of using Immigration and Naturalization Service agents identify illegal aliens at the time of arrest for drug-related crimes, and determine whether they are amenable to deportation. (If the individual does not agree to expedited deportation, they are entitled to proceed to trial under our judicial system.)

A U.S. attorney would then review the matter to determine whether the voluntary departure of the illegal alien would be of more benefit to society than prosecution for the crime. Once approved by a U.S. attorney, the individuals would be deported before spending more of the limited resources of the criminal justice system. INS agents would also be assigned to prisons to identify illegal aliens who are already imprisoned.

Under the program, the INS will then have record of the individuals who have been deported, thereby ensuring that they will not be able to enter the country again.

I propose to try this plan on a pilot basis for 1 year in New York City where jail overcrowding has reached crisis proportions. At the end of the year, the attorney general will prepare a report to Congress detailing the numbers of illegal aliens deported, estimate the cost savings resulting from the program in lieu of prosecuting and incarcerating such individuals, and recommend whether the program should be instituted on a wider basis.

This is not a cure-all to the prison overcrowding problem. As I stated at the outset, many factors share the blame for this state of affairs. However, removing at least part of the illegal alien population from the criminal justice system will help unclog our courts and prisons, thereby allowing us to deal more effectively with criminals and criminal suspects who are in this country legally.

This bill also represents a continuation of our commitment to fighting the drug problem in this country by deporting individuals engaged in drug crimes, keeping them off our streets.

Therefore, I urge my colleagues to support this program on a trial basis, in the hope that it may later be expanded on the national level. A small measure perhaps; but whatever excess weight can be lifted from the criminal system will surely enhance the administration of justice in America.

Mr. President, I ask for unanimous consent that the text of this bill be printed in the RECORD at this point.

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

S. 48

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Criminal Alien Departure Act of 1987".

AUTHORITY

SEC. 2. (a) The Attorney General, acting through the district director of the Immigration and Naturalization Service for the district covering New York City, shall develop a demonstration program (hereafter in this Act referred to as the "program") to offer voluntary departure from the United States to any deportable alien arrested in New York City for an offense described in subsection (b) if the Assistant United States Attorney determines that the voluntary departure of such alien would benefit the United States more than the prosecution of such alien.

(b) An offense referred to in subsection (a) is any offense involving a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate.

DEMONSTRATION PROGRAM

SEC. 3. The program shall include—

(1) a system for identifying aliens described in section 2(a);

(2) the hiring of—

(A) additional supervisory agents and special agents of the Immigration and Naturalization Service (hereafter in this Act referred to as the "Service")—

(i) to identify aliens described in section 2(a); and

(ii) to be assigned to central locations for the arraingment of such aliens;

(B) additional special agents of the Service to be assigned to prison reception areas in New York City to identify aliens described in section 2(a);

(C) special agents of the Service to assist the local district attorney or the appropriate United States attorney in determining which eligible aliens should be offered voluntary departure from the United States;

(3) the acquisition of facilities for temporary detention of aliens pending their voluntary departure from the United States; and

(4) expenditures to cover the costs of aliens departing the United States under the program, where appropriate.

REPORT

SEC. 4. Twelve months after the date of enactment of this Act, the Attorney General shall prepare and transmit to the Congress a report setting forth with respect to the program during the preceding twelve-month period—

(1) a complete accounting of the expenditure of funds;

(2) the number of aliens eligible for voluntary departure from the United States and the number of such aliens that so departed;

(3) the estimated costs of departure for each such alien;

(4) the estimated cost savings which resulted from carrying out the program in lieu of prosecuting and incarcerating the same individuals; and

(5) recommendations as to whether the program should be instituted on a wider basis.

AUTHORIZATON OF APPROPRIATIONS

SEC. 5. There are authorized to be appropriated $5,000,000 for the fiscal year 1988 to carry out the program.●

By Mr. MOYNIHAN:

S. 49. A bill to amend section 203 of the Federal Property and Administrative Services Act of 1949 to establish as a priority the conveyance of surplus Federal property for use as correctional facilities to alleviate the shortage of prison space resulting from the increase in drug crime convictions; to the Committee on Governmental Affairs.

PRISON CONVERSION ENHANCEMENT ACT

● Mr. MOYNIHAN. Mr. President, my purpose in rising today is to introduce the Prison Conversion Enhancement Act of 1987. No one among us is unaware of the desperate conditions which characterize our State and Federal penal systems. Overcrowding is considered the most immediate and greatest concern. Corrections officials have stated that overcrowding is no longer an emergency, but a disaster.

The side effects of this acute condition are numerous. Overtaxed resources and severe crowding contribute to the neglect of what some consider to be an important element of incarceration—rehabilitation and education of inmates to protect society against recidivism. More importantly, however, overcrowding forces prosecutors, judges and prison officials to consider releasing some suspects and convicts with little or no time served. Surely the interests of society are jeopardized when our criminal justice system returns known criminals to the streets simply because we do not provide sufficient prison space. Indeed, a sad commentary on our system.

The solution is surprisingly simple. Add more prison capacity by expanding old or building new facilities. Yet the political reality is that this administration is less than committed to spending dollars on such an endeavor. Although the 1981 report of the Administration's Task Force on Violent Crime called for a 4-year $2 billion

Federal assistance program to finance the construction of State prisons, such an undertaking has yet to materialize.

There are less expensive alternatives to prison construction, although I believe that construction and renovation are necessary components of any section plan to reduce prison overcrowding. What I refer to is the transfer of Federal surplus property for use as correctional facilities.

Under current law, the General Services Administration, in coordination with the Department of Justice, can approve the transfer of surplus Federal property for prison use. However, there are varied interests competing for surplus property as it becomes available. Since 1981, only four such conversions to prisons have been made; the first being in Watertown, NY.

What I propose in the Prison Conversion Enhancement Act of 1987 is to establish as a priority the conveyance of surplus property for use as correctional facilities for the next 2 years. The GSA will be required to inform the Department of Justice and Governors of any available property which is suitable for a conversion to a prison facility. Advice as to the procedure for applying for conversion will be provided to Governors, and applications for prison conversions from the States will be considered on an expedited basis.

At the end of the 2 years, the Department of Justice will report to the Congress on the number of such conversions, and explain why any suitable properties were not converted.

The purpose of this bill is to increase the number of correctional facilities available without expending large sums of money to accomplish this goal. It is my hope that my colleagues will act quickly on this simple, straightforward means of alleviating the shameful overcrowding in our Nation's prisons.

Mr. President, I request unanimous consent that the text of this bill be included in the RECORD at this point.

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

S. 49

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 "Prison Conversion Enhancement Act of 1987."

SEC. 2. PRIORITY FOR CORRECTIONAL FACILITIES.

Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) is amended by adding at the end thereof the following new subsection:

"(q)(1) Notwithstanding any other provision of this section, for a period of two years following the date of enactment of this subsection, the Administrator of the General Services Administration shall consider available property which has potential to be converted into a correctional facility as a priority disposition. During such period, the Administrator of the General Services Administration shall inform the Attorney General and the Governor and State Correctional Facility officials of any available surplus property in such State which is suitable for conversion to a prison facility. At the time of identification of such property, the Administrator shall provide advice to such Governor as to the procedure for applying for conversion of the available property for prison use. Applications for prison conversion shall be considered by the Department of Justice and the General Services Administration on an expedited basis.

"(2) At the end of the two-year period provided in paragraph (1)—

"(A) the Attorney General shall report to the Congress on the number of surplus properties certified for use as prison facilities; and

"(B) the Administrator of the General Services Administration shall report to Congress on the number and location of properties which have been converted for use as prisons.

Such reports shall include descriptions of available property suitable for prison conversion which were not approved for prison use with an explanation as to why such approval was not granted.".●

By Mr. MOYNIHAN:

S. 50. A bill to amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns, to change certain contribution limits for elections, and for other purposes; to the Committee on Rules and Administration.

● Mr. MOYNIHAN. Mr. President, our elected form of government is beseiged by a crisis, a crisis which will continue to erode the process for selecting leaders first established by our Founders if an immediate and lasting solution is not found. I speak of the shameful cost of elections in America. Leadership positions are rapidly becoming bastions of the wealthy, because the process by which we elect our representatives has become reduced to one common denominator: money. Rather than red, white and blue, it is the color green which more appropriately symbolizes our elections. It is no coincidence that over half of the U.S. Senators, 53 to be precise, are millionaires. Few others can afford the undertaking.

A few numbers will tell the tale of the growing influence of money in American campaigns.

It is no longer uncommon for Senate candidates to spend between $5 to $10 million, and even beyond. Consider the $26 million North Carolina Senate race of 1984 and the nearly $25 million spent in the recent Senate race in California.

In 1974, the average amount spent by Senate candidates was $437,482. Ten years later, this average exceeded $2 million, with winning candidates spending nearly $3 million.

Although the final numbers are not calculated for the 1986 races, it is estimated that the combined cost of Senate. races in 1986 was $425 million; a staggering increase from the $88.2 million spent in 1974.

The role of independent expenditures has increased dramatically over the years. In 1978, $168,000 was spent in independent expenditures in Senate races; by 1984, that figure exceeded $4.6 million. For all Federal races combined that year, including Presidential, independent expenditures passed the $23 million mark.

The influence of political action committees also continues to rise. In the 1984 elections, approximately 30 percent of receipts in congressional elections were from PAC's; up from 13.7 percent in 1972. It is estimated that PAC's contributed $140 million to congressional candidates in the 1986 election; a significant increase from the $8.5 million contributed in 1972.

Although the power of money in elections has grown, there is hope. The reform process begun in the aftermath of Watergate 14-years ago can be reinvigorated. Public financing of Federal elections is an idea whose time may have come, albeit a bit late for some like President Teddy Roosevelt who first proposed the concept. The new Congress presents us with new opportunities to reverse the trend toward greater reliance on money, as the basis of a successful candidacy. The bill I am introducing today is one part of that effort.

The reforms embodied in the Senate Campaign Finance Act of 1987 combine a number of approaches to what I consider the three evils which threaten our democratic process: excessive influence of political action committees in relation to that of individuals; prohibitive cost of running for office; and uncontrolled independent expenditures.

To curtail the influence of PAC's, I propose the following: reducing the maximum political action committee contribution to $3,000 from $5,000, while increasing the ability of individuals to participate in the process by raising the individual limit to $2,000 from $1,000.

The amounts spent on campaigning can be kept down by limiting total expenditures and providing public financing. My bill would match each dollar of privately raised funds with public funds up to a maximum based on a state population formula for eligible candidates. The bill includes a built-in incentive to participate: participating candidates can receive additional public funds over the limit to the extent that their nonparticipating opponent spends over that amount. Expenditures from personal or family sources cannot exceed $20,000.

Finally, the benefits of independent expenditures will be significantly diminished under this proposal. If independent expenditures in excess of

$2,000 are made to oppose a candidate receiving public financing, or on behalf of a candidate who is not, the candidate receiving public funding is entitled to receive additional funds in the amount of the independent expenditures. Any person making independent expenditures will be required to report such activity to the Federal Election Commission and to each candidate in the election.

It is a start, and I believe a good one. The integrity of our electoral process is at stake; we are compelled to act. Let not our candidates be judged by their money, but by their qualifications, convictions, and ability.

Mr. President, I request unanimous consent that the text of my bill be printed in the RECORD.

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

S. 50

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 "Senate Campaign Finance Act of 1987".

CHANGES IN CONTRIBUTION LIMITS: DEFINITION OF INDEPENDENT EXPENDITURES

SEC. 2. (a) Section 315(a)(1)(A) of the Federal Election Campaign Act of 1971 is amended by striking out "$1,000" and inserting in lieu thereof "$2,000".

(b) Section 315(a)(2) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out "or" at the end of subparagraph (B);

(2) striking out "$5,000." in subparagraph (C) and inserting in lieu thereof "$3,000;".

(c) Section 301(17) of the Act is amended to read as follows:

"(17) The term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate. For the purposes of this subsection, 'cooperation or consultation with any candidate' with respect to an election cycle means, but is not limited to the following—

"(A) the person making the independent expenditure communicates with, advises, or counsels the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal Office;

"(B) the person making the independent expenditure includes as one of its officers, directors, or other employees an individual who communicated with, advised or counseled the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office; and

"(C) the person making the independent expenditure retains the professional services of any individual or other person also providing those services to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any services relating to the candidate's decision to seek Federal office.".

SEC. 3 The Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new subchapter:

"Subchapter III—Public Financing of Senate General Election Campaigns

"DEFINITIONS

"SEC. 501. For purposes of this subchapter—

"(1) unless otherwise provided in this subchapter the definitions set forth in section 301 of this Act apply to this subchapter;

"(2) 'authorized committee' means, with respect to any candidate for election to the United States Senate, any political committee which is authorized in writing by such candidate to accept contributions, incur expenses, or make expenditures on behalf of such candidate to further the election of such candidate. Such authorization shall be addressed to the chairman of the political committee, and a copy of such authorization shall be filed by each candidate with the Commission. A withdrawal of any authorization shall be in writing and shall be addressed and filed in the same manner as the authorization;

"(3) 'candidate' means an individual who has been nominated for election to the office of United States Senator by a major or minor party or who has qualified to have his or her name on the general election ballot;

"(4) 'eligible candidate' means a candidate who is eligible, under section 502, for payments under this subchapter;

"(5) 'expenditure report period' with respect to an election means—

"(A) in the case of a major party candidate, the period beginning on the date such candidate becomes an eligible candidate and ending 30 days after the date of the election or the date such candidate is no longer an eligible candidate, whichever date is earlier; or

"(B) in the case of a candidate other than a candidate of a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for such election;

"(6) 'election' means any regularly scheduled general, special, or runoff election, other than a primary election, held to elect a candidate to the United States Senate;

"(7) 'fund' means the Senate General Election Campaign Fund maintained by the Secretary of the Treasury in the Presidential Election Campaign Fund established by section 9006(a) of the Internal Revenue Code of 1954;

"(8) 'major party' means with respect to any election, a political party whose candidate for the office of United States Senator in any of the three preceding elections received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office;

"(9) 'minor party' means with respect to any election, a political party whose candidate for the office of Senator in any of the three preceding elections received, as the candidate of such party, 5 percent or more, but less than 25 percent of the total number of popular votes received by all candidates for such office;

"(10) the term 'qualified campaign expense' means an expense—

"(A) incurred by the candidate or the authorized committee of the candidate for the office of United States Senator to further his or her election to such office,

"(B) incurred within the expenditure report period, or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period, and

"(C) neither the incurring nor paying of which constitutes a violation of any law of the United States or of the State in which such expense is incurred or paid.

"An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, for expense on behalf of such candidate or such committee.

"CONDITION FOR ELIGIBILITY FOR PAYMENTS

"SEC. 502. (a) In order to be eligible to receive any payments under this subchapter, the candidate shall agree, in writing—

"(1) to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses and contributions of such candidate,

"(2) to keep and furnish to the Commission such records, books, and other information as it may request, and

"(3) to an audit and examination by the Commission under section 507 and to pay or repay any amounts required under such section.

"(b) To be eligible to receive payments under section 503, the candidate of a major party shall certify to the Commission, under penalty of perjury, that—

"(1) such candidate is seeking election to the United States Senate and such candidate and at least one other major party or minor party candidate have qualified for the election ballot under the law of the State involved,

"(2) such candidate and the authorized committees of such candidate will not incur qualified campaign expenses in excess of the aggregate payments to which they are entitled under section 503, unless otherwise provided in this subchapter,

"(3) no contributions to defray qualified campaign expenses have been or will be accepted by such candidate or any of the authorized committees of such candidate except to the extent necessary to make up any deficiency in payments received out of the fund because of the application of section 506(c), and

"(4) no contributions have been or will be accepted by such candidate or any authorized committees of such candidate to defray expenses which are not qualified campaign expenses.

"(c) In order to be eligible to receive any payments under this subchapter, a candidate other than a candidate of a major party shall certify to the Commission under penalty of perjury, that—

"(1) such candidate is seeking election to the United States Senate and such candidate and at least one other candidate of a major party have qualified for the election ballot under the law of the State involved,

"(2) such candidate and the authorized committees of such candidate will not incur qualified campaign expenses in excess of the aggregate payments to which an eligible candidate of a major party is entitled under section 503, unless otherwise provided in this subchapter, and

"(3) such candidate and the authorized committees of such candidate will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign ex-

penses incurred by such candidate and the authorized committees of such candidate certified to under paragraph (2) exceed the aggregate payments received by such candidate out of the fund pursuant to section 506.

"(d) Certification for payment to a candidate shall be made by the Commission within 5 days after the date the Commission receives a certification from such candidate, pursuant to this section. Such certification shall be in such form and filed as the Commission shall prescribe by rule or regulation.

"(e)(1) To be eligible to receive any payment under this subchapter, a candidate shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family in connection with such candidate's campaign for election in excesss of, in the aggregate, $20,000.

"(2) For purposes of this subchapter, the term 'immediate family' means the spouse, any child, parent, grandparent, brother, halfbrother, sister, or halfsister of the candidate, and the spouses of such persons.

"(f) If an individual ceases to be a candidate such individual—

"(1) shall no longer be eligible to receive any payments under this subchapter, except that such individual shall be eligible to receive payments to defray qaualified compaign expenses incurred while such person was an eligible candidate actively seeking election to the Senate; and

"(2) shall pay to the Secretary, as soon as practicable after the date upon which such individual ceases to be a candidate, an amount equal to the amount of payments received by such individual under this subchapter if such payments are not used to defray qualified campaign expenses.

"ENTITLEMENT OF ELIGIBLE CANDIDATES TO MATCHING PAYMENTS

"SEC. 503. (a) Subject to the provisions of this chapter—

"(1) each eligible candidate of a major party in an election shall be entitled to equal amounts under this subchapter in an amount which, in the aggregate, shall not exceed 50 percent of the expenditure limit applicable to such candidate based on this formula—

"(A) in each State with a voting-age population of 1,000,000 or less: $500,000";

"(B) in each State with a voting-age population greater than 1,000,000 but less than 3,000,000: an amount equal to 50 cents times such voting-age population; and

"(C) in each State with a voting-age population of 3,000,000 or over: an amount equal to 30 cents times such voting-age population, but not less than $1,500,000.

"(2) Subject to section 502(b), any eligible candidate of a major party shall be entitled to—

"(A) an initial payment under section 507 of $20,000; and

"(B) additional matching payments equal to the amount of contributions received, to be paid in multiples of $10,000 under section 507, if, with respect to each such payment, the eligible candidate and his authorized committees have received contributions aggregating $10,000, which have not been matched under this section, up to the maximum amount set forth in section 503(a).

"(3) An eligible candidate of a minor party in an election shall be entitled to a payment under this subchapter equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by the candidate for Senator of the minor party, as such candidate, in the preceding election bears to the average number of popular votes received by the candidates for Senator of the major parties in the preceding election.

"(4) An eligible candidate, other than a candidate of a major or minor party, who receives 5 percent or more of the total number of popular votes cast for the office of United States Senate in such election shall be entitled to payments pursuant to this subchapter equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for Senator of the major parties. All such payments shall be made at such time after the election as the Commission determines tha amount of payments such candidate is eligible for pursuant to this subparagraph. The Commission shall certify such amount to the United States Treasury for payment.

"(b) The aggregate payments to which an eligible candidate shall be entitled under paragraph (3) or (4) of subsection (a), shall not exceed an amount equal to the lesser of—

"(1) the amount of qualified campaign expenses incurred by an eligible candidate and the authorized committees of such candidate, reduced by the amount of contributions allowed to defray qualified campaign expenses received and expended or retained by an eligible candidate and such committees, or

"(2) the aggregate payments to which an eligible candidate of a major party is entitled under subsection (a)(1), reduced by the amount of contributions described in paragraph (1) of this subsection.

"(c) An eligible candidate shall be entitled to payments only—

"(1) to defray qualified campaign expenses incurred by an eligible candidate or the authorized committees of such candidate, or

"(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidate or such committees) used to defray such qualified campaign expenses.

"ADDITIONAL ENTITLEMENT OF OPPONENTS OF NONPUBLICLY FINANCED CANDIDATES; MATCHING OF INDEPENDENT EXPENDITURES

"SEC. 504. (a) Within 5 days after nomination by a major or minor party, and under such regulations as the Commission may prescribe, each candidate nominated by a major or minor party shall notify the Commission in writing of his or her intention to accept or not accept the funds to which he or she is entitled under section 503.

"(b)(1) A candidate of a major party who has elected to accept the funds for which he or she has qualified under section 503 and who is opposed by a major party candidate who has elected not to accept public funding shall be entitled to receive additional funds from the general fund of the United States Treasury, pursuant to paragraph (2).

"(2)(A) Subject to the provisions of subparagraph (P), a major party candidate eligible to receive funds pursuant to paragraph (1), shall receive additional funds in the amount of one dollar for every dollar of contributions or expenditures raised, incurred, or expended by the candidate not accepting funding.

"(B) Such additional funds shall only match those contributions or expenditures raised, incurred, or expended by the candidate not accepting funding which are in excess of the entitlement of such eligible candidate.

"(c) For purposes of implementing subsection (b), a candidate who elects not to accept public funding shall report his or her receipts and expenditures to the Commission—

"(1) monthly for contributions or expenditures received, incurred, or expended prior to 60 days prior to the date of the election;

"(2) weekly for contributions or expenditures received, incurred, or expended from 59 to 11 days prior to the date of the election; and

"(3) daily for contributions or expenditures received, incurred, or expended during the 10 days prior to the date of the election.

"(d) Notwithstanding the provisions of section 505—

"(1) if a major party candidate is eligible, pursuant to subsection (b), to receive additional funding because of contributions or expenditures received, incurred, or expended by such opponent between the date 59 days prior to the date of the election and the date of the election which are required to be reported by paragraph (2) or (3) of subsection (c), and

"(2) such eligible candidate files a request with the Commission stating that such candidate is eligible to receive such additional funds,

the Commission, within 24 hours after such request is filed, shall certify to the Secretary of the Treasury for payments to such eligible candidate.

"(e)(1) If, with respect to an election, a total of more than $2,000 in independent expenditures is made in opposition to, or on behalf of an opponent of, a candidate who is eligible to receive payments under section 502, such candidate shall receive additional payments equal to such total, but such payments shall not duplicate payments under subsection (b)(2)(A).

"(2)(A) Any person who makes independent expenditures shall notify the Commission and each candidate in the election not later than 48 hours after such independent expenditures total more than $2,000 and thereafter shall make such notification each time such person's additional independent expenditures total $1,000 or more.

"(B) No independent expenditure may be made unless such expenditure is reported as provided in subparagraph (A) at least 10 days before the date of the election.

"CERTIFICATION BY COMMISSION

"SEC. 505. (a) No later than 48 hours after a candidate files a request with the Commission to receive payments under section 503 or 504, the Commission shall certify such eligibility to the Secretary of the Treasury (hereinafter in this title referred to as the 'Secretary') for payment in full of the amount of which such candidate is entitled. The request referred to in the preceding sentence shall contain—

"(1) such information, and be made in accordance with such procedures, as the Commission may provide by regulation; and

"(2) a verification signed by the candidate and the treasurer of the principal campaign committee of such candidate stating that the information furnished in support of the request, to the best of their knowledge, is

correct and fully satisfies the requirements of this title.

"(b) Initial certifications by the Commission under subsection (a) and all determinations made by the Commission under this title, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 508 and judicial review under section 510.

"ESTABLISHMENT OF ACCOUNT; PAYMENTS TO ELIGIBLE CANDIDATES

"SEC. 506. (a) The Secretary shall maintain in the Presidential Election Campaign Fund established by paragraph 9006(a) of the Internal Revenue Code of 1954, in addition to any accounts maintained under such section, a separate account to be known as the 'Senate General Election Campaign Fund'. The Secretary shall deposit into such fund, for use by a candidate eligible for payments under this subchapter, the amount available after the Secretary determines that amounts in the fund necessary for payments under subtitle H of the Internal Revenue Code of 1954 are adequate. The moneys designated for such account shall remain available without fiscal year limitation.

"(b) Upon receipt of a certification from the Commission under section 505, the Secretary shall promptly pay to the candidate, out of the fund, the amount certified by the Commission. Amounts paid to any such candidate shall be under the control of such candidate.

"(c) If at the time of a certification by the Commission under section 505 for payment to an eligible candidate, the Secretary determines that the moneys in the fund are not, or may not be, sufficient to satisfy the full entitlement of such eligible candidate, he shall withhold from such payment such amount as he determines to be necessary to assure that an eligible candidate will receive his or her pro rata share of his or her full entitlement. Amounts so withheld shall be paid when the Secretary determines that there are sufficient moneys in the fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there are not sufficient moneys in the fund to satisfy the full entitlement of an eligible candidate, the amounts so withheld shall be paid in such manner that each eligible candidate receives his or her pro rata share of his or her full entitlement.

"EXAMINATIONS AND AUDITS; REPAYMENTS

"SEC. 507. (a) Notwithstanding the provisions of section 311(b), after each election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of each candidate of the United States Senate who received payments under this subchapter.

"(b)(1) If the Commission determines that any portion of the payments made to a candidate under this subchapter was in excess of the aggregate payments to which such candidate was entitled, it shall so notify such candidate, and such candidate shall pay to the Secretary an amount equal to the excess.

"(2) If the Commission determines that a candidate or any authorized committee of such candidate incurred qualified campaign expenses in excess of the aggregate payments to which the candidate was entitled under section 503, it shall notify such candidate of the amount of such excess and such candidate shall pay to the Secretary an amount equal to such amount.

"(3) If the Commission determines that a candidate or any authorized committee of such candidate accepted contributions, other than contributions to make up deficiencies in payments out of the fund because of the application of section 506(c) to defray qualified campaign expenses, other than qualified campaign expenses with respect to which payment is required under paragraph (2), it shall notify such candidate of the amount of the contributions so accepted, and such candidate shall pay to the Secretary an amount equal to such amount.

"(4) If the Commission determines that any amount of any payment made to a candidate under section 506 was used for any purpose other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used to defray qualified campaign expenses,

It shall notify such candidate of the amount so used, and such candidate shall pay to the Secretary an amount equal to such amount.

"(5) No payment shall be required from a candidate under this subsection to the extent that such payment, when added to other payments required from such candidate under this subsection, exceeds the amount of payments received by such candidate under this subchapter.

"(c) No notification shall be made by the Commission under subsection (b) with respect to an election more than 3 years after the date of such election.

"(d) All payments received by the Secretary under subsection (b) shall be deposited in the Senate General Election Campaign Fund established in section 506.

"CRIMINAL PENALTIES

"SEC. 508. (a)(1) It shall be unlawful for an eligible candidate of a political party in an election or for any authorized committee of such candidate to knowingly and willfully incur qualified campaign expenses in excess of the aggregate payments to which an eligible candidate of a major party is entitled with respect to such election.

"(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by any authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(b)(1) It shall be unlawful for an eligible candidate of a major party in an election or for any authorized committee of such candidate to knowingly and willfully accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the fund because of the application of section 506 or to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 501(10).

"(2) It shall be unlawful for an eligible candidate of a political party (other than an eligible candidate of a major party) in an election or for any authorized committee of such candidate to knowingly and willfully accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred with respect to such election by such eligible candidate and an authorized committee of such candidate.

"(3) Any person who violates paragraph (1) or (2) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by any authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(c)(1) It shall be unlawful for any person who receives any payment under section 506, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expanded) which were used, to defray such qualified campaign expenses.

"(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

"(d)(1) It shall be unlawful for any person knowingly and willingly—

"(A) to furnish any false, fictitious, or fraudulant evidence, books, or information to the Commission under this subchapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this subchapter; or

"(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this subchapter.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

"(e)(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of an eligible candidate or any authorized committee of such candidate.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(3) In addition to the panalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of an eligible candidate or any authorized committee of such candidate shall pay to the Secretary of the Treasury, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

"(f)(1) It shall be unlawful for any individual to disclose any information obtained under the provisions of this subchapter except as may be required by law.

"(2) Any person who violates paragraph (1) shall be fined no more than $5,000, or imprisoned not more than one year, or both.

"REPORTS TO CONGRESS; REGULATIONS

"SEC. 509. (a) The Commission shall, as soon as practicable after each election, but not to exceed 6 months, submit a full report to the Senate setting forth—

"(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by a candidate and the authorized committees of such candidate;

"(2) the amounts certified by it under section 505 for payment to each eligible candidate;

"(3) the amount of payments, if any, required from such candidate under section 507, and the reasons for each payment required; and

"(4) the balance in (A) the Presidential Election Campaign Fund, and (B) each account maintained in such fund, at the end of such calendar year.

Each report submitted pursuant to this section shall be printed as a Senate document.

"(b) The Commission is authorized to prescribe such rules and regulations in accordance with the provisions of subsection (c), to conduct such examinations and audits (in addition to the examinations and audits required by section 507), to conduct such investigations, and to require the keeping and submission of such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this subchapter.

"(c) Thirty days before prescribing any rule or regulation under subsection (b), the Commission shall transmit a statement with respect to such rule or regulation to the Senate, setting forth the proposed rule or regulation. The statement shall contain a detailed explanation and justification of such rule or regulation.

" PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS

"SEC. 510. (a) The Commission is authorized to appear in and defend against any action filed under section 511, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to provisions of chapter 51 and subchapter III of chapter 53 of such title.

"(b) The Commission is authorized to appear, through attorneys and counsel described in subsection (a), in the district courts and other appropriate courts of the United States to seek recovery of any amounts determined to be payable to the Secretary of the Treasury as a result of any examination and audit made pursuant to section 507.

"(c) The Commission is authorized to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter arising under this subchapter, through attorneys and counsel described in subsection (a). Upon application of the Commission, an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal from the determination of such court shall lie to the Supreme Court of the United States. Judges designated to hear the case shall assign the case for hearing at the earliest practicable date, participate in the hearing and determination thereof, and cause the case to be in every way expedited.

"(d) The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court of the United States for certiorari to review judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

"JUDICIAL REVIEW

"SEC. 511. (a) Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of this subchapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after such certification, determination, or other action by the Commission.

"(b)(1) The Commission, the national committee of any political party, or any individual eligible to vote for a candidate is authorized to institute an action under this section, including an action for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this subchapter.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise such jurisdiction without regard to whether a person asserting rights under the provisions of this subsection has exhausted administrative or other remedies provided by law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court of the United States. Judges designated to hear the case shall assign the case for hearing at the earliest practicable date, participate in the hearing and determination thereof, and cause the case to be in every way expedited.".

SEC. 4. (a) Section 315(c) of the Federal Election Campaign Act of 1971 is amended by striking out "subsection (b) of this section and subsection (d) of this section" and inserting in lieu thereof "subsections (b) and (d) of this section and subsection (a) of section 503".

(b) Section 315(c)(2)(B) of the Federal Election Campaign Act of 1971 is amended by inserting before the period at the end thereof the following: ", except that with respect to the limitations established by subchapter III of this Act, the term 'base period' means the calendar year 1987".

SEC. 5. This Act and the amendments made by this Act shall become effective on January 1, 1989, and shall apply to campaigns for election to the Senate after such date.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated to the Commission, for the purpose of carrying out its functions under this Act, such sums as may be necessary.●

By Mr. HATCH (for himself, Mr. STAFFORD, Mr. KENNEDY, Mr. GLENN, Mr. MATSUNAGA, and Mr. LUGAR):

S. 51. A bill to prohibit smoking in public conveyances; to the Committee on Commerce, Science, and transportation.

PROHIBITING SMOKING IN PUBLIC CONVEYANCES

● Mr. HATCH. Mr. President, last summer I heard from a young woman, Anna Carroll. She is 45 years old and has emphysema, even though she has never smoked. Whenever she is around someone who smokes, she has difficulty breathing. In fact, her condition occasionally becomes so bad that she cannot work.

Cigarette smokers literally make Ann sick. They also make traveling life threatening. The noxious and obnoxious presence of cigarette smoke has made it impossible for Anna to use any public transportation.

After I read Anna's letter, I started considering the possibility of legislation to ban smoking on public conveyances, and an amazing thing happened. I discussed the idea with several other Senators and health organizations, and apparently the word got out.

People started sending stacks of mail to my office, encouraging me to introduce the legislation. Glamour magazine ran a story in support of the idea, and Ann Landers—the most widely read column in America—ran a story saying, "Four Cheers for Orrin!"

Senators don't usually get that much attention for legislation which has been introduced, let alone for legislation which is just being considered.

Mr. President, Anna is not alone. Tens of thousands of people with asthma and emphysema are effectively banished from public transportation because of cigarette smoke, and hundreds of thousands of Americans who suffer from heart disease put their well-being at risk every time they travel because the air around them has been poisoned by the smoking of others.

The scientific evidence that nonsmokers are injured by the smoke from others is now indisputable. The Surgeon General's report on the "Health Consequences of Involuntary Smoking," released last December, stated that involuntary smoking is a cause of disease, including lung cancer, in health nonsmokers, and simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, exposure of nonsmokers to environmental tobacco smoke.

The National Academy of Science went further in its report of the "Airliner Cabin Environment," finding a number of reasons to support their recommendation to ban smoking from all commercial flights.

It is estimated that 5,000 nonsmokers die each year from exposure to the cigarette smoke of others. Several studies have shown that nonsmokers experience and immediate deterioration in lung function when exposed to passive smoke.

Mr. President, twice as many nonsmokers die from breathing the smoke of others as from any other carcinogens currently regulated as hazardous air pollutants under the Federal Clean Air Act.

Mr. President, it is time to realize that smoking doesn't just kill the smoker. It kills nonsmokers whose only mistake is being near a smoker. The 1,000 smokers who kill themselves every day with cigarettes are taking 12 to 15 nonsmokers with them.

If all of this is not bad enough, smoke from cigarettes affects the

health of our children. Children who are exposed to cigarette smoke are more likely to get pneumonia and bronchitis. Furthermore, as you have already heard, cigarette smoke from others can cause life-threatening asthma attacks. In fact, some children stop having asthma attacks if they are no longer exposed to cigarette smoking.

Mr. President, the bottom line is that every time nonsmokers step on a plane or train or other public conveyances with smokers, they are shortening their lives.

Moreover, cigarette smoke in public conveyances presents another threat to our lives and well-being. Fatal aircraft accidents have been linked to careless cigarette smoking. A recent FAA study found that careless smoking was the cause of 6 percent of inflight fires.

Mr. President, the scientist have spoken on the health risks of passive smoking; the people have spoken on their desire to be protected from passive smoking; and now it is time for us in Congress to act.

To address this clear and present danger to the health and safety of the traveling public, today I am introducing legislation to ban smoking from all regularly scheduled, domestic public conveyances. In plain English, that means no more smoking on airplanes, buses, or trains—period.

Mr. President, there are a variety of excellent reasons why my colleagues should act to clear the air on public transportation: the poisoning of the American people by passive smoke, the damage cigarette smoke does to young children, and the threat to the safe operation of aircraft and vehicles. However, the strongest case for this legislation is Anna.

The question is simple: When a smoker's right to smoke comes in conflict with her right to clean air—breathable air—and her right to travel in this country, free of pain and discomfort, whose rights should prevail?

Most Americans think it should be the nonsmoker's right to breathe—and I agree.

In fact, a 1985 Gallup poll showed that 85 percent of nonsmokers, three of four former smokers, and, most interestingly, two of three smokers felt that smokers should not smoke around nonsmokers. A recent survey in my own State of Utah found 95 percent were in favor of banning smoking on public conveyances.

Mr. President, I don't see how any of my colleagues can disagree that we must protect those who have decided not to smoke. For the sake of their health and well-being—but especially for Anna—I urge my colleagues to join me in support of this legislation.

I ask unanimous consent that the bill, a copy of the letter from Anna M. Carroll, and a copy of the letter from the Coalition on Smoking OR Health be included in the RECORD.

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

S. 51

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 "Prohibition of Smoking in Public Conveyances Act of 1987".

FINDINGS

SEC. 2. The Congress finds that—

(1) tobacco smoke is a major contributor to indoor air pollution;

(2) current methods of separating smokers and nonsmokers on public conveyances have not effectively protected nonsmokers from exposure to tobacco smoke;

(3) exposure to cigarette smoke results in health hazards to nonsmokers, including lung cancer, respiratory infections, decreased respiratory function, and exacerbation of preexisting conditions of the heart and lungs;

(4) exposure to cigarette smoking is especially dangerous for children, elderly individuals, individuals with cardiovascular diseases, individuals with allergies, and individuals with respiratory conditions such as asthma or emphysema;

(5) children exposed to cigarette smoking on a chronic basis are more likely to contract pneumonia, bronchitis, throat infections, and ear infections, and are more likely to have asthma attacks;

(6) exposure to small amounts of tobacco smoke in a confined area such as an airplane cabin has been shown to cause discomfort because of the unique microclimatic conditions in such an area and because of the close proximity of passengers; and

(7) numerous studies have documented overwhelming public support for the protection of nonsmokers in public places.

PROHIBITED ACTS

SEC. 3. (a) It shall be unlawful for any person to smoke in any regularly scheduled public conveyance which is traveling within the United States.

(b)(1) It shall be unlawful for any person to smoke in a waiting area in a terminal for a public conveyance in the United States, except in a smoking area of such a terminal designated pursuant to paragraph (2).

(2) The owner or operator of a terminal for a public conveyance may designate a portion of a waiting area in the terminal as a smoking area. Such an area—

(A) shall be clearly marked; and

(B) must be physically separate from nonsmoking areas in such waiting area.

(c) It shall be unlawful to smoke in any public restroom in a terminal for a public conveyance.

PENALTIES

SEC. 4. (a) Any person who violates the provisions of subsection (a) of section 3 shall, on conviction thereof, be subject to a fine of $500.

(b) Any person who violates the provisions of subsection (b)(1) or subsection (c) of section 3 shall, on conviction thereof, be subject to a fine of $250.

INJUNCTIVE RELIEF

SEC. 5. (a) Any person who is aggrieved by a violation of section 3 may bring an action, in the district court of the United States for the district in which the violation occurred, for injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

(b) If a person who brings an action under subsection (a) prevails in such action, the court may award costs and reasonable fees and expenses of attorneys to such person.

STATE ENFORCEMENT

SEC. 6. Any law of a State or a political subdivision of a State—

(1) which relates to smoking in public conveyances, smoking in waiting areas in terminals for such conveyances, or smoking in public restrooms in such conveyances or terminals; and

(2) which is more restrictive than the provisions of this Act,

may be enforced by such State or political subdivision to the extent that such law is not inconsistent with the provisions of this Act.

DEFINITIONS

SEC. 7. For purposes of this Act—

(1) the term "public conveyance" means any vehicle of a privately or publicly owned common carrier providing passenger service, and including air, rail, boat, ship, or bus service;

(2) the term "smoke" means the possession of a lighted cigarette, cigar, or pipe which contains tobacco; and

(3) the term "United States" has the same meaning as in section 3(3) of the Federal Cigarette Labeling and Advertising Act.

ALEXANDRIA, VA,
July 18, 1986.

HON. ORRIN G. HATCH,
U.S. Senate, 135 Russell Building, Washington, DC.

DEAR SENATOR HATCH: My name is Anna M. Carroll. I am 45 years old and have been diagnosed as having nonhereditary pulmonary emphysema. I have never smoked. My family didn't smoke. My husband doesn't smoke.

Experts on the hazards of passive smoking, including a research physicist at EPA, have told me that my emphysema is directly related to the fact that I was surrounded by chain smokers at work for more than 25 years (the same agency). Indeed, once I was no longer exposed directly to smokers on the job (the past six months), my vital capacity lung test showed a marked improvement.

The reason I am writing to you is because of the need for legislation to protect nonsmokers. It seems unfair that I, who have never smoked, must not only bear the brunt of a horrible disease caused by smokers, but must continue to be penalized by smokers when I attempt to travel by public transportation. I cannot take a bus or train. Even when I want to join a local tour group, I must first call up to see if smoking is permitted. If it is, I cannot participate. Travel by air has become a nightmare.

Recently, an airline told me if I wanted to be guaranteed a seat as far away from the smokers as possible, I would have to arrive at the gate an hour before departure time. I did, only to find there was no separate waiting area for nonsmokers. Airline and airport personnel only pointed fingers at somebody else-nobody would take responsibility. By the time I boarded the plane, I was in respiratory distress. The stewardess kept a close watch in case I suddenly required oxygen. I was unable to work the following day.

Tobacco smoke causes me chest pain and a struggle to breathe freely leaves me enervated. Now, even the smell of tobacco smoke

causes anxiety attacks, particularly in situations where I cannot easily walk away.

Letters to the Secretary of Transportation, the FAA, airlines, etc., have done little to no good. There are no laws on the books, so nobody takes responsibility for protection of the innocent nonsmokers.

Senator, it is unfair that smokers have a choice—they can choose to travel by public modes of transportation and endanger the public health. I endanger no one, yet I am not free to travel wherever I please. Please do something to alleviate this problem. Your efforts will be greatly appreciated.

Sincerely.

ANNA M. CARROLL.

COALITION ON SMOKING OR HEALTH,
Washington, DC, July 28, 1986.

Hon. ORRIN HATCH,
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: We are pleased to endorse and support your bill to ban smoking on all public conveyances. Medical evidence shows that tobacco smoke is a health hazard to nonsmokers, especially children, the elderly and those with preexisting heart and lung conditions. In addition, research has documented that nonsmokers exposed to the tobacco smoke of others have an increased risk of developing lung cancer, respiratory infections and deceased respiratory function.

More than three dozen states, and hundreds of muncipalities, have enacted policies to protect nonsmokers in public places from exposure to secondhand smoke. Currently, Congress is considering several bills which would limit smoking in U.S. Government buildings to designated areas. It is appropriate that this growing concern for nonsmokers be turned to the problem of smoking on public conveyances, where millions of nonsmokers, including children, are regularly exposed to tobacco smoke. Current methods of separating nonsmokers from smokers are not effective, and we commend you on the introduction of legislation which would prohibit smoking in any regularly scheduled public conveyance such as airlines, railways and buses, as well as in public waiting room and terminals.

We look forward to working with you towards passage of this important health legislation.

Sincerely,

American Lung Association, American Heart Association, American Cancer Society, American Public Health Association, American Dental Association, American Association of Dental Schools, American Diabetes Association, Action on Smoking and Health, American College of Osteopathic Pediatricians.

American Academy of Pediatrics, American College of Cardiology, American Licensed Practical Nurses Association, American Academy of Otolaryngology, American College of Chest Physicians, American Association of Respiratory Care, American Medical Students Association, Center for Science in the Public Interest, National Perinatal Association.

American Association of Cancer Institutes, Joint Council of Allergy and Immunology, Association of State and Territorial Health Officials, American Speech-Language-Hearing Association, Association of Schools of Public Health, American Association of Preferred Provider Organizations, Terri Gotthelf Lupus Research Institute, National Alliance of Senior Citizens, American Academy of Otolaryngic Allergy.●

By Mr. PRESSLER (for himself, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. DOMENICI, Mr. NICKLES, Mr. WARNER, Mr. MURKOWSKI, Mr. DIXON, Mr. SIMON, and Mr. BENTSEN):

S. 52. A bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program; to the Committee on Energy and Natural Resources.

CONTINENTAL SCIENTIFIC DRILLING AND EXPLORATION

Mr. PRESSLER. Mr. President, I rise today on behalf of myself and Senators MATSUNAGA, MOYNIHAN, DOMENICI, NICKLES, WARNER, MURKOWSKI, DIXON, SIMON, and BENTSEN to introduce the Continental Scientific Drilling and Exploration Act. This legislation will move us an important step closer toward developing a national Continental Scientific Drilling Program [CSDP].

This measure is identical to the Continental Scientific Drilling and Exploration Act which I introduced early in the 99th Congress. That bill, which had 15 cosponsors, passed the Senate without objection following a hearing by the Committee on Energy and Natural Resources. At that hearing, witnesses from academia, government, and private industry expressed unanimous support for the bill and the importance of developing a Continental Scientific Drilling Program.

That enthusiasm has continued to grow during the past several months. I recently received a letter from Dallas Peck, Director of the U.S. Geological Survey—one of the key agencies involved in developing the CSDP—which is indicative of the continued support for this program. All three agencies have been consistent champions of the CSDP, and it has been a pleasure to work with them in developing this legislation.

The bill I am introducing today is straightforward and has no budgetary impact. It directs the Secretary of Energy, Secretary of Interior, and Director of the National Science Foundation to prepare and submit to Congress a report on the objectives, costs, and benefits of CSDP.

Specifically, that report would include the long- and short-term policy objectives of the CSDP; projected schedules of scientific and engineering events which would advance the objectives of the CSDP; estimates of funding levels needed to achieve the program's objectives; and the scientific, economic, technological, and social benefits which would be realized through the implementation of the program. This report would provide Congress with vital information it needs to make informed decisions as to how or even whether the United States should move closer toward a national scientific drilling program.

The Continental Scientific Drilling Program was conceived over 15 years ago, about the time that an International Ocean Drilling Program was generating its scientific data. That program provided invaluable information about the composition and evolution of the ocean floor, but also made scientists realize that they had little knowledge of the dynamics and physical properties of the Earth's continental crust.

Although continental drilling had been under way in the United States since 1859, the focus of most of that activity had been exploration for mineral resources. Those drill holes were usually not in locations or drilled to depths which would yield the most information about the Earth's crust.

Over the years, interest in the Continental Scientific Drilling Program has grown. Since the late 1970's, members of the academic and scientific communities have been working along with government and private industry to develop and fund a full-scale National Drilling Program. The potential benefits that could be realized from such a program are numerous.

By drilling deep into the Earth's crust, we can enhance our understanding of the formation and migration of petroleum and natural gas, and the dynamics behind the geothermal systems that provide energy for the generation of electrical power. The discovery and development of these and other potential energy sources will become more and more important to the economic and security interests of the United States over the coming decades.

In addition, understanding how liquids flow deep within the Earth's crust would help scientists ensure the proper disposal of hazardous wastes and toxic substances. Deep drilling is also the only way to obtain accurate measurements of the stresses and temperature changes associated with geological faults. Such information could one day enable scientists to predict potentially devastating earthquakes with greater accuracy.

Unfortunately, progress in the United States toward a national Continental Scientific Drilling Program has been slow. The United States has yet to make a commitment to deep drilling on the same scale as the Soviet Union or our European allies. The Soviets, for example, have been drilling a deep hole in the Kola Peninsula for over 15 years and have now reached a depth of over 39,000 feet. They are also drilling another hole in the Caucasus Mountains which has already reached a depth of 26,000 feet.

In the meantime, the West German Government recently committed to drill a 46,000- to 49,000-foot-deep hole.

In the meantime, the United States' deep drilling activities are still in their infancy. In December 1986, the Continental Scientific Drilling Program began its first dedicated deep hole at Cajon Pass, CA. This project, which will cost $8 million and go to a depth of 16,000 feet could yield valuable information about the stresses and dynamics of the San Andreas fault.

The Cajon Pass project is being conducted under the joint auspices of the U.S. Geological Survey and DOSECC—Deep Observation and Sampling of the Earth's Continental Crust, Inc.—a nonprofit consortium of universities established several years ago to help direct the implementation of the Continental Scientific Drilling Program. A recent article in the Washington Post titled "Scientists Hope Drilling Will Get to Bottom of San Andreas Fault," provides a detailed description of the Cajon Pass project. I ask unanimous consent that the article be inserted in the RECORD at the conclusion of my remarks.

While the CSDP is making some headway, we need to do more. The resources we have been willing to commit to this important program so far pale in comparison to those of other countries. It is important that the United States not be outpaced by other countries in realizing the scientific and technological developments that would accompany a deep drilling program. The benefits which could be attained in terms of natural resource development, hazardous waste disposal, and earthquake prevention are too important to allow our deep drilling efforts to languish.

The legislation I am introducing today will help us move forward in this important area. I stress again that this measure has no budgetary impact. The information that will be generated by the report called for in the bill will put the question of whether we want to proceed with a full-scale Continental Scientific Drilling Program squarely before the Congress. It is important that we take this important step so we can make other decisions vital to the successful development of a deep drilling program. I urge my colleagues to support this important measure, and ask unanimous consent that a copy of the legislation be printed in the RECORD, along with the previously mentioned letter.

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

S. 52

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

PURPOSES

SEC. 2. The purpose of this Act is to—

(1) implement section 323 of the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1985, and for other purposes", approved October 12, 1984 (Public Law 98-473; 98 Stat. 1875) which supports and encourages the development of a national Continental Scientific Drilling Program;

(2) enhance fundamental understanding of the composition, structure, dynamics, and evolution of the continental crust, and how such processes affect natural phenomena such as earthquakes, volcanic eruptions, transfer of geothermal energy, distribution of mineral deposits, the occurrence of fossil fuels, and the nature and extent of acquifers;

(3) advance basic earth sciences research and technological development;

(4) obtain critical data regarding the earth's crust relating to isolation of hazardous wastes; and

(5) develop a long-range plan for implementation of the Continental Scientific Drilling Program.

FINDINGS

SEC. 3. Congress finds that—

(1) because the earth provides energy, minerals, and water, and is used as a storage medium for municipal, chemical, and nuclear waste, an understanding of the processes and structures in the earth's crust is essential to the well being of the United States;

(2) there is a need for developing long-range plans for a United States Continental Scientific Drilling Program; and

(3) the Continental Scientific Drilling Program would enhance—

(A) understanding of the crustal evolution of the earth and mountain buidling processes;

(B) understanding of the mechanisms of earthquakes and volcanic eruptions and the development of improved techniques for prediction;

(C) understanding of the development and utilization of geothermal and other energy sources and the formation of and occurrence of mineral deposits;

(D) understanding of the migration of fluids in the earth's crust for evaluation of waste contamination and the development of more effective techniques for the safe subsurface disposal of hazardous wastes;

(E) understanding and definition of the size, source, and more effective use of acquifers and other water resources; and

(F) evaluation and verification of surface geophysical techniques needed for exploring and monitoring the earth's crust.

IMPLEMENTATION OF CONTINENTAL SCIENTIFIC DRILLING PROGRAM

SEC. 4. The Secretary of the Department of Energy, the Secretary of the Department of the Interior through the United States Geological Survey, and the Director of the National Science Foundation shall implement the policies of section 323 of the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1985, and for other purposes", approved October 12, 1984 (Public Law 98-473; 98 Stat. 1875) by—

(1) taking such action as necessary to assure an effective, cooperative effort in furtherance of the Continental Scientific Drilling Program of the United States;

(2) taking all reasonable administrative and financial measures to assure that the Interagency Accord on Continental Scientific Drilling continues to function effectively in support of such program;

(3) assuring the continuing effective operation of the Interagency Coordinating Group to further the objectives of such program;

(4) taking such action to assure that the Interagency Coordinating Group receives appropriate cooperation from any Federal agency that can contribute to the objectives of such program, without adversely affecting any program or activity of such agency; and

(5) acting through the Interagency Coordinating Group, preparing and submitting to the Congress, within one hundred and eighty days after the enactment of this Act a report describing—

(A) long and short-term policy objectives and goals of the United States Continental Scentific Drilling Program;

(B) projected schedules of desirable scientific and engineering events that would advance United States objectives in the Continental Scientific Drilling Program;

(C) to the extent and for the duration that the Interagency Coordinating Group deems practicable, maximum, minimum, and intermediate levels of resources and funding that would be required by each participating Federal agency to carry out events pursuant to subparagraphs (A) and (B) at the various levels of effort;

(D) the scientific, economic, technological, and social benefits expected to be realized through the implementation of such program at each level described in subparagraph (C);

(E) a recommended course for interaction with the international community in a cooperative effort to achieve the goals and purposes of this Act;

(F) the extent of participation or interest shown to date in the Continental Scientific Drilling Program by—

(i) any other governmental agency;

(ii) any academic institution;

(iii) any organization in the private sector; and

(iv) any governmental or other entity in the international community;

(G) a plan to develop benefical cooperative relationships among the entities mentioned in subparagraph (F), to the extent that the Interagency Coordinating Group deems practicable; and

(H) any other information or recommendations that the Interagency Coodinating Group deems appropriate.

U.S. DEPARTMENT OF THE INTERIOR,
Reston, VA, December 11, 1986.

HON. LARRY PRESSLER,
U.S. Senate,
Washington, DC.

DEAR SENATOR PRESSLER: On behalf of the Interagency Coordination Group (with representatives from the Department of Energy, National Science Foundation, and U.S. Geological Survey) for Continental Scientific Drilling (CSD), I want to thank you and your staff for your continuing support of CSD and sponsorship during the 99th Congress of S. 1026, the Continental Scientific Drilling and Exploration Act. We believe that CSD represents one of the major scientific frontiers in the earth sciences. We again appreciate your involvement with this issue and look forward to working with you in the future.

Sincerely yours,

DALLAS L. PECK,
Director.

[From the Washington Post, Dec. 26, 1986]

SCIENTISTS HOPE DRILLING WILL GET TO BOTTOM OF SAN ANDREAS FAULT

(By Jay Mathews)

CAJON PASS, CA.—The San Andreas Fault cuts through the scrub-covered mountains just west of here, the mystery of its destructive power hidden deep in the granite heart of the ancient ridges.

After laboratory tests, stress measurements, temperature recordings and thousands of manhours of seismograph reading, a small army of scientists has concluded that the only way to get at the truth is to go down after it. So they are digging a very deep hole—three miles, they hope—to see what is there and how it can help them predict the fault's next devastating jolt.

Funded by $5 million from the National Science Foundation and the U.S. Geological Survey, the drilling will be the deepest ever undertaken in the United States for research purposes. The Soviets have dug the world-record research hole—7.5 miles deep—on the Kola Peninsula. The Swedes are planning a three-mile hole, and the Germans and French have projects under way.

"It is something that has caught on," said U.S. Geological Survey (USGS) geologist Ray Weldon, part of the team of scientists working out of trailers next to the 198-foot blue-white-and-yellow drilling rig here.

Similar drilling activities under the sea "have revolutionized the understanding of the ocean floor," Weldon said. Here, in the frustrating search for reliable warning signs of major earthquakes, scientists are hoping to resolve a key theoretical dispute in the field of plate tectonics: They want to know why the continental plates that meet at the fault line sometimes jerk violently past each other, creating a temblor.

Stanford University geophysicist Mark Zoback, leader of the Cajon Pass bore-hole project, noted that the laboratory experiments he and others have conducted on rocks under stress show that significant friction—and heat—should occur at the fault line. The Pacific plate moves northwest past the North American plate about 2.4 inches every year, a quick march in geological terms. No other dry-land faults are known to slip that fast.

But more than 100 temperature measurements along the fault, some to a depth of 900 feet, have revealed none of the friction-generated heat predicted by laboratory tests. Zoback has detected stress near the fault, but, research with his wife, Mary Lou, a USGS geophysicist, indicates that its direction may actually weaken friction on the fault line.

The Cajon Pass hole is designed to descend 6,000 feet, deep enough to settle a persistent argument over whether the heat is there.

"It's awfully hard to argue that 100 independent heat flow determinations are all wrong, but they were taken in very shallow holes and may be unreliable," Zoback said. Some theorists, sometimes known as "high stressers," argue that the measurements are faulty or that the heat is dissipated by water flows. Others, called "low stressers," suggest that the plates slide past each other at the fault line more easily than scientists have expected. There may be friction between the bottom of the plate and the earth's hot, rigid mantle, a much deeper phenomenon that would be harder to measure.

The bore-hole measurements, Zoback said, are "critical for earthquake prediction." If the high stressers are right, their laboratory experiments are valid and can be used to look for warnings of quakes. If they are wrong, textbooks will have to be rewritten and old experiments put aside.

A small sign on the fence surrounding the drill site 50 miles northeast of Los Angeles announces the project as a joint venture of USGS and DOSECC—Deep Observation and Sampling of the Earth's Continental Crust Inc. The latter is a consortium of about 30 universities that support the project.

The drill crews, now cutting below the 800-foot level, have orders to take out regular core samples for study. The research team plans to measure stress at various depths using a bore hole televiewer developed by Mobil Oil Co.; it uses ultrasonic waves to probe the rock in the pitch dark. Pumping fluid into temporarily sealed-off portions of the hole can also measure stress.

Another Stanford geophysicist, Amos Nur, plans to measure the speed at which sound waves travel in different core samples. This provides an index of pore pressure, the amount of pressure transmitted by water in rock pores. Some laboratory experiments indicate that changes in pore pressure in fault zones foretell earthquakes. Nur hopes to find a practical way to measure such changes in the field.

The drilling crew, accustomed to looking for oil, must contend with the unusual difficulties of punching through granite. Only rarely is petroleum found under such hard igneous rock, so when "an oil crew hits granite, they go home," USGS engineer Thomas H. Moses Jr. said.

But an oil company that once tried to drill here still holds the mineral rights. It can take over the project if the scientists unexpectedly hit a gusher. Such a stroke of fortune, said Moses, "would turn this project into a pile of bleep."

Then, like a good scientist, he remembered that all happenstance is data. "Of course," he said with a grin, "it might raise a lot of other interesting questions."

By Mr. PRESSLER (for himself and Mr. DASCHLE):

S. 53. A bill to provide for improvements to the Mount Rushmore Memorial; to the Committee on Energy and Natural Resources.

MOUNT RUSHMORE IMPROVEMENTS ACT

Mr. PRESSLER. Mr. President, I rise today to introduce a bill which is important not only to my home State of South Dakota, but to the entire country. I am pleased to note that my distinguished new colleague, Senator DASCHLE, has joined me as a cosponsor.

The purpose of this legislation is to begin the process of obtaining much needed improvement at the Mount Rushmore National Memorial. As you know, Mr. President, Mount Rushmore is our Nation's shrine to democracy. That granite mountain, with its famous depiction of four of our greatest Presidents, has been a great source of tremendous national pride and inspiration ever since its completion in 1941. But as it nears its golden anniversary in 1991, the Mount Rushmore National Memorial is in serious need of substantial repairs.

No improvements have been made at the facilities on Mount Rushmore for well over 20 years. Since that time, visitation has nearly doubled. Originally designed to accommodate 1 million visitors per year, the memorial is currently experiencing acute overcrowding problems as it attempts to handle an annual visitation in excess of 2.5 million. As a result, much of the public is denied what could be a truly meaningful experience.

The current National Park Service personnel at Mount Rushmore do a tremendous job with the existing facilities. But, as a practical matter, the enormous and ever-increasing popularity of this national treasure has simply made obsolete the current physical plant. There is an ever increasing need to rush visitors through the memorial as quickly as possible in order to make way for those waiting. Interpretive programs have been severely curtailed. Parking is a nightmare. Priceless artifacts are stored rather than displayed. Security problems present a constant threat. The sculpture lighting is inadequate. Evening programs are severely limited. Overcrowding is an everyday occurrence. Indeed, visitors sometimes must be turned away. In short, the visitor's experience suffers.

The proposal I am forwarding today represents the first step in correcting these problems. It is our hope that most of the needed improvements could be completed in time for the celebration of Mount Rushmore's 50th anniversary. It is essential that we go forward with the proposed improvements in order that Americans from around the country can continue to not enjoy only the exhilarating experience of one of our greatest national monuments, but to better understand what the shrine to democracy is really all about.

But, Mr. President, not only is this legislation important for what it does, but for how it proposes to do it. The improvements could be made largely through private funds.

I am not proposing that we go to Uncle Sam and simply ask for the Federal Government to foot the bill. Because of the tremendous budgetary constraints of today the administration has already said it would oppose such an effort. In this time of strict fiscal restraint, we are going to have to come up with creative alternatives to funding badly needed public projects. That is our goal here. And, hopefully, this initiative might prove a model for other public projects which are or could be made conducive to private sector participation and support. What we are really attempting is to develop a joint initiative between the private and public sectors to raise the necessary funds.

I have been working over the past few months with the National Park Service and the Mount Rushmore National Memorial Society of Black Hills,

a private nonprofit group formed in 1930 for the sole purpose of supporting Mount Rushmore, in an attempt to devise a plan by which the much needed improvements could be made. For numerous reasons, neither a wholly publicly financed nor a wholly privately financed initiative is feasible. Working together, we are attempting to develop a solution. The concept could lead to funding the needed improvements at a minimal cost to the Federal Government. This legislation would represent the first step in that process.

Before the plan can get off the ground, it is imperative that the National Park Service design a clearer blueprint of the technical and financial needs associated with the project. This could be done at a fraction of the cost of the project. That is the primary purpose of this bill. I urge my colleagues to support this initiative.

It is a project worthy of our attention. I think it is important that we fully explore these potential alternative sources of funding. In today's economy, we need to rethink our public financing policies, and develop new approaches to old problems. That is our purpose here. The approach suggested in this legislation could represent a means by which we would be able to carry out our responsiblity to the public and at the same time help ease the budgetary pressures of today.

The details of the proposal are explained more fully in the language of the bill itself and correspondence between myself and the National Park Service. Mr. President, I ask unanimous consent that the text of the bill and the correspondence be printed in the RECORD.

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

S. 53

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 "Mount Rushmore Improvements Act of 1987".

PURPOSE

Sec. 2. The purpose of this Act is to—

(1) initiate a proposal to develop a cooperative funding effort between the public and private sectors in order to provide needed improvements at Mount Rushmore National Memorial;

(2) encourage private sector participation in lending financial support to meet the needs of properties within the domain of the National Park Service and other agencies of the Federal Government which are conducive to private sector support;

(3) define and develop a schedule of planning, design, and construction events which will lead to the completion of the necessary upgrading and expansion of facilities at Mount Rushmore National Memorial before the fiftieth anniversary of such Memorial;

(4) enhance the programs, facilities, and services offered to the visiting public at Mount Rushmore National Memorial; and

(5) fulfill the needs identified in the 1980 General Management Plan of the National Park Service, as it relates to Mount Rushmore National Memorial.

FINDINGS

SEC. 3. Congress finds and declares that—

(1) no capital improvements have been realized at Mount Rushmore National Memorial since 1964;

(2) since 1964, visitation at Mount Rushmore National Memorial has nearly doubled;

(3) programs and services available to the general public at Mount Rushmore National Memorial currently are being limited to compensate for lack of adequate visitor facilities;

(4) Mount Rushmore National Memorial is in serious need of substantial capital improvements at this time;

(5) because of the fiscal and budetary constraints on the Federal Government, and the scarcity of resources available to the National Park Service for distribution throughout the National Park System, it is desirable to encourage private sector participation in raising the funds necessary for the needed improvements at Mount Rushmore National Memorial;

(6) private sector participation in funding needed improvements in the National Park Service and in other projects throughout the Federal Government which are conducive to such participation would—

(A) be of great benefit to the general public;

(B) further important but otherwise unattainable public policy goals;

(C) provide important financial and cultural improvements in local communities; and

(D) be consistent with efforts to reduce Federal spending and help balance the Federal budget; and

(7) the private and public sectors can and should engage in a cooperative effort to meet the public when it is impractical for either sector to meet the need by itself.

IMPLEMENTATION OF THE MOUNT RUSHMORE NATIONAL MEMORIAL IMPROVEMENTS

SEC. 4. No later than September 30, 1987, the National Park Service shall develop a comprehensive design and plan for the upgrade and expansion of facilities at Mount Rushmore National Memorial, consistent with the findings and purposes set forth herein, and report such design and plan to the Congress.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 5. There are authorized to be appropriated $500,000 for the purpose of carrying out the provisions of this Act.

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,

Washington, DC, December 18, 1986.

MS. LORRAINE MINTZMYER,
Director, Rocky Mountain Region,
National Park Service,
Denver, CO.

DEAR MS. MINTZMYER: The purpose of this letter is to seek your professional opinion regarding a project I am initiating to upgrade and expand facilities at the Mt. Rushmore National Memorial.

It is my intention to propose legislation in the 100th Congress to implement needed improvements at Mt. Rushmore which were identified in the National Park Service's 1980 General Management Plan. For your information, enclosed is a copy of correspondence between me and the Mt. Rushmore National Memorial Society of Black Hills, which discusses the plan in more detail. As you know, these improvements are desperately needed as there has been virtually nothing done in this area since 1964, and visitation has nearly doubled from 1964 figures.

I envision the possibility of developing some type of cooperative effort between the private and public sectors to raise the needed funds. I understand the Administration's reluctance to endorse a complete federal funding of such a project. On the other hand, it would be unreasonable to expect that this type of project can be funded by entirely private donations. Indeed, as the enclosed correspondence indicates, this approach has been explored by the Mt. Rushmore Society and found to be unworkable because of the prohibitive start-up costs associated with a private fundraising effort.

It is my hope that we can formulate some type of private sector/public sector cooperative plan to accomplish the task. We need to develop creative public solutions to funding problems if we are to realize our twin goals of providing important government services and balancing the federal budget. Indeed, it is my hope that we can develop an approach which might serve as a model not only for other Park Service needs, but for other areas of the federal government as well.

Therefore, I am requesting information needed to go forward with this proposal as soon as possible. Specifically, I would request that you prepare for me a capability statement outlining the steps necessary to complete such a project in time for celebrating the 50th anniversary of Mt. Rushmore in 1991. In the capability statement, please answer the following questions:

If we embarked on such a program, what specific improvements should be made in order to modernize and expand the facilities commensurate with present needs? In addition to defining the specific individual improvements, please give me your opinion as to which of these would be most susceptible to private sector funding. Which could most logically be done by private sector funding and which are more appropriately left to the federal government?

How capable are you of defining a specific planning and design process? Assuming Congress appropriates $500,000 for this purpose, which I am proposing, could it be spent wisely in FY 1988? Is this figure a reasonable amount to seek for FY 1988 activities associated with such a project? Can the planning be completed in FY 1988?

Would the Park Service be receptive to state as well as private contributions toward funding these improvements?

What specific steps would the Park Service recommend/require to get this project under way?

Any additional information you deem relevant to my inquiry.

My interest in seeking this capability statement is to be in a better position to consider future budget requests and to have the information necessary to determine the feasibility of proceeding with this plan.

As stated earlier, there are groups outside the federal government interested in lending financial support to this project. But we need a clearer blueprint of the work needed and a more definite schedule of the events necessary to realize the Society's goal of completing the project for the 50th anniversary celebration.

A detailed capability statement would be most helpful in assessing the options available. In this time of austere budgetary constraints, it would be a serious mistake if we

failed to explore what potentially could be a creative alternative to total federal funding.

As I hope to introduce this legislation on the first day of the 100th Congress, it would be greatly appreciated if you could provide me with the capability statement by January 1, 1987.

Thank you for your attention to this matter. If you should have any questions, please feel free to contact me or Kevin Schieffer of my staff at 202/224-5842. I look forward to your response.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, ROCKY MOUNTAIN REGIONAL OFFICE,
Denver, CO.

Hon. LARRY PRESSLER,
U.S. Senate,
Washington, DC.

DEAR SENATOR PRESSLER: This responds to your December 18, 1986 inquiry and an amplifying telephone discussion with Kevin Schieffer on December 31 in regard to upgrading and expanding facilities at Mount Rushmore National Memorial. The General Management Plan, which was approved in 1980, outlines the development needs for the Memorial. Specific development proposals generated as a result of that plan identified a wide range of needs, including nearly all of the work mentioned in the material provided with your letter.

We are very receptive to your approach to raising development funds from the private sector, and would welcome state as well as private support. Under current budget constraints, development at Mount Rushmore would not be funded from the Service's construction program in the foreseeable future. Only two projects, renovation of the sculptor's studio and exhibits, and reconstruction of the main entrance road and parking, have proceeded to a point where they have formally been assigned a National Park Service priority. But even for these relatively high priority projects, it would be many years before funding would be available based on current program levels. The entrance road project, which was not mentioned in the material with your letter, is planned for accomplishment by the Federal Highway Administration with funding from the Federal Lands Highway Program. This project may be especially appropriate to state funding through the Public Lands Highway Program.

A list of the specific improvement which should be made to modernize and expand the facilities commensurate with present needs is enclosed, categorized by projects we believe are most amendable to private sector funding, and those more appropriately left to the Federal Government. The construction cost estimates provided are based only on similar facilities and may change significantly after more detailed planning is completed. These estimates include factors for construction supervision and unanticipated change orders after contract award based on overall service experience. Estimates for the detailed design of specific facilities, primarily to produce the contract documents, are not included with the construction estimates and would be an additional 5 to 7 percent. We would provide more specific cost estimates for the necessary architectural and design work as part of the planning work which would be done by the Service.

The enclosed capability statement addresses our capacity to define a specific planning and design process. To summarize that statement, if $500 thousand were to be provided in fiscal year 1988 as you propose, the Service would be able to complete comprehensive design for a substantial portion of the identified projects, including the planning necessary to provide a specific strategy of the work most appropriate for private sector support. The detailed planning scope could be tailored as fund raising efforts progress to assure that projects for which private funding commitments are made receive highest priority. This planning effort would provide the bridge between the general planning already accomplished by the General Management Plan, and the specific architectural and engineering work necessary to make specific improvements at the Memorial.

In further response to your inquiry, we would be happy to provide you with copies of cooperative agreements and other materials based on similar efforts at other Service areas, and we could meet with your staff if you are interested in further details on the scope of the projects or the planning effort.

We hope this information satisfactorily responds to your request. We appreciate your support of the National Park Service.

Sincerely,

LORRAINE MINTZMYER,
Regional Director,
Rocky Mountain Region.

DEPARTMENT OF THE INTERIOR,
January 2, 1987.

Agency/Bureau: National Park Service.
Fiscal year: 1988.
Appropriation: Construction.
Activity: Advanced Planning.

Proposed amendment: +$500 thousand for advanced planning to develop comprehensive design for upgrade and expansion of facilities at Mount Rushmore National Memorial.

Current Program: Programs and services are currently being limited to compensate for lack of adequate visitor facilities at Mount Rushmore National Memorial. Present facilities were planned and constructed to serve an annual visitation of 1 million. Expansion of facilities is needed to provide visitor services for the 2 million people visiting the Memorial annually.

Amount Budgeted in FY 1988: None.

Feasibility: Private groups have indicated an interest in lending financial support to upgrade facilities at Mount Rushmore in time for the Memorial's 50th anniversary and official dedication in 1991. The proposed amendment would fund the planning effort necessary to provide the bridge between the general planning already accomplished by the General Management Plan, and the architectural and engineering work necessary to make specific improvements at the Memorial.

Capability: All funds would be obligated in FY 1988 to complete comprehensive design (site planning) for a substantial portion of the identified projects, including the planning necessary to provide a blueprint of the work most appropriate for private sector support. For example, expansion of the amphitheater, renovation of the sculptor's studio, expansion of parking, structural analysis of the sculpture, improvement of sculpture lighting, rehabilitation of the concession building, and expansion and upgrading of interpretive exhibits would be addressed.

Outly Effect: FY 1988—$500,000.

Proposal Made By: Senator Pressler.

Mount Rushmore National Memorial
Summary of Development Needs

[In thousands of dollars]	Cost [1]
Projects amenable to private support:	
1. Renovate old studio and install exhibits	1,747.5
2. Reconstruct amphitheater and walks; add restrooms	2,186.4
3. Revise sculpture lighting	450.6
4. Rehabilitate concession building	655.0
5. Expand visitor center exhibits and plan and produce sculptor's studio exhibits	150.0
6. Construct parking area	3,217.4
7. Emergency protection of sculptor's models	91.0
Total	8,497.9
Projects less appropriate for private support:	
1. Bury powerlines	500.0
2. Relocate maintenance facilities	2,327.9
3. Reconstruct main entrance road and parking (planning, design, and construction to be funded by Federal Lands Highway Program)[2]	2,500.0
Total	5,327.9
Grand total	13,825.8

[1] Estimated.

[2] This project may be especially appropriate for state funding through the Public Lands Highway Program if consistent with South Dakota's priorities.

By Mr. PRESSLER:

S. 54. A bill to make foreign nationals ineligible for certain agricultural program loans, payments, or benefits, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

AGRICULTURAL PROGRAMS SAVINGS

Mr. PRESSLER. Mr. President, today I am introducing legislation to close several loopholes in farm program payment limitations and prohibit the payment of farm program benefits to foreign landowners and operators.

With the increased cost of farm programs and news reports of multimillion dollar farm program payments being made to large corporate farms, there is increasing pressure to make changes in the farm bill. Last year a new $250,000 total farm program payment cap was implemented. This is a step toward limiting farm program payments but many of the loopholes which allow huge farms to circumvent the old $50,000 payment limitation were not addressed and still exist. I believe that these loopholes should be closed before we start to overhaul farm programs.

The bill I am introducing today includes three provisions to reduce the cost of farm programs and direct benefits to family farmers. The first section prohibits the payment of farm program benefits to foreign landowners or operators. Under current law, a

farmland owner or operator is eligible for farm program benefits if they comply with other requirements. A December 10, 1986, Washington Post article illustrated a clear example of how millions of U.S. farm support payments are going abroad. The article stated that farm program subsidies of $2.2 million went to Farms of Texas, Inc., a $70 million partnership owned by Crown Prince Hans Adam of Liechtenstein. This is just one example of farm program payments being made to foreigners.

Statistics released by USDA determined that 8,760,300 acres of farmland was owned by foreign investors as of December 31, 1985. That amount has very likely increased during the last year. This represents a relatively small percentage of total U.S. farmland, but millions of taxpayers dollars are paid to foreign landowners annually in farm program benefits. Last year the Congressional Budget Office estimated that prohibiting payment of farm program benefits to foreigners would save $30 million annually.

The eligibility of foreigners for farm program benefits also encourages foreign investors to purchase farmland. The foreign investors are purchasing land that an American farmer would very likely buy. The foreign landowners are generally large corporations. This provision prohibits taxpayers dollars from going to these huge foreign corporations.

The second cost saving provision would change the percentage of ownership an individual must have in a farm corporation to be considered a person for purposes of the payment limitation. The amendment would make it much more difficult for corporations to circumvent the current $50,000 payment limitation by setting up dummy corporations. The Congressional Budget Office estimated last year that this provision would result in a $20 million savings annually.

On August 1 of last year, I offered this provision as an amendment, but withdrew it after receiving a commitment for hearings on the issue in the Senate Agriculture Committee. Unfortunately, no hearings were held. Hopefully, hearings can be held early this year on this legislation.

A recent Kipling Agriculture Letter included some interesting statistics on the growth in the reorganization of corporate farm structure to qualify for larger government payments. From 1984 to 1986 the number of corn farmers enrolled in commodity programs increased by approximately 160,000 or 12 percent, while the total acres eligible for benefits rose by only one-half percent. Wheat farmers enrolled in Government programs increased by 10 percent, while bare acres dropped 1.3 million acres. Most of the increase in the number of farms participating is due to corporate restructuring. This provision would make this much more difficult.

This provision is not really a change in policy, but an effort to close a loophole in the $50,000 payment limitation. Why should we impose a $50,000 payment limitation if we are not going to effectively implement the limitation?

Specifically, the second section of the bill would change the definition of a corporation. Currently, if an individual, including his spouse, minor children and trusts for children or legal entity, own more than 50 percent of the stock, they are not considered a separate person for the purposes of the $50,000 payment limitation. This allows a 50 percent stockholder in a corporation to receive a $50,000 payment as well as the corporation. This bill will reduce the percent of stock ownership under this provision to 20 percent. Therefore, any stockholder with more than 20 percent ownership would be considered the same as the corporation for the purposes of the payment limitations. This change will make it much more difficult for farm corporations to circumvent the $50,000 payment limitation.

For many years Congress has established a limitation on the amount of farm program benefits an individual farmer may receive. The intent of this provision was to prevent the owners of large farms from receiving hundreds of thousands and millions of dollars in farm program benefits. This both holds down farm program costs and directs benefits to family size farmers. Unfortunately, large corporate farms have found creative means of avoiding the payment limitation. These huge payments increase the cost of farm programs and give badly needed programs for family farmers a bad reputation.

The third section of the bill would require that all producers participating in crop support programs comply with the same set-aside requirements. Currently, large operators who hit the $50,000 payment limitation are allowed to produce nonprogram crops on a portion of the acreage which would otherwise be retired from production. This not only gives large producers an unfair advantage over the average size producer, but also encourages subsidized production of nonprogram crops. This allows these large producers to unfairly compete with producers who depend on nonprogram crops for their living. The subsidized production also depresses market prices. The Congressional Budget Office has estimated that this provision would save $30 million annually. This savings does not consider the benefits of increased market prices for various nonprogram crops.

Mr. President, we will be hearing a lot about the cost of farm programs and the need to reduce those costs. I hope that my colleagues will join me in supporting this bill which makes minor changes in farm programs but would result in savings of approximately $80 million annually. Last year I received a commitment for hearings on this legislation. Hopefully, the Agriculture Committee will hold those hearings early this year.

By Mr. PRESSLER:

S. 55. A bill to authorize the Lyman-Jones and West River rural water development projects; to the Committee on Energy and National Resources.

LYMAN-JONES AND WEST RIVER RURAL WATER PROJECT

● Mr. PRESSLER. Mr. President, today I am reintroducing legislation to authorize the development of the Lyman-Jones and West River rural water project in South Dakota. During the last session of Congress I introduced a similar bill, S. 1471. A companion bill was introduced in the House of Representatives. Hearings were held by the appropriate subcommittees in both the House and the Senate and further action was scheduled but time ran out. I an reintroducing this bill early in the 100th Congress so that the project can continue to move forward.

The Lyman-Jones and West River rural water project is the result of a grassroots effort to bring good quality water to western South Dakota. For over 25 years local residents in western South Dakota have been working to make this project a reality. Several years ago during a public listening meeting I held in Chamberlain, SD, Frank Woster, a director on the Lyman-Jones rural water project, talked to me about the poor quality of water in the area and the unsuccessful efforts of local residents to find the much needed rural water project through the Farmers Home Administation.

The Lyman-Jones and West River rural water project would be similar to the WEB pipeline project which is currently under construction in north-central South Dakota. The project would provide good quality Missouri River water for domestic and livestock use in 9 western South Dakota counties and 12 rural communities in the area. The possibility of providing water to two Indian reservations is also being explored. The tribes have expressed an interest in receiving water from the project. This addition would substantially increase the number of people served. The water quality in these communities is poor. The water contains dissolved solids in excess of the recommended EPA limit. In fact, most of the water supplies in the area would be considered brackish by EPA standards. The water in this area contains exceedingly high levels of sodium, sulfate, and iron which

cause digestive problems in humans and livestock.

Such poor quality water creates public health problems. I recently met with a resident of western South Dakota who had been required to take medication for high blood pressure for years. His doctor suggested he start buying his water for drinking and cooking. He did this, and as a result has been able to stop taking medication for high blood pressure. Owners of restaurants and service stations in western South Dakota must caution visitors about the possible hazards of drinking the water. This is of particular concern since Interstate 90, the primary route for tourists traveling to the Black Hills, passes through this area. The large amount of dissolved solids in the water is not only bad for human health, but also substantially increases the cost of maintaining water systems and household appliances.

In this area, most of the water comes from deep wells. The wells are very costly to drill and have a short useful span. The average community must spend near one-quarter of a million dollars to drill a new well. The area ranchers also pay an average of between $10,000 and $30,000 to drill a well. Even with these high costs, the average lifespan of a well is only 4 to 12 years with average annual maintenance costs of 10 percent of the construction costs. Having to live with this poor quality water and expensive water systems has made the area residents very thirsty for good quality water from the nearby Missouri River.

The Lyman-Jones rural water system was originally organized in 1971. Initially, no signup fee was assessed; but later, when the signup fee was collected, approximately 85 percent of the area residents paid the signup fees. Six municipalities also signed up for the project. A similar signup occurred in the West River rural water system area in the 1980's. The need and desire for good quality water in the area has been clearly demonstrated.

When the Lyman-Jones rural water system was first organized, the cost of the project was estimated at $17 million. Inflation has since increased the cost. The estimated total cost of both projects is now approximately $50 million. The size of the projects make it impractical for the Farmers Home Administration to provide financing for the projects. With the limited funds available through the FmHA Rural Water Program, the FmHA has recommended that the two projects try to obtain funding similar to that received by the WEB project in South Dakota.

Water development in South Dakota has a long history. In the 1940's, South Dakota agreed to sacrifice over 500,000 acres of farmland for the construction of four Missouri River mainstem dams. These dams have provided hydroelectric power, flood control, and navigation for downstream States. In return for the sacrifices South Dakota made for the construction of the dams, the Federal Government made a commitment to South Dakota. That commitment was to provide water development in the State. Since coming to Congress over 10 years ago, I have continually fought for the development of South Dakota water projects. We have had some success in this effort during that time with the development of the WEB project and the rehabilitation of the Belle Fourche irrigation project, but the Federal commitment to South Dakota has not been fulfilled. The authorization of the Lyman-Jones and West River rural water project is an effort to obtain a partial fulfillment of the Federal commitment to South Dakota.●

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 56. A bill to establish the El Malpais National Monument, the Masau Trail, and the Grants National Conservation Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

MASAU TRAIL ACT

Mr. DOMENICI. Mr. President, today I am reintroducing the Masau Trail Act. This act, which will establish the Masau Trail, the El Malpais National Monument, and the Grants National Conservation Area, will provide protection to some of New Mexico's most unique natural resources and also will promote tourism in the Grants, New Mexico area, which has suffered greatly from the decline in the energy industries, especially the uranium industry.

The act is named after Masau, the great god-man who welcomed the Indian people to the Earth from the underworld as they came through the sipapu, or place of emergence. According to the history of the Pueblo Indians, mankind has existed since the beginning of time, but lived for a long, long time underground. Eventually, mankind emerged from the underworld and was welcomed by Masau. The Pueblo people then followed Masau's huge footprints, which were as large as a man's arm, across the Earth.

It is fitting that the act be named after Masau, as modern day travelers will be able to follow in the footprints of the Indian people who traveled across northwestern New Mexico in ancient times as they travel along the Masau Trail, which will be created by this legislation.

Masau has characteristics similar to the legislation that I am introducing. Masau means many things to many people. He is the god of life; the god of death; the god of travelers; the god of boundaries; the god of fertility; the god of war. Likewise, this legislation will mean many things to many people. It will accomplish several very important objectives for the State of New Mexico:

First, it will establish the Masau Trail, an automobile touring route linking a number of historic and cultural sites in northwestern New Mexico;

Second, it will provide a significant tourist attraction for the Grants area in the form of a new unit of the National Park Service to be called the El Malpais National Monument;

Third, it will provide Federal protection to over 379,000 acres of land; and

Fourth, it will place over 115,000 acres of Federal land in wilderness status.

Mr. President. I am compelled to point out that renowned travel expert Arthur Frommer has recently declared New Mexico to be one of the 10 best vacation spots in the world. It is an area of magnificent beauty and proud history. This bill will increase New Mexico's attraction to travelers from all over the world. Additionally, this bill will help the community of Grants, NM, which has lost 7,000 jobs in recent years due to the collapse of the uranium industry.

THE MASAU TRAIL

The Masau Trail will be an automobile touring route which will link a number of prehistoric and historic sites in northwestern New Mexico. These sites will include Aztec Ruins, Bandelier, Canyon de Chelly, Chaco Canyon, El Malpais, El Morro, and Salinas National Monuments, as well as other national, State, and local sites of interest. The trail is a multi-governmental, multi-agency concept. On the Federal level, the National Park Service, the Bureau of Land Management, and the National Forest Service will include lands under their control in the trail. The State of New Mexico and various local governments, as well as the Indian tribes in the area, will be invited to participate in the trail.

The purpose of this trail is to introduce visitors to the wealth of historic, cultural, and natural sites in northwestern New Mexico and to give them a comprehensive perspective on the history of the Indian peoples who populate the region. It will allow visitors to the region to appreciate the continuum if history and culture, from ancient times to modern day, which is represented in the region. The Masau Trail will emphasize the interrelationship of all of the sites along the trail.

The trail will be marked by signs with grain footprints, the footprints of Masau. One can see examples of Masau's footprints in the ancient petroglyphs which cover the volcanic escarpment on the west side of Albuquerque. I have been working on find-

ing ways to provide protection to this area, which includes over 10,000 ancient Indian and Hispanic rock carvings in a 17-mile stretch, and hopefully in the coming year we will be able to incorporate the Albuquerque petroglyphs into the Masau Trail.

A multigovernmental, multiagency visitors center, bringing together all of the entities that are participating in the trail, will be constructed along Interstate 40 near Grants. This center will introduce travelers to the Masau Trail and give them an overview of the history and culture of this fascinating region. It also will provide tourists with information on the various components of the trail and directions on how to reach those sites.

EL MALPAIS NATIONAL MONUMENT

This legislation will also create a new unit of the National Park Service, the El Malpais National Monument, at the lava flows known as El Malpais south of Grants.

Last summer, I had the opportunity to tour El Malpais with William Mott, the Director of the National Park Service. Following that visit, Mr. Mott recommended to me that Congress designate approximately 126,000 acres of the El Malpais lava flows and surrounding lands as a National Monument under the supervision of the Park Service. The bill I introduce today will do that. The Monument will encompass the Bandera, Laguana, and McCarty's lava flows, the ice caves, Bandera Crater, the Sandstone Bluffs overlook, the Dominquez-Escalante Trail, the natural sandstone arch, the Narrows, La Vieja rock formation, McCarty's Crater, and a multitude of other resources. A visitors center will be constructed in the vicinity of Bandera Crater and the ice caves, where most of the visitor use is expected to be concentrated.

El Malpais is a large volcanic region located near Grants, NM, approximately 75 miles west of Albuquerque. El Malpais, which means bad country, is the historic Spanish name for the lava formation.

El Malpais consists of at least five different lava flows, the most recent of which is estimated to be only 600 to 1,300 years old, making it one of the most recent lava flows in the continental United States. The lava flows contain a number of unusual and unique physical features of lava eruptions, including pahoehoe, AA, blocky flows, grooved lava, squeeze, ups, collapsed depressions, pressure ridges, kipukas, spatter cones, lava tubes, ice caves, and large cinder cones. El Malpais contains the longest known lava tubes in North America. One tube has been measured to be sixteen miles in length.

The Bandera Crater area and associated lava flows and ice caves have been characterized by many geologists as outstanding geological features with superior interpretive and educational value. Bandera Crater is nearly a half mile wide, 1,000 feet deep, and is considered a classic example of its type of volcanic activity. Ice caves occur within the flow associated with the Bandera Crater area. Some ice caves have magnificent 30 to 50 foot ice crystals on the ceilings.

The eastern edge of the El Malpais area includes a high sandstone ridge and bluff area which encompasses a highly scenic landscape with tremendous contrast between the black lava flows and the pink sandstone bluffs. This bluff area contains the largest and most dramatic natural arch in New Mexico. Also found in this area is the Las Ventanas site, an established unit of the Chaco Culture Archeological Protection Site System, and La Vieja, the old woman, a rock formation that looks like the profile of a woman.

The Dominguez-Escalante Trail crosses the lava flow. This was the route pioneered by Father Silvestre Velez de Escalante and his Fransiscan superior, Fransisco Atanasio Dominguez, as they sought a route from Santa Fe to California in 1776 in order to unite the northern and western portions of Spain's American empire. This marked trail offers interpretive opportunities and an excellent cross-lava trail corridor.

The establishment of the El Malpais National Monument will provide visitors with a magnificent window on the unique geologic, natural, and cultural features of the El Malpais area. I am happy that the National Park Service, the premier agency in the world for presenting natural resources to the public, will be administering this area. They will bring their expertise to this project and will assure that visitors to this area get a first-class experience.

THE GRANTS NATIONAL CONSERVATION AREA

The legislation I introduce today also will designate approximately 253,000 acres of land surrounding the El Malpais National Monument as the Grants National Conservation Area.

This area will be administered by the Bureau of Land Management. The Bureau has protected this area, including the area to be designated as a National Monument, for a number of years. They have done an excellent job and this will allow them to continue to manage the majority of these lands.

The conservation area will encompass the string of volcanic craters known as Chain or Craters, portions of the various lava flows, the areas known as hole in the Wall and Little Hole in the Wall, and surrounding grazing lands.

This area lies within the zone known as the Acoma cultural province. It is approximately 25 miles from the famed Acoma Pueblo and its Sky City. The conservation area contains extremely high-value, high-density archelogical resource in thousands of separate archelogical sites. Many of these sites are associated with the prehistoric Chacoan system and the related, but more recent, Acoma cultural province. This region was an area of interface between the prehistoric Mogollon and Anasazi cultures.

The conservation area contains numerous sites and site communities, including pithouses, single room filed house, water control features, and abundance of rock art, Chacoan road segments, Chacoan outliers with attendant surrounding communities, great kivas, and large pueblo masonry structures.

The high density and diversity of cultural resources along the east side of the lava combined with the relative short distances created by the physical features that concentrated settlement between the lava flows to the west and the high rugged sandstone mesas to the east create a major research and visitor use opportunity. The bill provides direction to the Bureau of Land Management to develop special management plans for the protection and study of these archelogical resources. A similar directive is provided to the National Park Service for those archelogical resources within the El Malpais National Monument.

This legislation will designate approximately 115,000 acres of BLM wilderness within the conservation area. These areas, known as the Rimrock, Little Rimrock, Sand Canyon, Pinyon, and West Malpais Wilderness Study Areas, and the Hole in the Wall, contain some of the most stunning natural resources in New Mexico and deserve to be protected for the enjoyment of future generations.

Mr. President, I am extremely excited about this legislation. I believe that it will provide much needed protection to one of the most unusual and unique natural and cultural areas of the United States. It also will provide visitors to northwestern New Mexico with an incredibly comprehensive and rewarding education on the history of this region. Finally, it will give an area of the State of New Mexico which has suffered much from the collapse of the uranium industry a much-deserved shot in the arm in the form of increased tourism. The magnificent thing about this legislation is that it can do each of these things without excluding the others.

However, this proposal is by no means perfect. When hearings are held on this legislation, we must address the issue of water rights. Although very little water is present in this area, the withdrawal of lands for a National Monument and for the creation of wilderness units brings into question the status of water rights in the area. This has become a very con-

tentious issue. I am aware that some Members of the Senate feel that any legislation creating a National Monument or wilderness units must include language addressing water rights. The bill that I am introducing today, however, does not address the issue of water rights.

Another area that will need close examination is grazing. A number of individuals have historically conducted grazing in the areas covered by this bill. The Park Service boundaries have been drawn so as to exclude grazing areas to the maximum extent possible without diminishing the resource to be protected, as grazing within the National Monument will be phased out within 10 years. However, we must closely examine the boundaries to make sure that we haven't overlooked anything in this area.

Additionally, this legislation does not address the future of subsurface mineral rights which underlie lands to be designated as wilderness. The creation of wilderness effectively denies the owner of the subsurface estate the possibility of ever developing the mineral potential of the land or even of discovering what minerals are present there. I believe that Congress must treat the owners of the subsurface estate fairly and provide an efficient process for exchanging mineral rights which underlie wilderness lands for other Federal mineral rights.

This legislation was originally introduced in the last Congress but was not enacted because there was no opportunity to hold hearings. In light of the tremendous support which this legislation has received, I hope that hearings on this measure may be held in the near future and that this legislation will be enacted into law quickly.

Mr. BINGAMAN. Mr. President, I am pleased to join the distinguished senior Senator from New Mexico in introducing the El Malpais/Masau Trail bill.

This bill is identical to legislation being introduced in the House of Representative by Congressman RICHARDSON and to legislation introduced last session. The bill is the result of a great deal of effort by all interested parties to reach an acceptable compromise.

The proposal establishes a 126,000-acre El Malpals National Monument to be administered by the National Park Service. It includes an El Malpais Visitors Center. It calls for the designation of the Masau Trail, an auto touring route to link prehistoric and historic cultural sites in western New Mexico. It authorizes a Masau Trail Visitors Center in Grants, NM.

The bill creates a 254,000 acre National Conservation Area to be administered by the Bureau of Land Management. Grazing, hunting, trapping, and noncommercial wood gathering would be permitted in the BLM area. The bill also creates 115,000 acres of BLM wilderness, including Rimrock, Little Rimrock, Sand Canyon, Pinon, and West Malpais wilderness study areas, and an area known as the Hole In The Wall. The bill calls for the study of roadless areas of the National Monument and the restudy of the Chain of Craters Wilderness Study Area for possible designation as wilderness. The legislation also protects Native American uses and directs the BLM and the Park Service to develop management plans for the protection of areas with valued archeological resources.

This bill is a delicate balance which will foster important economic development and increased tourism in the Grants area and provides important environmental protection of this region of the country.

The Malpais is a unique area of the State of New Mexico and the Nation and it is deserving of Park Service and wilderness protection. The name Malpais is the historic Spanish name meaning bad country. It is the name of the lava formation located in western New Mexico also known as the Grants Lava Flow. It actually consists of three flows which have been described by the Park Service as a beautiful, fresh, black lava flow, as fresh and unweathered as the historic flows of the Hawaiian Islands, Vesuvius, and other areas. It also contains a variety of beautiful volcanic features, including some of the largest and most extensive lava tubes reported in the United States; many cinder cones of classic symmetry; and some astonishingly magnificent ice caves, full of ice stalagmites crystalline ceilings, and other unique formations. It also contains lava tube sinkholes and uniquely angled formations not found anywhere else on the North American Continent.

The surrounding wilderness areas are also deserving of protection as they shield beautiful natural areas of tall pines and pinons, as well as sandstone bluffs and extinct volcanoes.

There is tremendous local and public support for protecting these scenic areas. The package that has been developed takes the best features of the proposals by the Park Service and the BLM and combines them into a well organized management plan for the area.

I regret we were not able to complete action on this important legislation last session. However, I strongly support the measure and I encourage its immediate passage.

Thank you, Mr. President.

By Mr. BOREN:

S. 57. A bill to provide interest rate on agricultural loans; to provide for the repayment of certain Federal financing bank loans; and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

AGRICULTURAL INTEREST RATE RELIEF ACT

Mr. BOREN. Mr. President, I am introducing today the Agricultural Interest Rate Relief Act of 1987. This legislation is a revised version of a bill Senator BOSCHWITZ and I introduced in 1985 and attempted to include in the Farm Credit Act Amendments of 1985. We reintroduced the bill last spring and offered this legislation as part of an amendment last fall. I have attempted to make this legislation more palatable to all concerned parties.

In addition to making the interest rate buy-down provisions of the bill more palatable, I have also incorporated provisions of a bill introduced by Senator NICKLES and myself last year which requires the Farm Credit System to restructure loans when it is cheaper to restructure than to foreclose.

There is no question that the farmers and ranchers of this country are facing difficult times. Net cash-flow declined by 21 percent in 1985, continuing the downward trend begun in 1979. Net cash-flow has declined by 38 percent from the 1979 peak. During 1985, farm income fell by approximately 7 percent. After adjusting for inflation, net farm income in 1985 was $11 billion. Ten years ago, net farm income was over $20 billion. Estimates for 1986 indicate that net farm income again decline in inflation-adjusted net farm income to about 33 percent. On average, Oklahoma farmers did not generate enough income from the farm in the past 2 years to cover operating expenses.

Nominal land values fell an unprecedented 13 percent in 1984 and approximately 8 percent in 1985, the fourth consecutive year of declining land values. From 1981 to 1986, farm real estate values, in real terms, will have dropped by approximately 34 percent. In some counties, land values have fallen more than 50 percent in the past 3 or 4 years. By the end of 1986, it is estimated that cumulative farm sector equity losses since 1981 could exceed $250 billion—more than a fourth of peak values.

Low income, combined with falling land values, have placed many farmers in a difficult financial position. Twenty percent of all farms are experiencing financial stress and an additional 10 percent are considered potentially at risk because of high debt loads. One hundred and twenty-three thousand farms are highly leveraged and technically insolvent and 51,000 operators had debt-to-asset ratios over 100 percent. Approximately 62 percent of all farm debt, amounting to $123 billion, is held by borrowers with debt-to-asset ratios over 40 percent.

The farm situation has deteriorated to the point that the survival of many banks in the Nation is being ques-

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tioned. Agricultural banks accounted for more than one-half of the 118 commercial banks that failed in 1985. The percentage of bank failures that are agricultural increased dramatically from 15.9 percent in 1983 to 59.5 percent in the first 10 months of 1985. The number of potentially vulnerable commercial agricultural banks rose from 96 to 302 during the past 3 years. In June of 1983, there were 106 problem agricultural banks; by October 1985, there were 413.

Mr. President, the condition of the agricultural economy does not merely affect farmers and their lenders. Agriculture is the largest sector of the American economy. Agriculture accounts for 20 percent of the Nation's gross national product, with $610 billion of business activity yearly. Each additional $1 billion of farm demand creates 35,000 jobs and adds a total of $2 billion to the Nation's gross national product.

In 1981, there were 1.1 million full-time jobs in the United States related to agricultural exports alone. There are 151,680 jobs in the printing and publishing industry that are dependent upon agriculture. Also, 543,480 jobs in the transportation and warehousing industry are dependent upon agriculture. The meat and poultry industry, alone, employs 347,000 people. Farmers annually spend $10 billion for tractors and other equipment; $7 billion for fuel and oil; and $9 billion for fertilizer and lime. There are 93,176 jobs in iron and steel manufacturing that are dependent upon agriculture. Thirty-seven percent of all jobs in the glass and glass products industry are dependent upon agriculture and 69 percent of all jobs in the metal containers industry are dependent upon agriculture.

As should be obvious, everyone in this country has a stake in agriculture and retaining its viability. The legislation I am introducing today is not going to save every American farmer. It is not a complete solution, by any means. Yet, it does take a step in the right direction.

My legislation establishes an interest rate buy-down program that will help many American farmers by reducing their interest cost. Interest payments, alone, make up approximately 20 percent of farmers' total production cost. The Agricultural Loan Interest Subsidy Program [AGLIS] will reduce the interst rate on agricultural loans by 4 to 6 percent. Three percentage points will be paid by the Federal Government; an optional 1 to 2 percentage points may be paid by the States and 1 percentage point by the lender. The lender can write off 15 percent of the principal of the loan in lieu of paying 1 percent of the interest.

In addition to establishing an interest rate buy-down program, the Agricultural Interest Rate Relief Act requires the Farm Credit System and the Farmers Home Administration to restructure loans instead of foreclosing on them in instances where it is actually cheaper to restructure than to foreclose. I want to point out that this will not mean that everyone who has a Farm Credit System [FCS] or FmHA loan will be able to avoid foreclosure. Restructuring is required only when it is actually cheaper for the FCS or the FmHA. In this way, losses for the FCS and the FmHA will be minimized. For the FCS, this should result in lower interest cost for all borrowers of the System.

My legislation also encourages the Farm Credit System to allow borrowers who will be foreclosed on to retain possession and occupancy of the principal residence of the borrower.

At the present time, there are no regulations for the disposition of property acquired by the Farm Credit System. The FCS, in essence, can do about anything with the land. As it stands, a previous owner could be prohibited from purchasing his homestead. The legislation I am introducing today will change this policy and will require the Farm Credit System to give special consideration to previous owners in the selling or leasing of land acquired by the System.

Another problem we have encountered in the past couple of years is the Farm Credit System's refusal to provide borrowers copies of the appraisals of the assets of the borrowers. In one case, a farmer was told that the System had cut the value of his assets in half but would not provide him with a copy of the appraisals. It is certainly hard to argue that the appraisals were too low or inaccurate if one does not have a copy of the appraisal. This legislation requires the Farm Credit System to provide copies of the appraisals to the borrowers.

The Agricultural Interest Rate Relief Act also prevents the Farm Credit System from requiring additional collateral or foreclosing on a borrower for failure to provide additional collateral if the borrower is current in the payment of interest or principal. Right now, the Farm Credit System can foreclose on borrowers who are completely current on their payments. Due to the drop in land values, many farmers simply do not have any additional collateral to give the FCS.

This legislation will also prohibit the Farm Credit System from increasing the interest rate on a loan that has been classified. An anomaly of current FCS policy is to increase the interest rate for a borrower the more he has difficulty meeting his payments.

Mr. President, we must change the current policies of the Farm Credit System. The current policies are driving down land values and jeopardizing the economic position of every farmer and rancher in this country. In turn, as more and more farmers are going out of business, more banks are going down. The entire economy is beginning to feel the affects of the problems confronting our Nation's farmers and ranchers.

This legislation also clarifies a provision enacted as part of the Farm Credit Act Amendments of 1985. In 1985, Senators DOMENICI, BINGAMAN, NICKLES, BAUCUS, MCCLURE and myself offered an amendment which would prohibit district banks from charging associations whose stockholders voted against merging with other associations a higher rate of interest or assessment than that charged other like associations. We thought at that time that it was perfectly clear that so-called disapproving associations would not be charged a higher rate, yet, the Farm Credit Administration now proposes to implement a regulation which would allow farm credit banks to charge different rates of interest, prices for services and financial assistance to disapproving associations as long as they could back it up with financial considerations. This regulation would be totally contrary to the intent the sponsors of the amendment had. In this bill, Mr. President, the statute is clarified so that there can be no question what we intended. With the adoption of this provision, there will be no circumstance under which the district banks can charge a higher rate to disapproving associations.

Mr. President, this bill is not a major rewrite of the 1985 farm bill. The credit provisions, which may seem broad, will not change to any great degree, the claimed policies of the Farm Credit System. When we first introduced the bill last spring, I talked with Frank Naylor, the chairman of the Farm Credit Administration Board, about the various provisions. As many of you know, Mr. Naylor was formerly with the Department of Agriculture. He told me that the modifications relating to the Farmers Home Administration were already the policy of the Farmers Home Administration. Further, he stated that he supported the provisions concerning the Farm Credit System, but, like any administrator, he wanted to have the authority to implement the policies without statutory language. Officials from the Farm Credit System tell me they are doing everything now that my amendment will require. No one, consequently, should have any objections to this legislation, unless the reality is that the Farm Credit System is not actually doing what officials claim they are doing.

Last fall, we enacted a disaster assistance program to deal with the drought and excessive moisture affecting various parts of the country. At that time, it was the intention of the

principal sponsor of that legislation to include disaster payments for wheat producers who were prevented from planting their crop due to excessive moisture. However, the enacted language precludes winter wheat producers from eligibility due to the phrase "1986 crops of wheat, feed grains, upland cotton, and rice." The 1986 crop of wheat was the crop harvested prior to any of the flooding in the fall of last year. The floods that occurred in Oklahoma last fall prevented many wheat producers from planting the 1987 wheat crop in time to ensure a crop. The technical language of the disaster provisions adopted last fall does not provide payments to producers of the 1987 wheat crop. Consequently, even though it was everyone's intention to cover all crops affected by drought and excessive moisture in 1986, the language does not cover the 1987 wheat crop.

To correct this technical error, I have included a provision which requires that the Secretary of Agriculture make disaster payments to producers who were prevented from planting the 1987 wheat crop in time to ensure normal crop production.

In addition, Mr. President, I have included a provision to correct a problem that has arisen with respect to cotton disaster payments. The disaster provisions we enacted last fall require the Secretary to make payments to cotton producers; however, a producer is only considered to have suffered a loss if his yield is below 50 percent of his normal yield. This works for most other commodities, but it does not work for cotton producers whose crops receive excessive moisture immediately prior to harvest. Unlike wheat, cotton is sold based on quality as well as quantity. Consequently, a producer who gets a perfect cotton grade will receive, on the world market today, about 38 cents per pound. If the quality has deteriorated due to excessive moisture, the producer could receive as little as 8 cents per pound. As is obvious, the actual yield may not have declined, but the quality and subsequent price received declines dramatically when exposed to excessive moisture.

The legislation I am introducing will require the Secretary of Agriculture to take into consideration the quality of the cotton produced in addition to reduced yields. In this way, if a crop has received a reduction in quality of 50 percent, the Secretary would be required to make disaster payments in the same manner as he would if the yield had declined.

Mr. President, this legislation will not cost anything to the American taxpayer. In fact, it will save money. We achieve substantial savings from the inclusion of a provision which will allow rural electric co-ops and systems to pay off their loans with the REA without any prepayment penalties. This provision pays for the credit program and the modifications in the disaster program.

We should reward those rural co-ops and systems that have chosen to seek private financing for their programs. Congress recently passed similar legislation and directed the Secretary of the Treasury to write the necessary regulations. Unfortunately, the Secretary followed the letter of the law but most certainly not the spirit of our intent.

The guidelines as written by Treasury are unduly restrictive, arbitrary, and written such that few, if any, rural electric co-ops and systems will be able to prepay their Federal Financing Bank debt. As an example of the unreasonable nature of these guidelines, we need to look only at Treasury's requirement that a rural electric co-op or system must be able to reduce their consumer rates by 25 percent if they choose to refinance. Therefore, my constituent, Western Farmers Electric Co-op, would have to save over $45 million to qualify to refinance. Mr. President, Western Farmers does not have $45 million to save. Without this restriction, they could, however, refinance part of their debt and save over $8.5 million, all of which will be passed on to their customers.

Recognizing part of the problems with the Treasury regulations, Senator STEVENS and I offered an amendment to the budget reconciliation bill last fall which would take care of part of the problem. However, only four or five co-ops will be able to take advantage of refinancing, even with the adoption of our amendment.

This legislation will allow all those co-ops and systems facing substantial interest payments to refinance at the much lower current rates without having to deal with the unreasonable Treasury guidelines.

Mr. President, this legislation will help farmers and American taxpayers. I ask unanimous consent that the text of the bill be printed in the RECORD.

I urge my colleagues to join me in support of this legislation.

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

S. 57

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 "Agricultural Interest Rate Relief Act of 1987".

TITLE I—AGRICULTURAL LOAN INTEREST SUBSIDY PROGRAM

SEC. 101. DEFINITIONS.

As used in this title:

(1) BORROWER.—The term "borrower" means a person who meets the eligibility criteria prescribed in section 103.

(2) LENDER.—The term "lender" means a commercial bank, savings and loan association, credit union, insurance company, or institution, including a subsidiary or affiliate thereof, that—

(A) has agreed to participate in the interest subsidy program; and

(B) has been approved for participation in the interest subsidy program by the appropriate State agency.

SEC. 102. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a Federal-State-Lender cooperative agricultural loan interest subsidy program under which, at the request of a State, borrowers and lenders within the State may participate in the interest subsidy program in accordance with this title.

(b) CONSULTATION.—The Secretary shall establish the interest subsidy program in consultation and cooperation with the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Federal Reserve Board, the Chairman of the Farm Credit Administration, the Chairman of the Federal Deposit Insurance Corporation, and each State agency.

SEC. 103. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by a lender for agricultural purposes that is outstanding on the date of enactment of this Act;

(3) during the period beginning on the date of the approval of a State plan under section 106 and ending September 30, 1988—

(A) be delinquent in the payment of principal or interest, or both, on the loan; or

(B) demonstrate to the lender that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower will be temporarily unable, without assistance provided under this Act, to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years;

(6) have a debt to asset ratio of at least 40 percent;

(7) have an ability to repay the loan, based on past performance as a capable producer and assistance to be provided under this Act; and

(8) not produce an agricultural commodity on highly erodible land or converted wetland in violation of section 1211 or 1221 of the Food Security Act of 1985 (16 U.S.C. 3811 or 3821).

SEC. 104. INTEREST SUBSIDIES.

(a) APPLICATIONS.—During the period beginning on the date of the approval of a State plan by the Secretary under section 106 and ending September 30, 1987, a borrower may apply to a lender for an interest subsidy for any agricultural loan made by the lender to the borrower that is outstanding on the date of enactment of this Act.

(b) INTEREST SUBSIDIES.—If a borrower of a loan applies to a lender for an interest subsidy in accordance with subsection (a), the lender determines that the borrower meets the eligibility criteria prescribed in section 103, and the lender agrees to participate in

the interest subsidy program, subject to this section, not later than 90 days after receipt of the application, the loan shall be restructured in such a manner that the interest rate payable by the borrower shall be fixed for a period of 3 years or the remaining term of the loan, whichever is less, at a rate equal to the interest rate of the loan on the date of enactment of this Act less up to 5 percentage points.

(c) PAYMENT OF SUBSIDIES.—If an interest subsidy is provided for a loan made by a lender to a borrower in a State—

(1) the Secretary shall pay 3 percentage points of the subsidy by making payments through the State agency to the lender;

(2) if the State elects to make such payments, the State may pay not less than 1 percentage point and not more than 2 percentage points of the subsidy by making payments to the lender; and

(3) the lender shall—

(A) pay 1 percentage point of the subsidy; or

(B) cancel at least 15 percent of the principal due on the loan.

(d) TERM OF LOAN.—The term of any loan for which an interest subsidy is provided under this section shall not be less than the term of the loan outstanding before the subsidy is provided.

(e) SCHEDULE OF PAYMENTS.—The schedule of payments on a restructured loan shall be established in accordance with the ability of the borrower to repay the loan.

(f) ACCRUED INTEREST.—Interest accrued on a restructured loan prior to restructuring shall not be capitalized but shall be paid by the borrower to the lender prior to any retirement of principal under the loan as restructured in accordance with this title.

(g) REPAYMENT.—Any balance of principal and interest outstanding on any restructured loan shall be repaid at a rate that is agreed on by the lender and borrower, except that the rate of interest on the loan may not exceed the standard rate charged by the lender on loans with comparable maturities for similar purposes at the time the loan is restructured.

(h) MAXIMUM AMOUNT OF ASSISTANCE.—The aggregate outstanding amount of loan principal for which an interest subsidy may be provided under this title may not exceed—

(1) in the case of a loan made to an individual, $400,000; and

(2) in the case of a loan made to a family corporation or family partnership, $600,000.

SEC. 105. PAYMENTS TO STATES.

(a) IN GENERAL.—From sums available pursuant to section 403 and subject to subsection (b) and section 106, the Secretary shall pay to each State for each of the fiscal years ending September 30, 1987, through September 30, 1990, an amount equal to the sum of—

(1) the amount necessary to finance the share of interest subsidies provided to borrowers residing in the State that is required to be paid by the Secretary under section 104(c)(1); and

(2) 100 percent of the administrative expenses that are incurred by the State agency in carrying out this title and are approved by the Secretary.

(b) MAXIMUM AMOUNT OF PAYMENTS.—The aggregate amount of payments paid by the Secretary to States under subsection (a) for a fiscal year may not exceed $600,000,000.

SEC. 106. STATE PLANS.

(a) IN GENERAL.—To be eligible to participate in the interest subsidy program during a fiscal year, a State must—

(1) submit a plan to the Secretary for the fiscal year; and

(2) receive the approval of the Secretary for the plan.

(b) PLAN REQUIREMENTS.—To receive the approval of the Secretary for a plan, a State must submit a plan that—

(1) designates a single agency that shall be responsible for the administration, or the supervision of the administration, of the interest subsidy program in the State;

(2) assesses the interest subsidy needs of borrowers residing in the State;

(3) describes the interest subsidy program established in the State (including any agencies designated to provide a subsidy under such program), which program must meet such requirements as the Secretary may prescribe;

(4) estimates the amount of funds necessary to provide interest subsidies under the program and related administrative expenses, except that such amount may not exceed the amount allocated by the Secretary for payment to the State out of the total amount available for payment under section 105;

(5) requires any lender participating in the interest subsidy program to provide to any borrower who is delinquent in the payment of principal or interest, or both, due on a loan during the period referred to in section 104(a) prompt written notice that describes the assistance available under this title and any deadlines for application for the assistance; and

(6) includes such other information as the Secretary may require.

(c) APPROVAL OF PLANS.—(1) The Secretary shall approve or disapprove a plan submitted by a State under subsection (b) not later than 45 days after the State submits the plan.

(2) The Secretary shall approve any plan that complies with subsection (b).

(d) AUDITS.—(1) Each State agency shall—

(A) provide for an annual audit of expenditures made by the State agency in carrying out the interest subsidy program, not later than 60 days after the end of each year in which the program is conducted; and

(B) promptly report to the Secretary the findings of such audit.

(2) Not later than 60 days after the end of each year in which a State agency participates in the interest subsidy program, a State agency shall provide the Secretary with a statement that provides—

(A) a description of whether (and, if so, by how much) the payments received under section 105 for such year exceeded the expenditures by the State agency during such year; and

(B) such other information as the Secretary may require.

(e) DENIAL OR WITHHOLDING OF PAYMENTS.—(1) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, except as provided in paragraph (2), the Secretary shall—

(A) notify the appropriate State agency that payments will not be made to the State agency under section 105 for the year until the Secretary is satisfied that the State is complying with such subsection; and

(B) make no payments under section 105 until the Secretary is satisfied that the State is complying with such subsection.

(2) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, the Secretary may—

(A) suspend the denial of payments under paragraph (1) for such period as the Secretary determines is appropriate; and

(B) withhold payments of approved State administrative expenses incurred in providing assistance under the plan, in whole or in part, for the year,

until the Secretary is satisfied that the State is complying with such subsection, at which time such withheld payments shall be paid.

(3) If the Secretary finds that a State has substantially failed to comply with subsection (b) or (d), the Secretary may, in addition to or in lieu of any action taken under paragraph (1) or (2), refer the matter to the Attorney General with a request that the Attorney General seek injunctive relief to require compliance by the State. If the Attorney General brings a suit in an appropriate district court of the United States and makes a showing of substantial noncompliance, appropriate injunctive relief shall issue.

SEC. 107. REVIEW BY SECRETARY AND STATE AGENCIES.

(a) REVIEW AND TECHNICAL ASSISTANCE BY SECRETARY.—The Secretary—

(1) shall provide for review, and may provide for an audit, of the manner in which the interest subsidy program is carried out in a State; and

(2) may provide to States technical assistance in carrying out the program.

(b) REVIEW BY STATE AGENCIES.—A State agency may monitor the compliance of a lender with this title. Any lender that violates this title shall be ineligible to receive further payments under this title.

SEC. 108. NOTICE AND DETERMINATIONS OF ASSISTANCE.

A lender in a State participating in the interest subsidy program may not take any action as the result of a borrower defaulting on an outstanding loan made by such lender to a borrower unless the lender has—

(1) provided the borrower with the notice required under section 106(b)(5); and

(2) in the case of a borrower who has applied for assistance under this title, determined that the borrower does not meet the eligibility criteria prescribed in section 103.

SEC. 109. ASSISTANCE OF FEDERAL AND STATE AGENCIES.

(a) IN GENERAL.—To make assistance under this title available expeditiously and in a consistent and uninterrupted manner, the Secretary shall—

(1) use such funds, personnel, and facilities of the Department of Agriculture (including the Commodity Credit Corporation) as the Secretary considers necessary to carry out this title; and

(2) request other Federal or State agency to provide such funds, personnel, and facilities as the Secretary considers necessary to carry out this title.

(b) REIMBURSEMENT.—Any agency that provides advanced funds, personnel, or facilities under subsection (a) shall be fully reimbursed for such assistance as soon as is practicable from subsequent appropriations.

SEC. 110. PROGRAM INELIGIBILITY FOR PRODUCTION ON HIGHLY ERODIBLE LAND OR CONVERTED WETLAND.

(a) HIGHLY ERODIBLE LAND CONSERVATION.—Section 1211 of the Food Security Act of 1985 (16 U.S.C. 3811) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

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

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Agricultural Interest Rate Relief Act of 1987.".

(b) WETLAND CONSERVATION.—Section 1221 of the Food Security Act of 1985 (16 U.S.C. 3821) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

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

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Agricultural Interest Rate Relief Act of 1987.".

TITLE II—FARM CREDIT SYSTEM INSTITUTION BORROWERS

Subtitle A—Farm Credit System Loan Restructuring Program

SEC. 201. DEFINITIONS.

As used in this subtitle:

(1) BORROWER.—The term "borrower" means a borrower of a loan made by an institution.

(2) CAPITAL CORPORATION.—The term "Capital Corporation" means the Farm Credit System Capital Corporation established under section 4.28A of the Farm Credit Act of 1971 (12 U.S.C. 2216).

(3) CHAIRMAN.—The term "Chairman" means the Chairman of the Farm Credit Administration Board designated under section 5.8(a) of the Farm Credit Act of 1971 (12 U.S.C. 2242(a)).

(4) COMMITTEE.—The term "committee" means a credit review committee selected from and by—

(A) the local board of directors of the institution from which a loan originated; or

(B) in the case of consolidated or merged institutions, members of a local advisory board elected by the stockholders served by the merged or consolidated institutions from which a loan originated.

(5) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan made by an institution and the value of collateral used to secure the loan, taking into consideration the lien position of the institution;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of institutions;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(6) LOAN.—The term "loan" means a loan made by an institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SEC. 202. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this subtitle, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by, and a stockholder of, an institution who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the institution that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 203. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, an institution must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this subtitle.

SEC. 204. LOAN FORECLOSURE AND RESTRUCTURING.

If an institution determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this subtitle, in lieu of foreclosure, the institution shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 205. ADDITIONAL COLLATERAL.

An institution may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of principal or interest on the loan; or

(2) bring any action to foreclose on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of principal or interest on the loan at the time the additional collateral was required.

SEC. 206. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If an institution determines that a person does not meet the eligibility criteria prescribed in section 202, not later than 15 days after such determination, the institution shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If an institution determines that the cost of restructuring a loan in accordance with this subtitle exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the institution to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by an institution makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this subtitle; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(B) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by an institution to a borrower and the cost of restructuring the loan in accordance with this subtitle, the cost of the appraisal shall be borne by—

(A) the institution if the appraised cost of restructuring the loan in accordance with this subtitle is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this subtitle is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.—(1) If an institution determines that a borrower of a loan meets the eligibility criteria prescribed in section 202 and that the cost of restructuring the loan in accordance with this subtitle is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the institution determines is adequate to enable the borrower to make payments in accordance with section 204; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by an institution shall have the right to appear before a committee to contest a determination, amount, or action under this subtitle if—

(1) the institution and the borrower enter into an agreement under which the institution agrees to restructure the loan in ac-

cordance with this subtitle and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the institution does not restructure the loan in accordance with this subtitle; and

(3) the borrower makes a written request to the committee to contest the determination, amount, or action, as the case may be, not later than 30 days after the date by which the institution agreed to restructure the loan in accordance with this subtitle.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 207. REIMBURSEMENT FOR PRINCIPAL REDUCTION.

The Capital Corporation shall reimburse an institution for the amount of principal due on loans that is reduced by the institution under section 204 if the Chairman determines that such action is necessary to avoid the liquidation or insolvency of the institution.

SEC. 208. REPORT.

Not later than 270 days after the date of enactment of this Act, the Chairman shall submit a report to Congress on the operation of this subtitle, including—

(1) an analysis of the impact of actions taken under this subtitle on losses suffered by institutions;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by institutions under this subtitle;

(4) the number and amount of loans restructured in accordance with this subtitle;

(5) the number of current and estimated future delinquencies before and after the expiration of this subtitle on loans made to borrowers; and

(6) the recommendations of the Chairman concerning reauthorization of this subtitle.

Subtitle B—Farm Credit System Reform

SEC. 211. ACCESS TO APPRAISALS.

Section 4.13A of the Farm Credit Act of 1971 (12 U.S.C. 2200) is amended to read as follows:

"SEC. 4.13A. ACCESS TO DOCUMENTS AND INFORMATION.—In accordance with regulations of the Farm Credit Administration, a System institution shall provide to each borrower of such institution—

"(1) at the time of execution of a loan, a copy of each document signed by the borrower;

"(2) at any time thereafter, on request, a copy of each document signed or delivered by the borrower;

"(3) at any time, on request, a copy of the articles of incorporation or charter and bylaws of the institution; and

"(4) at the time of execution of a loan and at any time thereafter, on request, a copy of each appraisal of the assets of the borrower.".

SEC. 212. HOMESTEAD PROTECTION.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.20 (12 U.S.C. 2208) the following new section:

"SEC. 4.21. HOMESTEAD PROTECTION.—If an institution forecloses a loan made by the institution or a borrower of a loan made by the institution declares bankruptcy or goes into voluntary liquidation to avoid foreclosure or bankruptcy, the institution is encouraged to permit the borrower to retain possession and occupancy of the principal residence of the borrower, and a reasonable amount of adjoining land, to maintain the family of the borrower.".

SEC. 213. INTEREST RATES ON CLASSIFIED LOANS.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.22 (as added by section 212) the following new section:

"SEC. 4.22. An institution of the Farm Credit System may not increase the interest rate on a loan made to a borrower that is outstanding on the date of enactment of the Agricultural Interest Rate Relief Act of 1987 as the result of the loan been classified as a risk or problem loan.".

SEC. 214. CERTIFICATION OF NEED FOR FINANCIAL ASSISTANCE.

Section 4.28J of the Farm Credit Act of 1971 (12 U.S.C. 2216i) is amended by inserting after "TREASURY.—" the following new sentence: "Not later than 60 days after the date of enactment of the Agricultural Interest Rate Relief Act of 1987, and each 90 days thereafter, the Farm Credit Administration shall determine whether the Farm Credit System is in need of financial assistance to address financial stress of System institutions.".

SEC. 215. OPERATING EXPENSES OF INSTITUTIONS.

Part D1 of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.28L (12 U.S.C. 2216k) the following new section:

"SEC. 4.28M. OPERATING EXPENSES OF INSTITUTIONS.—During the period beginning on date of enactment of the Agricultural Interest Rate Relief Act of 1987 and ending the later of September 30, 1990, or such time as the Secretary of the Treasury no longer holds any obligations issued by the Capital Corporation, the operating expenses of an institution of the Farm Credit System may not exceed the average cost of bonds issued by the System, plus 1 percent.".

SEC. 216. DISPOSITION AND LEASING OF FARMLAND.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.36 (12 U.S.C. 2219a) the following new section:

"SEC. 4.37. DISPOSITION AND LEASING OF FARMLAND.—(a) The Farm Credit Administration shall issue regulations for the disposition and leasing of farmland acquired by any institution of the Farm Credit System, including the Capital Corporation, (hereafter in this section referred to as an 'institution') in accordance with this section.

"(b) An institution shall to the extent practicable sell or lease farmland acquired under this Act in the following order of priority:

"(1) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

"(2) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.

"(c)(1) An institution shall not offer for sale or sell any such farmland if the placing of such farmland on the market will have a detrimental effect on the value of farmland in the area.

"(2) In selling such land, the institution shall give special consideration to a previous owner or operator of such land.

"(d)(1) An institution shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with subsection (e), a lease with an option to purchase farmland acquired under this Act.

"(2) The Farm Credit Administration shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

"(3) In leasing such land, the institution shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the institution determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

"(4) To the extent an institution may lease or operate real property under this section, the institution shall, if the institution determines to administer such property through management contracts, offer the contracts on a competitive bid basis, giving preference to persons who will live in, and own and operate qualified small businesses in, the area where the property is located.

"(e)(1) An institution shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

"(2) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the local board of the institution shall, by majority vote, select the operator who may purchase such land.

"(f) If farmland is available for disposition under this section, the institution shall—

"(1) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; and

"(2) post an announcement of the availability of such farmland in a prominent place in the local office of the institution that serves the county in which the farmland is located.".

SEC. 217. STOCK PURCHASE REQUIREMENT.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.37 (as added by section 216) the following new section:

"SEC. 4.38. STOCK PURCHASE REQUIREMENT.—A borrower must purchase stock in the Farm Credit System, in accordance with regulations issued by the Farm Credit Administration, to be eligible—

"(1) to obtain a loan from an institution of the Farm Credit System; or

"(2) to enter into an installment contract for the purchase of farmland acquired by the Farm Credit System.".

Subtitle C—Farm Credit System Associations

SEC. 220. TREATMENT OF CERTAIN FARM CREDIT ASSOCIATIONS.

Section 5.17(a)(2) of the Farm Credit Act of 1971 is amended by striking out in line 2 "; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this Act at a rate higher than that charged like associations in the district or (ii) discriminated against in the provision of any financial service and assistance" and insert in lieu thereof the following: ". The Farm Credit Administration shall ensure that disapproving associations (i) shall not be charged any assessment under this Act at a rate higher than that charged other like associations in the district and (ii) shall be

provided, on the same basis as like associations in the district, financial services and assistance".

TITLE III—FARMERS HOME ADMINISTRATION BORROWERS

SEC. 301. DEFINITIONS.

As used in this title

(1) BORROWER.—The term "borrower" means a borrower of a loan who meets the eligibility criteria prescribed in section 302.

(2) COMMITTEE.—The term "committee" means the appropriate county committee established under section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982).

(3) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan and the value of collateral used to secure the loan, taking into consideration the lien position of the Secretary;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of the Secretary;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and the ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(4) LOAN.—The term "loan" means a loan made by the Secretary under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

SEC. 302. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the Secretary that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 303. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, the Secretary must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this title.

SEC. 304. LOAN FORECLOSURE AND RESTRUCTURING.

If the Secretary determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this title, in lieu of foreclosure, the Secretary shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 305. ADDITIONAL COLLATERAL.

The Secretary may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of interest on the loan; or

(2) bring any action to foreclose on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of interest on the loan at the time the additional collateral was required.

SEC. 306. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If the Secretary determines that a person does not meet the eligibility criteria prescribed in section 302, not later than 15 days after such determination, the Secretary shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If the Secretary determines that the cost of restructuring a loan in accordance with this title exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the Secretary to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by the Secretary makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this title; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(B) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by the Secretary to a borrower and the cost of restructuring the loan in accordance with this title, the cost of the appraisal shall be borne by—

(A) the Secretary if the appraised cost of restructuring the loan in accordance with this title is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this title is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.—(1) If the Secretary determines that a borrower of a loan meets the eligibility criteria prescribed in section 302 and that the cost of restructuring the loan in accordance with this title is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the Secretary determines is adequate to enable the borrower to make payments in accordance with section 304; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or the method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by the Secretary shall have the right to appear before a committee to contest a determination, amount, or action under this title if—

(1) the Secretary and the borrower enter into an agreement under which the Secretary agrees to restructure the loan in accordance with this title and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the Secretary does not restructure the loan in accordance with this title; and

(3) the borrower makes a written request to the committee to contest the determination, amount, or action, as the case may be, not later than 30 days after the date by which the Secretary agreed to restructure the loan in accordance with this title.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 307. REPORT.

Not later than 270 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the operation of this title, including—

(1) an analysis of the impact of actions taken under this title on losses suffered by the Secretary;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by the Secretary under this title;

(4) the number and amount of loans restructured in accordance with this title;

(5) the number of current and estimated future delinquencies before and after the expiration of this title on loans made to borrowers; and

(6) the recommendations of the Secretary concerning reauthorization of this title.

SEC. 308. ALTERNATIVE CROP LOAN PROGRAM.

The Consolidated Farm and Rural Development Act is amended by inserting after section 352 (7 U.S.C. 2000) the following new section:

"SEC. 353. (a) For purposes of this section, the term 'alternative crop' means any agricultural operation (including aquaculture and livestock production) conducted by an applicant if—

"(1) there is no substantial history of such operation in the area in which the applicant resides; and

"(2) the applicant has derived from such operation not more than 20 percent of the gross annual income of the applicant during any of the 5 preceding taxable years.

"(b) In addition to the purposes prescribed in sections 303 and 312, the Secretary may make and insure, or guarantee, real estate and operating loans under subtitles A and B, respectively, to farmers and ranchers in the United States for the production of alternative crops.

"(c)(1) Subject to paragraph (2), to be eligible to obtain a loan or loan guarantee for a real estate or operating loan for the production of an alternative crop, a person must—

"(A) meet the eligibility requirements prescribed for a real estate loan under section 302 or an operating loan under section 311, respectively; and

"(B) submit to, and receive the approval of, the Secretary for a 5-year plan of projected production and income from the proposed alternative crop.

"(2) In determining eligibility for a loan or loan guarantee under this section, the Secretary shall consider training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operation, whether or not such training or experience is in the production of an alternative crop.

"(d) The Secretary may enter into a multiyear commitment to provide a loan or loan guarantee under this section for a term, of not to exceed 3 years, that is consistent with the nature of the alternative crop operation.".

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. INTER-AGENCY AGRICULTURAL TASK FORCE.

(a) ESTABLISHMENT.—In light of the severe economic problems confronted by many agricultural banks and the regulatory responsibilities of bank regulatory agencies, not later than 30 days after the date of enactment of this Act, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Reserve System shall develop an Inter-Agency Agricultural Task Force to assist commercial agricultural banks and the borrowers of the banks to resolve present economic problems and to facilitate commercial bank lending to agriculture in the future.

(b) DUTIES.—The Inter-Agency Task Force shall—

(1) review existing regulations and policies to facilitate agricultural lending;

(2) cooperate with field office personnel to avoid conflicts and inconsistencies between the agencies; and

(3) consider meaningful alternatives to assist commercial banks in providing agricultural financing through regulatory or statutory changes, including accounting changes, interest rate buy-downs, or other similar methods for assisting banks.

(c) REPORTS.—Not later than 6 months after the date of enactment of this Act, and semiannually thereafter, the Inter-Agency Task Force shall report its findings and recommendations in carrying out this section to—

(1) the Committee on Agriculture of the House of Representatives;

(2) the Committee on Agriculture, Nutrition, and Forestry of the Senate;

(3) the Committee on Banking, Finance and Urban Affairs of the House of Representatives; and

(4) the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 402. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Secretary and the Farm Credit Administration shall issue such regulations as are necessary to carry out provisions of this Act under their jurisdiction.

SEC. 403. GENERAL DEFINITIONS.

(1) INSTITUTION.—The term "institution" means an institution of the Farm Credit System described in section 1.2 of the Farm Credit Act of 19712 (12 U.S.C. 2002).

(2) INTEREST SUBSIDY PROGRAM.—The term "interest subsidy program" means the Federal-State Lender cooperative agricultural loan interest subsidy program established under title I.

(3) FCS LOAN RESTRUCTURING PROGRAM.—The term "FCS loan restructuring program" means the restructuring program established under substitle A of title II for loan made by institutions of the Farm Credit System.

(4) SECRETARY—The term "Secretary" means the Secretary of Agriculture.

(5) STATE.—The term "State" mean each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of The Northern Mariana Islands, or (to extent the Secretary determines it is feasible and appropriate) the Trust Territory of the Pacific Islands.

6. STATE AGENCY.—The term "State agency" means the agency designated by a State under section 106(b)(1) of this Act to carry out the interest subsidy program in the State.

SEC. 404. AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out titles I through IV of this Act.

SEC. 405. Except as otherwise provided in this Act, the authority granted by title I through IV of this Act shall terminate 3 years after the date of enactment of this Act.

TITLE V—EMERGENCY ASSISTANCE FOR CERTAIN AGRICULTURAL PRODUCERS

SEC. 501. EMERGENCY ASSISTANCE FOR CERTAIN AGRICULTURAL PRODUCERS.—Title VI of the Act making continuing appropriations for the fiscal year 1987, and for other purposes (Public Law 99-500) is amended in section 633(B) by—

(a) inserting before the first comma in the first sentence "or other law";

(b) inserting after "peanuts" in paragraph (a)(2) "or the 1987 crop of wheat";

(c) adding at the end of paragraph (a)(5)(A)(ii) a new sentence as follows: "To ensure equitable treatment of all producers suffering losses, the Secretary shall make adjustments in the actual production on the farm of such crop of the commodity to reflect any reduction in the quality of the crop that resulted from drought, excessive heat, floods, hail or excessive moisture in 1986.";

(d) inserting before the semicolon at the end of paragraph (a)(5)(B)(i) "or in the case of the 1987 crop of wheat, the 1987 permitted acreage determined for such crop";

(e) inserting after "of the commodity" in paragraph (a)(8)(A) "(in the case of the 1987 crop of wheat, the 1987 farm program payment yield for such crop)"; and

(f) adding at the end of paragraph (d)(2) a new sentence as follows: "Applications for payments with respect to the 1987 crop of wheat or with respect to other crops for which the actual production on a farm is to be adjusted by the Secretary under paragraph (a)(5)(A)(ii) must be filed before May 31, 1987.".

TITLE VI—RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS LOAN

SEC. 601. AMENDMENT TO THE RURAL ELECTRIFICATION ACT OF 1936.—Section 306A of the Rural Electrification Act of 1936 is amended to read as follows:

"SEC. 306A. PREPAYMENT OF FEDERAL FINANCING BANK LOANS.—(a) If on the date of enactment of the Interest Rate Relief Act of 1987 a borrower has an outstanding loan made by the Federal Financing Bank and guaranteed by the Administrator of the Rural Electrification Administration under section 306 of this Act (7 U.S.C. 936), the borrower may prepay such loan (or any loan advance made under thereunder) by paying outstanding principal balance due on such loan (or advance), if—

"(1) private capital, with the existing loan guarantee, is used to replace the loan; and

"(2) the borrower certifies that any savings for such prepayment will be passed on to its customers, used to improve the financial strength of the borrower in cases of financial hardship, or used to avoid future rate increases.

"(b) If prepayment on a loan (or advance) is made under subsection (a), no sums in addition to the payment of the outstanding principal balance of the loan (or advance) shall be charged as the result of such prepayment against (1) the borrower, (2) the Rural Electrification and Telephone Revolving Fund, or (3) the Rural Electrification Administration.

"(c) Any guarantee of a loan prepaid under this section with private capital under repayment terms agreeable to the borrower shall be fully assignable and transferable without condition and shall remain available for the remainder of the term originally agreed to by the Administrator.

SEC. 602. Regulations to implement the amendments made by section 601 shall be issued and become effective within 30 days of enactment of this Act. Such regulations shall (1) facilitate prepayment of loan advances, (2) provide for full processing of each prepayment request within 30 days of its submission to the Rural Electrification Administration, and (3) except as specifically provided for in this section, impose no restriction that increases the cost to borrowers of obtaining private financing for prepayment or inhibits the ability of the borrower to enter into prepayment arrangements pursuant to section 306A of the Rural Electrification Act of 1936.

SEC. 603. TRANSFER OF FUNDS.—Of the amount of net proceeds received from prepayments of principal on loans (or advances) made during fiscal year 1987 under section 306A of the Rural Electrification Act of 1936 or Public Law 99-349 in excess of $2,017,500,000, an amount that the Secretary of Agriculture determines necessary to carry out the provisions of titles I through IV of this Act, but not to exceed $700,000,000, shall be transferred to the Agricultural Credit Insurance Fund and shall remain available in such fund until expended for such purpose, an amount that the Secretary of Agriculture determines necessary for carrying out the provisions of section 633 of Public Law 99-500, but not to exceed $400,000,000, shall be transferred to the Commodity Credit Corporation and shall be available for such purpose, and an amount equal to $400,000,000 shall be transferred to the Agricultural Credit Insurance Fund and shall be available for emergency insured and guaranteed loans to meet the needs resulting from natural disasters.

By Mr. DANFORTH (for himself, Mr. BAUCUS, Mr. WALLOP, Mr. BOREN, Mr. DURENBERGER, Mr. MITCHELL, Mr. WILSON, Mr. DECONCINI, Mr. KERRY, Mr. CRANSTON, Mr. BINGAMAN, Mr. RIEGLE and Mr. SYMMS):

S. 58. A bill to amend the Internal Revenue Code of 1986 to make the credit for increasing research activities permanent and to increase the amount of such credit; to the Committee on Finance.

RESEARCH AND DEVELOPMENT INCENTIVE ACT

● Mr. DANFORTH. Mr. President, yesterday, President Reagan delivered his budget proposal for fiscal year 1988 to the Congress. In the description accompanying the President's budget proposal, the high priority that the administration places on basic research is clearly set forth:

The ability of the Nation to meet global competition, to provide for national security, and to improve the quality of life for all citizens depends in part upon national investments in science and technology. The Nation's future position in global markets will depend upon: the allocation of national resources to the generation of new knowledge; and the effective and timely transfer of this new knowledge to specific applications.

I wholeheartedly agree with this message. In the competitive world in which we live today we must stay on the cutting edge of research and development. We cannot afford to let our major international trading partners leapfrog over us into the forefront of high technology, research, and development. For this reason, I am introducing legislation, The Research and Development Incentive Act of 1987, which will shore-up and strengthen the research and development tax credit.

Specifically, the legislation that I am introducing will do two things. First, my bill will make the R&D tax credit permanent. The R&D credit was originally enacted by Congress in 1981 for a trial period of 5 years. The test of the credit was a tremendous success as private R&D in the United States has soared to record levels in recent years. In fact, for the first time ever private R&D spending rose during a recessionary period (1981-82).

When the credit expired at the end of 1985, Congress was in the midst of the tax reform debate, and the credit was viewed as only one small piece of a very large and complicated puzzle. When the 1986 tax bill finally passed, the R&D tax credit was extended for an additional 3 years through 1988.

In my opinion, this is inadequate. While we recognized the significant role played by the credit in encouraging research and development, we did not do the credit justice in 1986. Businesses must plan their R&D spending over long periods of time. To enhance business R&D planning, the credit must become a permanent aspect of our tax laws. It loses some of its punch when businesses cannot predict whether it will be here next year or the year after.

The second aspect of my bill restores the credit to its full strength. In 1986, Congress chose to reduce the rate of the credit from 25 percent to 20 percent. My bill will return the credit to 25 percent.

On first reaction, one might think that a 20-percent credit is fairly generous. In fact, other credits, such as the historic rehabilitation tax credit, are only 20 percent or less. The shortcoming in this thinking lies in a basic misunderstanding of the nature of the credit. Because the credit is an incremental credit, it is calculated as a percentage of a business' increase in R&D spending over its average R&D expenditures for the preceding 3 years. The credit is not a percentage of total R&D expenditures incurred during a particular tax year. Thus, a company that does the same amount of research and development every year is not entitled to any credit. Another company that increases its R&D by 20 percent over the average amount of its R&D in the preceding 3 taxable years, gets an R&D credit equal to approximately 3 percent of its total R&D, not 20 percent of its total R&D.

Experts have estimated that a 20-percent R&D credit has a real incentive value of approximately 5 percent, and that a 25-percent R&D credit would have a real incentive rate of roughly 7 percent. In my opinion, we erred last year when we reduced the real incentive of the R&D credit from 7 percent to 5 percent. A study released by the Congressional Research Service in 1985 concurs in my conclusion. That study stated that "tax rate reductions may actually have a negative impact on R&D investments and justify a retention or an increase" in the R&D credit.

Mr. President, before concluding I want to quote from an editorial by John Chancellor delivered last May during the national debate on tax reform:

If the United States is going to prosper at home and compete abroad it needs all the R&D investment it can get. Research is something this country is better at than almost all other countries. Companies with the biggest R&D investments do better overseas than almost any other sector of the American economy.

I was in Tokyo a few weeks ago. The Japanese are facing stiff competition from countries like Taiwan and South Korea. So the Japanese companies are increasing investment in R&D to develop more sophisticated products.

Matsushita Electric has boosted its R&D budget to a billion and a half dollars a year, and that's competition for America. There are lots of sacred cows which may be slaughtered in the new tax bill, but incentives for research and development are still alive. Killing them would be dangerous butchery.

The 100th Congress begins with the buzzword "competitiveness" being attached to every new idea or bill. It is my hope that we will take the opportunity to recognize a proven tool in our national struggle to remain competitive. I hope that we will act swiftly and pass my bill. We must demonstrate unequivocally that research and development is a national priority.

Mr. President, I ask unanimous consent that the entire text of my bill be included in the RECORD.

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

S. 58

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 Research and Development Incentive Act of 1987."

SECTION 2. RESEARCH CREDIT MADE PERMANENT.

Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking out subsection (h) thereof.

SEC. 3. INCREASE IN CREDIT FROM 20 PERCENT TO 25 PERCENT.

(a) IN GENERAL.—Section 41(a) of the Internal Revenue Code of 1986 is amended by striking out "20 percent" each place it appears and inserting in lieu thereof "25 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.●

● Mr. BAUCUS. Mr. President, today Senator DANFORTH and I are introducing legislation to make the research and development tax credit permanent and restore its 25 percent incremental rate.

Although the ink on the 1986 Tax Reform Act is barely dry, we believe it is important that Congress act swiftly on measures that are critical to U.S. competitiveness. R&D incentives fall into this category.

We cannot overemphasize the need for quick congressional action to im-

prove our competitiveness. Among other things, this means increasing U.S. research and development.

The United States cannot afford to be complacent about its research spending. R&D spending was stagnant in the United States for most of the 1960's and 1970's.

Japan, on the other hand, adopted an R&D tax credit in 1966 and has been increasing spending on R&D at a healthy clip ever since.

In fact, the Wall Street Journal reports that Japan now spends a larger share of its gross national product on research than the United States does. The same report places Japan third, after the Soviet Union and West Germany, in percentage of GNP spent on research.

Our R&D tax credit was not adopted until 1981. Since that time, R&D spending has climbed dramatically, from $30.9 billion in 1980 to an estimated $60 billion last year. We are making progress, but we still have a long way to go.

Last year, Congress extended the R&D tax credit for 2 years as part of the tax reform package. However, the credit's incremental rate was reduced from 25 to 20 percent.

Now that the rush of tax reform is behind us, it is time to look at the specific policies adopted and see how they can be improved without jeopardizing revenue estimates for the near future.

One important improvement would be to make the R&D tax credit permanent.

Developing new technologies is a long-term project. Companies must plan far ahead and accept substantial risks. Most experts who have examined the credit recommend a permanent R&D tax credit.

Martin Neil Baily and Robert Z. Lawrence, senior fellows at the Brookings Institution, have stated:

> It is a great mistake to enact only a temporary extension of the credit.

The Congressional Research Service's Jane Gravelle has said:

> Adopting the credit on a temporary basis for the purpose of assessing the effectiveness of the credit is self-defeating, because the very temporary nature of the credit makes it impossible to determine the incentive effect.

Kenneth Brown, who evaluated the credit for the Joint Economic Committee, has found that—

> The long-term nature of research and development is at odds with a temporary credit. A permanent credit would * * * be more cost effective.

In addition, the following groups have recommended that the research and development tax credit be made permanent:

The While House Conference on Productivity;

The Business-Higher Education Forum;

The National Association of Manufacturers;

The U.S. Chamber of Commerce;

Georgetown University's Center for Strategic and International Studies; and

The President's Commission on Industrial Competitiveness.

A second improvement would be to restore the credit to its original 25 percent incremental rate. The R&D tax credit is unique in that it can be claimed only for incremental increases in R&D spending. The credit was designed in this way specifically to encourage companies to spend more for research.

Evidence shows that the incremental feature of the credit worked. It was responsible for an estimated 6 to 7 percent of the increase in R&D spending since 1981.

Because the R&D tax credit is incremental, and because it is applied against a rolling base, the true value of the 25-percent credit was about 7 percent. By reducing its rate to 20 percent, Congress reduced the credit's effective value to about 5 percent.

It is unwise to dilute the credit. It is "penny wise and pound foolish." Economists have estimated that a permanent 25-percent R&D tax credit could add as much as $17 billion a year worth of research in 1991. Therefore, our legislation restores the rate to 25 percent.

For similar reasons, our legislation makes the new basic research credit permanent. This credit was adopted in the 1986 Tax Reform Act to encourage company support of basic research at universities and nonprofit research institutes.

A permanent credit will send a signal to the U.S. research community that the 100th Congress wants corporations and universities to work together on a long-term effort to keep our country first in the global technology race. For too many years the corporate/university research relationship suffered. Now, that relationship is improving. In introducing this legislation, we hope to further encourage corporate/university partnerships.

Mr. President, last year, as the tax reform bill was being considered, John Chancellor of NBC News editorialized about R&D incentives. His remarks bear repearing.

> If the United States is going to prosper at home an compete abroad it needs all the R&D investment it can get. Research is something that country is better at than almost all other countries. Companies with the biggest R&D investments do better overseas than almost any other sector of the American economy.
>
> I was in Tokyo a few weeks ago. The Japanese are facing stiff competition from countries like Taiwan and South Korea. So the Japanese Companies are increasing investment in R&D to develop more sophisticated products.
>
> Matsushita Electric has boosted its R&D budget to a billion and a half dollars a year, and that's competition for America.

Because of the central importance of technological advance to our future well-being, there is virtual unanimity among economists that the Government needs to intervene and prevent underinvestment in our most valuable resource: Ideas. Underinvestment in applied and basic research occurs because companies cannot fully capture the rewards from their investments. The rewards accrue to all of us at a rate that is fully 50 percent above that which an individual company receives.

The rewards accrue to States and businesses well beyond the Silicon Valley. Even in my State of Montana, which is not known as a technology-based State, the R&D credit is important. The growth of new businesses utilizing new technologies holds the promise for a prospering economy with new and stable jobs to replace those lost in farming, mining and forestry.

Those businesses range from pharmaceutical, agricultural, biological to chemical. They are providing innovations in microprocessing, lasers, communications, health care, toxic waste management, farm management and much more.

Mr. President, our legislation is a modest step to ensure that these and other U.S. businesses continue to provide America with first-class technology. But it is a very important step, one that should receive immediate attention as the first session of the 100th Congress convenes.●

● Mr. DURENBERGER. Mr. President, I am pleased to join my distinguished colleague from Missouri, Senator DANFORTH, in cosponsoring the Research and Development Incentive Act of 1987. At a time when this Nation's leadership in high technology processing and manufacturing is being seriously challenged, it is vitally important that we provide the strongest possible incentives to encourage American companies to strengthen their commitment to advanced research and development [R&D]. This legislation would do just that.

This legislation restores the incremental R&D tax credit rate to 25 percent. And it makes the credit permanent. Both of these changes are critically important, especially at this time when our trade deficit in manufactured products continues to worsen. The latest trade figures for manufactured products are devastating. They indicate that imports of manufactured products exceeded U.S. exports by $119 billion last year.

If we are to successfully turn this deficit around, and compete more effectively, we must sustain a serious commitment to advanced R&D. Otherwise, we will see a continuing erosion

of our economic leadership in the world and a continued decline in our standard of living.

When the Senate Finance Committee drafted its version of a tax reform bill last year, the committee maintained the R&D credit at 25 percent. However, when the bill emerged from the conference committee the credit was scaled back to 20 percent. At the same time, the conference committee adopted several provisions that will reduce corporate cash-flow and inevitably make it more difficult for businesses to generate sufficient funds for advanced long-term R&D. I believe these were short-sighted decisions that should be rectified immediately.

More importantly, the Tax Reform Act of 1986 only extended the R&D credit through the end of 1988. By extending the credit for such a brief period, I believe we sent the wrong signal to the American business community. We in this Chamber have often complained about the shortsightedness of American business. By contrast, many experts have expressed praise for the long-term commitments that our Japanese competitors make to developing new products and opening new markets.

Commitments to R&D projects must be made for the long-term, often extending for 5 to 10 years. Corporate budgets for such projects are dependent on cash flow projections which inevitably factor in tax provisions. By extending the R&D credit for just another 2 years, we have diminished the incentive effect of the credit and added further uncertainty for companies planning extended R&D projects. That decision surely reinforces short-term thinking at a time when we should be encouraging planning for the next decade and beyond.

Mr. President, an article in yesterday's New York Times discussed the findings of a report prepared by the Defense Science Board. That report indicates that in the critically important area of semiconductor products and processes, the United States is falling even further behind Japan. The report indicates that out of 25 semiconductor products or processes, Japan now leads in 12 categories while the United States lead in only 5 and maintains parity in the other 8. More importantly, our position relative to Japan is declining in 19 of the 25 categories, including 4 of the 5 in which the United States now leads.

This is a dangerous trend that has implications both for our national security as well as our economic security. It must be reversed. A permanent 25 percent R&D credit is but one element that will encourage American business to take greater risks in developing new products that will keep us at the cutting edge of technology.●

By Mr. HECHT (for himself and Mr. REID):

S. 59. A bill entitled the "National Forests and Public Lands of Nevada Enhancement Act of 1987;" to the Committee on Energy and Natural Resources.

NATIONAL FORESTS AND PUBLIC LANDS OF NEVADA ENHANCEMENT

Mr. HECHT. Mr President, on the last night of the last Congress I stood before this body to try to get favorable floor action on the National Forest of Nevada Enhancement Act of 1986. I was unsuccessful in that attempt because a number of my colleagues on the other side of the aisle were uncomfortable approving water rights language that would have kept intact the existing water rights regime in Nevada. Specifically, the bill I sought to pass would have avoided creating any new Federal reserve water right as a side-effect of the Forest Service—Bureau of Land Management interchange accomplished by that bill.

On that final night of the last Congress I promised the people of Nevada that I would return to the floor of the Senate at the very beginning of this Congress and reintroduce the bill. Today, Mr. President, I am making good on that promise. The National Forests and Public Lands of Nevada Enhancement Act of 1987 would transfer approximately 511,000 acres of Nevada's BLM land to the Forest Service, and approximately 23,000 acres of land from the Forest Service to the BLM. This bill will streamline land management in Nevada, and also ultimately make it less expensive to the taxpayers.

I thought last year, and still feel now, that the fairest and most reasonable approach regarding water rights on the lands changing hands is that which I championed in the last Congress, and that which my new junior colleague from Nevada, Senator REID, also supported last year in his companion legislation on the House side. Namely, we should just leave things as they are, hold all water rights interests harmless, and not change the rules of the game on anyone.

Now we are in a new Congress, and all interested Senators will have ample opportunity to examine this legislation and the significance of its language. This in contrast to the rushed and often confusing final hours of a Congress, when it is a lot simplier to just say "no" then to spend precious time studying a matter that primarily affects another State.

I am therefore both hopeful and optimistic, that given the chance to fully study the water rights protections in the bill I introduce today, the Senate will see the merit in that language and the bill and process the legislation with all deliberate speed.

By Mr. GARN (by request):

S. 60. A bill entitled the "Financial Services Competitive Enhancement Act of 1987;" to the Committee on Banking, Housing, and Urban Affairs.

FINANCIAL SERVICES COMPETITIVE ENHANCEMENT ACT

● Mr. GARN. Mr. President, today I introduce the Financial Services Competitive Enhancement Act of 1987 at the request of the American Bankers Association. This bill will enable large and small depository institutions to offer new insurance, securities, and real estate products to the American consumer, in part reflecting a trend in new laws passed or being considered by States and foreign countries. For example, New York and Wisconsin have recently taken actions to permit banks to engage in a broader variety of activities, and our neighbor Canada is seriously considering a similar course of action. The bill also modernizes the regulation of depository institutions to reflect changes that have already occurred in the marketplace as well as those proposed by this bill. These regulatory changes are all designed to preserve safety and soundness of the financial services system.

Mr. President, identical legislation is also being introduced today in the House of Representatives by Congressman DOUG BARNARD, and in fact, the bill is similar to legislation he introduced last July. The American Bankers Association has worked closely with Congressman BARNARD and his staff in drafting the bill, and has urged its prompt consideration by both Houses of Congress in a year when efforts to increase the competitiveness of all U.S. companies will dominate the legislative agenda. Because I heartily agree that financial services providers must be allowed to become more competitive—for the sake of the country as well as the American consumer—I have agreed to introduce this legislation today, at the beginning of this new Congress. While the bill contains several provisions that were not part of earlier bills I introduced to reform the financial services industry, such as S. 2851 which passed the Senate in 1984 by the overwhelming margin of 89 to 5, its thrust is similar. It is intended to spark debate and action on the spectrum of issues confronting the entire financial services system.

As I've already mentioned, the focus of this bill is to make U.S. financial firms more competitive, both to bring new benefits to American consumers and to strengthen the position of U.S. firms competing worldwide. It is no secret that the premier position of our institutions has been eroding. Japanese firms dominate the list of the world's largest banks and securities firms. And as our hearings before the Senate Banking Committee last February revealed, the United Kingdom

has streamlined its regulatory climate through the so-called big bang and other changes to attract capital and institutions from all over the world. Perhaps most importantly, many countries now permit their financial institutions to engage in a far wider range of activities than the United States does, particularly with respect to banks. This bill would enable banks to compete head-on, as they should be allowed to do to keep U.S. companies and U.S. markets innovative, strong, and prosperous.

The bill also provides substantial benefits to community banks who in recent years have faced increased competition in providing financial services in their local markets—from residential mortgages to automobile loans to even small business loans. In addition to helping them meet this competitive challenge, the ability to offer a broader array of financial service products will provide a more diversified income stream to community banks. This will enhance the ability of those banks to weather temporary economic downturns in their local economies and enhance those banks' ability to continue supporting local borrowers experiencing temporary cash-flow problems. As the manager of a community bank in Kansas testified before the Senate Banking Committee last spring:

We think the evolving integration of the services industry presents some great opportunities for us to have financial products that are tailored to meet our customers' need. But to take advantage of that, Congress needs to remove the restrictions which prohibit us from participating as equals in the areas of insurance and securities and real estate.

Mr. President, I have no illusions that every element of this legislation will pass or that it is perfect. It will undoubtedly be opposed by certain interest groups, and alternative legislation is likely to be introduced. It is, however, a clear step in the right direction, and it raises the issues that this Congress must confront and resolve in order to keep banks competitive, strong, safe, and sound.

Mr. President, I ask unanimous consent that a letter from the American Bankers Association, S. 60, be 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, Janaury 6, 1986.

Hon. JAKE GARN,
U.S. Senate, Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR GARN: Attached please find a copy of H.R. 50, "The Financial Services Competitive Enhancement Act of 1987" introduced today by Congressman Doug Barnard. The American Bankers Association has worked closely with Congressman Barnard and his staff in preparing this legislation.

On behalf of the American Bankers Association, we would greatly appreciate your introducing this same legislation in the U.S. Senate. You have been a leader during the past six years on legislation that would allow banks to adjust to the ever changing forces in the financial services marketplace. Therefore, we believe you would be an excellent sponsor for this legislation in the Senate.

There is strong public interest in maintaining a financial system capable both of meeting the diverse needs of individuals, businesses, and governments and facilitating a smoothly functioning economy with a minimum expenditure of resources. We believe this legislation will provide significant benefits to consumers. These benefits may take the form of lower prices for goods and services; increased use of goods and services; or the development of new products and repackaging of traditional services in new ways that promote their accessibility and utility to consumers.

We agree with you for the need of comprehensive legislation that would allow banks to compete equitably with other providers of financial services. It is crucial that legislation of this type be enacted in order to maintain a viable as well as a safe and sound banking system. We hope you will agree to introduce this legislation in order that it may be the subject of public debate and consideration in the Senate.

Sincerely,

EDWARD L. YINGLING.●

By Mr. STEVENS (for himself, Mr. MURKOWSKI, and Mr. DANFORTH):

S. 62. A bill to improve efforts to monitor, assess, and to reduce the adverse impact of driftnets; to the Committee on Commerce, Science, and Transportation.

PELAGIC DRIFTNET FISHERIES

Mr. STEVENS. Mr. President, the living marine resources off our coasts are under grave attack from the growing threat of plastic driftnets. These nets are suspended vertically in the water by floats, and are allowed to drift with the high sea currents. The nets are capable of entangling any species of fish, marine mammals, or sea birds which come into contact with them.

The driftnet fleets of Japan, Korea, and Taiwan have been allowed to grow at an alarming rate. The Japanese mothership salmon fishery currently operates 172 catcher vessels in the North Pacific Ocean. The squid and billfish driftnet fisheries sprang up in the late 1970's and have experienced the biggest growth in the last 3 years. The combined fleets field over 1,700 vessels in the North Pacific, and set more than 1 million miles of net annually.

The fleets have gone virtually unregulated, and the domestic regulations of the respective nations have a poor enforcement record. Last year, the Coast Guard sighted a number of Japanese and Taiwanese vessels in fishing zones prohibited by the laws of their own countries. The National Marine Fisheries Service law enforcement personnel recently seized 600,000 pounds of illegally caught salmon. The investigation is ongoing, but the preliminary indication is that the salmon were caught by Taiwanese vessels operating on the high seas.

U.S. conservation efforts within the Exclusive Economic Zone over anadromous species, marine mammals, and sea birds are being seriously undermined by these plastic curtains of death. The National Ocean Policy Study held oversight hearings on the impact of these driftnet fisheries. The little information which is available highlights serious disruption in the marine ecosystem caused by driftnets. It is estimated that over 1 million salmon of U.S. origin are caught or destroyed annually. Further catch statistics will probably reveal that the actual loss is much greater than the current estimates. These fleets also entangle Dall's porpoise, northern fur seals, and sea lions in the nets. The fur seal population of the Pribilof Islands has declined by over 400,000 animals. U.S. scientists believe that as many as 50,000 fur seals die annually as a result of entanglement in nets and other nonbiodegradable marine debris. The oversight hearing also produced testimony on the shocking number of driftnet-related mortalities in the sea bird population. Many of the species killed by the driftnets are protected by the Migratory Bird Treaty.

In response to concerns raised by Alaskan fishermen and the environmental community, I introduced S. 2611 last year. The legislation was designed to increase the availability and reliability of information pertaining to impact of the driftnet fisheries on living marine resources, and to impose further conservation measures within the U.S. Exclusive Economic Zone. S. 2611 passed the Senate Commerce Committee in July without objection, and was brought to the Senate floor in October. Unfortunately, last minute concerns were raised by New England fishermen and further consideration was postponed until this year. The New England fishermen believed that S. 2611 contained an assertion of jurisdiction over fishery resources outside the Exclusive Economic Zone. This concern is unfounded. There is nothing in the legislation which extends U.S. fisheries jurisdiction. The United States has already asserted jurisdiction over anadromous species such as salmon in the Magnuson Act, and our jurisdiction has been formally recognized in international agreements by the Governments of Taiwan, Japan, and Korea.

Mr. President, I am introducing today the legislation in much the same form as S. 2611. Senate Report 99-529 contains a concise explanation of the impact of the driftnet fishing fleets living marine resources. The report also provides an analysis of S. 2611 which serves as the basis for the legis-

lation I am introducing today. Senate hearing 99-562 is another excellent source of information on the driftnet issue.

Several of the provisions contained in S. 2611 have been modified to accommodate concerns raised by the State Department. First, the requirement that observers be placed on all vessels in the Japanese salmon fishery has been changed to require a sufficient number of research observers necessary to ensure 95 percent confidence in the information.

Second, the Secretary of Commerce is granted authority to modify the Sea Bird Protection Zone around the Aleutian Islands upon a finding that such modification will provide an equal or greater degree of protection for sea birds.

Third, the Secretary of State is provided with 2 years to enter into cooperative monitoring and research agreements with foreign nations before joint-venture fishing permits for nations that refuse to enter into such agreements by the end of the 2-year period may be denied.

Finally, a new provision has been included in the legislation which requires the administration to evaluate the feasibility of and provide recommendations for the use of our Nation's satellite resources to assist in the monitoring of driftnet operations. A coordination of satellite resources is imperative if we are to enforce our anadromous species jurisdiction in a cost-effective manner.

This legislation is critical to the conservation of our living marine resources throughout their migratory range. I call upon my colleagues to become informed on the issue and join with me in this effort.

By Mr. STEVENS:

S. 63. A bill to establish a National Commission on Acquired Immune Deficiency Syndrome; to the Committee on Governmental Affairs.

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Mr. STEVENS. Mr. President, acquired immune deficiency syndrome, more commonly know as AIDS, which was unknown in 1979, has emerged as a major sexually transmitted disease and has appropriately been placed at the top of the public health agenda by the Department of Health and Human Services. The AIDS virus now infects more than a million people in the United States and, to the best of our knowledge, most of these people will remain carriers for life. At least 100,000 of those people infected with the AIDS virus in the United States are women. Even more frightening are the prospects faced in other parts of the world. Infection in Central Africa, within the so-called AIDS belt, has risen to over 10 million people, accounting for almost one-tenth of the entire population.

The cases of AIDS reported thus far are only the beginning of the expected toll. At least 50 percent of those now infected will, within the next 5 to 10 years, progress to severe disease and death. We know that the virus inflicts serious damage on the immune system, with the resulting inability of the victim to fight off infections. It also causes gross impairment of the brain. In some cases, the brain is reduced by massive tissue destruction to one-third its normal size. Other life-threatening forms of this disease include at least three forms of cancer—all potentially lethal; infiltration of the lungs with white blood cells; and impairment of the clotting components of the blood.

If the spread of AIDS is not checked, the present epidemic will become a catastrophe. More than 1 in 10 Americans may be infected by this virus in the foreseeable future. In a recent report issued by the Surgeon General, Dr. Everett Koop, it is estimated that, by the year 1991, patients with AIDS will need health and supportive services at a total cost of between $8 and $16 billion. A constantly increasing population of AIDS patients will severely burden the health care system and cripple our armed services. I believe this situation demands both immediate action to stem the spread of infection and a long-term national commitment to produce a vaccine and therapeutic drugs.

Education is the key, along with basic scientific research. The National Academy of Sciences has indicated that a program of research will require at least $1 billion by 1990, with additional monetary commitments over many years. We have made only a start in meeting this crucial need. In the fiscal year 1987 continuing resolution, $396 million was provided for public health activities aimed at preventing and treating AIDS. This is in addition to the $21.8 million Congress appropriated, at my request, to fight AIDS in the military.

Federal agencies, including the National Institutes of Health, the Centers for Disease Control, and the Food and Drug Administration, have contributed enormously to the acquisition of knowledge about AIDS and the HTLV-III virus and to the development of techniques to help in its efforts with several Federal agencies, and is soliciting and reviewing extramural research proposals. I want them to continue their efforts, but greater involvement of the academic and private sectors must be encouraged. We need to determine the appropriate level of our national effort. There is also a need to mobilize existing resources, both fiscal and manpower, and encourage cooperation between the public and private sectors. To fill these needs—and also to inform the American public, Congress, and the executive branch—I have introduced legislation to form a National Commission on AIDS.

This Commission will be charged with comprehensively examining the AIDS issue, including research and current health care efforts; encouraging other public and private groups to become involved in domestic and international efforts on AIDS; and studying the employment, housing, and insurance problems incurred by individuals with AIDS, as well as any legal or ethical issues or violations of civil rights. The Commission will be asked to submit a report to Congress and the President making recommendations for legislative and administrative actions to prevent and treat AIDS, to provide education and information about this disease, to provide assistance to individuals having AIDS, and to coordinate our Nation's spending priorities relative to this disease.

Mr. President, we need to mobilize all existing resources through more effective coordination between the public and private sectors. To meet this need, and also to inform the American public, Congress, and the President, we must establish a National Commission on AIDS. I ask my colleagues to support this bill.

By Mr. CHILES:

S. 64. A bill to amend the Agricultural Adjustment Act to permit marketing orders to provide for paid advertising for Florida-grown strawberries; to the Committee on Agriculture, Nutrition, and Forestry.

PAID ADVERTISING FOR FLORIDA-GROWN STRAWBERRIERS

● Mr. CHILES. Mr. President, I am pleased to introduce legislation which will be of great assistance to Florida's strawberry growers. As you know, Florida is an important and growing producer of strawberriers. The Florida Strawberry Growers Association has been very successful in strawberry research, marketing, and services to its members.

Florida strawberry growers, through the Florida Strawberry Growers Association, have petitioned the Secretary of Agriculture for the eventual establishment of a Federal marketing order for strawberries in the State of Florida. An important part of this marketing order will be paid advertising. Provisions for paid advertising in the marketing order will greatly assist the growers in their promotion efforts.

The Agricultural Marketing Agreement Act of 1937 did not make provision for paid advertising as part of a marketing order. But through the years the act has been amended to allow such advertising for many commodities. Marketing orders for almonds, cherries, papayas, carrots,

citrus fruits, onions, tokay grapes, fresh pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, avocados, apples, and tomatoes may all involve paid advertising. The legislation I am introducing would add Florida strawberries to that group.

I commend Florida's strawberry growers on their successful efforts to promote their product and am pleased to introduce this legislation on their behalf.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 64

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

SECTION 1. PAID ADVERTISING FOR FLORIDA-GROWN STRAWBERRIES UNDER MARKETING ORDERS.

The first proviso of section 8c(6)(I) of the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(6)(I)), is amended by striking out "or tomatoes" and inserting in lieu thereof "tomatoes, or Florida-grown strawberries,".●

By Mr. HECHT (for himself, Mr. REID, Mr. SYMMS, Mr. NICKLES, Mr. GRAMM, Mr. MCCLURE, Mr. WALLOP, Mr. GRASSLEY, Mr. HATCH, Mr. COCHRAN, Mr. MELCHER, and Mr. WILSON):

S. 65. A bill entitled the "Highway Speed Modification Act of 1987"; to the Committee on Commerce, Science, and Transportation.

HIGHWAY SPEED MODIFICATION ACT

● Mr. HECHT. Mr. President, today I am reintroducing legislation I sponsored almost 2 years ago to modify the 55-miles-per-hour speed limit law. Since the introduction of that bill, S. 329, I have been impressed with the enormous public interest in this legislation and their support for changing this outdated law. Obviously, Congress holds the same viewpoint since just last fall, during consideration of the 1986 highway reauthorization bill, an amendment to change the 55-miles-per-hour law sponsored by Senator SYMMS and myself passed this body by a vote of 56 to 36. Under the provisions of that amendment, individual States would have been allowed to raise speed limits on rural interstate highways up to 65-miles-per-hour; however, only if the Governor so chooses.

The legislation I am offering today, Mr. President, is very similar to what the Senate approved last fall. Simply put, this bill, S. 65, allows our States the right to raise the speed limit up to 65 on all roads, interstate and noninterstate. It takes into full consideration that in high-density population areas, speeds should remain at 55. But is also acknowledges that our States are the only entities best suited to know what roads and highways are capable of being traveled at high speeds. And, most importantly, it returns that right back where it belongs, with the States.

Mr. President, there has been much written and said about whether or not we should change the 55-miles-per-hour law. I think there is no question we should, and it is obvious that most Americans think so too. In fact, it is estimated that today over 75 percent of all drivers do not comply. Why then should we not bring back some common sense and reality to the issue? Why should we not return this job back to our States? And, why must the Federal Government remain in the business of telling Americans how they should or should not drive?

I am pleased today, Mr. President, to be joined by Senators REID, SYMMS, NICKLES, GRAMM, MCCLURE, WALLOP, GRASSLEY, HATCH, COCHRAN, MELCHER, and WILSON in sponsoring this legislation. In a meeting Senator SYMMS and I had in the Oval Office last fall, President Reagan endorsed a change in the 55-mile-per-hour law as well. The Senate has spoken once, Mr. President, and there can be no doubt the time has come to give the American driving public a well deserved break from the 55-mile-per-hour law. I hope all my colleagues will join in this effort.●

● Mr. NICKLES. Mr. President, more than three-quarters of the drivers in our country regularly exceed the 55-mile-per-hour speed limit on rural interstate highways. Does this mean that we are a nation of reckless drivers? I do not think so.

Widespread noncompliance with the 55-mile-per-hour speed limit does indicate the drivers view this law as impractical, particularly on long straight stretches of well-constructed rural highways with little traffic.

Why is the Federal Government in the business of setting speed limits anyway? Until a little over 13 years ago, setting speed limits on roadways was a matter of State jurisdiction, set by our own State legislators. That is the way it should be.

In 1973, Congress made history by setting a Federal speed limit of 55-mile-per-hour. This was mainly a reaction to the OPEC oil embargo when conservation became a necessity. In 1974, the speed limit became permanent.

The only reason many States continue to enforce the 55 limit, against the will of the majority of their citizens, is because of the way the Federal Government enforces the law.

The Government says if a State's drivers exceed the speed limit more than 50 percent of the time, that State can lose up to 10 percent of its Federal highway construction money. In Oklahoma that would amount to approximately $20 million.

And to add insult to injury, that money is not Federal money at all—it is tax money States are required to charge their own citizens by adding an extra 9.5 cents onto the price of each gallon of gas they buy. Simply put, Washington threatens the States by withholding money that rightfully belongs to the States.

Also, the rationale for the 55-mile-per-hour speed limit is less meaningful than it was 13 years ago. Oklahomans are well aware that we have plenty of fuel available at a low price. Automobiles are more fuel efficient and safer. Even though Americans are driving over the speed limit, the automobile fatality rate is dropping and is statistically lower on rural interstates than on more populated roadways.

No one is saying that States—like some of the heavily populated Eastern States—should increase their speed limits. In parts of Oklahoma, there is no call for moving speed limits from their present level. But it is time to give back to States the authority to decide for themselves. Nobody knows better than the people of Oklahoma what is best for Oklahoma.

That is why I am once again joining with my colleagues to offer legislation which would allow each State to raise speed limits up to 65 miles per hour on roads outside urban areas.

This legislation mandates nothing. It simply says that each State will determine for itself whether rural highway speed limits should be increased without losing Federal funds.

I urge my colleagues to join me in putting States back in the driver's seat with this commonsense approach.●

By Mr. BUMPERS:

S. 66. A bill to provide for competitive leasing for onshore oil and gas; to the Committee on Energy and Natural Resources.

COMPETITIVE OIL AND GAS LEASING ACT

Mr. BUMPERS. Mr. President, I rise today to introduce for the fifth consecutive Congress a bill to reform the Federal onshore oil and gas leasing system.

As every Member of this body knows, I have long fought for this change in our current leasing system, which I believe is outmoded, susceptible to fraud and manipulation, and not designed to provide the Government with a fair return. The Federal Onshore Competitive Oil and Gas Leasing Act of 1987 would enact several long overdue changes to the Federal onshore leasing laws. These reforms will establish a leasing system which is fair and workable and will enhance our domestic energy situation. I urge my colleagues to support this bill.

PROBLEMS WITH THE CURRENT LEASING SYSTEM

Mr. President, I believe that reform of the Federal Government's onshore leasing system is absolutely necessary. The current system serves neither the public nor the oil and gas industry's best interests. For the edification of my colleagues who may not have heard this speech before, and to refresh the memories of those who have, I will attempt to summarize the problems with the present Federal leasing system for oil and gas.

Under existing law—the Mineral Leasing Act of 1920—only those lands with known oil and gas potential—those overlying a known geological structure of a producing oil or gas field [KGS]—may be leased on a competitive basis. Because of this restrictive test, less than 5 percent of all onshore leases are now offered competitively. Oil and gas leases not within a KGS must be leased noncompetitively—for a small filing fee and $1 an acre.

In addition to the restrictive nature of the KGS test, it is exceedingly difficult to apply with any degree of certainty. The distinguished Senator from Wyoming [Senator WALLOP] has called the KGS system "witchcraft, at best" and I emphatically agree. Currently, the Bureau of Land Management does not profess to make a technical or professional decision on whether lands overlie a KGS. They simply determine that if a tract is within a mile of producing acreage, it is presumed to be a KGS. Anything further than 1 mile from a producing tract is deemed not to be KGS lands.

The Bureau of Land Management has often made these determinations without current information on producing wells and complete, dependable geological data. These problems have been further complicated by staffing and communications problems within BLM. As a result of errors in BLM's KGS determination process, several leases, determined by BLM not to be within a KGS, have been leased on a noncompetitive basis, even though there was a high degree of competitive interest in the leases. In these instances, the Federal Government received far less than fair market value. The most egregious examples of these occurrences were at Fort Chaffee, AR and Amos Draw, WY.

In 1979 the Interior Department issued noncompetitive leases on 33,000 acres near known gas producing wells at Fort Chaffee for $1 an acre. Arkla gas used to set the leases aside, claiming that they were over a KGS and under the law, should have been leased competitively. The district court agreed, ruling that the Interior Department's decision to lease the area noncompetitively was arbitrary. This decision has been upheld on appeal. In 1980, 24,000 acres of adjoining lands were leased competitively for $1,705 per acre. So instead of the Treasury receiving $24,000 for the leases, it received $43 million, half of which was returned to the State.

More recently, 18 tracts in the Amos Draw region of Wyoming located adjacent to producing lands were leased noncompetitively. The Government received $13,000 in rental fees and $1.2 million in lottery filing for the tracts. Within 6 weeks, the lottery winners sold their lease right for fees estimated at $50 to $100 million. The Amos Draw scandal led to a suspension of the Onshore Leasing Program for 10 months from 1983 to 1984.

In 1984, the National Academy of Sciences began a thorough study of the KGS Program. The NAS report, issued earlier this year, makes several proposals for improving the program. However, the Academy's bottom-line conclusion was that its proposals "at best can lessen the criticism of the KGS Program—and that—that the nature of both oil and gas exploration and existing law preclude resolving the issues to everyone's satisfaction. Uncertainty and individual judgment will always exist even if every piece of data were required by the BLM. Some errors in classification will always occur." "Known Geological Structures Under the Mineral Leasing Act: Interpreting and Applying the Term Known Geologic Structure of a Producing Oil and Gas Field," National Academy Press, 1986, p. 82.

These findings support my belief that the existing competitive leasing system is anachronistic, wasteful and must be replaced. The committee bill would replace the KGS determination process with a neutral market based test. This change will help to assure that the Federal Government receives market value for its leases and will streamline the administration of the leasing program.

An equally serious problem associated with the current leasing system is the potential for fraud and abuse within the noncompetitive system, particularly within the simultaneous filing—(simo)—for lottery system. In 1980, evidence of multiple filings by single applicants in the lottery led to a 3-month hiatus in the program and remedial rule changes. Shortly thereafter filing services for the lottery began to spring up in large numbers. These services recruit clients and then, for a fee, file lottery applications in their names. These services commonly misrepresent the value of the tracts to be offered for lease and the filer's changes of winning a tract. A number of filing services charge service fees greatly in excess of actual filing fees. Some even claim to "guarantee" their clients will be winners.

At one time there were over 500 filing services operating in this country and State and Federal officials estimate that the public has been defrauded of between $200 and $300 million each year by these companies. At present, 44 filing services operate nationwide. This drastic reduction is due in part to the increase in the filing fee to $75 and the required prepayment of the first year's rental payment of $1 per acre. The reduction also reflects the increased investigative efforts of State governments, the Departments of Justice and the Federal Trade Commission to halt fraudulent activities.

Nevertheless, the unscrupulous are ingenious and indefatigable and other types of fraudulent activities have been introduced into the system. One example involves the so-called "40 acre merchants" who break up leases, which are typically over 1,000 acres in size, into 40 acre parcels and sell them to the unsuspecting public. Another fraud involves misrepresentation of the value of lands which were leased noncompetitively—for example tracts in Alaska with no known potential for oil and gas were sold as "valuable oil lands within sight of the Trans-Alaska pipeline."

My bill enhances the Government's authority to combat fraudulent practices and provides the Secretary of the interior with the authority to disapprove lease assignments of less than 640 acres. The requirement that all lands be subject to a competitive test before being offered noncompetitively should also reduce the lottery's attraction for speculators because lands available in the lottery would be presumed to be worth less than $20 an acre.

BACKGROUND AND SUMMARY OF LEGISLATION

For several years I have introduced legislation to establish an all-competitive leasing system for onshore oil and gas resources on Federal lands. I have championed the all-competitive approach here in the Senate for the past 7 years and I would still prefer to see an all-competitive system. However, in the hopes of achieving a consensus regarding leasing reform I introduced S. 2439 in May of last year. It is this legislation, with a few modifications, which the Energy Committee considered and reported to the Senate by a vote of 15 to 2. After further modification, the legislation passed the Senate at the end of the 99th Congress, but failed to be considered by the House of Representatives. The bill I am introducing today is similar to the committee-reported version of S. 2439, with a few technical modifications. The legislation creates a two-tiered system for onshore oil and gas leasing which can be summarized as follows:

All Federal lands subject to oil and gas leasing would be offered first for competitive bidding.

A minimum bid of $20 per acre would be required in the competitive tier. Parcels receiving at least one bid

of $20 or higher would be leased to the highest bidder.

Parcels receiving no bids or bids below the minimum would then be available for leasing in the second—noncompetitive—tier for 1 year.

If these parcels are not leased within the year, they again become available only under the competitive system.

The royalty payment under this proposal would be fixed at 12½ percent. Other lease terms, such as rental rates and the length of the lease remain as in existing law. The maximum lease size would be 2,560 acres, except in Alaska.

The primary virtue of this legislation, in my view, is that it eliminates the use of known geologic structures [KGS] as the determinant of eligibility for competitive leasing and substitutes a market based price test. The lottery system—for lands which have been leased previously—and the over-the-counter system—for lands which have never been leased—are preserved for those parcels which the market has determined to be worth less than $20 an acre. The Government's authority to combat fradulent practices involving the onshore oil and gas leasing system would be enhanced under the committee bill.

The Secretary would have new authority to disapprove lease assignments of less than 640 acres in order to prevent "40 acre merchants" from marketing small parts of leases to the unsuspecting public.

Specific authority to combat fraud, including civil and criminal penalties, is provided for regulatory and enforcement agencies.

The Congressional Budget Office estimated last year that passage of this legislation would increase gross Federal receipts from bonus bids by approximately $50 million in fiscal year 1987 and by about $100 million per year over the fiscal years 1988 through 1991. Net receipts to the Government would be $15 million for 1987 and $30 million, because half of the receipts go to the States and receipts for filing fees for noncompetitive leases would be slightly reduced.

Mr. President, this legislation does not provide all I would wish for in a leasing system for our Federal oil and gas resources. It is less than half a loaf for me. But I think it is a workable bill and a fair compromise between diverse interests. I urge the Senate to adopt this legislation and look forward to working with our colleagues in the House on this important issue. I hope that the 100th Congress will finally enact the leasing reform legislation which we have needed for so long.

I ask unanimous consent that a copy of the bill and a section-by-section analysis be printed in the RECORD immediately after my statement.

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

S. 66

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 "Federal Onshore Competitive Oil and Gas Leasing Act of 1987."

SEC. 2.(a) Section 17(b)(1) of the Act of February 25, 1920, (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State, where appropriate, not less than quarterly, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish by regulation a minimum acceptable price which shall be the same for all leases and which is at least $20 per acre. The minimum acceptable price shall be established without evaluation of the lands proposed for lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the minimum acceptable price. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall become available for leasing under subsection (c) of this section for a period set by the Secretary not to exceed one year after the lease sale.".

(b) The first sentence of section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)) is amended to read as follows: "(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding.".

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding a paragraph to read as follows:

"(c)(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period established by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows: "A minimum royalty of not less than $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil and gas in paying quantities in the lands leased.".

SEC. 3. The third sentence of section 30(a) of the Act of February 25, 1920 (30 U.S.C. 187(a)) is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or subleasee or for lack of sufficient bonds: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment (1) of a separate zone of deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment or sublease shall be processed promptly by the Secretary.".

SEC. 4. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or until plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 5. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) (16 U.S.C. 3148 (c) and (e)) are deleted in their entirety.

(2) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted.

(3) Subsections (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

SEC. 6. (a) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 CFR subpart 3112) and pending on the date of enactment of this Act shall be processed, and leases shall be issued under the provisions of the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions of other applicable law. If the date of enactment of this Act occurs during a simultaneous filing period prescribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(b) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all noncompetitive oil and gas lease offers filed pursuant to regulations governing the over-the-counter leasing system (43 CFR subpart 3111) prior to January 1, 1987, shall be proposed, and leases shall be issued under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in

effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the Secretary posts tracts for competitive sale containing lands in an over-the-counter noncompetitive lease offer filed between January 1, 1987, and the date of enactment of this Act, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(c) Notwithstanding any other provision of this Act, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 CFR subpart 3120) pending on the date of enactment of this Act shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(d) No competitive lease applications or offers pending on the date of enactment of this Act for lands within the Shawnee National Forest, Illinois; the Ouachita National Forest, Arkansas; Fort Chaffee, Arkansas; or Eglin Air force Base, Florida; shall be processed until these lands are posted for competitive bidding in accordance with section 2 of this Act. If any such tract receives no bid from a responsible qualified bidder then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued under the Act of February 20, 1920 (30 U.S.C. 181 *et. seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

SEC. 7(a) Except as provided in section 6 of this Act, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), after the date of enactment of this Act shall be conducted in accordance with the provisions of this Act.

(b) The Secretary shall issue final regulations within one hundred and eighty days after the date of enactment of this Act. The regulations shall be effective when published in the Federal Register.

(c)(1) Prior to issuing regulations implementing this Act, the Secretary shall hold at least one competitive lease sale pursuant to Section 2 of this Act. Sale procedures shall be established in this notice of sale. This sale shall include tracts which, but for the enactment of this Act, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 CFR subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 CFR subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 CFR subpart 3111) between January 1, 1987, and the date of enactment of this Act. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this Act, have been posted for filing of simultaneous applications do not receive bids of greater than or equal to the minimum acceptable price established by the Secretary at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section.

SEC. 8. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Except as otherwise provided in this section, nothing in this Act shall be considered as affecting the application of section 102 of the National Environmental Policy Act of 1969."

SEC. 9. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by inserting after section 40 the following new section:

"SEC. 41(a) Any person shall be liable under the standards set forth in subsections (c) and (d) of this section if that person misrepresents to the public by any means of communication the following:

"(1) The value or potential value of any lease or portion thereof issued under this Act;

"(2) the value or potential value of any lease or portion thereof to be issued by this Act;

"(3) the value or potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act;

"(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person; or

"(6) the provisions of this Act and its implementing regulations.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participating in exploration, leasing, or development of any federal mineral, or both.

"(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines and imprisonment afforded by any other law or regulation.

"(g)(1) A state may commence a civil action under subsection (c) of this section against any person conducting activity within the state in violation of this section. Civil actions brought by a state shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) This state shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thirty days of filing of the action.

"(3) Any civil penalties recovered by a state under this subsection shall be retained by the state and may be expended in such manner and for such purposes as the state deems appropriate. If a civil action is jointly brought by the Attorney General and a state, by more than one state or by the Attorney General and more than one state, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a state of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 9. Section 35 of the Act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end of the section:

"In determining the amount of payments to states under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States."

SEC. 10. The Secretary shall submit annually to the Congress a report containing appropriate information on the implementation of this Act. Such report shall include, but not be limited to:

(a) the number of acres leased, and the number of leases issued;

(b) the amount of revenue received from bonus bids, rentals and royalties;

(c) the amount of production from competitive leases issued under this Act and from competitive and noncompetitive leases issued prior to the enactment of this Act; and

(d) such other data and information as will facilitate (i) an assessment of the on-

shore oil and gas leasing system, and (ii) a comparison of the system as revised by this Act with the system in operation prior to this Act.

EXPLANATION OF COMPETITIVE LEASING BILL

GENERAL COMMENTS

The bill is based on S. 2439, as reported by the Senate Energy and Natural Resources Committee in July, 1986, with the addition of several technical amendments and substantive amendments of a minor nature.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title.

Section 2(a)—provides that all lands to be leased (except those in special tar sands areas) shall be leased by competitive bidding as long as the highest bid equals or exceeds $20 per acre or a minimum acceptable price established by the Secretary of at least $20. Any minimum acceptable price above $20 shall be established by regulation and shall apply to all leases.

Leases may contain no more than 2,560 acres, except in Alaska where the units may be 5,120 acres. Lease sales shall be held quarterly and shall be conducted by oral bidding. The royalty rate for leases is fixed at 12.5%. The lease term is the same as under existing law—5 years.

Section 2(b)—provides that all land receiving no bid or bids below $20 per acre will be made available for leasing for a period not to exceed one year, without competitive bidding to the person first making application for a lease. Noncompetitive leases issued under this authority would have a 10 year term, as in existing law.

Section 2(c)—provides that if no lease application is pending at the end of the one year period, lands shall again be available for leasing only on a competitive basis. Lands within a lease which is terminated, expires, is canceled or is relinquished shall again be available only on a competitive basis.

Section 2(d)—provides for a minimum royalty of not less than $1 per acre. This would eliminate the possibility of the minimum royalty being less than the rental rate on a lease.

Section 3—allows the Secretary to disapprove lease assignments of a part of a legal subdivision or of less than 640 acres outside of Alaska or of less than 2560 acres within Alaska, in addition to his current authority with regard to disapproval of assignments. The Secretary is directed to approve lawful assignments promptly.

Section 4—amends the cancellation provisions of the Mineral Leasing Act to conform to changes made in the leasing provisions.

Section 5—amends the Alaska National Interest Lands Conservation Act to eliminate the "favorable petroleum geological province" determination and to make leasing in Alaska subject to the provisions of this Act.

Section 6—describes "grandfather provisions" for lease applications pending at the time this Act is enacted. Paragraph (a) grandfathers pending simultaneous, noncompetitive applications and provides an orderly transition if the Department is conducting a simultaneous filing at the time this Act is enacted. Paragraph (b) grandfathers over-the-counter applications filed prior to January 1, 1987. The cut-off date will avoid a last minute rush of lease applications. Paragraph (c) grandfathers pending competitive applications. Paragraph (d) grandfathers pending, noncompetitive applications in certain controversial areas only if the lands are not leased competitively under section 2.

Section 7—requires issuance of regulations within 180 days of enactment of this Act and requires the Secretary to hold at least one lease sale under the provisions of this Act without having implemented regulations.

Section 8—provides that actions taken as a result of this Act are not "major federal actions" for the purpose of implementing section 102 (2) (c) of NEPA. Lease issuance will continue to be subject to NEPA.

Section 9—adds a new section 41 to the Mineral Leasing Act of 1920 to provide specific authority to combat certain fraudulent practices involving the Federal onshore oil and gas leasing program. Subsection 41(a) imposes liability on persons making misrepresentations to the public regarding the provisions of the Act, as amended or its implementing regulations, or regarding the value, potential value, or availability of leases. Subsection 41(b) imposes liability on any person who organizes, or participates in, any scheme, arrangement, plan or agreement to circumvent the Act, as amended, or its implementing regulations. Subsection 41(c) imposes a civil liability standard of "knew or should have known." It provides that the Attorney General shall institute a civil action against any person who, given the nature of the intended recipient of the communication, "knew or should have known" he was violating the provisions of the section. Subsection 41(d) imposes a criminal liability standard of "knowingly and willfully." Additional provisions provide liability and remedies for certain activities.

Section 10—provides that payments to the states under section 35 of the Mineral Leasing Act shall not be reduced by administrative or other costs incurred by the United States.

Section 11—requires an annual report from the Secretary of the Interior on the implementation of this Act.

By Mr. BUMPERS (for himself and Mr. ROTH):

S. 67. A bill to amend the Tax Reform Act of 1986 by repealing a certain transition rule; to the Committee on Finance.

REPEAL OF A CERTAIN TRANSITION RULE

Mr. BUMPERS. Mr. President, today I am reintroducing legislation to correct an egregious error in the Tax Reform Act. I introduced this same bill on the closing day of the last Congress—S. 2954, CONGRESSIONAL RECORD of October 18, 1986, at 33841—and I pledged then that I would reintroduce it again as soon as Congress reconvened. The Congress came very close to taking action to correct this error before we adjourned and it is time now that we take up this issue once again and resolve it.

This legislation would repeal a special "transition" rule which was slipped into the Tax Reform Act at the last minute before it was reported from the tax reform conference committee. This rule provides valuable tax benefits to certain aircraft manufacturers and puts all other aircraft manufacturers at a severe competitive disadvantage. By repealing this transition rule we can avoid an injustice to all of the U.S.- and foreign-owned companies which do not receive special treatment under the transition rule. The legislation I am introducing would repeal this transition rule retroactively to the effective date of the rule, December 31, 1985.

When I introduced this bill last October I was fully aware that the Senate would not be able to consider this legislation in the limited time we had available before we adjourned. In fact, S. 2954 was introduced immediately before the Senate adjourned sine die. When I introduced this legislation last October, I pledged to reintroduce the bill again at the start of this Congress and I also emphasized that S. 2954 and the bill I now introduce repeal this transition rule retroactive to the first day of 1986.

In my statement in October and in an earlier press release on this issue, I gave notice to all those who believed that they would receive the full benefits of this transition rule that they might not, in fact, receive these benefits. As I said in my introductory statement, "Those taxpayers who proceed to rely on this 'transition' rule in the tax reform act are taking a risk and they are acting at their peril." As I also said then, in introducing the bill I was "giving them more notice than was given to the aircraft manufactures not covered by this unfair and ill-advised 'transition' rule"—CONGRESSIONAL RECORD, October 18, 1986, at 33841.

The transition rule which this legislation repeals can be found in section 204(a)(11) of the Tax Reform Act. This provision can be found at page I-76 of the conference report on the tax reform legislation. This transition rule would provide special tax treatment to purchasers of aircraft manufactured in four States explicitly enumerated in the provision, Kansas, Florida, Georgia, and Texas.

As we all know, the Tax Reform Act repealed the investment tax credit effective for property placed in service after December 31, 1985. But under the aircraft transition rule, the ITC would not be repealed for the purchase of certain aircraft identified in the provision. The aircraft to which the ITC repeal is not effective are aircraft which are "In inventory or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986."

There were a few limitations in the rule. To be included in this rule, the aircraft must be subject to a sale contract binding "on or before December 31, 1986," and must be "delivered and placed in service by the purchaser, before July 1, 1987."

As you can imagine, this transition rule has been a major factor in general aviation aircraft sales over the past few months. Indeed, there was an unseemly rush to sell aircraft just before

the December 31, 1986, deadline. Now we will witness another rush to beat the July 1, 1987, delivery deadline. The effect of this rush is to reduce the tax liability of the purchases of the aircraft and every aircraft which was purchased resulted in a drain in Government revenue.

This is precisely the sort of tax-motivated behavior and tax avoidance that the tax reform bill supposedly was directed at curbing and this rush of sales and raid on the U.S. Treasury would have been prevented had the bill I introduced last October been adopted.

This aircraft transition rule on the ITC repeal is not unusual as compared to other transition rules except in that it applies only to aircraft manufactured in the four explicitely enumerated States I have just mentioned. This is the feature of the rule which is so strange and which creates the need for the legislation I reintroduce today.

The chairman of the Finance Committee said during the Senate debate on the tax reform conference report that "he was under the impression this provision covered all the domestic plane manufacturers in the United States"—September 27, 1986, RECORD at 26616. As I will explain, this impression was based on a misconception about the structure and location of the aircraft manufacturing industry in the United States. As a result of this misconception, the effect of this aircraft transition rule has been devastating to other aircraft manufacturers and their suppliers in the 46 States not covered by the rule.

For example, Arkansas—a State not covered by this transition rule—has two manufacturers of general aviation aircraft, Falcon Jet, a French-owned company, and the Arkansas Modification Center, which manufactures aircraft for British Aerospace. While neither of these companies is U.S. owned, both companies manufacturer planes which have over 50 percent valued added in Arkansas or from U.S. suppliers and the point of final assembly for these planes is in the United States. For example, the Falcon Jet uses engines manufactured by Garrett Turbine Engine Co. of Arizona and avionics manufactured by Collins Avionics of Iowa. The British Aerospace also uses Garrett engines. Both companies have major facilities in Arkansas, where much of the work on these planes is done.

Clearly, both of these companies are "domestic" in the key sense—they employ U.S. workers, directly and through U.S. suppliers, and the final assembly of the planes is in the United States.

Both of these companies manufacture aircraft which meet the intent of the rule except for the fact that they are manufactured in the "wrong" State, specifically in Arkansas. According to the rule, a plane is "manufactured" at the "point of its final assembly." In the case of both Falcon Jets and British Aerospace planes, the companies fabricate and install the cockpit and cabin furnishings, prepare and install the avionics equipment and radar, and paint the planes in Arkansas. These efforts include installation of any customer-selected optional equipment. In short, there is substantial manufacturing at the Arkansas facilities, contrary to the claims of some of the sponsors of this transition rule.

Both of these Arkansas companies have suppliers in other States. Ironically, four of the suppliers for Falcon Jet are in Florida, four are in Texas, and two are in Georgia, all States which otherwise benefit from the transition rule. Falcon Jet also has 22 suppliers in California, 5 in New York, 5 in Illinois, 5 in New Jersey, 3 in Ohio, 3 in Pennsylvania, 2 in Massachusetts, 2 in Minnesota, 2 in Michigan, and 1 each in Maryland, New Hampshire, Connecticut, and Mississippi. The suppliers of British Aerospace are similarly dispersed. It has 41 U.S. suppliers for one of its planes and 49 for another.

Let me emphasize, the only respect in which the aircraft manufactured by these two companies have not met the standards set in section 204(a)(11) is that they are not manufactured in one of the four explicitly mentioned States. If this provision had been drafted to apply to all 50 States, both of these companies would have had aircraft which qualified for the transition relief. If it had been drafted to apply to planes which contained 50 percent or more U.S. value added, planes of both companies would have been covered. The peculiar drafting of the transition rule alone bars its application to these two companies in Arkansas.

It should be obvious that Senator PRYOR and I were not involved in the drafting of the transition rule in the tax reform bill. To begin with, I did not support the retroactive repeal of the investment tax credit and have received many complaints from companies in Arkansas about this issue. I would support extending the ITC through 1986 for all taxpayers. If the ITC is repealed for all taxpayers, however, I would find it hard to justify any exception to that repeal. I would find it particularly hard to justify an exception that had the impact of the transition rule with which this legislation deals.

While I have not argued that the U.S. aircraft manufacturing industry needs or deserves any special transition rule, it is quite clear to me that if any sectors of this industry do receive benefits from some special transition rule then all sectors should be treated identically. This transition rule, however, directly and intentionally gives one sector of this industry a direct and valuable competitive advantage over another sector of this industry. This is anticompetitive. It is unfair. It is an abuse of the transition rule process.

Over the last 3 weeks of the last Congress, I worked to prevent the injustice which this transition rule has caused. On September 22 I wrote to the chairman of the Senate Finance Committee explaining the injustice of section 204(b)(11). Unfortunately, no corrective action was proposed in the technical corrections resolution, House Concurrent Resolution 395, which the House first adopted on September 25.

I then worked closely with the chairman of the Senate Finance Committee to secure an amendment to the House-passed technical corrections resolution to remedy this injustice. Throughout these discussions I made it clear that I would support either a repeal of the transition rule or extension of it to all U.S.-based manufacturers.

I made it clear, however, that I would prefer that the rule be repealed for everyone. Only when it became clear that the original sponsors of the rule would not agree to this did I seek to apply the transition rule generically to all U.S.-based manufacturers in all 50 States. In pressing to include Arkansas and other States to the list of States, I sought to prevent an injustice. If the rule was not to be repealed, the only way then to avoid the injustice was to add other States.

In pressing to include Arkansas I was not attempting to secure special treatment for an Arkansas company or for the business aircraft industry. Rather, I was trying to secure equal treatment for the business aircraft manufacturers in Arkansas. Neither these manufacturers nor I started this dispute. Had certain manufacturers not sought to obtain a competitive advantage over other U.S.-based companies I would not now be introducing this legislation.

The Senate first took up the House-passed concurrent resolution on October 16 and adopted an amendment to the House text. This amendment included an amendment to the aviation transition rule. I supported the amendment and said so in a floor statement during the debate—CONGRESSIONAL RECORD of October 17, 1986 at 33388—statement inadvertently printed the following day. The Senate amendment extended the reach of the provision to all 50 States and prevented it from providing a retroactive windfall to purchasers of aircraft before the transition rule was announced, that is purchases between January and August 16, 1986. The Senate adopted the concurrent resolution with this amendment—October 16, 1986, CONGRESSIONAL RECORD at 32350.

Unfortunately, the House refused to agree to all of the Senate amend-

ments—CONGRESSIONAL RECORD of October 17, 1986, at 32982—and it sent the resolution back to the Senate for reconsideration. My understanding is that the House did not consider each of the Senate amendments to House Concurrent Resolution 395 on the merits but was reacting to the fact that the Senate had offered a number of substantive amendments to the resolution.

The Senate took up the resolution a second time on October 17 and again proposed to modify the aircraft transition rule—CONGRESSIONAL RECORD of October 17, 1986, at 33382. I again spoke in favor of the Senate amendments—CONGRESSIONAL RECORD of October 17, 1986, at 33385. The Senate modification to the aircraft transition rule again made the rule generic to all 50 States and avoided a windfall for aircraft purchased before the conference committee adopted the rule.

When the House took up the entire concurrent resolution for a third time on October 18, it was unable to consider the Senate amendments on the merits due to objections which were filed by certain Members of the House. The House simply adopted the resolution in the same form as it had the previous day, sending the resolution back to the Senate in a form which the Senate already had twice rejected. By this time the Senate had adjourned sine die and the resolution died.

This means that the Senate action to remedy the error in the tax reform bill was not finally adopted, leaving the original error in the tax bill intact. What I am saying is that we tried to fix the problem created by the aircraft transition rule without having to resort to introducing this legislation but the House would not let us. I had no alternative but to introduce the bill to repeal the transition rule, which I did as soon as it was clear that the House would effectively kill the technical corrections resolution.

With this legislation, I am pressing now to repeal the "transition" rule altogether, the solution I have always thought was the best one available. Since the technical corrections resolution died at the end of the last Congress, the original agreement to extend the "transition" rule to the other 46 States no longer has any meaning and no longer is appropriate. Now it is simply an up-or-down matter on whether this rule should survive for the benefit of any purchasers of aircraft.

Let me explain why repealing the rule is the only option now available. As drafted the "transition" rule affects sales made before December 31, 1986. It has no effect on sales made this month or next month in 1987. Adopting a technical corrections bill extending the effect of this rule to sales made last year can have no effect on sales made then or on sales made now.

Given the fact that the "transition" rule only applied to aircraft manufactured in four States, it is implausable to think that the rule had any effect in 1986—other than a negative effect—on sales of aircraft manufactured in any other State. So, it no longer makes any sense retroactively to extend the "transition" rule to aircraft manufactured in the other States. All this does is provide a tax windfall to those persons who—despite the "transition" rule—went ahead in 1986 and bought aircraft from manufacturers located in the other 46 States.

There is only one other alternative for correcting this "transition" rule. It would be effective to provide aircraft manufacturers in the other 46 States with a tax benefit from August 16 to December 31 of this year. The aircraft manufacturers in these other 46 States could advertise the availability of the ITC for aircraft purchased between these two dates and this probably would induce some persons to buy aircraft manufactured this year in these States. This would be fair—the companies in the four favored States have had their day in the marketplace in 1986 and now it is time to give their competitors the same opportunity in 1987.

I have not proposed to provide this prospective, 1987 ITC window to aircraft manufactured in the other 46 States. It would be fair to do so and it would offset the competitive advantage that already has been given to the manufacturers in the four favored States. But, the cleanest and fairest approach is simply to repeal the rule altogether. That is the best approach. It saves revenue. It avoids an unfairness. If the Finance and Ways and Means Committees would rather provide a prospective remedy, however, I will be happy to consider it.

Adoption of this legislation will affect those persons who—despite my timely warnings in 1986—have bought aircraft manufactured in the four States mentioned in the transition rule. They undoubtedly will come here crying foul and demanding that they receive a tax benefit even though they have had no assurance of receiving it.

But it is not just purchasers of aircraft which have an interest in this transition rule. Some of the aircraft manufacturers are interested in this issue as well despite the fact that they have made all the tax-motivated sales they can make under this provision. It has come to my attention that one aircraft manufacturer has been agreeing to indemnify its customers for some of the value of the ITC should my legislation be adopted. In short, this company has been placing a bet on whether I will be successful in repealing the transition rule.

More interestingly, this company apparently was offering to indemnify its customers before last August 16, when the aircraft "transition" rule became a part of the tax reform bill. This indemnification offer is particularly interesting because as early as March 18 of last year it was on notice that the ITC probably would be repealed effective between January 1 and March 1, 1986. On May 6 of last year it was quite clear that the ITC would be repealed on January 1, 1986. Despite these facts the company continued to offer to indemnify its customers.

I do not know whether this company had any indication that an aircraft transition rule might later be included in the tax reform bill or whether it was simply placing a bet that something would happen on the ITC or that the tax reform bill would die altogether. I do not know if and when the company requested that any transition rule be included in the bill. I do not know when it finally learned that, in fact, an aircraft transition rule had been included in the conference report.

But, introduction of my legislation last October has put this company on notice that it too should not rely on this transition rule, that it should not offer to indemnify its customers if they did not receive an investment credit for their aircraft purchase. If it decided to continue to offer to indemnify its customers, it has done so at its peril. It has been warned and it cannot now claim that it is being treated unfairly for having continued to speculate on the fate of the ITC with respect to aircraft purchased in 1986.

The impact of the original provision in the tax reform bill on foreign-owned aircraft companies with substantial operations in the United States already has led to a major international dispute. This dispute probably will become quite nasty and it will have a damaging impact on international trade in civil aircraft. The issue does not now die simply because the rule is having no ongoing effect; the damage that has been done during the last 4 months of last year remains and festers.

The United States now is in the position where it may have to compensate foreign-owned aircraft manufacturers for the damage which has been done. The same type of transition rule may well be enacted by foreign governments and we will be in no position to complain. If this transition rule is allowed to remain on the books, it will continue to poison trade relations in civilian aircraft for years to come and the issues it raises will continue to be cited by our trading partners to justify their own protectionist behavior.

It is ironic that the United States has argued strenuously that the European airbus consortium should not do

precisely what this original provision would have done, discriminate against foreign companies and suppliers. Were this amendment to remain in effect, the airbus governments might be justified in providing launch aid for the A330/340 this March.

After the GATT conference in Uruguay last September, it is quite unwise for the United States to enact a provision designed specifically to benefit U.S. manufacturers and to give them a competitive advantage over their foreign competitors. We should not believe for 1 minute that the governments of France and Britain would stand by and permit the United States to provide special tax incentives only to United States companies and which benefits are specifically denied to French and British owned companies even though these companies have substantial manufacturing facilities in the United States?

In fact, the United States and France have signed an agreement on trade in civil aircraft, dated April 12, 1979, which includes an agreement "to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would create discrimination against suppliers from any signatory." Article 4.4. The transition rule in the tax reform bill would seem clearly to violate this agreement.

In 1985 the U.S. general aviation industry exported some 28 business jets and 54 small turbine-powered commuter airlines. Many of these come from the States covered in this "transition" rule. Sales of at least 20 aircraft by manufacturers in these States are currently pending with European customers. It will be interesting to see how this "transition" rule will affect sales of these and other aircraft. This rule may well boomerang on U.S. companies, particularly those in the four favored States.

I must say that even had the transition rule been amended to include all 50 States, it would have provided special tax benefits to U.S. taxpayers who purchase aircraft manufactured in the United States and would not provide these benefits to any U.S. taxpayer if the plane is not manufactured in the United States. This has the effect of an explicit "buy American" requirement. Even were the provision to include planes manufactured by foreign-owned companies in the United States, it would still not include planes which were manufactured abroad, either by U.S.-owned or foreign-owned companies.

As I have said, by introducing this legislation last October and announcing my intention to reintroduce it at the beginning of this Congress, I have provided full notice to all those who have been in the market for buying aircraft that they should not rely on this rule. In calculating the cost to them of any such purchase, they have been on notice not to take this transition rule into account. In fact, in introducing this bill last October, I was well aware that the introduction of the bill—with its retroactive effective date—would create some uncertainty in the civil aviation market and that is precisely what I intended to do. There was very wide publicity about my bill and there can be no purchaser of any aircraft since October 18 of last year who can now claim that they are surprised by what I am doing now.

I regret that we were unable to remedy this problem with the technical corrections resolution last October. I regret the impact which repeal of the transition rule will have on persons who made purchases of aircraft over the last 5 months.

But the transition rule is unjust. It has hurt companies in Arkansas and many other States. It has hurt them unfairly. It has hurt competition. The only alternative now is to repeal this mischievious rule.

I do not know whether I will be able to secure final enactment of this bill into law, but I am optimistic that the injustice of this transition rule will lead to remedial action by the Congress. There is no issue here of retroactive legislation unfairly depriving a taxpayer of rights he or she relied upon. The only issue is whether it is fair to provide transition relief for certain companies for the purpose of giving them a competitive advantage over their U.S.-based competitors.

I ask unanimous consent that the text of this bill be printed at this point in the RECORD.

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

S. 67

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

SECTION 1. REPEAL OF CERTAIN TRANSITION RULE.

(a) IN GENERAL.—Section 204(a) of the Tax Reform Act of 1986 is amended by repealing paragraph (11).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 1985, in taxable years ending after such date.

By Mr. TRIBLE:

S. 68. A bill to require the District of Columbia to reimburse Fairfax County and Prince William County, VA, for costs incurred in relation to the Lorton prison; to the Committee on Governmental Affairs.

REIMBURSEMENT OF EXPENSES RELATED TO LORTON PRISON

Mr. TRIBLE. Mr. President, I am introducing legislation today to ensure that the citizens of northern Virginia no longer bear the financial burden of playing host to the Lorton prison.

For many years, Washington, D.C.'s prison has been located in Fairfax County, VA. During those years, the Lorton correctional facility has been plagued by escapes, riots, and similar disturbances, and the financial burden of resolving those problems has often fallen on the residents of Fairfax County and Prince William County.

It is they who pay the cost of mobilizing the county police force to search for an escaped convict. It is they who pay county police to guard the prison's perimeter during a riot to help prevent escapes. And it is they who must finance other emergency efforts by county personnel made necessary by Lorton's presence in Fairfax County.

My proposal will redress this unfair situation by requiring that the District government reimburse Fairfax and Prince William Counties for expenses incurred by the counties in providing police, fire, and related services to the prison. Simply put, this bill will help place the financial burden of handling emergencies at Lorton back where it belongs—on the city that runs the correctional facility.

Last year, I offered an amendment similar to this to the D.C. appropriations bill. That amendment was approved by the Congress, and I am pleased that $100,000 of the District's fiscal year 1986 budget has been earmarked for reimbursements to Fairfax and Prince William Counties.

However, I believe that the reimbursement requirement must be made permanent. To that end, this bill will help ensure that the costs of maintaining the Lorton prison and responding to emergencies there will be borne by the District government and not by my constituents in northern Virginia.

Mr. President, I ask unanimous consent that a copy of this legislation be printed in the RECORD.

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

S. 68

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the District of Columbia shall reimburse Fairfax County and Prince William County, Virginia, for expenses incurred by those counties providing police, fire, rescue, and related safety and medical services to the Lorton prison in response to escapes, riots, and similar disturbances.

(b) Within 90 days of the date of enactment of this Act and every three months thereafter, the Mayor of the District of Columbia shall make a report to the Chairman of the Senate Appropriations Subcommittee on the District of Columbia and the Chairman of the House Committee on the District of Columbia regarding the amount and purpose of reimbursements made to Fairfax and Prince William Counties as required by this Act.

By Mr. TRIBLE:

S. 69. A bill to amend the Internal Revenue Code of 1986 to repeal the

basis recovery rule for pension plans; to the Committee on Finance.

REPEAL OF BASIS RECOVERY RULE

Mr. TRIBLE. Mr. President, today I am offering legislation to repeal a gross inequity in the Tax Reform Act of 1986 and to restore fair treatment for individuals who contribute to their retirement plans. This measure is desperately needed to protect the financial security for nearly 20 million workers across the Nation and I urge my colleagues to support this effort.

I remain adamantly opposed to any changes in the method of taxing contributory retirement benefits. Contributory pensions have traditionally been taxed according to the 3-year basis recovery rule. Under this rule, when the employee retires and begins to receive an annuity, these payments are not taxed until that individual has received—in the form of annuities—an amount equal to his own contributions to the retirement fund.

The basis recovery rule has worked well for many years and it should not be changed. Unfortunately, the adage, "if it ain't broke, don't fix it" was ignored last year. In the rush to enact tax reform legislation, Congress overlooked the legitimate concerns of over 19 million working Americans. Basic concerns of fairness and retirement security for individuals were shunted aside. The final version of the Tax Act imposed a retroactive repeal of the basis recovery rule.

The provisions of the Tax Reform Act affecting the basis recovery rule are patently unfair. It is simply unjust to change tax rules in effect for over 30 years, when working people have made retirement decisions based on this important provision.

Not only are the tax changes unfair, they have been imposed retroactively. Drastic changes in tax law, costing individuals thousands of dollars and upsetting retirement plans, were imposed retroactive to July 1, 1986.

This change is unprecedented, and this treatment is unconscionable.

The tax measure included thousands of changes in tax law. Yet, of all the changes adopted, only one provision affecting individuals only applied retroactively. The sole retroactive provision is the repeal of the basis recovery rule, affecting primarily public employees at all levels of government.

Why do we require these individuals who have relied on the 30-year-old formula to endure a loss of financial security not required of any other individuals? Why was this group singled out?

During debate on the tax bill conference report, one colleague after another expressed disappointment and opposition to the change in the basis recovery rule. In fact, nearly everyone who spoke on the bill singled out this provision as an unfair one.

Today, we have the opportunity to reconsider repealing the basis recovery rule. My legislation eliminates the changes imposed by the Tax Reform Act. It would allow employees to retire and have their annuities taxed under the rules which worked well for many, many years.

I cannot overestimate the deleterious effect of the basis recovery rule change. I urge my colleagues to join with me now in eliminating this patently inequitable provision.

By My. TRIBLE (for himself and Mr. D'AMATO):

S. 70. A bill to provide for the imposition of the death penalty for certain continuing criminal enterprise drug offenses; to the Committee on the Judiciary.

MAJOR DRUG DEALER DEATH PENALTY ACT

Mr. TRIBLE. Mr President, I am introducing legislation today that will add another weapon to the Federal Government's war on drugs by allowing for capital punishment of those convicted of major trafficking offenses.

As a former Federal and State prosecutor, I believe strongly in the value of the death penalty as a deterrent, and as a means of punishment. I also believe it is time to make the death penalty available for a growing and heinous crime—large-scale distribution of illicit drugs that results in the death of one or more individuals.

Early last year, the President's Commission on Organized Crime reported on just how serious a crime drug trafficking has become. According to the commission:

> Drug trafficking is the most serious organized crime problem in the world today. The drug trade generates billions of dollars for organized crime each year, imposing incalculable costs on individuals, families, communities, and governments worldwide.

Mr. President, the surge in illicit drug production and trafficking in recent years has upped the ante in the Nation's battle against the drug trade. Those who traffic in illicit drugs prey on our youth and impose unacceptable costs on society. It is time that the Federal Government imposed a comparable penalty on drug runners and their trade.

To that end, the legislation I am introducing would impose the death penalty on those convicted under 21 U.S.C. 848 of continuing criminal enterprises that result in drug-related deaths. This legislation has been drawn to comport with the Supreme Court's numerous holdings on the constitutionality of the death penalty. In so doing, the bill will make the death penalty available only in the following limited circumstances:

First, when the underlying offense, be it sales, importation, or another drug-related crime, is punishable as a felony;

Second, where the offense is one of a continuing series of such crimes, as part of which the offender holds a supervisory or authority position over five or more participants in the drug ring, and from which the offender derives substantial income;

Third, where the drug-related criminal enterprise results in the death of an individual.

Thus, this legislation is focused only on the Nation's major traffickers—those involved in large-scale distribution schemes, whose patterns of trafficking cause the death of one or more individuals. It is these big-time dealers who contribute most to the widespread availability of illicit drugs. And it is they who are most deserving of the toughest punishment that the Government can mete out.

I urge my colleagues to join me in cosponsoring this legislation. It is identical to legislation that passed the House during the 99th Congress. Regrettably, it was dropped from the Anti-Drug Abuse Act of 1986 before that measure passed the Senate, despite a procedural vote in its favor. It should have passed last year, and I believe the 100th Congress should pass it quickly this year. In so doing, we can provide a valuable tool for the Nation's prosecutors, who are on the front lines in the drug war. And, we can send a powerful signal to the Nation's drug runners that we will not tolerate the damage that drugs inflict upon our children, our families, our schools, and our communities.

I ask unanimous consent that a copy of this legislation be inserted in the RECORD at this time.

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

S. 70

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

SECTION 1. ELEMENTS OF OFFENSE.

Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking "(a) Any" and inserting "(a)(1) Except as otherwise provided in this section, any";

(2) by striking "; except that if" and inserting ". If"; and

(3) by adding at the end the following:

"(2) If an individual intentionally engages in conduct during the course of a continuing criminal enterprise and as a result of that conduct any individual (other than a participant in such criminal enterprise) dies, the individual so engaging shall be subject to the death penalty in accordance with this section.".

SEC. 2. PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH PENALTY.

Section 408 of the Controlled Substances Act is amended by adding at the end the following:

"HEARING REQUIRED WITH RESPECT TO THE DEATH PENALTY

"(f) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"NOTICE BY THE GOVERNMENT IN DEATH PENALTY CASES

"(g)(1) Whenever the government intends to seek the death penalty for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factor or factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

"HEARING BEFORE COURT OR JURY

"(h)(1) When the attorney for the Government has filed a notice as required under subsection (f) and the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"PROOF OF AGGRAVATING AND MITIGATING FACTORS

"(i) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (l) and (m), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (m), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during a trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the information.

"RETURN OF FINDINGS

"(j) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in subsection (l) or (m), found to exist. If one of the aggravating factors set forth in subsection (m)(1) and another of the aggravating factors set forth in paragraphs (2) through (7) of subsection (m) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding of such a factor by a jury shall be made by unanimous vote. If an aggravating factor set forth in subsection (m)(1) is not found to exist or an aggravating factor set forth in subsection (m)(1) is found to exist but no other aggravating factor set forth in subsection (m) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subparagraph (m)(l) and one or more of the other aggravating factors set forth in subsection (m) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"IMPOSITION OF SENTENCE

"(k) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"MITIGATING FACTORS

"(l) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant was less than eighteen years of age at the time of the crime.

"(2) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(3) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(4) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(5) The defendant could not reasonably have foreseen that his conduct in the course of the commission of murder, or other offense resulting in death for which he was convicted, would cause, or would create a grave risk of causing, death to any person.

"AGGRAVATING FACTORS FOR HOMICIDE

"(m) If the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim;

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim; or

"(D) intentionally engaged in conduct which—

"(i) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and

"(ii) resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (a)(1), the defendant knowingly created a grave risk of death to one or more persons in addition to the victims of the offense.

"(6) The violation of this chapter in relation to which the conduct described in subsection (a)(2) occurred was a violation of section 405.

"(7) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION

"(n) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"SENTENCING IN CAPITAL CASES IN WHICH DEATH PENALTY IS NOT SOUGHT OR IMPOSED

"(o) If a person is convicted for an offense under subsection (a)(2) and the court does not impose the penalty of death, the court

may impose a sentence of life imprisonment without the possibility of parole.

"APPEAL IN CAPITAL CASES

"(p)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of any aggravating factor, or the failure to finding any mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

By Mr. METZENBAUM (for himself, Mr. GLENN, Mr. RIEGLE, Mr. LEVIN, Mr. DIXON, and Mr. SIMON):

S. 77. A bill to amend the act of August 18, 1941, with respect to the preparation of cost and benefit feasibility assessments regarding certain emergency flood control projects; to the Committee on Environment and Public Works.

GREAT LAKES FLOODING

● Mr. METZENBAUM. Mr. President, I am today, along with Senators GLENN, RIEGLE, LEVIN, DIXON, and SIMON introducing legislation that addresses the serious problem of flooding along the Great Lakes.

Current water levels on Lakes Huron, Michigan, and Erie are higher than at any point in recorded history. The U.S. Army Corps of Engineers' most recent forecast indicates that the lake levels will continue to increase this spring. As the winter and spring storm seasons approach, there is general agreement among the corps and the International Joint Commission that the potential for an emergency and extensive flood damage is high.

Fortunately, we have in place a program that is designed to deal with such emergencies.

The so-called, Public Law 99, Advanced Measures Program, authorized by Congress in 1955, gave the Army Corps of Engineers continuing authority to take action to protect public health and safety against flood emergencies. The law created an emergency fund to be expended in flood emergency preparation * * * or restoration of any flood control work threatened or destroyed by flood.

According to Corps of Engineers regulatory guidelines, State Governors may request assistance when, "* * * confronted with an immediate threat of unusual flooding."

In short, the law is quite straightforward. The Federal Government is to help communities protect against imminent flooding.

In practice, however, the Corps of Engineers has been less than straightforward in administering the program. For Ohio and other Great Lakes States, obtaining advanced measures assistance has been nearly impossible.

Two years ago, the Governor of Ohio requested Federal assistance to help protect 50 sites from Lake Erie flood damage. Since that time, only two small dike projects have been completed.

Forty-one sites were cursorily dismissed after a brief field review. Two more were eliminated following a cost benefit analysis.

The total funds expended by the corps to protect the two sites was approximately $124,000—not exactly a big ticket item in the greater scheme of water related expenditures. Of particular concern is the fact that the Federal Government will spend many times that amount to clean up each of the unprotected sites after the inevitable flood occurs.

Communities in other Great Lakes States, including Michigan, New York, and Wisconsin have been at the receiving end of similar treatment from the Corps of Engineers.

The issue, however, is not simply projects. The issue is one of protection—of people's safety, their livelihoods and their property. Thousands of communities along the lakes are facing imminent flooding.

Most of these are working class communities, established along the lakes over 100 years ago. These people are not looking for a handout. They are simply asking their Government to help them get through this crisis.

A good example is Ottawa County in my own State of Ohio. Several large rivers snake through this low-lying region before emptying into Lake Erie. Today flooding is common throughout the entire county. On any given day flood waters extend 15 to 20 miles inland as the lake backs up into the rivers and drainage canals. Many roads are permanently under water. Formerly productive farmlands are now under water.

Twenty-six of the fifty proposed advanced measures Ohio sites would have been located in Ottawa County. None were approved by the Army Corps of Engineers.

Mr. President, Congress enacted the advanced measures program to help local communities prevent flood damage.

Unfortunately, the Corps of Engineers, through its administrative practices and policies, has defeated the purpose of the program.

The bill that I am introducing would get to the heart of the problem—which is the Corps of Engineers' cost benefit policy. Most of the advanced measures projects proposed by the Great Lakes States were rejected because they did not pass the corps'—not Congress'—rigid definition of cost effectiveness.

The corps' definition, in short, asks whether the cost of a proposed project is exceeded by the benefits to be gained by protecting residences only. Any benefits that would be gained by protecting farmers' crops, commercial establishments, inventories, or road access are simply ignored.

In my view, these are legitimate benefits that should be factored into the cost benefit equation.

What good does it do to save all the residences in Ottawa County if every business is wiped out? What do we accomplish by saving the farmer's house when his fields revert to wetlands and he goes out of business?

This bill will make sure the advanced measures program works the way Congress intended. The benefits to be considered in studying a proposed project will be defined to include the protection of residential, commercial and agricultural establishments.

In addition, the cost side of the equation would be limited to the Federal cost. I see no reason why cost analyses performed to determine the feasibility of a Federal undertaking should be based on an amount larger than that which the Federal Government plans to spend.

Mr. President, this is a responsible bill. It does not interfere with existing cost-sharing arrangements for the advanced measures program, under which State and local sponsors pay 30 percent of total project costs.

I believe it will save the Government money in the long run. I hope that my colleagues will see fit to support it.

I ask unanimous consent that a copy of this bill be printed in the RECORD.

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

S. 77

Be it enacted by the Senate and House or Representatives of the United States of America in Congress assembled, That section 5 of the Act of August 18, 1941 (33 U.S.C. 701n) is amended—

(1) by redesignating subsection (a) as subsection (a)(1); and

(2) by adding at the end of the subsection (a)(1), as redesignated by this Act, the following new paragraph:

"(2)(A) In preparing a cost and benefit feasibility assessment for any emergency

project described in paragraph (1), the Chief of Engineers shall consider the benefits to be gained by such project for the protection of—

"(1) residential establishments;

"(2) commercial establishments, including the protection of inventory; and

"(3) agricultural establishments, including the protection of crops.

"(B) For purposes of computing the costs of a project for any feasibility assessment described in subparagraph (A), such costs shall not be computed to be any amount in excess of the Federal costs related to such project.".●

By Mr. METZENBAUM (for himself and Mr. GLENN):

S. 78. A bill to amend the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

GREENMAIL AND NOTICE OF STOCK PURCHASES

● Mr. METZENBAUM. Mr. President, there are serious problems with the way companies are bought and sold in this country. Each of the past 6 years has witnessed a new record in the number of large mergers occurring in the United States. Recently, we have seen many of our major corporations financially weakened and saddled with debt as a result of hostile takeovers. We have seen wealthy entrepreneurs make vast fortunes in a few weeks by purchasing a foothold in a corporation, then selling back the stock in a short time at inflated prices not available to the average stockholder.

We can no longer take seriously the argument that all corporate takeovers are somehow the natural result of an efficient- and productive-free market. All unfriendly takeovers are not bad, but many are. They frequently exploit permissive laws and regulations which allow abusive takeover tactics. Raiders are free to proceed in a perfectly legal way, but in a way which unfairly exploits shareholders, damages corporations, and threatens the economic stability of the community.

During the last Congress, I introduced legislation dealing with a number of issues relating to the takeover process. I plan to do so in this Congress as well. Ultimately, Congress must pass balanced and comprehensive legislation, which protects the legitimate interests of the shareholders, the corporation, and the community as a whole. I hope to work with the business community in bringing about passage of such legislation.

Today I am introducing legislation dealing with two of the critical issues regarding the acquisition process about which there is a growing consensus. The bill I am introducing would, first, prohibit the payment of "greenmail" by corporations subject to a hostile takeover attempt. Second, it would close the "10-day window," which allows persons who have purchased 5 percent of a company's outstanding stock to delay giving notice to the other shareholders for 10 days.

The term "greenmail" refers to the purchase by a corporation of its own stock in order to rid itself of a takeover attempt by a hostile raider. In recent years, we have seen cases of raiders who walked away with instant fortunes when a corporation was forced to buy its own stock at a substantial premium.

One of the most notable cases in recent months was the attempted takeover of Goodyear by Sir James Goldsmith. Mr. Goldsmith purchased 11.5 percent of Goodyear stock over a period of weeks on the open market. In order to avoid the takeover, Goodyear bought back all his shares at $49.50 per share. As a result, Mr. Goldsmith walked away with over $90 million as well as payment of approximately $30 million in expenses. Goodyear also offered to purchase 40 million shares from all its stockholders at a price of $50. However, this offer, unlike the one to Mr. Goldsmith, was prorated for each shareholder based on the number of shares tendered.

In order to finance these stock purchases, Goodyear made the decision to sell three of its divisions and to institute cost-saving measures that resulted in closing some facilities. I fully understand how Goodyear's management came to the decision to restructure the company. However, no objective observer could say the company, its stockholders, or employees came out ahead. After the buyout of Mr. Goldsmith, Goodyear stock was trading at approximately $42. The only real winner in this case was Mr. Goldsmith himself.

Shortly after the Goodyear buyout of Mr. Goldsmith, Gillette paid a premium to Revlon to purchase more than 9 million of its own shares. The raider walked away with a huge profit, estimated to be about $40 million, while the ordinary shareholders' own stock plummeted in price.

Other examples of corporations purchasing their own stock at a premium are shown in the table below. The table shows that in these cases, the raider was paid a substantial premium over the prevailing stock price before and after the buyout.

Company suitor	Stock price per share		
	Week before buyout	Buyout price	Week after buyout
Walt Disney, Saul Steinberg	63.75	70.83	49.50
Houston Nat. Gas Coastal Corp	55.25	60.00	43.25
St. Regis, Sir James Goldsmith	39.88	52.00	39.75
Blue Bell, Bass Brothers	36.75	48.40	36.38
Quaker State, Saul Steinberg	18.25	24.00	17.00
Texaco, Bass Brothers	45.00	50.00	39.00
Warner Comm., Rupert Murdoch	24.50	31.00	22.13

Source: Newsweek, June 25, 1984, page 56.

There are three problems with the opportunity for a raider to obtain greenmail. First, other shareholders are treated unfairly since the raider is given preferential treatment. As the table above shows, the ordinary shareholder is frequently left with stock worth even less than the trading price before the takeover was initiated. Second, companies can be left financially weaker, and saddled with additional debt, after raising the cash to pay the premium to the raider. Finally, the opportunity to walk away with such a fortune attracts raiders in the first place, raiders who are not really interested in obtaining long-term control, improving management, or making the company more efficient.

The bill I am introducing today prohibits a corporation from purchasing its own stock at a premium over market if the stock owner holds over 3 percent of a class of securities and has held this stock for less than 2 years, unless the purchase has been approved by the shareholders or the same offer is made to the other shareholders. This provision is identical to that recommended by the Securities and Exchange Commission in 1984. (See S. 2784, introduced in the 98th Congress at the request of the Commission, June 20, 1984.)

The SEC did not resubmit its greenmail proposal during the 99th Congress on the grounds that greenmail transactions were declining. (See testimony of Chairman John Shad before the Senate Subcommittee on Securities, April 4, 1985.) Recent events cast great doubt on this conclusion, and I hope the Commission again will seriously consider making a recommendation in this area.

The Advisory Committee on tender offers, established by the SEC, also proposed a similar provision. (See report of recommendations, July 8, 1983, p. 46.) A greenmail provision was also reported by the Senate Banking Committee as part of S. 2581 in 1984 and subsequently passed the Senate. Thus, there has been substantial support for acting in this critical area.

The bill I am introducing today would also close the 10 day window for providing notice of stock purchases.

Under current law, a person purchasing securities must provide notice of his holdings and his intentions when he has purchased 5 percent of a company's stock. However, a loophole in the law allows a bidder to acquire substantially more stock before disclosure by deferring the disclosure requirement for 10 days.

In the Goodyear acquisition, Mr. Goldsmith actually purchased substantially more than 5 percent of Goodyear stock before public disclosure was made. This delay means that other stockholders who are unaware of the intentions of the raider continue to trade their stock at values far below those which would exist if the intentions had been made public.

The bill I am introducing today would reduce this 10-day period to 2

days, a much more realistic time for filing proper notice.

As in the case of the greenmail provision, the Securities and Exchange Commission proposed a very similar provision in the 98th Congress. (See S. 2784, introduced June 20, 1984.)

Mr. President, these two amendments to current law would provide a start toward constructively reforming the takeover process. We need to address other issues as well, including the structure of partial and two-tier tender offers, the time available to shareholders to respond to a tender offer, the Hart-Scott-Rodino Act premerger filing requirements, and other issues. I look forward to working with my colleagues as well as members of the business community and others to develop constructive proposals in these areas.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 78

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

GREENMAIL

SECTION 1. Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end thereof the following:

"(h) It shall be unlawful for an issuer to purchase, directly or indirectly, any of its securities at a price above the market from any person who holds more than 3 per centum of the class of the securities to be purchased and has held such securities for less than two years, unless such purchase has been approved by the affirmative vote of a majority of the aggregate voting securities of the issuer, or the issuer makes an offer to acquire, of at least equal value, to all holders of securities of such class and to all holders of any class which such securities may be converted.".

CLOSE OF "10-DAY WINDOW"

SEC. 2. (a) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by striking out "ten" and inserting in lieu thereof "two".

(b) Section 13(d) of such Act is further amended by adding at the end thereof the following:

"(7) A person subject to the requirements of paragraph (1) may not acquire, directly or indirectly, beneficial ownership of any additional shares of the equity security that is the subject of the statement required by paragraph (1) for two business days subsequent to the filing of such statement with the Commission. The Commission may, by rule, regulation, or order, in the public interest or for the protection of investors, exempt any person from the requirements of this paragraph.".●

By Mr. METZENBAUM (for himself and Mr. STAFFORD):

S. 79. A bill to notify workers who are at risk of occupational disease in order to establish a system for identifying and preventing illness and death of such workers, and for other purposes; to the Committee on Labor and Human Resources.

HIGH RISK OCCUPATIONAL DISEASE NOTIFICATION AND PREVENTION ACT

● Mr. METZENBAUM. Mr. President, the working men and women of this country should have a right to know if their jobs create a high risk that they will contract a life-threatening disease. And those who are at risk should have a right to advice on how to obtain appropriate medical monitoring. The High Risk Occupational Disease Notification and Prevention Act of 1987, which Senator STAFFORD and I have today introduced, endows workers with these simple yet life-saving rights.

Our bill will promote the process of early detection of occupational diseases through a system of identifying, notifying, and counseling workers at risk. We believe that enactment of this important measure will save thousands of lives and millions of dollars in private and Federal health care spending.

The asbestos tragedy has awakened the American public to the national problem of occupational disease. But asbestos is just one substance. Hundreds of others expose workers to similar dangers daily.

Each year, 100,000 workers die and 390,000 more are disabled from occupational disease. The Federal Government estimates that 880,000 workers face full- or part-time exposure to cancer-causing substances, and 40 million to 50 million American workers have been exposed to one or more of these hazards. In short, millions of Americans put their lives on the line every time they punch a time clock. These men and women have the right to know what risks they are taking and how to cope with them. To do any less is to participate in a conspiracy of silence which unnecessarily jeopardizes their lives.

While some progress has been made in regulating employee exposure to hazardous substances in the work place, there is much more to be done. American industry is not going to stop producing hazardous chemicals or other substances. Many of these substances are essential elements or by-products of the technology that contributes to our quality of life.

But the quest for improved technology must not blind us to the importance of combating occupational disease. It would be tragic if technological advancement took the lives of those workers who made progress possible. That is why a national detection and prevention effort is so critical.

A Federal notification program would help workers exposed to arsenic. They are at high risk of contracting skin cancer, a disease that can be treated successfully if medical screening occurs early enough.

Notification and medical screening also can help workers to take precautions. Workers exposed to asbestos run a high risk of contracting lung cancer, a risk that becomes even more grave if they smoke cigarettes. By assisting such workers to give up smoking, we can reduce significantly the incidence of this deadly disease.

Our proposed legislation establishes a low-cost system for identifying, notifying, and monitoring at-risk worker populations. Identification and notification, based on existing medical and scientific data, will be carried out by a professional panel operating under the direction of the Secretary of Health and Human Services. Workers who are identified and notified that they are at risk will be advised on how to initiate medical monitoring through their personal physicians or other medical and health professionals. Regional health centers designated by the Secretary will provide training and emergency backup assistance.

The bill includes an authorization of $25 million for each of the first 2 years following enactment. On this limited budget, the Secretary should be able to identify and notify 300,000 workers per year. The Federal cost of this effort will be fully offset so long as even 1 notified worker out of 30—or 10,000 workers—acts soon enough to benefit from preventive intervention or treatment and as a result saves an average of $2,500 in health care costs. If, as is far more likely, the health care savings per worker are 5 to 10 times that amount, the bill will save hundreds of millions of dollars in Federal health care expenditures. Even more significant, of course, are the savings in human terms; avoiding the misery of disabling or fatal diseases for thousands of American workers.

Senator STAFFORD and I introduced a similar bill during the last Congress. That bill, and a companion measure introduced in the House of Representatives, had the support of the American Cancer Society, the American Lung Association, the American Public Health Association, the American Psychological Association, the American Association of Occupational Health Nurses, the United Automobile Workers, the United Steel Workers of America, the Oil, Chemical and Atomic Workers, the International Association of Firefighters, the AFL-CIO and the Industrial Union Department of the AFL-CIO. We anticipate that the bill we are introducing today will be supported by an even more impressive array of public health associations and labor organizations.

During the last session of Congress, the Senate Subcommittee on Labor and the House Subcommittee on Health and Safety conducted exhaustive hearings on the high risk notification bill. At those hearings there was

considerable expert testimony in favor of the legislation. At the same time, the business community and the administration raised some legitimate concerns regarding the proposed legislation. In response to those concerns, we have modified the former Senate bill in several important respects:

This measure alters the definition of "risk" to conform to the definition used under the hazard communication standard promulgated by this administration;

It recognizes the need to coordinate employee notification with existing labeling requirements of the hazard communication standard, while emphasizing the additional medical surveillance component not present under current law;

This bill includes a more precise scientific approach to describing how exposed worker populations are identified and defined for purposes of notification;

It specifies a procedure for notification that includes a public hearing and the right to judicial review based on a complete agency record;

Finally, this measure provides for a simpler and more equitable allocation of the costs of medical surveillance between employers and employees in a population at risk.

The need for a notification and prevention program has never been more apparent. A study published last year in the New England Journal of Medicine found that three decades of medical research aimed primarily at cancer treatment have failed to stop the rising rate of death from cancer among Americans. One of its central conclusions is that as a Nation we must spend more money on cancer prevention, including showing the American people how changes in environmental factors can substantially reduce cancer risks. Anyone who has a passing familiarity with the enormous financial costs of health care coverage would reach the same conclusion. Indeed, at a recent health insurance conference on wellness in the workplace, an industry representative declared that the new challenge is to develop "proactive products" aimed at preventing health breakdowns rather than simply reacting to the expense of illness after it occurs.

Mr. President, I urge my colleagues to support this important initiative in the area of occupational health. It will save lives and it will save money.

Mr. President, I ask unanimous consent that the text of the bill I have just described, "the High Risk Occupational Disease Notification and Prevention Act of 1987," be printed in the RECORD.

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

S. 79

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 "High Risk Occupational Disease Notification and Prevention Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) potentially harmful substances, physical agents, and processes are in wide industrial and commercial use in the United States;

(2) a significant number of workers suffer disability or death or both wholly or partially as a result of being exposed to occupational health hazards;

(3) diseases caused by exposure to occupational health hazards constitute a substantial burden on interstate commerce and have an adverse effect on the public welfare;

(4) workers have a basic and fundamental right to know that they have been exposed to an occupational health hazard and are at risk of contracting an occupational disease;

(5) there is a period of time between exposure and the onset of disease when it often is possible to intervene medically in the biological process of disease either to prevent or, by early detection, successfully treat many disease conditions;

(6) social and family services that reinforce health-promoting behavior can reduce the risk of contracting an occupational disease;

(7) by means of established epidemiological, clinical, and laboratory studies, it is possible to define and identify specific worker populations at risk of contracting occupational disease;

(8) there is no established national program for identifying, notifying, counseling, and medically monitoring worker populations at risk of occupational diseases;

(9) there is a lack of adequately trained professionals, as well as appropriately staffed and equipped health facilities to recognize and diagnose occupational diseases;

(10) there is a need for increased research to identify and monitor worker populations at risk of occupational diseases; and

(11) through prevention and early detection of occupational disease the staggering costs of medical treatment and care in the United States can be substantially reduced.

(b) PURPOSE.—It is the purpose of this Act—

(1) to establish a Federal program to notify individual employees within populations at risk of occupationally induced disease that they are at risk because of exposure to an occupational health hazard, and to counsel them appropriately;

(2) to authorize and direct the certification of health facilities that have a primary purpose of educating, training, and advising physicians and other professionals in local communities throughout the United States to recognize, diagnose, and treat occupational disease;

(3) to expand Federal research efforts to improve means of identifying and monitoring worker populations at risk of occupational disease; and

(4) to establish a set of protections prohibiting discrimination against employees on the basis of identification and notification of occupational disease risk.

SEC 3. DEFINITIONS.

For the purpose of this Act:

(1) BOARD.—The term "Board" means the Risk Assessment Board established under this Act.

(2) COMMERCE.—The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Terriorty of the Pacific Islands), or between points in the same State but through a point outside thereof.

(3) EMPLOYEE.—The term "employee" means—

(A) an employee of an employer who is employed in a business of his or her employer that affects commerce; or

(B) a former employee who—

(i) was formerly employed by an employer in a business of his or her employer that at the time of employment affected commerce; and

(ii) as to whom any Federal agency maintains records pertaining to work history, or the employer maintains personnel records, medical records, or exposure records.

(4) EMPLOYER.—The term "employer" means a person engaged in a business affecting commerce who has employees, including the United States or any State or political subdivision of a State.

(5) HAZARD COMMUNICATION STANDARD.—The term "hazard communication standard" means the standard contained in section 1910.1200 of title 29 of the Code of Federal Regulations in effect on January 1, 1987.

(6) MEDICAL MONITORING.—The term "medical monitoring" means periodic medical examinations of employees who are at risk of occupational disease.

(7) OCCUPATIONAL HEALTH HAZARD.—The term "occupational health hazard" means a chemical, a physical, or a biological agent, or an industrial or commercial process, found in the workplace for which there is statistically significant evidence (based on at least one study conducted in accordance with established scientific principles) that acute or chronic health effects may occur in exposed employees. The term includes chemicals that are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents that act on the hematopoietic system, and agents that damage the lungs, skin, eyes, or mucous membranes.

(8) PERSON.—The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(9) POPULATION AT RISK OF DISEASE.—The term "population at risk of disease" means an employee population exposed to an occupational health hazard at intensities or for durations comparable to at least one study referred to in paragraph (7).

(10) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

SEC. 4. RISK ASSESSMENT BOARD.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Department of Health and Human Services the Risk Assessment Board.

(2) MEMBERSHIP.—The Board shall consist of 5 members. Board members shall be career or commissioned Public Health Service employees designated by the Secretary, to serve terms of 5 years, except that initially 1 member shall be appointed for 1 year, 1

member for 2 years, 1 member for 3 years, 1 member for 4 years, and 1 member for 5 years. The Board shall include an epidemiologist, a toxicologist, an industrial hygienist, a physician, and an occupational health nurse.

(3) CHAIRMAN.—The Secretary shall designate 1 member to serve as Chairman of the Board.

(4) VACANCIES.—Any member appointed to fill a vacancy in the Board that occurs prior to the expiration of a term shall be appointed to serve for the remainder of that term.

(5) REPORTING.—The Board shall report to the Secretary through the Assistant Secretary for Health.

(6) STAFF.—The Secretary shall provide a full-time staff necessary to carry out the functions of the Board.

(b) FUNCTIONS OF BOARD.—

(1) IN GENERAL.—

(A) DUTIES.—The Board shall—

(i) review current medical and other scientific studies and reports concerning the incidence of disease associated with exposure to occupational health hazards;

(ii) identify and designate from this review those populations at risk of disease that should receive notification pursuant to this act, including the size, nature, and composition of the populations to be notified; and

(iii) develop a form and method of notification that will be used by the Secretary, or agents of the Secretary described under section 6, to notify the designated populations at risk of disease.

(B) INFORMATION REQUESTS.—The Board, consistent with section 552a of title 5, United States Code (relating to privacy), may request information from any Federal agency or other government or private organization for the purpose of obtaining studies and reports conducted or initiated with respect to actual or potential occupational health hazards. The information shall be furnished consistent with provisions for Federal access set forth under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et. seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et. seq.), and regulations promulgated pursuant to such Acts.

(2) IDENTIFICATION OF POPULATIONS AT RISK OF DISEASE.—In identifying populations at risk of disease, the Board shall consider the following factors based on the best available scientific evidence—

(A) substances, agents, or processes that may be toxic based on epidemiologic and clinical observations of human populations, or animal and laboratory studies;

(B) estimates of increased risk of death or disease in specific sites, systems or organs of the body in exposed human populations; and

(C) estimates of increased risk of death or disease in exposed human populations related to industrial classifications, job categories, and duration and intensities of exposure.

(3) DESIGNATION OF IDENTIFIED POPULATIONS FOR NOTIFICATION.—

(A) DESIGNATION.—In designating populations at risk of disease for notification, the Board shall undertake as its first priority to designate populations likely to benefit from medical surveillance or health counseling.

(B) FACTORS.—In making the designation required by subparagraph (A), the Board shall consider but not be limited to—

(i) exposures for which there exists a permanent standard promulgated under section 6(b)(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)(5));

(ii) the extent of medical monitoring already available to employee populations covered by the permanent standards; and

(iii) the need to notify former employees as well as current employees.

(C) NOTIFICATION.—The Board shall notify or coordinate notification of not less than 100,000 employees per year. The Board shall make every reasonable effort to notify or coordinate notification of not less than 300,000 employees per year.

(4) DETERMINATION.—If the Board determines that a class or category of employees is a population at risk of disease to be notified pursuant to this Act, the Board shall—

(A) make such a determination pursuant to subsection (c); and

(B) within 10 days of making such a determination, transmit the determination to the Secretary that the individuals within such population be notified under section 5.

(c) PROCEDURES.—

(1) NOTICE OF PROPOSED DETERMINATION.—For each population designated for notification, the Board shall issue a notice of proposed determination.

(2) CONTENTS OF NOTICE.—The notice required by paragraph (1) shall—

(A) be published in the Federal Register;

(B) set forth which classes or categories of employees are being considered for inclusion as an employee population to be notified, and a concise statement of the basis for their inclusion;

(C) provide for the public to submit written views on the proposed determination within 45 days of the notice; and

(D) provide for a hearing within 30 days of the notice at which the public may express views on the proposed determination of the Board.

(3) FINAL DETERMINATION.—The Board shall issue a final determination within 45 days after the hearing based on the record developed pursuant to paragraph (2). The final determination shall be deemed to be a final agency action.

(4) EXTENSION.—The Board may, in exceptional circumstances, extend the time between the issuance of the notice described in paragraph (2), and the issuance of a final determination under paragraph (3), except that the extension may not exceed 150 days for the total period of time beginning with the issuance of the notice.

(5) ACTION.—Any aggrieved person may bring a civil action for mandamus in the appropriate United States district court if the final agency action is not completed within 90 days or 150 days, as the case may be.

SEC. 5. EMPLOYEE NOTIFICATION AND COUNSELING.

(a) NOTIFICATION OF POPULATION AT RISK.—On a determination by the Board that a given class or category of employee is a population at risk of disease to be notified pursuant to this Act, the Secretary shall make every reasonable effort to ensure that each individual within such population is notified of the risk.

(b) CONTENTS OF NOTIFICATION.—The notification shall include:

(1) HAZARD.—An identification of the occupational health hazard, including the name, composition, and properties of known chemical agents.

(2) DISEASES.—The disease or diseases associated with exposure to the occupational health hazard, and the fact that such association pertains to classes or categories of employees.

(3) LATENCY PERIODS.—Any known latency periods from the time of exposure to time of the clinical manifestation of the disease.

(4) COUNSELING.—Counseling information appropriate to the nature of the risk, including but not limited to—

(A) the advisability of initiating a personal medical monitoring program;

(B) the most appropriate type of medical monitoring for the disease associated with the risk;

(C) the name and address of the nearest occupational and environmental health center certified under this Act;

(D) the prohibitions against discrimination for notified employees, as established under section 9;

(E) employer responsibilities with respect to health care for notified employees, as established under section 9; and

(F) the telephone number of the hot line established under subsection (c).

(c) TELEPHONE INFORMATION.—The Secretary shall establish a toll-free long distance telephone "hot line" for employees notified under this section or their personal physicians, for the purpose of providing additional medical and scientific information concerning the nature of the risk and its associated disease.

(d) DISSEMINATION OF INFORMATION.—The Secretary, after consultation with the Board, shall prepare and distribute other medical and health promotion material and information on any risk subject to notification under this section and its associated disease as the Secretary and the Board consider appropriate.

(e) ACCESS TO INFORMATION.—In carrying out the notification responsibilities under this section, the Secretary, consistent with section 552a of title 5, United States Code, (relating to privacy) may request information from—

(1) any Federal agency solely for the purpose of obtaining names, addresses and work histories of employees subject to notification under this section; and

(2) any employer insofar as Federal access already is provided for under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), and regulations promulgated pursuant to such Acts.

(f) LIABILITY.—The Secretary and the agents of the Secretary (including any employer or government acting pursuant to section 6) shall not be liable under Federal or State law for monetary damages with respect to any omission or act performed pursuant to this section unless the omission or act is willful.

(g) JUDICIAL REVIEW.—

(1) PETITION.—Any person adversely affected or aggrieved by a determination of the Board under this Act that a given class or category of employees is or is not a population at risk of disease is entitled to judicial review of the determination in the appropriate United States court of appeals on a petition filed in such court. Any petition filed pursuant to this section shall be filed within 30 days after such determination by the Board. On the filing of a petition, the Secretary shall certify the hearing record.

(2) REVIEW.—The court shall review the determination of the Board based on the hearing record.

(3) JUDICIAL ACTION.—The court may set aside the determination of the Board under subsection (a) only if the determination is found to be—

(A) arbitrary, capricious, or an abuse of discretion;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations; or

(D) without observance of procedure required by law.

(4) STAY.—The commencement of proceedings under this subsection shall not operate as a stay of the requirement on the Secretary to notify employees unless the court specifically orders a stay based on a determination by the court that the complaining party is highly likely to succeed on the merits.

SEC. 6. MEANS OF EMPLOYEE NOTIFICATION.

(a) RESPONSIBILITY OF SECRETARY.—Except as otherwise provided in this section, the Secretary shall be responsible for notifying employees at risk of disease, as determined by the Board.

(b) COOPERATION WITH PRIVATE EMPLOYERS AND STATE AND LOCAL GOVERNMENTS.—

(1) IN GENERAL.—In carrying out notification responsibilities under subsection (a), the Secretary is encouraged to cooperate to the extent practicable with private employers and State and local departments of health.

(2) CERTIFICATION OF PRIVATE EMPLOYERS OR STATE OR LOCAL GOVERNMENTS.—

(A) IN GENERAL.—The Secretary may certify a private employer or a State or local government to conduct notification. Such certification shall require inclusion of the information described in section 5(b) and shall be in accordance with standards issued by the Secretary.

(B) ADMINISTRATION.—No private employer or public agency of a State or local government certified under this paragraph may receive payment for the cost of such notification from the United States or have a right of access to Federal records for the purposes of carrying out the notification.

(C) FORM OF NOTIFICATION.—The form of notification adopted by a private employer or public agency of a State or local government shall confrom, to the maximum extent practicable, to a model notification form issued by the Board under section 4(b).

(c) EMPLOYEES NOT CURRENTLY EXPOSED.—

(1) IN GENERAL.—In the case of former employees and employees for whom no exposure to the occupational health hazard occurred in the course of current employment, the notification shall be transmitted to each employee in the designated population at risk of disease who was exposed to the occupational health hazard within 30 years prior to the date of notification.

(2) INDIVIDUAL NOTIFICATION.—Notification shall be on an individual basis, except that if individual notification is not reasonably possible, the notifying entity shall make use of public service announcements and other means of notification appropriate to reach the population at risk.

(d) EMPLOYEES CURRENTLY EXPOSED.—

(1) IN GENERAL.—In the case of employees for whom any exposure to the occupational health hazard occured in the course of current employment, notification shall be transmitted to individual employees and posted prominently at the worksite in places easily accessible to and frequented by the employees in the population at risk.

(2) EMPLOYERS SUBJECT TO HAZARD COMMUNICATION STANDARD.—If the employer is subject to the hazard communication standard with respect to the occupational health hazard in question, notification shall include a concise summary of the information contained in any material safety data sheet prepared on the occupational health hazard pursuant to the hazard communication standard. The concise summary shall be written in a manner calculated to be understood by the average employee.

SEC. 7. OCCUPATIONAL AND ENVIRONMENTAL HEALTH CENTERS.

(a) SELECTION FROM AMONG EXISTING FACILITIES.—

(1) ESTABLISHMENT AND CERTIFICATION.—Within 90 days after the effective date of this Act, the Secretary shall establish and certify 10 health centers. The Secretary shall select the 10 health centers from among the educational resource centers of the National Institute for Occupational Safety and Health and similar facilities of the National Institute for Environmental Health Sciences, the National Cancer Institute, and other private or governmental organizations designated by the Secretary. At a later date, the Secretary may establish and certify additional health centers from among the health care facilities described in this paragraph so as to obtain not more than 1 center per State throughout the United States.

(2) BASIS FOR SELECTION.—In carrying out paragraph (1), the Secretary shall base selection on ability and experience in the recognition, diagnosis, and treatment of occupationally related diseases in an ethical manner and capacity to offer training to physicians and other professionals.

(b) FUNCTIONS OF CENTERS.—The centers shall—

(1) provide education, training, and technical assistance to personal physicians and other professionals who serve employees notified under section 5; and

(2) be capable of providing diagnosis, treatment, medical monitoring, and family services for employees notified under section 5.

SEC. 8. RESEARCH, TRAINING, AND EDUCATION.

(a) IMPROVED METHODS OF MONITORING AND IDENTIFICATION.—The Board shall conduct or provide for research, training, and education aimed at improving the means of identifying employees exposed to occupational health hazards and providing medical assistance to such employees. The research, training, and education shall include but not be limited to—

(1) studying the etiology and development of occupationally related diseases, and the development of disabilities resulting from such diseases;

(2) developing means of medical surveillance of employees exposed to occupational health hazards;

(3) examining the medical treatment of workers exposed to occupational health hazards, and means of medical intervention to prevent the deterioration of the health and functional capacity of employees disabled by occupational diseases;

(4) studying and developing medical treatment and allied health and social services to be made available to employees exposed to occupational health hazards;

(5) developing educational programs designed to train physicians and other professionals who assist employees and their families in undertaking measures which ameliorate the effects of those diseases; and

(6) sponsoring epidemiological, clinical, and laboratory research to identify and define additional employee populations at risk of disease.

(b) AUTHORITY TO EMPLOY EXPERTS AND CONSULTANTS.—In carrying out activities under this section, the Board is authorized to engage the services of experts and consultants, as the Board considers necessary.

(c) COURSES OF STUDY ON OCCUPATIONAL DISEASE.—

(1) FEDERAL FINANCIAL ASSISTANCE.—No school of medicine may receive federal financial assistance in any academic year beginning after the date of enactment of this Act unless the school of medicine offers a course of study on occupational disease consisting of a minimum of 20 actual hours of didactic and practical instruction.

(2) ADMINISTRATION.—The Secretary shall enter into such arrangements with the head of other appropriate departments and agencies, as the Secretary determines are necessary to carry out the policy required by paragraph (1).

(3) DEFINITIONS.—For the purpose of this subsection:

(A) FEDERAL FINANCIAL ASSISTANCE.—The term "federal financial assistance" includes financial assistance by grant, loan, or contract other than a contract of insurance or guaranty.

(B) SCHOOL OF MEDICINE.—The term "school of medicine" has the same meaning given such term under section 701(4) of the Public Service Health Act (42 U.S.C. 292a(4)).

SEC 9. EMPLOYEE TESTING; DISCRIMINATION AGAINST EMPLOYEES.

(a) EMPLOYEE TESTING.—For any employee notified under section 5, the testing, evaluation, and medical monitoring recommend as a result of exposure to the occupational health hazard shall be provided or made available by the current employer—

(1) at no cost to the employee if any part of such exposure occurred in the course of the employee's employment by that employer; or

(2) at a charge to the employee not exceeding the cost to the employer if no part of such exposure occurred in the course of the employee's employment by that employer (or if the employer so determines, at no charge to the employee).

(b) DISCRIMINATION PROHIBITED.—No employer or other person shall discharge or in any manner discriminate against any employee on the basis that the employee is or has been a member of a population that has been determined by the Secretary to be at risk of disease.

(c) BENEFIT REDUCTION PROHIBITED.—If, following a determination by the Secretary under this Act, it is medically determined by the employee's designated physician (in consultation with the employer and the employer's medical representative) that an employee should be transferred to a less hazardous or nonexposed job, the employee shall maintain the earnings, seniority, and other employment rights and benefits, as though the employee had not been transferred from the former job. The medical transfer protection described in the preceding sentence shall be provided for as long as a less hazardous or nonexposed job is available, or, where said job is not available, for a period determined by the physician not to exceed 12 months.

SEC. 10. ENFORCEMENT AUTHORITY.

(a) RECORDKEEPING.—The Secretary shall require recordkeeping necessary to monitor the numbers, types and results of notification under this Act.

(b) INJUNCTIVE RELIEF.—

(1) ACTION.—Whenever the Secretary determines that any person is engaged or is about to be engaged in an act or practice constituting a violation of this Act or any rule or regulation promulgated under this Act, the Secretary may bring an action in the appropriate United States district court to enjoin such acts or practices.

(2) INJUNCTION OR RESTRAINING ORDER.—On a proper showing, an injunction or permanent or temporary restraining order shall be granted without bond.

(3) EFFECT OF OTHER SECTION.—Section 5(f) shall not limit the authority of the Secretary under this subsection.

(c) WILLFUL VIOLATIONS.—

(1) ACTION.—The Secretary may bring an action in the appropriate United States district court against any person who commits a willful violation of this Act, or any rule or regulation promulgated under this Act.

(2) PENALTY.—Any person who willfully violates this Act, or a rule or regulation promulgated under this Act, shall be assessed a civil penalty of not more than $10,000 for each violation.

(d) REVIEW OF DISCRIMINATION COMPLAINTS.—

(1) IN GENERAL.—

(A) APPLICATION FOR REVIEW.—Any employee who is aggrieved by a violation of section 9(b) or 9(c) may, within 6 months after such violation occurs, apply to the Secretary of Labor for a review of such alleged violation.

(B) INVESTIGATION.—On receipt of such application, the Secretary of Labor shall cause such investigation to be made as the Secretary of Labor considers appropriate.

(C) ACTION.—If, no such investigation, the Secretary of Labor determines that this section has been violated, the Secretary of Labor shall bring an action in any appropriate United States district court. In any such action, the United States district courts shall have jurisdiction for cause shown to restrain violations of this section and order all appropriate relief under subsection (e) or (f).

(2) DETERMINATION BY SECRETARY.—Within 90 days of the receipt of the application filed under this subsection, the Secretary of Labor shall notify the complainant of the determination of the Secretary of Labor under paragraph (1). If the Secretary of Labor finds that there was no such violation, the Secretary shall issue an order denying the application.

(e) REINSTATEMENT AND OTHER RELIEF.—Any employee who is discriminated against in violation of section 9(b) or 9(c) shall be restored to his or her employment and shall be compensated for—

(1) any lost wages (including fringe benefits and seniority);

(2) costs associated with medical monitoring that are incurred up to the time when the discrimination is fully remedied; and

(3) costs associated with bringing the allegation of violation.

(f) CIVIL PENALTIES.—Any person that discriminates against an employee in violation of this section shall be liable for a civil penalty of not less than $1,000 or more than $10,000 for each violation.

(g) EFFECT ON OTHER LAWS.—The notification of an employee pursuant to this Act that the employee is in a population at risk and the initiation of medical evaluation and monitoring shall not constitute or in any way affect a claim for compensation, loss, or damage arising out of exposure to the occupational health hazard, except that the results of such medical evaluation and monitoring may be introduced as evidence with respect to such a claim. Notification pursuant to this Act shall not be relevant in determining whether such a claim is timely under any applicable statute of limitations.

SEC. 11. REPORTS TO CONGRESS.

(a) HAZARD COMMUNICATION STANDARD REPORT.—The Secretary of Labor shall report to Congress annually, not later than January 15 of each year, regarding implementation and enforcement of the hazard communication standard. The report shall include detailed information on—

(1) MONITORING AND ENFORCEMENT.—Monitoring and enforcement; significant areas of noncompliance; and penalties assessed and steps taken to correct the noncompliance.

(2) ENFORCEMENT.—Efforts to evaluate the hazard communication standard.

(3) EMPLOYER ASSISTANCE.—Efforts to assist employers to comply with the hazard communication standard.

(4) EMPLOYEE EDUCATION.—Efforts to educate employees to their rights under the hazard communication standard.

(5) FEDERAL COURT DECISIONS.—Efforts to comply with Federal court decisions requiring or encouraging an expanded scope for the hazard communication standard.

(b) OCCUPATIONAL DISEASE NOTIFICATION REPORT.—The Secretary shall report to Congress annually, not later than January 15 of each year, regarding implementation and enforcement of notification under this Act. The report shall include detailed information on—

(1) NOTIFICATIONS.—Numbers, types and results of notifications carried out pursuant to section 5 and 6 of this Act.

(2) RESEARCH.—Research efforts carried out pursuant to section 8 of this Act.

(3) TRAINING.—Training efforts for employees, personal physicians, and other professionals carried out pursuant to sections 7 and 8 of this Act.

(4) ENFORCEMENT.—Enforcement efforts carried out pursuant to section 10 of this Act.

(5) ASSISTANCE.—Efforts to assist employers under this Act.

SEC. 12. SUBJECTS OF FEDERAL AGENCY STUDIES.

(a) NOTIFICATION REQUIRED.—Each Federal agency that conducts epidemiologic studies on occupational disease initiated after the effective date of this act shall establish procedures for notifying the subjects of such studies of findings demonstrating that they are part of a population at risk of disease.

(b) METHOD OF NOTICE.—All occupational epidemiologic studies conducted by a Federal agency initiated after the effective date of this Act shall include in the study design specific methods for notifying living subjects or their immediate family members that they are part of a population at risk of disease.

SEC. 13. REGULATIONS.

The Secretary shall prescribe such regulations as may be necessary to carry out this Act.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $25,000,000 for each of the fiscal years 1988 and 1989 to carry out this Act, of which $5,000,000,000 shall be available for research under section 8.

SEC. 15. EFFECTIVE DATE.

Except as may be otherwise provided in this Act, this Act shall become effective January 1, 1988, or 6 months after the date of enactment of this Act, whichever occurs first.●

● Mr. STAFFORD. Mr. President, I am joining today with Senator METZENBAUM in introducing the High Risk Occupational Disease Notification and Prevention Act of 1987.

There are several good reasons for enacting this bill.

The first is simple justice. Those whose lives, livelihoods, and health may be in jeopardy because of earlier exposures to poisonous chemicals should know it because we all deserve to know what our risks are.

Equally important, that knowledge should be shared because it can minimize or even eliminate the risk of actually contracting the disease for which a worker or his or her family may be at risk. Some diseases, especially cancers, which may be almost always fatal if undetected are significantly less fatal if found and treated early. In yet other cases, a disease may never develop if proper precautions are taken. Workers exposed to asbestos, for example, run a tenfold greater risk of dying from lung cancer if they smoke than if they do not.

In a society such as ours where the dangers of toxic chemicals are almost invariably discovered long after workers and others have been exposed, some sort of notification program is a necessity if the loss of human life is to be minimized. Exposures ought to never happen, but it is a fact of life that they do. Given that fact of life, we should establish a program such as the one proposed in this bill.

Mr. President, I urge my fellow Senators to review this bill carefully and join Senator METZENBAUM and me in cosponsoring this bill.●

By Mr. METZENBAUM:

S. 80. A bill to repeal the McCarran-Ferguson Act, and for other purposes; to the Committee on the Judiciary.

MC CARRAN-FERGUSON ACT REPEAL

● Mr. METZENBAUM. Mr. President, today I am introducing legislation to repeal the McCarran-Ferguson Act, the law which provides that the business of insurance is exempt from the Federal antitrust laws.

There is no justification for exempting the insurance industry from Federal antitrust standards. It is one of the largest and most important industries in the Nation. Virtually every individual and every business in this country must purchase insurance. Yet this essential industry is not now required to conform to the basic national policy of free competition.

How can the Congress explain to the American people why the insurance industry is exempt from Federal prohibitions against price-fixing and other anticompetitive practices when the price of insurance is skyrocketing? Promoting competition in insurance can only improve the availability and affordability of insurance. Maintaining the current antitrust exemption only restricts healthy and vigorous competition.

For some time now, we have heard the argument that the only problems in obtaining access to insurance are greedy lawyers and outrageous liabil-

ity judgments. Every solution offered by the industry turns out to cut back on the rights of the victims in personal injury or other suits.

Focusing only on those injured is unfair. It's bad public policy. It is time that we took the broad public interest into account, not simply the industry's.

The current exemption for insurance arose from a unique combination of historical events. In 1869, the Supreme Court held that the business of insurance was not commerce and that insurance transactions were not interstate in character. *Paul* v. *Virginia*, 75 U.S. 168 (1869). This early decision took an extremely narrow view of the reach of the commerce clause.

Over the decades, the Supreme Court's interpretation of the commerce clause expanded considerably, and in the early 1940's, the Justice Department challenged collusive arrangements in the industry. The Supreme Court reversed its earlier decision and found that the antitrust laws did apply to insurance. *United States* v. *South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944).

The very next year, the insurance industry came to Congress and persuaded it to exempt the industry from the Federal antitrust laws. There is no doubt that this decision was undertaken in response to the argument that the industry could not adjust to the radical changes that would occur if rules of free competition were to apply rather than the extensive system of State-approved price-fixing that was in existence.

Whatever validity that argument had in 1945, it is totally unpersuasive today. Subjecting the insurance industry to the same antitrust standards that apply to other industries is completely consistent with State regulation of the industry as well as legitimate joint activities by insurance companies. Requiring insurance companies to live by the rules of free competition would not disrupt State regulatory programs. It would not prevent insurance companies from sharing information. It would not preclude State approval of rates. It would promote competition in the industry, promote lower prices and greater availability of coverage, and insure that consumers have better information about the policies they purchase.

Unlike the situation in 1945, applying Federal antitrust standards to insurance would not undercut State regulatory policies. Almost all States have abandoned setting specific rates for insurance coverage. Instead, insurance companies have considerable flexibility in setting rates, subject to filing requirements. In addition, the Supreme Court has made clear that business conduct which is subject to a clearly articulated State regulatory scheme and actively supervised by the State is not subject to Federal antitrust law. The Supreme Court has recently held, for example, that collective ratemaking activities, permitted under a clearly articulated and actively supervised State policy, do not violate the antitrust laws. *Southern Motor Carriers Rate Conf.* v. *U.S.*, 471 U.S. 48 (1985).

Another development is the recognition by the courts that joint activities by competitors which promote competition are permissible under the antitrust laws. The courts have long held that substantial information can be shared among competitors without running afoul of the antitrust laws. More recently, the Supreme Court has clearly stated joint activities which reduce costs and enable products to be marketed more efficiently will be upheld. *Broadcast Music, Inc.* v. *Columbia Broadcasting System*, 441 U.S. 1 (1979). This principle applies to sharing information about risks, joint underwriting of large-scale projects, and other joint activities which promote a more efficient and productive insurance industry.

These considerations led the National Commission for the Review of Antitrust Laws and Procedures to recommend in 1979 that:

> The current broad antitrust immunity for the business of insurance granted by the McCarran-Ferguson Act should be repealed. In its place, narrowly drawn legislation should be adopted to affirm the lawfulness of a limited number of essential collective activities under the antitrust laws. * * *
>
> The Commission believes that the current immunity is not only overly broad, but also unnecessary: Those collective activities by insurers that are essential to the functioning of a competitive industry would likely pass muster under the traditional rule of reason analysis of Sherman Act section 1. Similarly, where collective activity or other insurance company behavior is affirmatively mandated by a State in its capacity as sovereign, and effectively supervised by independent State officials, such behavior would fall within the judicially recognized "State action" exception to the antitrust laws. (Report of the Commission, pp. 225-6)

In short, the argument that the insurance industry requires an antitrust exemption to function effectively is nonsense. The antitrust laws allow joint activities by insurance companies which are in the public interest. In contrast, the current exemption prevents the Department of Justice, the Federal Trade Commission, or private plaintiffs from challenging even blatant anticompetitive activity.

Under the current law, an agreement by insurance companies to fix prices or allocate markets could not be challenged by the Department of Justice, the Federal Trade Commission, or private plaintiffs. Not only does the current law bar these actions, but in cases where the exemption may not apply, it guarantees prolonged litigation over its applicability. For example, the FTC recently challenged particular activities by title insurance companies that allegedly restrain competition on the grounds that these activities were not really the business of insurance. *Ticor Title Insurance Co.*, D-9190. Nevertheless, the defendants have vigorously disputed the authority of the FTC to bring the case.

In addition to the problem of preventing the Government from challenging anticompetitive actions, the McCarran-Ferguson Act exempts the industry from the Federal prohibition against unfair and deceptive practices enforced by the Federal Trade Commission. Today, if an insurance company misleads consumers in its marketing of insurance, the Federal Trade Commission is in almost all cases foreclosed from acting.

In 1979, Congress went even beyond the McCarran-Ferguson Act in prohibiting the Federal Trade Commission from even studying the insurance industry without a specific request from the House or Senate Commerce Committee. This provision was enacted after the FTC had published a study which concluded that the average rate of return on the investment portion of whole life insurance was 1.3 percent. As former Chairman of the Federal Trade Commission, Michael Pertschuk, stated:

> The Commission had concluded—as many other students of life insurance marketing had also concluded—that this low level of return was directly caused by a marketing system that made it virtually impossible for a prospective policyholder—other than an actuary—to compare the interest yields of competing investment opportunities. (Testimony before Subcommittee on Monopolities and Commercial Law, House Committee on the Judiciary, May 3, 1984, pp. 3-4)

The FTC did not issue a regulation in this area. It did not propose Federal intervention at all. Instead, it distributed its report to the States and recommended that they develop a standard disclosure requirement so that the insurance industry would provide information about investment return to consumers. The Congress reacted by prohibiting the FTC from studying the insurance industry without an express request by either the House or Senate Commerce Committee. In other words, the FTC was to keep its mouth shut about problems with the insurance industry until Congress told it to speak. Former Chairman Pertschuk called this provision a "legislative prefrontal lobotomy."

The bill I am introducing today would simply apply the same antitrust standards of free competition to insurance that apply to other industries. In doing so, it would repeal the language in the McCarran-Ferguson Act which purports to rest all regulation of the insurance industry in the States. By repealing that language, my bill would not in any way do away with State insurance commissions or preclude the States from regulating insurance as

they do now. Just as in many other industries, Federal antitrust laws would apply to companies which are the subject of State regulations.

The bill also provides for a delayed effective date to enable the insurance industry to review its activities for potential antitrust liability. In particular, the bill provides that the repeal of the exemption is deferred for 1 year after the date of enactment. In addition, no criminal penalties or treble damages can be assessed for 2 years. Finally, no antitrust remedy is available for 2 years if the defendant in an antitrust case has relied in good faith on an advisory opinion by the Department of Justice. These provisions provide ample time for the industry to review its activities and insure that they are in full compliance with antitrust standards.

I fully expect that the insurance industry will again argue that it cannot function under the Federal antitrust standards and that many of its current activities will be prohibited, even those which benefit the public. If the industry can show that certain defined activities which are in the public interest would actually be prohibited under the antitrust laws, then certain narrow and carefully defined exemptions may be warranted. These issues can best be pursued in through hearings where the industry and other observers can comment.

This industry is too big, too important to every American, to maintain an an antitrust exemption long after its initial justification has disappeared. Today, access to insurance and affordable prices have become critical problems for individuals, small business, and even governmental bodies. Insurance companies should have to operate by the rules of free competition just as other industries do.

The McCarran-Ferguson Act has long outlived whatever legitimate purpose it served. It is time to repeal it.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 80

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to express the intent of the Congress with reference to the regulation of the business of insurance", commonly known as the McCarran-Ferguson Act (59 Stat. 33), is repealed.

(b) The repeal made by this section shall be effective as to conduct engaged in beginning one year after the date of enactment of this Act.

SEC. 2. (a) In any action brought under the provisions of the Clayton Act or the Sherman Act alleging a violation of either such Act for conduct that would have otherwise been lawful pursuant to the provisions of the Act entitled "An Act to express the intent of the Congress with reference to the regulation of the business of insurance" no award of treble damages or criminal penalties shall be awared against any such person for conduct by such person occurring within two years after the date of enactment of this Act.

(b) During the two year period referred to in this section, no relief shall be granted against any person in an action referred to in subsection (a) for conduct by such person during such period, if such person has in good faith, relied upon an advisory opinion issued by the Department of Justice.●

By Mr. METZENBAUM:

S. 81. A bill to amend the Older Americans Act of 1965 to establish the Alzheimer's Disease and Related Dementias Home and Community Based Services Block Grant; to the Committee on Labor and Human Resources.

ALZHEIMER'S DISEASE AND RELATED DEMENTIAS HOME AND COMMUNITY BASED SERVICES BLOCK GRANT ACT

● Mr. METZENBAUM. Mr. President, Alzheimer's disease has been called the "Disease of the Century." Today, I am introducing a bill, "The Alzheimer's Disease and Related Dementias Home and Community-Based Services Block Grant" to provide needed support to victims of Alzheimer's disease and related dementias, and their families.

At both Federal and State hearings, professionals and families alike, described Alzheimer's as an "insidiuous disease; no illness is more terrifying and life-altering than Alzheimer's." It destroys its victims and damages their families.

Through demonstration projects, and activities of voluntary organizations, we have learned much about the urgent needs of our older citizens who, with age, are increasingly vulnerable to dementing disorders, and to the risk of institutionalization and total impoverishment. The risk for Alzheimer's disease increases rapidly over the age of 65, with 20 to 30 percent of those over the age of 80 afflicted.

We know that demographic data project an aging population. Rapid increases in the number and proportion of older people in the United States, especially those in their eighties and nineties confront us with a major challenge, and an urgent necessity to plan appropriately—and without delay.

There are currently close to 3 million persons with Alzheimer's disease and related disorders. Less than 60 years from now, we will face a major epidemic with that number expected to triple to 9 million.

Currently, we depend heavily on family caregivers—spouses and children—to provide long-term care for family members with Alzheimer's disease. However, projections indicate that families will be smaller in the years to come. Thus, there will be fewer caregivers available.

Mr. President, Alzheimer's disease not only imposes extreme physical and emotional hardships on the family, it creates enormous financial costs as well. These costs are already estimated at over $40 billion. Unless we begin now to provide the social supports essential for continued family caregiving, we may find our institutions and our health care system overwhelmed with increasingly large numbers of demented adults, and our Nation overwhelmed with colossal costs of hundreds of billions of dollars.

Research continues, with insufficient funds, given the magnitude of the problem. The research community appears cautiously optimistic that answers will be found. This very month, the fourth International Conference on Alzheimer's Disease is meeting in Zurich to compare research findings worldwide. There will be answers—eventually—sooner, rather than later, we hope.

However, until that happy day arrives, family caregivers will need many social supports to maintain their afflicted family members in the home.

Mr. President, my bill will delay the institutionalization so costly to families and to the nation by providing needed home and community-based services.

This bill, "The Alzheimer's Disease and Related Dementias Home and Community-Based Services Block Grant," amends the Older Americans Act which comes up for reauthorization this year.

It establishes a block grant program directed by the Administration on Aging. The grant will be made available to States on a matching formula basis, to develop a plan to provide for:

Coordination of services;

Case management and counseling to determine services needed for delaying nursing home admission;

Respite care;

Day care;

Training and counseling of family members;

Homemaker services,

Transportation, and other such supportive services that will help families maintain Alzheimer victims at home.

I urge my colleagues to join me in support of the millions of Americans suffering physical, emotional, and financial devastation as a result of this insidious and tragic disease, and the related dementing disorders.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 81

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 "Alzheimer's Disease and Related Dementias Home and Community Based Services Block Grant Act of 1987".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) there are more than 3,000,000 individuals with Alzheimer's disease and related dementias in the United States;

(2) the cost of caring for individuals with Alzheimer's disease and related dementias is estimated at over $40,000,000 annually;

(3) over one half of the patients in nursing homes are diagnosed as patients with Alzheimer's disease or related dementias;

(4) the potential number of individuals who may have Alzheimer's disease and related dementias in their old age will overwhelm the capacity of our institutions to care for such individuals;

(5) individuals with Alzheimer's disease or related dementias often require specialized long term care services to be provided in a coordinated manner by many agencies; and

(6) providing home and community based services for individuals with Alzheimer's disease and related dementias will extend the ability of caregivers of such individuals to maintain such individuals in their homes and can reduce health care costs by delaying or preventing institutionalization.

(b) It is the purpose of this Act to prevent or delay the institutionalization of individuals with Alzheimer's disease and related dementias by providing home and community based services to assist in caring for such individuals in their homes.

ESTABLISHMENT OF BLOCK GRANT

SEC. 3. The Older Americans Act of 1965 is amended by adding at the end thereof the following new title:

"TITLE VIII—ALZHEIMER'S DISEASE AND RELATED DEMENTIAS HOME AND COMMUNITY BASED SERVICES BLOCK GRANT

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 801. For purpose of allotments under section 802, there are authorized to be appropriated $80,000,000 for each of the fiscal years 1988, 1989, 1990, 1991, and 1992.

"ALLOTMENTS

SEC. 802. (a) The Secretary shall allot the amounts appropriated under section 801 for each fiscal year on the basis of a formula prescribed by the Secretary which is based on—

"(1) the number of individuals in each State over the age of 60 years;

"(2) the number of individuals in each State with Alzheimer's disease and related dementias;

"(3) the extent of the need of each State for services for individuals with Alzheimer's disease and related dementias; and

"(4) the per capita income of each State.

"(b) To the extent that all the funds appropriated under section 801 for a fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted an application or State plan in accordance with section 806 for such fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) some State allotments are offset or repaid under section 1906(b)(3) of the Public Health Service Act (as such section applies to this title pursuant to section 806(e));

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

"(c)(1) If the Secretary—

"(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this title be provided directly by the Secretary to such tribe or organization, and

"(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this title:

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).

"(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved under subsection (a) as the total number of elderly individuals in the tribe during such fiscal year bears to the total number of elderly individuals residing in the State during such fiscal year.

"(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the elderly individuals for whom such a determination has been made.

"(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

"(5) For purposes of this subsection, the term 'elderly individual' means an individual who has attained the age of 60 years.

"FEDERAL SHARE

"SEC. 803. The Federal share of all projects in a State supported by an allotment to a State under section 802 shall be at least 60 percent of the aggregate necessary costs of all such projects, as determined by the Secretary, and may not be more than 80 percent of such costs for each State, which, in the determination of the Secretary, has one of the greatest levels of need of all States for services for individuals with Alzheimer's disease and related dementias.

"PAYMENTS UNDER ALLOTMENTS TO STATES

"SEC. 804. (a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under section 802 (other than any amount reserved under subsection (c) of such section) from amounts appropriated for that fiscal year.

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"USE OF ALLOTMENTS

"SEC. 805. (a)(1) Except as provided in subsection (b), amounts paid to a State under section 804 shall be used by the State to provide home and community based services for individuals with Alzheimer's disease and related dementias. Such services may include—

"(A) case management services, including counseling prior to admission to nursing homes;

"(B) respite care, both in and out of the home;

"(C) training and counseling of family members of individuals with Alzheimer's disease and related dementias;

"(D) adult day care services;

"(E) personal care services for individuals with Alzheimer's disease and related dementias;

"(F) occupational therapy and functional management training;

"(F) homemaker services;

"(G) minor remodeling of the home of an individual with Alzheimer's disease or a related dementia;

"(H) transportation services;

"(I) hospice care services; and

"(J) the preparation and dissemination of a directory of long term care services available in various localities in the State.

"(2) In carrying out this title, a State shall give priority to the provision of services to individuals who have attained the age of 60 years and to individuals with the greatest economic need for services under this title. For purposes of this paragraph, a State shall not determine economic need solely on the basis of the income of the individual.

"(3) Any individual having Alzheimer's disease or a related dementia who resides in a State shall be eligible for home and community based services under this title. A State shall not disqualify an individual for eligibility for such services on the basis of the length of time such individual has resided in the State.

"(b) The Secretary, if requested by a State, shall provide technical assistance to the State in planning and operating activities to be carried out under this title.

"(c) A State may not use amounts paid to it under section 804 to—

"(1) provide inpatient services (other than hospice services permitted under subsection (a)(1)(I);

"(2) make cash payments to intended recipients of services;

"(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment; or

"(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this title.

"(d) Not more than 7 percent of the total amount paid to a State under section 804 for a fiscal year may be used for administering the funds made available under section 804. The State shall pay from non-Federal sources the remaining costs of administering such funds.

"APPLICATION; STATE PLAN; REQUIREMENTS

"SEC. 806. (a) In order to receive an allotment for a fiscal year under section 802 each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require, and shall contain the State plan required by subsection (b).

"(b)(1) As part of the annual application required by subsection (a) for an allotment for any fiscal year, the chief executive officer of each State shall submit to the Secretary a State plan for the administration of amounts paid to the State under this title. Each State plan shall—

"(A) certify that the State agrees to use the funds allotted to it under section 802 in accordance with the requirements of this title;

"(B) provide assurances that the chief executive officer will designate the State agency on aging to administer funds provided under this title;

"(C) certify that the State will use funds provided under this title to pay for home and community based services for an individual with Alzheimer's disease or a related dementia only after all other Federal and State sources of payments and benefits for such services have been utilized;

"(D) contain a description of the intended use of the payments the State will receive under section 804 for the fiscal year for which the application is submitted, including—

"(i) a specification of the programs and activities to be supported and services to be provided with such payments;

"(ii) a specification of the budget for such programs, activities, and services;

"(iii) a statement of the manner in which the State will administer the State plan;

"(iv) a specification of the requirements that will be used by the State in determining eligibility for services to be provided under this title; and

"(v) a statement of the number and types of personnel that will be used to carry out such programs and activities and to provide such services, and of the plans of the State to recruit and train such personnel;

"(E) specify the manner in which activities of State agencies which administer programs relating to health, welfare, social services, rehabilitation, mental health, and the elderly will be coordinated with the provision of home and community based services under this title by State and local agencies and public and private institutions and organizations;

"(F) certify that the State will coordinate the provision of home and community based services with funds provided under this title with activities conducted to provide such services by voluntary, religious, and community organizations and local governments;

"(G) describe the manner in which the State will evaluate programs and activities conducted, and services provided, under this title; and

"(H) certify that the State agrees that Federal funds made available under section 804 for any period will be so used as 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 programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

"(2) Each State plan shall be developed by the State agency on aging in cooperation with the State agencies which administer the programs described in paragraph (1)(E).

"(d) The State plan shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the State plan and after its transmittal. The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted, and the services provided, by the State under this title, and any revision shall be subject to the requirements of the preceding sentence.

"(e) Except where inconsistent with the provisions of this title, the provisions of section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 of the Public Health Service Act shall apply to this title in the same manner as such provisions apply to part A of title XIX of such Act.

"(f) Each report submitted by a State to the Secretary under section 1906(a)(1) of the Public Health Service Act (as such section applies to this title pursuant to subsection (e) of this section) shall include an analysis of the extent to which the provision of home and community based services under this title prevented or delayed the institutionalization of individuals with Alzheimer's disease and related dementias. Each such report shall include—

"(1) a description of, and an evaluation of the effectiveness of, case management services, including counseling prior to admission to nursing homes, provided under this title;

"(2) a description of, and an evaluation of the effectiveness of, other services provided under this title which are designed to delay admission of individuals to nursing homes;

"(3) a specification of the costs of various services provided under this title;

"(4) a list of public and private resources in the State which make payments or reimbursements for home and community based services for individuals with Alzheimer's disease and related dementias; and

"(5) such recommendations for revisions of the State plan as the State considers appropriate.

"ADMINISTRATION

"SEC. 807. (a) The Secretary shall carry out this title through the Commissioner.

"(b) The Commissioner shall develop guidelines to be used by States in carrying out activities under this title. Such guidelines shall be developed in cooperation with the Assistant Secretary for Human Development Services, the Director of the National Institute on Aging, and the Director of the National Institute of Mental Health.

"(c) In carrying out this title, the Commissioner shall consult with the Advisory Panel on Alzheimer's Disease established under section 921 of the Alzheimer's Disease and Related Dementias Services Research Act of 1986.

"ANNUAL REPORT

"SEC. 808. Within 90 days after the end of each fiscal year, the Commissioner shall prepare and transmit to the Congress and the Secretary a report which describes the activities conducted under this title during the preceding fiscal year. Each such report shall contain a summary of the reports submitted by States under section 806(f).

"DEFINITIONS

"SEC. 809. For purposes of this title—

"(1) the terms 'Indian tribe' and 'tribal organization' have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act; and

"(2) the term 'State agency on aging' means a State agency on aging designated under section 305(a).".

SEC. 3. This Act and the amendments made by this Act shall take effect on October 1, 1987.●

By Mr. STAFFORD (for Mr. SYMMS, Mr. CHAFEE, Mr. DURENBERGER, and Mr. SIMPSON):

S. 82. A bill to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes; to the Committee on Environment and Public Works.

FEDERAL-AID HIGHWAY ACT

Mr. STAFFORD. Mr. President, today I am introducing the Federal-Aid Highway Act of 1987. The provisions contained in this bill were passed by the Senate on September 24, 1986, by a vote of 99 to 0.

I was very disappointed that the Senate and House conferees were unable to reach agreement on highway legislation before the 99th Congress adjourned. It is extremely important that highway legislation be considered and completed early this year. It is because of the urgency of releasing highway money to the States that I am introducing today the legislation that has already been debated and agreed to by the Senate.

Many States have already canceled bid lettings and will not be able to go forward with any highway projects this spring because they have used all their Federal-aid apportionments. If legislation is not finalized by March, many of the Northern States' entire construction season will be jeopardized. This means that many projects critical to improved transportation services will not go forward. It also means that there will be a significant loss of construction and construction-related jobs.

I know my colleagues will agree that we must return the fees collected from highway users to the States and localities as quickly as possible so they can be invested in our transportation system. I believe the fastest way to do that is to begin with legislation that was already approved by the Senate and begin the conference with the House immediately so that differences can be resolved and the funds can be apportioned to each one of your States.

By Mr. JOHNSTON (for himself, Mr. EVANS, Mr. METZENBAUM, Mr. FORD, Mr. WIRTH, Mr. MATSUNAGA, Mr. PRYOR, Mr. MELCHER, Mr. BUMPERS, Mr. KERRY, Mr. SPECTOR, Mr. LEVIN, Mr. SARBANES, Mr. BURDICK, Mr. HEINZ, Mr. D'AMATO, Mr. WARNER, Mr. GORE, Mr. HARKIN, Mr. PROXMIRE, Mr. COCHRAN, Mr. KENNEDY, Mr. BENTSEN, Mr. KASTEN, Mr. WEICKER, Mr. ADAMS, and Mr. QUAYLE):

S. 83. A bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances; to the Committee on Energy and Natural Resources.

NATIONAL APPLIANCE ENERGY CONSERVATION ACT OF 1987

● Mr. JOHNSTON. Mr. President, with one exception, no greater honor and privilege has been bestowed on me in my lifetime than my becoming chairman of the Committee on Energy and Natural Resources in the 100th

Congress. The only exception is the honor bestowed on me when I first came to this body to represent the people of Louisiana. I assume this chairmanship with a sober sense of responsibility because of the caliber and achievements of those chairmen who preceded me and because the outlook for our energy future is disturbing indeed. Frankly, our domestic energy industry is in deep trouble and the future implies even greater dependence on foreign energy sources in politically volatile areas of the world.

Reviving our domestic energy industries and restraining the growth in our reliance on foreign energy sources will require that we keep our minds open and our feet firmly planted on the ground. We must be hardheaded, but not thickheaded. The distinction is critical.

It is appropriate to begin by introducing with Senator EVANS and numerous other colleagues the National Appliance Energy Conservation Act of 1987. This bill establishes national energy efficiency requirements for major household appliances such as furnaces, water heaters, air-conditioners, and refrigerators. Equally important, the bill would rescue the appliance industry from a growing hodgepodge of conflicting State standards, substituting instead predictable, uniform national standards.

The language of this bill is identical to the appliance provisions contained in H.R. 5465 that was adopted by both Houses of Congress last fall without any opposition. The Department of Energy recommended its enactment. Yet, the act was pocket-vetoed on November 1, 1986.

Mr. President, the coalition behind this bill is impressive indeed, some 42 trade associations, consumer and environmental groups, including the appliance manufacturers who would be regulated by this bill. Even more significant is that many of these groups formerly opposed each other in the litigation that preceded this bill. It is not often that the National Association of Manufacturers, the Sierra Club and the United Methodist Church unite behind a bill.

Several States have advocated enactment of this legislation, States who have adopted appliance regulations that would be preempted by this bill. Finally, editorialists across the country have called for quick adoption of this measure.

How is it that a bill with all this support, with no opposition in the House or Senate, came to be vetoed by the President? It's a question not easily answered. The memorandum of disapproval issued by the White House says that the choice was between enactment of Federal appliance standards established explicitly in the bill and Federal regulations yet to be established by DOE rulemaking procedures under current law. The administration prefers to continue with the DOE rulemaking, although DOE itself recommended enactment of the measure.

It isn't as though the route under current law is untraveled. Under current law nine appliance standards were generally required to be issued no later than December 24, 1980, and an additional four standards no later than November 9, 1981, that is, over 5 years ago. Sued for their delay, DOE agreed in a court settlement to issue the first nine standards by October 29, 1981, a date which was not met. Once standards were issued a Federal court struck them down as "contrary to law". These were the infamous "no-standards standards." Numerous groups within the coalition supporting this legislation were opponents in the years of litigation over the rulemaking and represent nearly every conceivable party to a rulemaking on appliances. Weary of rulemaking delay at DOE, they finally sat down and worked out their own compromise which is embodied in this legislation. The administration would reject that compromise and force these manufacturers and interest groups to trudge through several more years of expensive rulemaking procedures.

Meanwhile, the States are creating a web of conflicting regulation in this area, a web that the Federal appliance standards were supposed to clear away through preemption half a decade ago. Most important, and here is the core of the issue, the administration policy has been to grant waivers from Federal preemption to practically any State that sought it. Thus, under current law the appliance manufacturers could face a web of conflicting State regulation whether or not Federal standards are issued. This would not occur under the legislation that the Congress passed last year and that we are introducing today.

So the stumbling block to this legislation is the administration's ideology which says appliance efficiency should be regulated by the States even though the law and the courts say it is a Federal matter and the States themselves would prefer uniform Federal regulation in this area. Heaven knows the appliance manufacturers would prefer Federal regulation. As I said earlier, if our Government is to establish effective energy policy it must not forget the critical distinction between being hardheaded and thickheaded.

One very sensitive aspect of this bill has been to minimize the effect it might have on the intense competition between the electric and gas industries. We don't want the bill to have the effect of creating a significant bias against any fuel—be it oil, gas, or electricity—so as to favor one over the other.

Our committee report last year addressed this point in some detail. However, we are continuing to examine this issue of whether the bill is neutral on the subject of interfuel competition. If any fine-tuning amendments are necessary, they can be addressed in the committee markup.

I urge my colleagues to join the throng of support behind this legislation. It deserves swift passage.●

● Mr. EVANS. Mr. President, I am pleased to join today with Senator JOHNSTON and others to introduce the National Appliance Energy Conservation Act of 1987.

Many of my colleagues may remember this legislation and the remarkable coalition of both manufacturers and environmentalists which developed and supported this bill during the last days of the 99th Congress. The measure we are introducing today is almost identical to what was passed unanimously by both House and Senate last year.

The act establishes clear, consistent national energy efficiency standards for all major home appliances, to be phased in over a 4-year period. As it stands now, several States already have such standards in place, and many more are working on this type of legislation in preparation for their State legislative sessions. I am aware that in my own State of Washington, State standards are being promoted by several legislators. Thus, if we do not act to establish truly national standards, the appliance marketplace would be subject to a patchwork of differing State requirements, to the detriment of both manufacturers and consumers. While the Department of Energy [DOE] is scheduled to begin publishing such standards by next year, their policy has consistently been to grant waivers from Federal preemption to practically any State that sought one. So even if DOE does issue such standards, appliance manufacturers could be faced with a maze of conflict State regulations whether or not Federal standards are issued. Under the bill we are introducing today, there would be a single, national standard which would preempt all State standards, except under extraordinary circumstances.

Mr. President, as Chairman of the Alliance to Save Energy, I am well aware of the enthusiastic response which has been received from environmental and energy conservation organizations regarding this legislation. The amount of energy Americans use in their homes accounts for an estimated one-third of the energy we consume as a nation. Those who are promoting this bill recognize the real opportunity for savings which can be realized by establishing tough energy efficiency standards such as those contained in the act. Some experts have estimated that with enactment of this measure, consumers will save approxi-

mately $200 per household in reduced energy consumption through the year 2000. Utilities and State regulatory agencies will also be better able to anticipate future energy requirements and can defer or avoid the need for new generating capacity, saving ratepayers and protecting the environment from the detrimental effects of constructing and operating unnecessary powerplants.

Despite the unanimous support of appliance manufacturers, distributors, environmentalists, States and utilities, the administration failed to give their approval to this legislation last year, pocket vetoing the act on November 1. The Memorandum of Disapproval issued by the White House expressed concerns that the standards contained in the bill would raise prices for consumers, but failed to balance these costs against the savings which nearly all agree would occur as a result of increased energy efficiency. Second, the administration argued that DOE is required to conduct rulemaking which "may lead to the imposition of Federal standards," but does not acknowledge that DOE has routinely provided exemptions from any Federal efficiency standards for any State which has applied for one, effectively circumventing the purpose of Federal standards.

Mr. President, I continue to believe that this legislation is indeed consistent with the administration's stated goal of eliminating inefficient use of energy, as well as reducing unnecessary regulatory burdens on the economy. As I said in a letter to the President urging him to sign the bill, the decision on whether to support the National Appliance Energy Conservation Act should not be one of a free market versus a federally regulated market, but one of reducing the regulatory burden borne by the appliance industry as opposed to the continued growth of conflicting State and Federal regulations.

This legislation is one of those rare instances when all parties concerned with an issue have sat down together and worked out a solution to their problem which they can all accept and support. I am hopeful that we can emulate their example here in the Senate, and achieve the same level of broad bipartisan support which this measure attracted last year. Today, having watched our dependence on foreign oil grow dramatically over the past year, it is even more urgent that we explore all cost-effective opportunities to use our energy resources as efficiently as possible. I appreciate the cooperation and leadership of the chairman of the Energy and Natural Resources Committee, Senator JOHNSTON, and understand that he intends to hold a markup of the bill as soon as possible. I know I join him in hoping that the Senate will again express its unanimous support for what is almost certainly the most important energy conservation legislation of this decade.●

● Mr. D'AMATO. Mr. President, I rise today to join as a cosponsor of the National Appliance Energy Conservation Act of 1987. I commend my distinguished colleague from Washington for his leadership on this issue.

I was pleased to enthusiastically support this bill during the 99th Congress, and, along with many of colleagues, I urged the President to sign this legislation into law. However, despite unanimous support in the Congress and widespread support among manufacturers, energy conservationists, and environmental groups, this legislation was vetoed on November 1, 1986.

In vetoing this legislation, the administration indicated a preference for handling this issue through the DOE rulemaking process. It is clear, however, that the DOE rulemaking process has not cleared up the web of conflicting regulations manufacturers still face. Under current law, nine appliance standards were required to be issued no later than December 24, 1980, and an additional four standards no later than November 9, 1981. Mr. President, DOE is more than 6 years late. We simply cannot wait any longer.

During these times of low energy prices, it is easy to forget the crisis situations which afflicted this Nation in the recent past—and which may, unfortunately, beset us again in the future. But it is now, when times are good, that conservation measures should be implemented so that future shortages may be averted.

For many years, attempts to regulate appliance-efficiency standards have been effective as a result of sometimes contradictory and, at the very least, uncoordinated efforts by State governments, appliance manufacturers, and energy conservationists. This lack of coordination has led to a squandering of valuable resources—a situation acceptable to none: States enacting differing standards; manufacturers forced to produce multiple versions to account for these individual standards; and conservationists frustrated by the preventable waste of our limited resources. In the end it is the average consumer, both in the home and at work, who loses the most by having to pay for unnecessarily high energy bills.

Now we have the opportunity to change this wasteful consumption. The National Appliance Energy Conservation Act is a proposal which marks a new era of cooperation between manufacturers, conservationists, and the States.

For the appliance manufacturer, the establishment of national standards will provide adequate time to develop new energy-efficient products and will reduce disruption of interstate commerce, thus eliminating expensive production costs of multistandard appliances.

While the National Appliance Energy Conservation Act will set nationwide standards, much care has been taken to safeguard the right of the individual State to regulate its own energy resources. I feel that this bill will create an element of predictability of energy consumption for State agencies and utilities. Furthermore, the bill contains exemptions for States faced with unforeseen special circumstances.

For the conservation-minded citizen, this proposal establishes timetables for the Department of Energy to regulate nationwide energy consumption and to constantly revise these standards. It is clear that the resulting energy savings will enable us to avoid some of the costs, pollution, and hazards posed by having to construct new powerplants.

Most importantly, it is the consumer who will benefit most from this agreement. Lower energy bills will result in billions of dollars of savings for households and businesses alike.

Mr. President, I support this legislation because it is reasonable and mutually advantageous for all—manufacturers, conservationists, States, consumers, and the national economy. It is one of those measures which has for so long been necessary and is finally on its way to becoming a reality. I commend the participants in this accord for their wisdom and ability to compromise. The National Appliance Energy Conservation Act of 1987 is a proposal which will enable the Nation to prevent the repetition of past energy crises while ensuring efficient consumption of our valuable resources for the future.●

By Mr. JOHNSTON (for himself, Mr. BINGAMAN, Mr. WIRTH, and Mr. BUMPERS):

S. 84. A bill to amend the Land and Water Conservation Fund Act of 1965; to the Committee on Energy and Natural Resources.

LAND AND WATER CONSERVATION FUND ACT AMENDMENTS

● Mr. JOHNSTON. Mr. President, today I am introducing legislation to amend the Land and Water Conservation Fund Act of 1965. The amendment I am proposing would increase the existing authorization ceiling for the fund from $900 million to $1 billion annually. The measure would also extend the authorization for 25 years through the year 2015. Under current law, the authorization expires at the end of fiscal year 1989.

Mr. President, few programs in the area of natural resource protection and recreation have been as successful as the Land and Water Conservation

Fund. It is the major funding source for Federal park and wildlands acquisition and is a major tool for land acquisition and recreation-related development for the States. Since its inception in 1965, the Land and Water Conservation Fund has enabled States and local governments to acquire 2.8 million acres of recreation lands and waters. Almost $3 billion in Federal Land and Water Conservation Fund moneys have been matched on a 50-50 basis by the State and local authorities. On the Federal side, almost 3 million acres have been purchased with appropriations from the Land and Water Conservation Fund and added to the National Park, Forest, Wilderness and Wildlife Refuge Systems.

As many of my colleagues are aware, the President's Commission on Americans Outdoors is preparing to issue its final report to the President and the Nation. As a member of that Commission, I am pleased that the panel's report will recognize the importance of the Land and Water Conservation Fund and will suggest ways to ensure that the Land and Water Conservation Fund remains a viable funding source for park land acquisition and development of recreation facilities. Some of these suggestions and recommendations include transforming the Land and Water Conservation Fund into a dedicated trust fund; expanding the uses of the fund to include State and local recreation facility rehabilitation; providing for a variety of new funding sources in addition to Outer Continental Shelf oil and gas revenues; and establishment of a low- or no-interest revolving loan program for facility development and rehabilitation.

The measure I am introducing today obviously does not address these issues. Until the Commission's report is final and until the Congress and the public have a chance to examine the recommendations in more detail, I believe it would be premature to pursue these options legislatively. However, I think it is critically important to get a legislative vehicle on the table so that we may begin addressing the many issues associated with the Land and Water Conservation Fund in advance of its expiration in fiscal year 1989.

As the chairman of the Energy and Natural Resources Committee, I plan to make the reauthorization of the Land and Water Conservation Fund Act and the consideration of changes to that act major legislative priorities for the 100th Congress. I know that a number of my colleagues on the committee and in the Senate will want to join me in this effort and I look forward to their suggestions and support.

By Mr. JOHNSTON (for himself, Mr. BINGAMAN, Mr. BREAUX, and Mr. DOMENICI):

S. 85. A bill to amend the Powerplant and Industrial Fuel Use Act of 1978 to repeal the end use constraints on natural gas, and to amend the Natural Gas Policy Act of 1978 to repeal the incremental pricing requirements; to the Committee on Energy and Natural Resources.

NATURAL GAS UTILIZATION ACT OF 1987

● Mr. JOHNSTON. Mr. President, I am pleased to introduce the Natural Gas Utilization Act of 1987. The bill would repeal the end use limitations on the use of natural gas contained in the Powerplant and Industrial Fuel Use Act of 1978. It would also repeal the incremental pricing requirements in title II of the Natural Gas Policy Act of 1978.

Enactment of this legislation is long overdue. Anyone who is familiar with current conditions in the natural gas industry recognizes that we have an oversupply of natural gas. Limiting its use is not sound policy. Indeed, it is counterproductive because it discourages the use of a clean, abundant domestic source of energy. From a long-term perspective, it also discourages exploration for and production of natural gas. That, too, is counterproductive and needs to be corrected.

The bill is essentially identical to a bill Senator DOMENICI and I introduced in the 99th Congress, S. 1251. A few technical corrections have been made. Indeed, the provisions are essentially the same as those contained in four different bills pending before the Energy and Natural Resources Committee at the end of the 99th Congress. In addition to the bill Senator DOMENICI and I introduced, there were Fuel Use Act amendments and incremental pricing provisions included in two bills introduced by the Senator from Oklahoma [Mr. NICKLES] and in the administration's comprehensive natural gas bill.

It should also be noted that the House of Representatives passed a bill last year that was introduced by Congressman BRYANT that would have had the same effect. The bill passed on the suspension calendar, which indicates that there was no substantial opposition to its passage in the entire House of Representatives.

Virtually every segment of the natural gas industry, from the wellhead to the burnertip, has endorsed legislation such as this.

If there is no substantial opposition, why hasn't this bill been enacted? The simple reason is this: It has been held hostage to passage of more comprehensive natural gas deregulation legislation. I certainly support passage of more comprehensive natural gas legislation, but I do not believe it is appropriate to hold this much-needed legislation hostage while we attempt to fashion a consensus natural gas bill. Thus, as Chairman of the Energy and Natural Resources Committee I intend to hold an early markup on this bill in the hope that we can succeed in getting the bill enacted in the early days of the 100th Congress.

Mr. President, I ask unanimous consent that the text of the Natural Gas Utilization Act of 1987 be printed at this point in the RECORD.●

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

S. 85

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

SECTION 1. (a) SHORT TITLE.—This Act may be referred to as the "Natural Gas Utilization Act of 1987".

(b) TABLE OF CONTENTS.—

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. Repeal of certain sections of the Powerplant and Industrial Fuel Use Act of 1978.
Sec. 3. Conforming amendments.
Sec. 4. Repeal of incremental pricing requirements.
Sec. 5. Effective date.

REPEAL OF CERTAIN SECTIONS OF THE POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

SEC. 2. (a) The following sections of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) are repealed:

(1) sections 103 (a)(16), (a)(18), (a)(19), and (a)(29)—(42 U.S.C. 8302 (a)(16), (a)(18), (a)(19), and (a)(29));

(2) sections 201 and 202 (42 U.S.C. 8311 and 8312);

(3) section 302 (42 U.S.C. 8342);

(4) section 401 (42 U.S.C. 8371);

(5) section 402 (42 U.S.C. 8372); and

(6) section 405 (42 U.S.C. 8375).

(b) The table of contents of the Powerplant and Industrial Fuel Use Act of 1978 is amended by striking the items relating to the sections repealed by subsection (a) of this section.

CONFORMING AMENDMENTS

SEC. 3. (a) Section 102 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301) is amended by striking "and major fuel-burning installations" and "and new" wherever these phases appear.

(b) Section 103 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8302) is amended—

(1) in subsection (a)(13)(B), by—

(A) striking clause (ii)(III):

(B) striking "; or" at the end of clause (ii)(II), and inserting a period in its place; and

(C) inserting "and" at the end of clause (ii)(I);

(2) in subsection (a)(15), by striking "or major fuel-burning installation" and "or new" wherever these phrases appear;

(3) in subsection (a)(20), by striking "or major fuel-burning installation";

(4) by redesignating subsections (a)(17), (a)(20), (a)(21), (a)(22), (a)(23), (a)(24), (a)(25), (a)(26), (a)(27), and (a)(28) as subsections (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), (a)(22), (a)(23), (a)(24), and (a)(25);

(5) in subsection (b), by striking "or major fuel-burning installation" wherever this phrase appears;

(6) in subsection (b)(1)(D), by striking everything after "synthetic gas involved" and inserting in its place a period; and

(7) by striking subsection (b)(3), and redesignating subsection (b)(4) as subsection (b)(3).

(c) Section 104 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8303) is amended to read as follows:

"The provisions of the Act shall apply in all the States, Puerto Rico, and the territories and possessions of the United States, except Hawaii and Alaska.".

(d) Section 303 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8343) is amended—

(1) by striking "or installation" and "or installation" wherever the phrases appear;

(2) by striking "or 302" wherever the phrase appears;

(3) by striking subsection (a)(3);

(4) by amending subsection (b)(1) to read as follows:

"(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 301(b) in existing electric powerplants.";

(5) in subsection (b)(3), by striking "or major fuel-burning installation"; and

(6) by amending the last sentence of subsection (b)(3) to read as follows: "Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.".

(e) Section 403 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8373) is amended by striking—

(1) in subsection (a)(1), "major fuel-burning installation, or other unit" and the comma immediately preceding this phrase and "installation, or unit" and the comma immediately preceding this phrase;

(2) in subsection (a)(2), "installation, or other unit" and the comma immediately preceding that phrase, and "installation, or unit" and the comma immediately preceding that phrase;

(3) in subsection (a)(2), the last sentence; and

(4) subsection (a)(3).

(f) Section 404 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8374) is amended by striking—

(1) in subsection (c), "new or" in the phrase "applicable to any new or existing electric powerplant"; and

(2) subsection (g).

(g) Section 701 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8411) is amended by striking—

(1) in the last sentence of subsection (b), "or installation";

(2) subsection (c);

(3) in the title of subsection (d), "And Exemptions";

(4) in the first sentence of subsection (d)(1), "or any petition for any order granting an exemption (or permit";

(5) in subsection (d)(1)(B), "or in the consideration of such petition,";

(6) in subsection (f), "or a petition for an exemption (or permit) under this Act (other than under section 402 or 404),"; and

(7) subsection (g).

(h) Section 702 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8412) is amended by striking—

(1) in the title of subsection (a), "Or Exemption";

(2) in subsection (a), "or granting an exemption (or permit)";

(3) subsection (b), and redesignating subsection (c) as subsection (b);

(4) in the first sentence of subsection (b)(1) (as redesignated), "or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b)";

(5) in the first sentence of subsection (b)(1) (as redesignated), "such rule, order, or denial is published under subsection (a) or (b)" and inserting in its place "such rule, or order is published under subsection (a)";

(6) in the first sentence of subsection (b)(2) (as redesignated), "the rule, order, or denial" and inserting in its place "the rule or order";

(7) in the second sentence of subsection (b)(2) (as redesignated), "(or denial thereof)"; and

(8) in subsection (b)(3) (as redesignated), "any such rule, order, or denial" and inserting in its place "any such rule or order".

(i) Section 711 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8421) is amended by striking in the first sentence of subsection (a), "or a major fuel-burning installation".

(j) Section 721 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8431) is amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

(k) Section 723 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8433) is amended by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c).

(l) Section 731 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8441) is amended by striking—

(1) "or major fuel-burning installation" wherever the phrase appears; and

(2) "title II or" in subsections (a)(1) and (g)(3).

(m) Section 745 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8455) is amended by striking in the first sentence of subsection (a), "from new and existing electric powerplants and major fuel-burning installations" and inserting in its place "from existing electric powerplants".

(n) Section 761 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8471) is amended by striking—

(1) in subsection (a), "any existing or new electric powerplant or major fuel-burning installation" and inserting in its place "any existing electric powerplant"; and

(2) in subsection (b)—

(A) "new or" in the phrase "In the case of any new or existing facility"; and

(B) "except to the extent provided under section 212(b) or section 312(b)" and the comma immediately preceding that phrase.

REPEAL OF INCREMENTAL PRICING REQUIREMENTS

SEC. 4. (a) Subject to subsections (b) and (c) of this section, title II of the Natural Gas Policy Act of 1978 (15 U.S.C. 3341-3348) is repealed, and the items relating to title II are stricken from the table of contents of that Act.

(b) A rule promulgated by the Commission under title II of the Natural Gas Policy Act of 1978 shall continue in effect only with respect to the flowthrough of costs incurred before the enactment of this section including any surcharge based on such costs.

(c) The Commission may take appropriate action to implement this section.

EFFECTIVE DATE

SEC. 5. The provision of this Act shall take effect on the date of enactment.

● Mr. DOMENICI. Mr. President, I am glad to be joining my colleague, Senator JOHNSTON, in introducing legislation to repeal the Fuel Use Act of 1978 [FUA] and the incremental pricing requirements of the Natural Gas Policy Act of 1978. This bill is the same as that introduced in the last Congress which we unfortunately were unable to get passed. I hope we have better luck in this Congress. This legislation is important for my State and for our Nation. The provisions it would repeal are the perfect examples of laws which are counterproductive to our Nation's energy independence.

The Fuel Use Act [FUA] was enacted in 1978 to shift electric utility plants and major industrial fuel-burning installations [MFBI] from oil and natural gas to coal. The FUA was largely in response to the Arab oil embargo of 1973 which highlighted the dependence on unstable imported oil sources and the gas supply shortages of the mid-1970's which were induced by the regulatory scheme then in place. Nearly 25 years of Federal wellhead price regulation has kept the price of gas below the market clearing levels, thereby discouraging the exploration for, and production of, this energy source.

While FUA was passed to limit the demand for gas, the Natural Gas Policy Act [NGPA] was passed to stimulate the exploration for and development of new gas sources. The NGPA has provided the framework for a transition to a decontrolled gas market. The supply impetus provided by the NGPA has been both obvious and encouraging. The gas market went from shortages to surpluses. Natural gas reserve additions from 1980 through 1983 equaled 102 percent of gas production, compared to only 48 percent in the 1969-78 period, excluding the 1-year addition of the Prudhoe Bay, AK, discovery.

Many believe that the restriction imposed on electric utilities and large industrial plants by FUA were ill-conceived, and that the success of NGPA in stimulating new gas supplies precludes the need to retain FUA. This opinion was given support in 1981 when a portion of FUA was repealed. As mandated in the original legislation, "existing" powerplants and MFBI (pre-1977) will not be required to be "off gas" by 1990. However, new electric utility plants and MFBI's still may not use gas as an energy source. A major fuel burning installation is any industrial boiler, cogenerator, turbine, or internal combustion engines with a fuel imput capacity in excess of 100M Btu per hour.

With the preclusion of gas the options available for future electricity generation are limited to nuclear, coal, foreign imports, or to postponing construction. Each of these options has problems which may delay its timely development. For instance, nuclear power has been plagued with a history of regulatory, economic and construc-

tion delay problems. The coal-fired electricity generation can be a viable energy alternative; however, due to the environmental requirements on coal combustion and emission control of sulfur dioxide, the cost of coal-fired facilities can equal or out pace nuclear facilities on capital investments. Furthermore, even when equipped with precipitators, scrubbers, and other pollution control systems, coal combustion still produces more pollution than gas combustion. Natural gas combustion produces virtually no sulfur dioxide [SO_2], particulate matters, solid waste, and significantly less nitrogen oxides and water pollution than coal combustion. In fact, natural gas has always been, and will continue to be, the cleanest fossil fuel. The importation of electrical power and industrial products has had negative impacts on domestic employment, gross national product [GNP], and the balance of trade deficit. Electricity imported from Canada is projected to increase from 17,800 gigawatt hours in 1981 to 35,000 gigawatt hours in 1995 and result in the cancellation of five coal-fired powerplants in Northwestern United States (3,519 megawatts). Postponing new construction is not a long-term option because regardless of the economic growth rate, new capacity will be needed sooner or later.

Because we are committed to the protection of our environment, we need to recognize that the inherent cleanliness of gas is beneficial to the environment and energy consumers. "Select gas" use can be a low-cost method of environmental compliance without sacrificing our economic growth in energy cost and manufacturing production. The simultaneous combustion of gas and less environmental attractive fuels (that is high-sulfur coal or oil) under the bubble policy can offer us the benefits I mentioned earlier. With the select gas use we can reduce our dependence on imported oil, increase use of our abundant domestic coal and gas resources, maintain our air quality standards, and enhance the employment outlook for Eastern and Midwestern coal miners. For the energy consumers, select use can cut overall fuel costs, reduce our susceptibility to fuel supply disruptions, and increase flexibility in siting new facilities.

The benefits of select use via the bubble policy have been proven already in many operating facilities in Vermont, New Jersey, and Pennsylvania. Even though the success of select use will depend on site-specific variables, such as emission limits, fuel cost differentials, and equipment type, the potential for it is great in many parts of the country. The report, "Evaluation of the Environmental and Other Benefits of the Selected Use of Natural Gas" by the Environmental Research and Technology, Inc., dated November 1983 concludes that select gag use not only reduces sulfur dioxide emissions but also reduces nitrogen oxides emissions and waste ash. From an economics point of view, it is generally less expensive for select gas use than use of scrubbers to achieve pollution reductions.

Sulfur oxide can be controlled by either removing sulfur from the fuel or sulfur oxide from the products of combustion. However, current technologies, such as scrubbers or coal cleaning, generally are capital intensive with high operating and maintenance cost or do not provide the necessary degree of sulfur oxide control.

I understand that there is a new nitrogen oxides control strategy, which utilizes natural gas, called reburning. It involves the reduction of nitrogen oxides in the furnace by downstream injection and burning natural gas. It appears that this technology is capable of reducing nitrogen oxides by 50 to 60 percent beyond the current new source performance standard level. EPA is currently conducting research programs to evaluate the potential of this technique for application to U.S. boilers. The use of natural gas can also generate more reactive and high capture efficiency of sorbent injection technology for enhanced sulfur oxide reduction. Gas has the unique advantage of allowing the simultaneous applications of reburn and sorbent injection technologies in the same boilers. The potential benefits of wider use of gas are both environmental and economic such that we can lower the energy costs and improve air quality.

A report issued by the General Accounting Office on March 23, 1982, entitled "A Market Approach to Air Pollution Control Could Reduce Compliance Costs Without Jeopardizing Clean Air Goals," suggested that a market approach, rather than command and control regulation, can save industry 90 percent in pollution abatement cost. The cost of saving can be translated to over $35 billion of capital outlays. Thus, the FUA is impeding a cost-effective technology for reducing air pollutants.

The combined implementation of the Fuel Use Act and incremental pricing requirements maintains economic inefficiencies on the marketplace. As I mentioned earlier, natural gas has been recognized as a superior fuel for utilities and industrial boilers. Throughout the 1960's and early 1970's natural gas was encouraged for such use by pollution control measures. With pricing controls and increased usage of natural gas, the imbalance between supply and demand worsened during the 1970's. Some feared that future supplies might not be adequate for both small (residential/commercial) and large (utility/industrial) users; hence, the incremental pricing theory was intended to shelter the small users by allocating expensive gas to large users and to promote conservation and coal conversion by large users. Incremental pricing requires that gas rate for certain industrial boilers must be set at rough parity with residual oil, even if gas would otherwise be less expensive. However, the increased costs placed an undue burden on the utilities and on residential and commercial users, who are basically dependent on the utilities for their energy needs. Therefore, incremental pricing not only fails to protect the small consumers, but also distorts the supply and demand of natural gas. Incremental pricing is also inhibiting the potential displacement of imported oil by domestic natural gas; even though over 95 percent of our natural gas is derived from domestic sources, while roughly 30 percent of our oil is imported.

Some may argue that the supply of gas in the long run would not be as attractive as it seems now, and speculate on how large the excess capability is and how long it will last. Because of this, they would claim the repeal of the Fuel Use Act and incremental pricing provisions is a risky step. The preliminary finding of a 1984 Natural Gas Reserve report issued by the American Gas Association coupled with the Annual Energy Information Administration [EIA] report indicates that total U.S. gas reserves have increased since the end of 1980 (that is aggregate reserve additions for the United States have exceeded aggregate production for the 4 years—1981, 1982, 1983, and 1984). Natural gas reserves reported by the 30 largest reserve holders showed that in 1984 reserve additions were about 7,355 Bcf—up 1,202 Bcf from a year earlier. To an even greater extent, major gas transportation companies reported strong increases in their total reserves in 1984. This sample of gas transportation companies accounted for 2,071 Bcf of reserve additions in 1984, as compared to 1,467 Bcf of reserve additions in 1983, and 1,567 Bcf in 1982. Clearly, the market is no longer restricted to the supply available, but it is restricted on the demand side through FUA and this will eventually feed back to the production side of the market.

Natural gas production in the United States in 1984 rebounded from the previous year's level. The top 30 producers increased 3.9 percent to a level of 8,711 Bcf. The statistics also indicate that in 1984 new discoveries represented a higher percentage of the major company reserve additions than a year ago. In 1984, total new gas additions were 90.2 percent of the reserve added by the top 30 reserve holders. In 1983, this percentage was 75 percent. AGA estimates that 1985 domestic unused production capability will be

about 2.9 Tcf, up from 2.8 Tcf in 1984. However, natural gas production in 1985 will be limited again by the demand of natural gas. It is evident that the short-term gas supply outlook is very good with persisting excess domestic deliverability. The long-term outlook is also positive. We have reason to hope that U.S. natural gas supplies from the lower 48 States can be consistent through the end of the century. But, as in the case of oil, uranium, and coal, gas supplies are not guaranteed. To a large degree, it depends on Government policy. Competitive pricing in the free market will only improve supply.

In summary, I strongly believe that increased use of natural gas either alone in conjunction with other fuels could meet our environmental mandates, benefit the energy consumers, and improve our economic outlook. I am not suggesting that all new powerplants and large industrial boilers should be gas fired. However, I do believe it is a choice that needs to be made by the plant operators and it cannot be made effectively by legislators. Plant operators need the utmost of flexibility in making their plant energy decision, because such flexibility encourages efficiency and creativity. FUA blocks this flexibility. Therefore, I am introducing this bill today to repeal such restrictions and I hope that my colleagues will join me in support of this bill.●

By Mr. GLENN:

S. 86. A bill to amend section 1105(c) of title 31, United States Code, to limit the amount of any increase in the public debt limit that the President may recommend for a fiscal year; to the Committee on Governmental Affairs.

LIMITATION ON RECOMMENDED INCREASES IN THE PUBLIC DEBT

● Mr. GLENN. Mr. President, I rise to introduce a bill intended to improve our budget process and the Gramm-Rudman-Hollings legislation and which also will serve as a basis for continued fiscal responsibility long after Gramm-Rudman-Hollings expires.

Let me describe what my bill does.

The bill requires that when the President submits his budget to Congress, he must either send us a balanced budget or tell us how to get to a balanced budget. It does this by amending section 1105 of title 31 of the United States Code, the section that tells us when and how the President must submit his annual budget. At present, that section requires the President to "recommend in the budget appropriate action" on how to make up any deficit. My bill would clarify the term "appropriate action" so that the President cannot recommend additional borrowing, or more piling up of the national debt, as the only way of complying with a law that has been in pace since 1921.

This bill is perfectly consistent with Gramm-Rudman. In fact, I think it improves Gramm-Rudman. It contains phase-in language, so that between now and 1991 the President may recommend a budget deficit that complies with the Gramm-Rudman targets.

Mr. President, with minor technical differences, this bill is identical to the amendments I offered to debt ceiling legislation in the last Congress. In 1985, the amendment passed the Senate by a vote of 93 to 4, and in 1986 the amendment was accepted by voice vote. At each of those times I noted that the law has always required the President to report on ways to make up for a budget deficiency. Over the years, however, two things have happened. First, Presidents have failed to file specific suggestions as to how to achieve a balanced budget. The Office of Management and Budget apparently believes that simply filing the budget satisfies the requirement of a section 1105 report; therefore, there is no one place in the Government where you can find specific Presidential recommendations on how we are going to make ends meet. Second, over the years Presidents typically have taken the easy way out and simply asked for more borrowing authority when they saw that revenues were going to fall short of outlays.

The result is that we have a law that was designed to impose fiscal responsibility but now does absolutely nothing. I agree that we need to restore fiscal responsibility, but we need to do so by starting where that process must start: with the President himself. We are not staffed or equipped at the congressional and of Pennsylvania Avenue to do this job. Under law, that is the President's responsibility.

Let me elaborate on this point, because it is important.

By law, the President initiates the budget process when he submits his recommendations to Congress in January each year. Then the Congress works its will. The final result is the 13 appropriations bills that the Constitution requires we pass before funds can be drawn from the Treasury in each of the 13 areas.

I emphasize that the appropriations bills are the final result, because I want to draw attention to the role played by Congress versus the role played by the President, for we have heard that it is Congress that is irresponsible in appropriating excessive amounts of money, and that this is why we need to impose spending restraints like Gramm-Rudman.

Well, it might come as a surprise to my colleagues to learn that Congress has actually appropriated less than what the President has asked for in his appropriations requests. For fiscal year 1985, Congress appropriated $16.6 billion less than what the President asked for; for fiscal year 1986 we appropriated $6 billion less. And last year to top that off, the continuing resolution for fiscal 1987 was again below the President's appropriations request—by a full $2.4 billion.

So it's clear that the label of fiscal irresponsibility cannot be tacked on the door of Congress. Consider this: In over 200 years, this Nation had run up a national debt of $1 trillion—and that was the work of every President from George Washington through Jimmy Carter. But in just 5½ years, the Reagan administration has added a second trillion to that national debt. In other words, they've added as much debt as all the Presidents since George Washington put together.

My bill deals with these realities. In fact, if this measure had been in effect earlier, there probably wouldn't have even been a Gramm-Rudman bill. But without my bill, we are putting the pressure in the wrong place—namely, the Congress—when what we really need is a law that forces the President to submit a balanced budget.

As I have said, this amendment is perfectly compatible with Gramm-Rudman. However, it goes further than Gramm-Rudman in one important respect. Gramm-Rudman runs out after fiscal year 1991. Apparently the underlying assumption is that once we have reached a balanced budget, we no longer need the discipline that got us there. My bill, on the other hand, would impose a permanent requirement for fiscal responsibility, including every year following 1991, for which the President would have to submit a balanced budget or tell us exactly how to get there. If my amendment passes, no President will be able to submit a budget that is fat with deficits but contains no weight reduction plan.

I remind my colleagues that this bill, without some necessary technical changes, passed overwhelmingly (94-3) in 1985; unfortunately it was dropped from the bill in conference. On the strength of that vote, in 1986, the Senate passed a virtually identical amendment as part of the debt ceiling legislation (H.J Res. 668). Since August 1986, I learned of a need to correct my bill to address a technical point. Thus, my new bill contains some technical changes, including changes to avoid any possible conflict with current Gramm-Rudman legislation.

I urge my colleagues to again favorably consider this measure.●

By Mr. GLENN:

S. 87. A bill to suspend for 2 years the duty on 1-(3-Sulfopropyl) pyridinium hydroxide; to the Committee on Finance.

● Mr. GLENN. Mr. President, I am introducing this legislation to suspend for 2 years the column 1 duty rate on imported 1-(3-sulfopropyl) pyridinium hydroxide. This legislation is noncontroversial and was included in the House trade bill, H.R. 4800.

At present, this duty rate is 13.5 percent ad valorem. The suspension would begin 15 days after the date of enactment and end on December 31, 1990. The column 2 duty rate would remain unchanged.

The chemical is a liquid with a density of approximately 10 pounds per gallon. It is synthesized from propane sultone and pyridine. The chemical is used exclusively in a proprietary formulation for copper and nickel electroplating baths.

There has been no domestic production of 1-(3-sulfopropyl) pyridinium hydroxide in the past 5 years. The only U.S. producer stopped production 5 years ago due to the associated industrial hazards. The chemical is now solely produced by a West German company which developed a safe method of manufacturing it. The West German company exports the chemical to various companies in the United States. Since this chemical is not manufactured in the United States, the current duty adds an unjustified expense to these companies' costs of doing business. I urge my colleagues to support this legislation.●

By Mr. GLENN:

S. 88. A bill to amend the Tariff Schedules of the United States to extend the suspension of duties on umbrella frames; to the Committee on Finance.

UMBRELLA FRAME TARIFF

● Mr. GLENN. Mr. President, I am introducing this legislation to continue the temporary suspension of duties hand-held umbrella frames, by changing the termination date from December 31, 1986 to December 31, 1990. This bill is noncontroversial and should be acceptable to the Senate as part of the miscellaneous trade and tariff bill.

This duty suspension is absolutely necessary for the continued survival of the few umbrella manufacturers left in the United States. Foreign competition now makes up more than 95 percent of the domestic umbrella market. The last domestic frame manufacturer went out of business over 4 years ago, so our domestic umbrella manufacturers must import frames. The best quality and most competitively priced frames that are available to domestic umbrella manufacturers come from Taiwan. These frames used to enter the United States duty-free under the Generalized System of Preferences [GSP] program. In 1984, Taiwan lost eligibility for GSP under the so-called "competitive need" limitations, and a duty rate of 15 percent was imposed (this duty rate has since been reduced to 12 percent). In 1984, I sponsored legislation to suspend this duty, and it was included in the 1984 tariff legislation. This suspension expired December 31, 1986, and the legislation I am introducing today will simply continue this duty suspension until December 31, 1990. I urge my colleagues to support this legislation.●

By Mr. GLENN:

S. 89. A bill to amend the Tariff Schedules of the United States to correct the classification of certain pigments; to the Committee on Finance.

PIGMENT DUTY CLASSIFICATION

● Mr. GLENN. Mr. President, today I am introducing legislation to change the duty classification of two commercial pigments, pigment red 214 and pigment yellow 155.

Under current duty classification, these pigments are classified in a category for imported goods which compete with domestic products. However, pigment red 214 and pigment yellow 155 have never been made in the United States. Therefore, they do not belong in this category.

Even though a need exists for these pigments in the American market, this need does not justify the investment of funds to domestically produce them. Instead, American manufacturers work with foreign manufacturers to distribute the pigments in the United States. But these pigments must compete with other imported pigments which are classified as noncompetitive with U.S. products and therefore are subject to a lower import duty. The erroneous duty classification of these pigments as competitive with American goods places U.S. importers of pigment red 214 and pigment yellow 155 at a distinct commercial disadvantage.

This legislation will simply correct this error and change the duty classification for these pigments to the noncompetitive category. This change reduces the duty from 15 percent to 8.3 percent. I urge my colleagues to support this legislation.●

By Mr. CHILES (for himself and Mr. GRAHAM):

S. 90. A bill to establish the Big Cypress National Preserve addition in the State of Florida, and for other purposes; to the Committee on Energy and Natural Resources.

BIG CYPRESS NATIONAL PRESERVE ADDITION ACT

● Mr. CHILES. Mr. President, today I am pleased to introduce legislation to authorize the expansion of the Big Cypress National Preserve in south Florida. This bill calls for placing in public ownership some 136,000 acres bordering the northeast boundary of the existing preserve. The acquisition program contemplated would be in conjunction with the planned construction of Interstate 75, providing a unique opportunity to utilize Federal dollars allocated for the construction of an Interstate Highway to accomplish equally important goals of environmental restoration and endangered species protection. It is in the public interest to have these particular lands in Federal ownership, and it is practicable and incumbent on us to move on this land acquisition program as soon as possible.

WHY THESE LANDS SHOULD BE ACQUIRED

First, let me point out specifically how acquiring these particular lands will complement and, in fact, enhance ongoing activities aimed at protecting Everglades National Park and preserving the endangered Florida panther. As an original sponsor of the Federal legislation establishing the Big Cypress National Preserve, I am keenly aware of the critical role water quality and quantity plays in ensuring the livelihood of Everglades National Park.

The unique international treasure of Everglades National Park covers some 1,337,000 acres on land and water containing a diverse representation of vegetation and wildlife. The sawgrass wilderness areas, cypress swamps, mangrove forest and shallow estuarine bays that compose the park area support a wide variety of fish, bird, and other wildlife populations, including many endangered species. Though large in acreage, this ecosystem is fragile and totally dependent on the complex hydrology of the entire region. Located at the end of a watershed, the park's livelihood is dependent on the quality and quantity of water that flows into it. Studies have indicated how impeded water flow has adversely affected species and their habitats.

It was the strong concern for protecting the watershed area so critical to Everglades National Park that prompted consideration of purchasing lands which now encompass the Big Cypress National Preserve. The 574,000 acre preserve was established by Congress in 1974 to make sure this important watershed area was not further developed or disrupted. Additionally, the purchase of this area has provided significant recreational opportunities which will become increasingly important as south Florida continues to experience growth and development. To date more than $180 million in Federal funds has been appropriated to purchase these important lands. Last year $2 million was appropriated to help complete the acquisition program.

In addition to establishing the Big Cypress National Preserve, Congress has acted on another front to address the hydrological problems affecting the Everglades National Park. In the spring of 1983 the National Park Service staff recommended a broad based

program to restore the natural water flows that the park once received, but no longer experiences. The hydrologic imbalances over recent decades have resulted in severe damage to the fish and wildlife populations of the park. In the fall of 1983 Congress approved legislation as part of a funding bill for the Army Corps of Engineers to allow for a 2-year experiment to determine adequate water delivery schedules for the park. The Senate Appropriations Committee approved extension of this experiment. This extended timetable will allow for the determination of a water delivery schedule to accomplish the restoration of the hydrology and reestablishment of the historic flow water through Northeast Shark River Slough and Taylor Slough into the park.

Alligator Alley, the cross-state highway going from Andytown in Broward County to Naples, has disrupted the natural water flow in the Big Cypress Preserve area and has posed a major threat to Florida panthers and other wildlife of the region. The road functions as a dam in some areas, causing unnatural pooling of water while at the same time interrupting the important sheet flow so essential to Everglades National Park. The construction of I-75 along Alligator Alley provides an important opportunity to correct these hydrological problems and, in fact, plans are underway to ensure that this is done. Public ownership of the lands bordering the I-75 corridor will expand the watershed protection offered to Everglades National Park, prevent future development of these lands, and increase recreational opportunities for the general public.

In addition, it is important to point out how public ownership of these identified lands will foster efforts currently underway to protect the habitat of the Florida panther and other endangered species. There are currently estimated to be 20 to 30 Florida panthers in existence, making it among the most endangered species on Earth. All known Florida panthers in existence live in Everglades National Park, the Big Cypress National Preserve and Fakahatchee Strand. The U.S. Fish and Wildlife Service has proposed the establishment of a 32,000 acre National Wildlife Refuge in the Fakahatchee Stand area for the primary purpose of protecting the critical habitat of the panther, the State Animal of Florida. As a member of the Senate Appropriations Committee, I have worked over the past few years to secure funding for this important land acquisition project. Congress provided $4 million in fiscal year 1985, $3 million in fiscal year 1986 and $3 million for fiscal year 1987.

The 136,000 acre area proposed for purchase under this bill contains land critical to the continuing survival of the endangered Florida panther. Panther fatalities have occurred as a result of automobile traffic on Alligator Alley. Provisions for wildlife crossings in the design for I-75 to allow panthers and other species to cross under the interstate show the commitment of the State in the continued protection of endangered species. The State of Florida Department of Transportation supports the construction of 23 new wildlife crossings and 13 bridge extensions, estimated to cost $12.9 million. The State has agreed to finance that portion of the total cost which is determined to be nonparticipating by the Federal Highway Administration, approximately $10 million. Public acquisition and management of these lands by the National Park Service as envisioned in this bill will complement the efforts of the Fish and Wildlife Service National Wildlife Refuge and will ensure that everything possible is done to guarantee the protection of panther, and other endangered species habitat.

WHY THESE LANDS SHOULD BE ACQUIRED NOW

The conversion of Alligator Alley to I-75 will sever existing access to private property north and south of the highway, requiring the payment of damages to the property owners by the Department of Transportation. Estimates are that severance damage funds, which must in any event be expended, will equal 47 percent of the value of the affected lands. The proposed legislation contemplates using the severance damage moneys to pay a portion of the cost of acquiring approximately 128,000 acres of privately owned land located immediately north of the existing Big Cypress National Preserve. The balance of the purchase price would be paid by the Department of the Interior and the State of Florida in the same cost-sharing arrangement (80/20) found in the original Big Cypress legislation.

If we act quickly to enact this legislation enabling the utilization of the DOT severance damage funds, we will make it possible for the public to acquire these environmentally significant lands for substantially less cost than would otherwise be possible. Within the next 6 months Florida DOT should be able to begin to make offers of severance damages to landowners along I-75. The other matching funds as well as the necessary legislative authority need to be available to complete full acquisition of the lands. For this reason, it is critical we secure approval of legislation to enable the State Department of Transportation to work with DOI and the State of Florida to accomplish the acquisition of these lands in conjunction with purchasing right-of-ways and paying severance damages associated with the construction of I-75.

The opportunity afforded by the construction of I-75 is too remarkable not to purchase these environmentally significant lands and expand the boundaries of Big Cypress National Preserve. The challenge to protect the important values of Everglades National Park and the critical habitat of the Florida panther is too great for Congress not to move forward and implement this plan.

In closing, I want to point out the extent to which the State of Florida has demonstrated its commitment to a partnership with the Federal Government to achieve the goals I have outlined. As I mentioned previously, the State is willing to go above and beyond its necessary role in financing the construction of I-75 to enhance environmental restoration and endangered species protection. The 1985 Florida Legislature enacted legislation designating the 128,000 acre area as an "area of critical State concern." This designation gives the State eminent domain power over this land and thus will facilitate the joint Federal-State acquisition program for this property. This designation will also help protect the area against development until acquisition is complete. Additionally, the State has just recently committed some $22 million in State funds for land acquisition in the Everglades area. The recent actions by the State of Florida coupled with the accelerated schedule for the construction of this portion of I-75 point to the need for expedient and positive action by Congress to approve this land acquisition program. I hope my colleagues will join me in this effort to protect and preserve the national treasures associated with Everglades National Park and Big Cypress National Preserve.

I ask unanimous consent that a copy of the bill be printed in the RECORD at this point.

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

S. 90

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Big Cypress National Preserve Addition Act".

(b) AMENDMENT OF BIG CYPRESS NATIONAL PRESERVE ACT.—Whenever in this Act an amendment is expressed in terms of an amendment to the Act of October 11, 1974, such amendment shall be considered to be made to the Act entitled "An Act to establish the Big Cypress National Preserve in the State of Florida, and for other purposes", approved October 11, 1974 (Public Law 93-440; 88 Stat. 1257).

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the planned construction of Interstate 75 is presently being designed in such a way as to improve the natural water flow to the Everglades National Park, which has been disrupted by State Road 84 (commonly known as "Alligator Alley");

(2) the planned construction of Interstate 75 provides an opportunity to enhance protection of the Everglades National Park, to promote protection of the endangered Florida panther, and to provide for public recreational use and enjoyment of public lands by expanding the Big Cypress National Preserve to include those lands adjacent to Interstate 75 in Collier County north and east of the Big Cypress National Preserve, west of the Broward County line, and south of the Hendry County line;

(3) the Federal acquisition of lands bordering the Big Cypress National Preserve in conjunction with the construction of Interstate 75 would provide significant public benefits by limiting development pressure on lands which are important both in terms of fish and wildlife habitat supporting endangered species and of wetlands which are the headwaters of the Big Cypress National Preserve; and

(4) public ownership of lands adjacent to the Big Cypress National Preserve would enhance the protection of the Everglades National Park while providing recreational opportunities and other public uses currently offered by the Big Cypress National Preserve.

(b) PURPOSE.—It is the purpose of this Act to establish the Big Cypress National Preserve Addition.

SEC. 3. ESTABLISHMENT OF ADDITION.

The Act of October 11, 1974, is amended by adding at the end thereof the following new section:

"SEC. 9. (a) In order to—

"(1) achieve the purposes of the first section of this Act;

"(2) complete the preserve in conjunction with the planned construction of Interstate Highway 75; and

"(3) insure appropriately managed use and access to the Big Cypress Watershed in the State of Florida,

the Big Cypress National Preserve Addition is established.

"(b) The Big Cypress National Preserve Addition (referred to in this Act as the 'Addition') shall comprise approximately 136,000 acres as generally depicted on the map entitled Big Cypress National Preserve Addition, dated June, 1986, and numbered 176-91000B, which shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior, Washington, D.C., and shall be filed with appropriate offices of Collier Country in the State of Florida. The Secretary shall, as soon as practicable, publish a detailed description of the boundaries of the Addition in the Federal Register.

"(c) The area within the boundaries depicted on the map referred to in subsection (b) shall be known as the Big Cypress National Preserve Addition.".

SEC. 4. ADMINISTRATION OF ADDITION.

(a) UNIT OF THE NATIONAL PARK SYSTEM.—The Act of October 11, 1974, is amended by adding at the end thereof the following new section:

"SEC. 10. (a) The Secretary shall administer the Addition in accordance with this Act and the provisions of law generally applicable to units of the national park system, including the Act entitled 'An Act to establish a National Park Service, and for other purposes', approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4).

"(b) In administering the Addition, the Secretary shall develop and publish in the Federal Register such rules and regulations as the Secretary deems necessary and appropriate to manage and control the use of Federal lands and waters with respect to—

"(1) motorized vehicles;

"(2) exploration for and extraction of oil, gas, and other minerals;

"(3) grazing and agriculture;

"(4) draining or constructing of works or structures which alter the natural water courses;

"(5) recreational uses, including hunting, fishing, and trapping, which shall be promoted and encouraged;

"(6) new construction of any kind; and

"(7) such other uses as the Secretary determines must be limited or controlled in order to carry out the purposes of this Act.

"(c) For purposes of administering the Addition and notwithstanding section 2(c), it is the express intent of the Congress that the Secretary should substantially complete the land acquisition program contemplated with respect to the Addition in not more than five years after the date of the enactment of this paragraph.".

(b) HUNTING, FISHING, AND TRAPPING.—Section 5 of the Act of October 11, 1974, is amended by inserting "and the Addition" after "preserve" each place it appears.

(c) SUITABILITY AS WILDERNESS.—Section 7 of the Act of October 11, 1974, is amended—

(1) by inserting "with respect to the preserve and five years from the date of the enactment of the Big Cypress National Preserve Addition Act with respect to the Addition" after "date of the enactment of this Act" in the first sentence; and

(2) by inserting "or the area within the Addition (as the case may be)" after "preserve" each place it appears.

(d) INDIAN RIGHTS.—Section 6 of the Act of October 11, 1974, is amended as follows:

(1) In clause (i) insert "and the Addition" after "preserve" and insert "(January 1, 1985, in the case of the Addition)" after "1972".

(2) In clause (ii) insert "or within the Addition" after "preserve".

SEC. 5. ACQUISITION OF LAND WITHIN ADDITION.

(a) UNITED STATES SHARE OF ACQUISITION COSTS.—The first section of the Act of October 11, 1974, is amended by adding at the end thereof the following new subsection:

"(d)(1) The aggregate cost to the United States of acquiring lands within the Addition may not exceed 80 percent of the total cost of such lands.

"(2) Except as provided in paragraph (3), if the State of Florida transfers to the Secretary lands within the Addition, the Secretary shall pay to or reimburse the State of Florida (out of funds appropriated for such purpose) an amount equal to 80 percent of the total costs to the State of Florida of acquiring such lands.

"(3) The amount described in paragraph (1) shall be reduced by an amount equal to 20 percent of the amount of the total cost incurred by the Secretary in acquiring lands in the Addition other than from the State of Florida.

"(4) For purposes of this subsection, the term 'total cost' means that amount of the total acquisition costs (including the value of exchanged or donated lands) less the amount of the costs incurred by the Federal Highway Administration and the Florida Department of Transportation, including severance damages paid to private property owners as a result of the construction of Interstate 75.".

(b) METHODS OF LAND ACQUISITION IN THE ADDITION.—The first sentence of subsection (c) of the first section of the Act of October 11, 1974, is amended—

(1) by inserting "or the Addition" after "preserve" the first place it appears; and

(2) in the first proviso—

(A) by inserting "in the preserve" after "subdivisions,"; and

(B) by striking out the colon and inserting in lieu thereof "and, any land acquired by the State of Florida, or any of its subdivisions, in the Addition shall be acquired in accordance with subsection (d):".

(c) VALUATION AND APPRAISAL.—The fourth sentence of subsection (c) of such section is amended by inserting "or the Addition" after "preserve" each place it appears.

(d) ACQUISITION OF PROPERTY RIGHTS BY THE STATE OF FLORIDA.—Subsection (c) of such section is amended by adding at the end thereof the following: "Nothing in this Act shall be construed to interfere with the right of the State of Florida to acquire such property rights as may be necessary for Interstate 75.".

(e) EXCLUSION OF SUBSURFACE ESTATE.—The third sentence of subsection (c) of such section is amended by inserting "and the Addition" after "preserve" each place it appears.

(f) IMPROVED PROPERTY IN ADDITION.—Section 3(b) of the Act of October 11, 1974, is amended—

(1) in clause (i) by inserting "with respect to the preserve and January 1, 1986, with respect to the Addition" after "November 23, 1971,"; and

(2) in clause (ii)—

(A) by inserting "with respect to the preserve and January 1, 1986, with respect to the Addition" after "November 23, 1971," the first place it appears; and

(B) by inserting "or January 1, 1986, as the case may be," after "November 23, 1971," the second and third places it appears.

SEC. 6. COOPERATION AMONG AGENCIES.

The Act of October 11, 1974, is further amended by adding at the end thereof the following new section:

"SEC. 11. The Secretary and other involved Federal agencies shall cooperate with the State of Florida to establish recreational and oil, gas, and mineral access points and roads, rest and recreation areas, appropriate wildlife protection, and, where appropriate, hunting, fishing, frogging, and other recreational opportunities in conjunction with the creation of the Addition and in the construction of Interstate Highway 75. Not more than 3 of such access points shall be located within the preserve (including the Addition).".

SEC. 7. REPORT TO CONGRESS.

The Act of October 11, 1974, is further amended by adding at the end thereof the following new section:

"SEC. 12. Not later than one year after the date of the enactment of this section, the Secretary shall submit to the Congress a detailed report on, and further plan for, the preserve and Addition including—

"(1) the status of the existing preserve, the effectiveness of past regulation and management of the preserve, and recommendations for future management of the preserve and the Addition;

"(2) a summary of the public's use of the preserve and the status of all access rights for public and private use;

"(3) the need for involvement of other State and Federal agencies in the management and expansion of the preserve and Addition;

"(4) the status of land acquisition; and

"(5) a determination, made in conjunction with the State of Florida, of the adequacy of the number, location, and design of the recreational access points on I-75/Alligator Alley for access to the Big Cypress National Preserve, including the Addition.

The determination required by paragraph (5) shall incorporate the results of any related studies of the State of Florida Department of Transportation and other Florida State agencies. Any recommendation for significant changes in the approved recreational access points, including any proposed additions, shall be accompanied by an assessment of the environmental impact of such changes.".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 8 of the Act of October 11, 1974, is amended—

(1) by striking out "There" in the first sentence and inserting in lieu thereof "(a) Except as provided in subsection (b), there"; and

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

"(b) There are authorized to be appropriated such sums as may be necessary to acquire lands within the Addition.".

● Mr. GRAHAM. Mr. President, on my first day in the Senate, I am pleased to be introducing, with Senator CHILES, the Big Cypress Preserve Addition bill. As Governor of Florida, I initiated the Save Our Everglades Program. As Senator, I intend to enhance this initiative through the 136,000 acre acquisition of lands vital to the protection of the everglades. This bill has national significance in preserving a unique environmentally sensitive national park from degradation and in preserving the Florida panther from extinction.

The importance and timeliness of the Big Cypress bill go far beyond a mere land acquisition. What is at stake is a sizable, existing financial investment—and a priceless biosphere of worldwide environmental significance.

If we fail to act, those 136,000 acres comprising the Big Cypress Addition will likely be developed into citrus groves and subdivisions. The resulting alterations in water flow and the degradation in water quality could be drastic. Plant and animal life could suffer immeasurable—perhaps irreparable—damage. Future water supplies for rapidly growing southwest Florida would surely suffer.

One of the most important investments in our national parks system would be wasted.

Everglades National Park and the Big Cypress National Preserve which border it are places unlike any other. Through them flows most of southwest Florida's fresh water. They are home to the rare and endangered species of plant and animal: the green and purple dollar orchid, the colorful tree snail, the southern bald eagle and the vanishing Florida panther.

Nowhere else in the world can you see crocodiles, sawgrass, manatees, mangroves, cypress knees, whitetail deer, swamp lillies, and indigo snakes—all coexisting in a delicate ecological balance.

A century ago we started to lose the everglades when developers drained the swamps and the wetlands for housing projects and cattle and farm land. In those days we didn't understand the unique and irreplaceable nature of Florida's singular ecosystem.

We now know that the fragile, complicated everglades are the heart of Florida. The survival of Everglades National Park depends on water which flows across the land from the Big Cypress Swamp and the everglades to the north of its boundaries. That is why the acquisition of sensitive lands adjacent to and buffering Everglades National Park and the Big Cypress National Preserve is crucial to the survival of those resources.

The water flow through the Big Cypress Preserve feeds Everglades National Park—literally keeps it from drying up. The tract of land specified in this bill is the source of that water flow—and is also an integral part of the habitat for the Florida panther. There are probably only about 30 panthers left in the world—all in south Florida.

We in Florida are most urgently aware of what is at stake in the preservation of the everglades.

We've seen the graphic and terrible results of letting the everglades dry out.

In the early 1970's and again in the early 1980's—during severe droughts—half a million acres of hardwood and sawgrass went up in flames. The river of grass became a sheet of fire. The crisis forced strict water rationing in some of our major cities, from Palm Beach to Key West.

We cannot let that happen again—and with the public acquisition and protection and the everglades' water system—with the creation of that envelope of protection around Everglades National Park—it never will.

This envelope of protection is also of vital importance to the rapidly growing population of southwest Florida. The Big Cypress Swamp is a source of water for the cities of southwest Florida. In future decades it will be critical to the water supplies of a rapidly growing gulf coast.

In 1983 the State of Florida put together one of the most progressive and aggressive land acquisition programs ever seen in an effort to restore the health of the everglades before it was too late.

Under the program called Save Our Everglades, Florida is attempting to turn back the clock. By the year 2000 the everglades will look and function more like it did in the year 1900 than it does today. The Save Our Everglades Program is as much about undoing past mistakes as it is about future preservation.

Save Our Everglades has a comprehensive set of goals including: the restoration of the natural meandering path of the channelized Kissimmee River—headwaters for the great fresh water river spilling slowly down through the State and replenishing Everglades National Park; the development of a comprehensive program to restore Lake Okeechobee and prevent its further pollution; the reflooding of a 100 square-mile tract of drained land in Palm Beach County, restoring it to its natural everglades condition; the management of the deer population at a level that can survive seasonal extremes in water levels; purchase of land in the East Everglades, Fakahatchee Strip and Big Cypress to expand the protective envelope around the park and to ensure safe habitat for the Florida panther; and the inclusion of the hydrologic structures and animal crossing in the Interstate 75 conversion.

Ultimately, the protected lands will total about 3,400,000 acres. Nearly 2,900,000 acres of that are under State/Federal ownership now. Florida has the largest program for public acquisition of environmentally sensitive lands in the Nation.

The Big Cypress Addition is a minimal investment with maximum return— the survival of Everglades National Park and the viability of the everglades' system and a continued drinking water supply for southwest Florida.

It is ironic that visionary public works projects to drain and develop the everglades first endangered them—and that today, a visionary public works project can help to save them.

The conversion of Alligator Alley to Interstate 75 will have hydrologic structures to permit the continuous flow of water southward. It will also have 36 panther and animal underpasses to allow safe movement under the road.

The severance damages required by the conversion place the acquisition of the surrounding land within reach. The opportunity exists to purchase these 136,000 acres for about half their appraised value.

This is a rare windfall. We can acquire a key piece of the envelope in the heart of the buffer zone without paying a phenomenally high price for it.

Everglades National Park and the Big Cypress National Preserve comprise 2,000,000 acres. The State of Florida donated the majority of the land for Everglades National Park when it was formed in 1947. Additionally, in 1973, Florida contributed $40 million for acquisition of the Big Cypress National Preserve. The State has since acquired over 940,000 acres to

buffer and protect these federally owned areas.

The water flow is interrupted by some significant parcels not yet acquired which are crucial to the free flow of the entire system. The Big Cypress Addition is at the heart of the buffer zone we need to complete to protect Everglades National Park.

Everglades National Park is the second largest national park in the continental United States.

It is the only subtropical park in the Nation's system.

Unlike other parks such as Grand Canyon or Yosemite which are more or less self-contained—Everglades National Park is dependent on lands outside its own boundaries—dependent on water which can only be ensured if the land over which the water flows is publicly owned.

It is a tropical aquatic preserve—one of only three United Nations-designed international biosphere reserves and world heritage sites in this country—and one of only eight such designated sites in the world. Its biological diversity is unmatched in North America; it has more endangered species than any other national park in the United States.

We in Congress have an obligation to the rest of the world—not just to Floridians or even Americans—to preserve the mysterious beauty of the everglades and the complexities of their function as a water provider—to preserve also the singular plant and animal and marine life species only found in the everglades hammocks and marshes.

State and Federal cooperation in the purchases of the Big Cypress Addition is profoundly more important than a good real estate deal.

We will be securing a priceless heritage for future generations. Our grandchildren—and their children—will live in a world that still shelters the roseate spoonbill, the ghost orchid and the Florida panther. We will have closed the protective envelope around Everglades National Park and the Big Cypress National Preserve, safeguarded the water supply for south Florida—demonstrated that vision and good investment, in this case, are the same.●

By Mr. INOUYE:

S. 91. A bill to amend title 38, United States Code, to modify the qualifications required for appointment to the positions of Chief Medical Director, Deputy Chief Medical Director, and Associate Deputy Chief Medical Director of the Veterans' Administration; to the Committee on Veterans' Affairs.

MODIFYING QUALIFICATIONS REQUIRED FOR CERTAIN POSITIONS OF THE VETERANS' ADMINISTRATION

Mr. INOUYE. Mr. President, today I am introducing legislation to authorize that the individual appointed to the position of Chief Medical Director, Deputy Chief Medical Director, and Associate Deputy Chief Medical Director of the Veterans' Administration may be a member of one of the several health care professions which currently are employed by the Veterans' Administration, rather than be restricted to doctors of medicine.

In my judgment, the time has come to legislatively recognize the truly interdisciplinary nature of health care within our Nation. I was most pleased that this type of proposal was recommended by the Senate Veterans' Affairs Committee during its deliberations in the 99th Congress; unfortunately, however, that provision never became public law.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 91

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (1) of section 4103(a) of title 38, United States Code, is amended by striking out "a qualified doctor of medicine," and inserting in lieu thereof "a person qualified under section 4105 of this title for appointment to a position referred to in subsection (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (a)(7), or (a)(8) of such section,".

(b) Paragraph (2) of such section is amended by striking out "a qualified doctor of medicine," and inserting in lieu thereof "a person qualified for appointment to the position of Chief Medical Director,".

(c) Paragraph (3) of such subsection is amended by striking out "a qualified doctor of medicine," and inserting in lieu thereof "a person qualified for appointment to the position of Chief Medical Director,".

By Mr. INOUYE:

S. 92. A bill to amend title 38, United States Code, to provide that the Administrator of Veterans' Affairs may furnish outpatient dental services and treatment for non-service-connected disability to any war veteran who has a service-connected disability of 50 per centum or more; to the Committee on Veterans' Affairs.

PROVIDING FOR OUTPATIENT DENTAL SERVICES FOR CERTAIN WAR VETERANS

Mr. INOUYE. Mr. President, I am introducing legislation today which would provide for outpatient dental care for any war veteran who is 50 percent or more disabled as a result of his or her military service. Veterans will be eligible for this care even if their dental problems are unrelated to their service injuries.

Legislation passed by the 91st Congress provides medical and outpatient care for veterans of all wars who were totally and permanently disabled by service-related injuries. This law, Public Law 91-102, was designed to care for the medical needs that would arise during their lives, but would be unrelated to their military wounds. It, however, specifically forbids payment for outpatient dental care. My bill seeks to fill the gap left by Public Law 91-102.

According to one estimate, approximately 175,000 veterans would be eligible for dental care if this bill is passed. Currently, these men get free care only if their problems are directly related to their service disability. But, as the Disabled American Veterans noted when they urged me to introduce this measure, many veterans live on limited, fixed incomes. Dental costs are arising along with everything else in these inflationary times, and an increasing number are being forced to go without proper dental care because they cannot afford it.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 92

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 612(b)(1) of title 38, United States Code, is amended—

(1) by striking out "or" at the end of clause (G);

(2) by striking out the period at the end of clause (H) and inserting in lieu thereof a semicolon and "or"; and

(3) by adding at the end thereof the following:

"(I) from which a veteran of any war who has a service-connected disability rated as 50 per centum or more is suffering.".

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 93. A bill to provide that services furnished by a clinical pyschologist in a rural health clinic need not be provided under the direct supervision of a physician in order to qualify for coverage under Medicare and Medicaid; to the Committee on Finance.

ENSURANCE OF RURAL HEALTH CARE RECIPIENT MEDICARE ELIGIBILITY

Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation which would amend our Nation's Social Security Act to ensure that those individuals who receive services at rural health clinics and are eligible for Medicare or Medicaid are able to receive mental health services from qualified professional psychologists.

The bill which we are introducing today follows up on the decision made during the 98th Congress, to provide for the recognition of the autonomous functioning of psychologists within health maintenance organizations [HMO's]. Our present proposal would similarly amend the rural health clinical provision to include authority for clinical psychologists to function in a similar manner to that of nurse practitioners and physician assistants, and

would only require a circuit-rider approach to physician involvement.

Our proposal does not increase the basic benefit package as the attached letter from Dr. Carolyne Davis, past-Administrator of the Health Care Financing Administration [HCFA], specifies.

This provision was recommended for enactment during the 99th Congress by the Senate Finance Committee as a provision of the Medicare antifraud bill. Hopefully, we will be able to have this measure enacted into public law during the 100th Congress.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 93

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

SECTION 1. COVERAGE OF SERVICES FURNISHED BY A CLINICAL PSYCHOLOGIST IN A RURAL HEALTH CLINIC.

(a) COVERAGE OF SERVICES.—Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking out "physician assistant or by a nurse practitioner" and inserting in lieu thereof "physician assistant, nurse practitioner, or clinical psychologist,".

(b) DEFINITION.—Section 1861(aa) of such Act (42 U.S.C. 1395x(aa)) is amended by adding at the end thereof the following new paragraph:

"(4) For purposes of this subsection, the term 'clinical psychologist' means an individual who—

"(A) is licensed or certified at the independent practice level of psychology by the State in which he so practices;

"(B) possesses a doctorate degree in psychology from a regionally accredited educational institution, or in the case of an individual who was licensed or certified prior to January 1, 1978, possesses a master's degree in psychology and is listed in a national register of mental health service providers in psychology which the Secretary deems appropriate; and

"(C) possesses 2 years of supervised experience in health service, at least 1 year of which is post-degree.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services furnished on or after the date of the enactment of this Act.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 94. A bill to amend titles XVIII and XIX of the Social Security Act to provide that pediatric nurse practitioner or pediatric clinical nurse specialist services are covered under part B of Medicare and are a mandatory benefit under Medicaid; to the Committee on Finance.

PROVIDING CERTAIN NURSE SERVICES COVERAGE

Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation that would amend the Medicare and Medicaid Programs in order to ensure that the services of pediatric nurse practitioners and/or pediatric clincial nurse specialists would be directly reimbursable under these two important programs.

Under the provisions of our proposal, the Department of Health and Human Services would be directed to initiate a special 5-year demonstration program for these practitioners in order to provide the Congress of the United States with sufficient information to ensure that an informed decision is made regarding the possibility of ultimately providing complete autonomy for our Nation's pediatric nurse practitioners and pediatric clinical nurse specialists throughout all aspects of Medicare and Medicaid.

Presently, under the Department of Defense CHAMPUS Program, these practitioners are deemed truly autonomous providers, and, from all that I have heard, these services are well received.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 94

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

SECTION 1. COVERAGE OF PEDIATRIC NURSE PRACTITIONER OR PEDIATRIC CLINICAL NURSE SPECIALIST SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking out "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (K); and

(3) by adding at the end thereof the following new subparagraph:

"(L) pediatric nurse practitioner or pediatric clinical nurse specialist services;".

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Pediatric Nurse Practitioner or Pediatric Clinical Nurse Specialist Services

"(ff)(1) The term 'pediatric nurse practitioner or pediatric clinical nurse specialist services' means services performed by a pediatric nurse practitioner or pediatric clinical nurse specialist (as defined in paragraph (2)) which the pediatric nurse practitioner or pediatric clinical nurse specialist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed, whether or not the pediatric nurse practitioner or pediatric clinical nurse specialist is under the supervision of, or associated with, a physician or other health care provider.

"(2) The term 'pediatric nurse practitioner or pediatric clinical nurse specialist' means an individual who—

"(A) is a registered nurse and is licensed to practice nursing in the State in which the pediatric nurse practitioner or pediatric clinical nurse specialist services are performed; and

"(B)(i) holds a master's degree in pediatric nursing or a related field from an accredited educational institution, or

"(ii) is certified as a pediatric nurse practitioner or pediatric clinical nurse specialist by the duly recognized professional nurses' association.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month which begins more than 60 days after the date of the enactment of this Act.

SEC. 2. COVERAGE OF PEDIATRIC NURSE PRACTITIONER OR PEDIATRIC CLINICAL NURSE SPECIALIST SERVICES AS A MANDATORY MEDICAID BENEFIT.

(a) COVERAGE OF SERVICES.—

(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(A) by striking out "and" at the end of paragraph (20);

(B) by redesignating paragraph (21) as paragraph (22); and

(C) by inserting after paragraph (20) the following new paragraph:

"(21) pediatric nurse practitioner or pediatric clinical nurse specialist services (as defined in section 1861(ff)(1)); and".

(b) CONFORMING CHANGES.—

(1) Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (10)(A), by striking out "paragraphs (1) through (5) and (17)" and inserting in lieu thereof "paragraphs (1) through (5), (17), and (21)"; and

(B) in paragraph (10)(C)(iv), by striking out "paragraphs (1) through (5) and (17) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (20)" and inserting in lieu thereof "paragraphs (1) through (5), (17), and (21) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (21)".

(2) Section 1902(j) of such Act (42 U.S.C. 1396a(j)) is amended by striking "(21)" and inserting in lieu thereof "(22)".

(c) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall be effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning more than 60 days after the date of the enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

By Mr. KERRY:

S. 95. A bill to amend the Clean Air Act to control certain sources of sulfur dioxide and oxides of nitrogen to reduce acid deposition, and for other purposes; to the Committee on Environment and Public Works.

NATIONAL ACID RAIN CONTROL ACT

Mr. KERRY. Mr. President, I rise today on this first day of the 100th Congress to introduce legislation that seeks to correct a problem of grave concern to Americans from all over the Nation—acid rain. Mr. President, it

is with the deepest regret that I find it necessary to once again introduce legislation and call for urgent action in 1987 on a critical environmental problem that we should be well on our way to solving and not still debating. Unfortunately, Congress has not acted and the urgency of our doing so is greater than ever. Acid rain is creating an environmental emergency in several regions of the country and it must be stopped now. Further delay will make damage worse and it may, in fact, leave our children with an irreversible environmental tragedy. We have the opportunity to end the scourge of acid rain. We know what must be done. And, we know it needs to be done. The time for excuses is long past. It is our duty to act without delay.

When the acid rain phenomena was first being researched, we were told by David Stockman and others that it was really just a question of "A few dead lakes in New England and northern New York." For those of us from those regions this lack of any real concern was discouraging, but not unexpected. But we knew they were wrong and the evidence mounts every year supporting our position. Acid rain is a phenomenon that results from reactions between fossil fuel emissions and atmospheric components. The "few dead lakes" that Mr. Stockman talked about are growing every day to the point where researchers warn that fish populations in some affected regions of the country are in grave danger of being wiped out in the not so distant future. As we know, a dramatic change in one part of the food chain cannot help but affect the other parts in the ecosystem. That ecosystem also includes trees where future timber harvests are imperiled by acid rain which researchers believe has worked to stunt growth in our forests.

In addition, human health concerns continue to be researched. Already we know that certain high-risk respiratory patients increase their risk when they live or spend time in areas where acid rain is known to be a problem. Acid rain also endangers cultural and historic artifacts and structures. In Massachusetts and many other Northeast States, that translates into damage to many of our State's treasures such as historic buildings, statues, and other manmade structures. Many of these are irreplacable and their loss will mean the end to many legacies that should properly be left for our children and their children.

I first became aware of the acid rain phenomena when as Lieutenant Governor I coordinated Massachusetts' effort to develop a reasonable State and national response to this problem. I spent a great deal of time talking to the many Massachusetts environmentalists that have become expert in the problems that acid rain has created. With them, I visited and tested lakes and streams in the State that show the dramatic effects of acid deposition on fish populations and on general water quality. Together with environmentalists, business leaders, and other government leaders we formed the acid rain working group to discuss the problems, the causes and the solutions for the acid rain phenomena. It was through this group that I concluded that acid rain was a major threat to the quality of life in Massachusetts.

As an active participant in the National Governors Association's Task Force on Acid Rain I journeyed to Europe on a fact-finding mission representing the New England Governor's Task Force on Acid Rain which I chaired. I went to Norway, Sweden, Belgium, Germany, and Great Britain.

In Norway I spoke with experts who have been coping with this issue for many years and where there are approximately 5,000 square miles of lakes that are now biologically dead. There is no doubt in their minds as to what has caused that environmental disaster.

In Sweden, some 18,000 square miles of lakes are dead and nobody in Sweden contests the issue of how and why this has come to be. In addition, in Sweden, they were particularly concerned about increasing evidence of forests that were showing diminished growth—a symptom that is being experienced throughout northern Europe and again they had no doubt that air pollution was the major contributor.

In Germany in 1984 I visited the Black Forest where I saw the most stark and dramatic display of what can happen through neglect in combatting this environmental threat. The foresters there—close to tears over the disappearance of their heritage before their eyes—told me that they feared that much of the damage could be permanent. They too have no doubt as to the cause of the problem.

Europe's experience should serve as a threatening lesson to the United States. I have seen a future that we cannot allow to occur.

Yet, the American response to the crisis of acid rain has been woefully inadequate. President Reagan has commissioned several studies on acid rain. Each study has come back and stated in stronger and more specific terms that acid rain is a major threat to our environment and must be addressed. However, on a national basis, it is study, debate, evaluate—when what we need is strong action to reduce acid rain causing emissions—now.

In Massachusetts we have been conducting an ongoing study since 1983 to try to provide a data base with which to study the magnitude of acid rain's effects on area surface waters. I have been pleased to support and participate in that study. Dr. Paul Godfrey of the University of Massachusetts at Amherst has been collecting and tracking acid rain information. We have enough data to see that is occurring throughout the State. The data shows that 62 percent of the surface waters tested are highly sensitive to acidification. These studies also show that most areas of my State have low alkalinity levels and thus are highly susceptible to acidification.

In Massachusetts, we are spending approximately $13 million per year to protect and restore statuaries and buildings which literally are being eaten away by acidic moisture. If you take the problems we now know of in Massachusetts with their associated human, ecological, and financial impacts and project them on a national scale, the deterioration and its costs become enormous.

Massachusetts has responded to this information by enacting one of the most comprehensive acid rain control bills in the country. It mandates a substantial reduction in both sulfur dioxide and nitrogen oxide emissions from Massachusetts sources.

But even in the law itself it is recognized that State action is not enough. It cannot and should not serve as a substitute for a national program. The Federal role in preventing pollution produced by one State from affecting another, is clear. Only Federal action can stop this damage.

Consequently, I have worked for many years on a comprehensive national acid rain control plan. Through the National Governor's Association Task Force attempt to reach a "meeting of the minds" among different geographical regions of the country, the outlines of what I believe could be a national consensus emerged. A major component of that approach is the motion that there should be a broad sharing of the financial burden among producers of acid rain and those who will benefit from its reduction. Pointing fingers at utilities or coal producers accomplishes little. It has only stalled the process. This is a national problem and requires a national solution. The legislation I am introducing today—the Acid Rain Control Act of 1987—S. 95—represents an effort to do just that.

The National Acid Rain Control Act of 1987 will amend the Clean Air Act to reduce annual sulfur dioxide [SO_2] emissions by 12 million tons and nitrogen oxides [NO_X] emissions by 3 million tons by 1995 in the 48 contiguous States and the District of Columbia.

The sulfur dioxide reductions will be achieved in three different ways. First, utilities and other industries will, upon enactment, be required to reduce emissions by following a series of mandated steps that include coal washing and the addition of adipic acid before combustion.

Second, each State will have control over allocating the additional reductions based on its share of the problem as determined by the EPA Administrator using the best available data. The State plan must call for a phased reduction so that seven-twelfths of the States's share reductions will be achieved before 1992, and the entire share target achieved by 1995. A State may allow a source to substitute emissions of NO_x for SO_2 at a ratio of 2 to 1. In the event that a State fails to submit a plan, or in the event that the plan is not accepted by the Administrator, major stationary sources will have to comply with an emission limitation equal to 1.2 pounds of SO_2 per million BTU's of heat input.

Finally, a trust fund will be established by the collection of a fee on the production of electricity generated by fossil fuel combustion. Payments from the fund will be used to help defray capital costs incurred by facilities in meeting their reduction requirements. The subsidy will be paid at a rate of $147 per ton of SO_2 reduced. This amount is designed to greatly reduce electric rate increases payable by utility customers. The fee will be assessed at one of three levels, based upon the 1982 State average SO_2 emissions rate. States with lower rates of emissions will be assessed lower fees. This fee structure is designed to provide equity while recognizing that in order to develop a feasible plan, the costs of emissions reduction must be shared. This payment formula would favor the installation of capital equipment to avoid coal miner job displacement while fixing the subsidy at a level which will encourage the use of newer and less costly technologies. The trust fund would also provide $10 million a year for accelerated research on cleaner burning industrial processes as well as $25 million a year for acid deposition mitigation programs.

Acid rain will not go away by wishing it so or by making believe it does not exist. Congress must act now because, unfortunately, the administration has given nothing more than lip service to the problem. The President has earnestly asked the National Academy of Sciences, EPA Administrator William Ruckelshaus, and Special Envoy Drew Lewis to conduct inquiries into the implications of the phenomenon. All three have concluded that a plan of action must be enacted with haste. So far, the President has failed to heed their common warning and instead he has hidden behind requests for ever more research. Lately we are even told that he will break his commitment to support the recommendations of the special envoys.

However, we must be honest and hard on ourselves as well, for we have abdicated our responsibility to protect the public as well. Republicans and Democrats alike will have to put away partisan concerns in order to enact legislation to accomplish these goals before it is too late to do so.

My legislation offers one approach to this problem. I realize that many of my colleagues will offer different proposals in this session of Congress and I commend them for their interest in this issue. We are all committed to seeing acid rain abated and I am proud to join with them in fighting this important fight. I realize that in order to enact a strong Acid Rain Control Program, it is going to be necessary for many of us to work together and take different elements of different proposals. So let me make it clear, Mr. President, that while I am committed to finding a solution to this problem, I am willing and committed to working toward an end to this crisis without thinking that mine is the only solution. Together we must create a coalition that will creatively and dramatically develop legislation that will end this crisis of incalculable dimension.

Mr. President, I ask unanimous consent that at the conclusion of my remarks the following additional information be printed:

S. 95 the National Acid Rain Control Act of 1987.

Background on S. 95—the Kerry acid rain bill.

Elements in S. 95 the National Acid Rain Control Act.

Summary of S. 95—the National Acid Rain Control Act.

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

S. 95

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 "National Acid Rain Control Act of 1987".

SEC. 2. PURPOSE.

The purpose of this Act is to reduce emissions of sulfur dioxide by 12 million tons per year and to reduce emissions of oxides of nitrogen by 3 million tons per year, by the year 1995, in order to lessen the damage to public health and the environment from acid deposition attributable to those pollutants.

TITLE I—ACID DEPOSITION CONTROL AND ASSISTANCE PROGRAM

SEC. 101. AMENDMENT OF CLEAN AIR ACT.

Title I of the Clean Air Act is amended by adding at the end thereof the following new part:

"PART E—ACID DEPOSITION CONTROL

"Subpart 1—General Provisions

"PURPOSE OF PART

"SEC. 181. The purpose of this part is to reduce sulfur dioxide emissions in the 48 contiguous States and the District of Columbia by 12,000,000 tons by 1995. Such reduction shall be achieved through—

"(1) a program under subpart 2 consisting of direct federally mandated emission reductions;

"(2) a program under subpart 3 consisting of State plans to provide for reductions in emission rates as may be necessary to achieve the remaining portion of the reduction; and

"(3) a program under subpart 4 to mitigate any potential economic impacts and coal mining job dislocation by subsidizing the capital costs of control technology used for the purpose of the program under subpart 3 through a fee on the generation of electric energy by fossil fuel fired electric utility generating plants.

"DEFINITIONS

"SEC. 182. As used in this part—

"(1) The terms 'new' and 'modified' when used with respect to an electric utility unit or other source means an electric utility unit or other source which commenced construction (or modification) after December 31, 1980, and which is subject to new source performance standards for sulfur dioxide under section 111.

"(2) The term 'commenced' when used with respect to construction or modification has the same meaning as when used in section 111.

"(3) The term 'fossil fuel fired electric utility generating plant' means all of the fossil fuel fired electric utility steam generating units owned or operated by an electric utility which are located on one or more contiguous or adjacent properties.

"(4) The terms 'steam generating unit', 'electric utility', and 'fossil fuel' have the same meanings as provided in regulations under section 111 applicable to electric utility steam generating units for which construction is commenced after September 18, 1978.

"(5) The term 'Btu' means a British thermal unit.

"(6) The term 'technological system of continuous emission reduction' has the meaning provided by section 111(a)(7).

"(7) The term 'sulfur dioxide' when used with respect to emissions means total sulfur emissions expressed as sulfur dioxide emissions.

"(8) The term 'baseline year' means the calendar year 1980, except that the Administrator may designate a subsequent calendar year as the baseline year if he determines that reasonable and reliable data is available for that year with respect to the actual sulfur dioxide emission rates of the unit or source involved.

"(9) The term 'best available cleaning method' means the coal cleaning method which results in the highest reasonably obtainable level of sulfur removal, as determined by the Administrator.

"RELATIONSHIP TO OTHER REQUIREMENTS

"SEC. 183. Nothing in this part shall be construed to affect or impair the requirements of section 110 (or of any applicable implementation plan) or of any other section of this Act; except that any stationary source which is subject to any such requirement may also be subject to additional requirements under this part.

"Subpart 2—Federally Mandated Emission Reductions

"FEDERALLY MANDATED EMISSION REDUCTIONS

"SEC. 186. (a) COAL CLEANING.—Any fossil fuel fired electric utility generating plant which burns coal with an average sulfur content of more than 2 percent must provide that such coal is cleaned prior to combustion using the best available cleaning method by not later than December 31, 1989.

"(b) ADIPIC ACID TREATMENT.—Any fossil fuel fired electric utility generating plant which is equipped with flue gas desulfuriza-

tion units must include adipic acid treatment with such units by not later than December 31, 1989.

"Subpart 3—State Plans for Additional Emission Reductions

"CALCULATION OF STATE SHARES

"SEC. 191. (a) SHARE OF 12,000,000 TON REDUCTION.—

"(1) EPA COMPUTATION.—For each of the 48 contiguous States and the District of Columbia, the Administrator shall compute a State share of the 12,000,000 ton reduction in annual emissions of sulfur dioxide referred to in section 181. The Administrator shall compute the State share for each such State as provided in subsection (b) not later than 18 months after the date of the enactment of the National Acid Rain Control Act.

"(2) DATA TO BE USED IN COMPUTATION.—In making computations under subsection (b), the Administrator shall use the best available data. To the extent that other better data regarding the emissions of sulfur dioxide from any category of sources is not available on or before the date 18 months after the date of the enactment of the national Acid Rain Control Act, the Administrator shall utilize the inventory of emissions developed in fulfillment of the requirements of the Memorandum of Intent on Transboundary Air Pollution signed by Canada and the United States on August 5, 1980.

"(b) STATE SHARE.—

"(1) GENERAL RULE.—The State share for each such State shall be the number of tons which is the sum of the amounts computed under subparagraphs (A), (B), and (C).

"(A) ELECTRIC UTILITY EXCESS EMISSIONS TONNAGE.—The tonnage computed under paragraph (2) for fossil fuel fired electric utility generating plants in the State.

"(B) NONUTILITY BOILER EXCESS EMISSIONS TONNAGE.—The tonnage computed under paragraph (3) for other fossil fuel fired steam generating units in the State.

"(C) PROCESS EMITTERS EXCESS EMISSIONS TONNAGE.—The tonnage computed under paragraph (4) for industrial process emitters of sulfur dioxide in the State.

"(2) ELECTRIC UTILITY EXCESS EMISSIONS TONNAGE.—

"(A) FRACTION OF 10,000,000 TONS.—The Administrator shall compute an excess emissions tonnage amount under this paragraph for fossil fuel fired electric utility generating plants in the State. The amount shall be determined by multiplying 10,000,000 tons by a fraction the numerator of which is determined under subparagraph (B) and the denominator of which is determined under subparagraph (C).

"(B) NUMERATOR OF ELECTRIC UTILITY FRACTION.—The numerator of the electric utility fraction under this paragraph shall be the tonnage of emissions of sulfur dioxide which the Administrator estimates to have been emitted during the baseline year at a rate in excess of 1.2 pounds per million Btu's of heat input from fossil fuel fired electric utility generating plants which are located in the State and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of 1.2 pounds per million Btu's of heat input.

"(C) DENOMINATOR OF ELECTRIC UTILITY FRACTION.—The denominator of the electric utility fraction under this paragraph shall be the tonnage of emissions of sulfur dioxide which the Administrator estimates to have been emitted during the baseline year at a rate in excess of 1.2 pounds per million Btu's of heat input from all fossil fuel fired electric utility generating plants which are located in the 48 contiguous States and the District of Columbia and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of 1.2 pounds per million Btu's of heat input.

"(3) NONUTILITY BOILER EXCESS EMISSIONS.—

"(A) FRACTION OF 1,000,000 TONS.—The Administrator shall compute an excess emissions tonnage amount under this paragraph for fossil fuel fired steam generating units located in the State, other than those which are part of a fossil fuel fired electric utility generating plant. The amount shall be determined by multiplying 1,000,000 tons by a fraction the numerator of which is determined under subparagraph (B) and the denominator of which is determined under subparagraph (C).

"(B) NUMERATOR OF NONUTILITY FRACTION.—The numerator of the nonutility fraction under this paragraph shall be the tonnage of emissions of sulfur dioxide which the Administrator estimates to have been emitted during the baseline year at a rate in excess of 1.2 pounds per million Btu's of heat input from fossil fuel fired steam generating units which are located in the State, other than units which are part of a fossil fuel fired electric utility generating plant, and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of 1.2 pounds per million Btu's of heat input.

"(C) DENOMINATOR OF NONUTILITY FRACTION.—The denominator of the nonutility fraction under this paragraph shall be the tonnage of emissions of sulfur dioxide emitted during the baseline year at a rate in excess of 1.2 pounds per million Btu's of heat input from all fossil fuel fired steam generating units which are located in the 48 contiguous States and the District of Columbia, other than units which are part of a fossil fuel fired electric utility generating plant, and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of 1.2 pounds per million Btu's of heat input.

"(4) PROCESS EMITTERS EXCESS EMISSIONS TONNAGE.—

"(A) FRACTION OF 1,000,000 TONS.—The Administrator shall compute an excess emissions amount under this paragraph for industrial process emitters (as defined by the Administrator) of sulfur dioxide in the State. The amount shall be determined by multiplying 1,000,000 tons by a fraction the numerator of which is determined under subparagraph (B) and the denominator of which is determined under subparagraph (C).

"(B) NUMERATOR OF PROCESS EMITTER FRACTION.—The numerator of the process emitter fraction under this paragraph shall be the tonnage of emissions of sulfur dioxide emitted during the baseline year at an annual average rate in excess of the limit determined under subparagraph (D) from emissions units of industrial process emitters of sulfur dioxide which are located in the State and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of the limit determined under subparagraph (D).

"(C) DENOMINATOR OF PROCESS EMITTER FRACTION.—The denominator of the process emitter fraction under this paragraph shall be the total tonnage of emissions of sulfur dioxide emitted during the baseline year at an annual average rate in excess of the applicable limit determined under subparagraph (D) from emissions units of industrial process emitters of sulfur dioxide which are located in the 48 contiguous States and the District of Columbia and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of the limit determined under subparagraph (D).

"(D) EMISSIONS LIMIT.—

"(i) For purposes of this paragraph, the average annual limit determined under this subparagraph for any emissions unit of a stationary source of industrial process emissions shall be the rate which the Administrator determines to be the national average BACT emissions limit for sulfur dioxide for emissions units within the category of process emitters involved.

"(ii) Utilizing the BACT/LAER Clearinghouse data available at the Environmental Protection Agency, the Administrator shall review the emission limitations for industrial process emitters which were established as 'best available control technology' (BACT) under this Act during the period August 1977 through December 31, 1986. On the basis of such data, and not later than 1 year after the date of the enactment of the National Acid Rain Control Act, the Administrator shall establish a national average BACT emission limit for sulfur dioxide for emissions units within each category of process emitters of sulfur dioxide.

"(c) REALLOCATION AMONG STATES.—Under regulations promulgated by the Administrator, any two or more contiguous States may by agreement reallot among agreeing States the State share of two or more agreeing States if, under such reallotment, the total reduction in annual emissions of sulfur dioxide is equal to or greater than, and contemporaneous with, the total reduction in annual emissions of sulfur dioxide which would be required under this part in the absence of such reallotment.

"STATE CONTROL PLANS

"SEC. 192. (a) SUBMISSION OF PLAN.—(1) Each of the 48 contiguous States and the District of Columbia shall submit to the Administrator a plan for achieving such State's share of the reduction in sulfur dioxide emissions.

"(2) The plan must be submitted within 12 months after the date of the enactment of the National Acid Rain Control Act, and the Administrator shall approve or disapprove such plan within 6 months after its submission.

"(b) TIMETABLE FOR REDUCTIONS.—The State plan shall provide for a phased reduction such that 7/12 of the State's share of the reduction shall be achieved prior to December 31, 1992, and the entire share shall be achieved prior to December 31, 1994. The timetable for achieving such reductions shall provide for continuous reduction with identifiable incremental reductions.

"(c) STATE PREROGATIVES.—The plan shall provide for the reductions in accordance with subsection (b) by any means; except that the State must comply with the federally mandated emission reductions required by section 186.

"(d) INTERIM EMISSIONS LIMITS.—The State shall apply an annual interim limitation on statewide sulfur dioxide emissions equal to the amount of such emissions for calendar year 1985. The interim limitation shall apply to emissions for calendar years prior to 1995, or, if earlier, until the State has achieved its entire share of the reduction required by section 191.

"(e) RECOMMENDED INDIVIDUAL SOURCE REQUIREMENTS.—The State plan may require that each fossil fuel fired steam generating

unit and each industrial process emitter in the State shall—

"(1) apply the best available control technology; or

"(2) limit sulfur dioxide emissions to an annual rate not in excess of 1.2 pounds per million Btu's of heat input.

"(f) SUBSTITUTION.—A State may allow the owner or operator of a source required to achieve emission reductions under this part to substitute a reduction in emissions of oxides of nitrogen for required reductions in emissions of sulfur dioxide, at a rate of two units by weight of oxides of nitrogen for each unit of sulfur dioxide.

"(g) ENFORCEMENT.—Each requirement of a State plan approved by the Administrator under this section shall be treated as a requirement of an applicable State implementation plan for purposes of sections 113, 114, 116, 120, and 304.

"REQUIREMENTS APPLICABLE TO STATES WHICH DO NOT HAVE AN APPROVED PLAN

"SEC. 193. (a) REQUIREMENTS FOR FACILITIES.—In any State in the 48 contiguous States and the District of Columbia which has not submitted a plan under section 192 within 12 months after the date of the enactment of the National Acid Rain Control Act, or which has not had a plan approved by the Administrator under section 192 within 6 months after the submission of such plan, or which fails to implement such plan after its approval—

"(1) the owner or operator of any fossil fuel fired facility which is a major stationary source which is not subject to section 111(a) shall comply with an emission limitation equivalent to an average annual rate of 1.2 pounds of sulfur dioxide per million Btu's of heat input on a rolling 30-day average; and

"(2) the owner or operator of any process emitter shall comply with the average BACT emissions limit established under section 191(b)(4)(D).

"(b) SUBMISSION OF PLAN.—The owner or operator of each source subject to the requirements of subsection (a) shall submit to the Administrator a plan and schedule of compliance for achieving such emission limitation not later than 3 years after the date of the enactment of the National Acid Rain Control Act, or, if later, 6 months after the date on which the Administrator determines that the State has failed to implement the State plan after its approval.

"(c) APPROVAL.—The Administrator shall approve the plan and schedule of compliance of the source if they—

"(1) contain enforceable requirements for continuous emission reduction;

"(2) contain requirements for monitoring by the source and enforcement agencies to assure that the emission limitations are being met; and

"(3)(A) in the case of a source which proposes to comply with the emission limitation through the use of fuel substitution, will achieve the emission reduction required by this section no later than 24 months after such plan is submitted; or

"(B) in the case of a source which proposes to comply with the emission limitation through the installation of a technological system of continuous emission reduction or replacement of existing facilities with new facilities with substantially lower emissions, or any other means except fuel switching, contains enforceable requirements that such source will, within 24 months after such plan is submitted, enter into binding contractual commitments to acquire, install, or construct such system or facilities.

"(d) PENALTIES.—Failure of such owner or operator to submit an approved plan and schedule within the time provided in this section, failure to comply with the plan and schedule of compliance, and failure to achieve the emission reduction required by the dates required by this section, shall be violations of emission limitations for the purposes of sections 113, 120, and 304.

"Subpart 4—Acid Deposition Control Fund

"ESTABLISHMENT OF FUND

"SEC. 196. (a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the 'Acid Deposition Control Fund' (hereafter in this subpart referred to as the 'Fund'), consisting of such amounts as may be deposited into such Fund as provided in this section.

"(b) DEPOSITS INTO THE FUND.—(1) The owner or operator of any fossil fuel fired electric utility generating plant located in the 48 contiguous States or the District of Columbia shall pay to the United States the fees established by section 197. The Secretary of the Treasury shall deposit the fees collected into the Fund.

"(2) Payments of fees under this subsection shall be made on a quarterly basis, based upon the electricity produced in the preceding quarter.

"(3) The Administrator, in consultation with the Secretary of the Treasury, shall promulgate such regulations as may be necessary to carry out this subsection.

"(c) PAYMENTS FROM THE FUND.—(1) The Administrator shall make payments from the Fund for the following purposes:

"(A) Payments shall be made to owners and operators of facilities for capital costs of sulfur dioxide reductions incurred by such owners or operators in meeting the requirements of this part, other than the federally mandated emission reductions required by section 186 or reductions which result from fuel switching or blending, at a rate of $147 per ton of sulfur dioxide emission reduction. Such payments shall be made for 15 years, commencing at the time the equipment comes into operation.

"(B) Payment of not more than $10,000,000 per year shall be made for accelerated research of cleaner burning industrial processes, in accordance with section 198.

"(C) Payment of not more than $25,000,000 per year shall be made for mitigation programs under title III of the National Acid Rain Control Act.

"(2) The Administrator, after consultation with the Secretary of the Treasury and the Secretary of Energy, shall promulgate regulations as may be necessary to implement this section, including regulations providing that—

"(A) no payment may be made under this section to a utility for any costs unless the Administrator determines that, under applicable rate schedules, the full amount of such payment will be used to reduce electric rate increases payable by customers of the utility which otherwise would result from the construction and installation concerned; and

"(B) such payments shall be made at such times as will minimize any electric rate increases for customers of the utility.

"FEES

"SEC. 197. (a) DETERMINATION OF EMISSION RATES.—Within 12 months after the date of the enactment of the National Acid Rain Control Act, the Administrator shall determine the average sulfur dioxide emission rate of each of the 48 contiguous States and the District of Columbia for the calendar year 1982 from all fossil fuel fired electric utility generating plants in such State.

"(b) FEE SCHEDULE.—The fee under this section shall apply to all electricity generated in such State by fossil fuel fired electric utility generating plants located in the State as follows:

"1982 State average sulfur dioxide emission rate:	Fee:
Less than or equal to 1.2 pounds per million Btu's of heat input	0.50 mills per kilowatthour
Greater than 1.2 pounds per million Btu's of heat input, but less than 2.0 pounds per million Btu's of heat input	1.0 mills per kilowatthour
Greater than 2.0 pounds per million Btu's of heat input	1.6 mills per kilowatthour

"(c) YEARS TO WHICH FEE APPLIES.—The fees established by this section shall apply to calendar years beginning with the first calendar year that begins more than 12 months after the date of the enactment of the National Acid Rain Control Act, and ending with the calendar year fifteen years from the date of enactment.

"Subpart 5—Accelerated Research on Cleaner Burning Industrial Processes

"RESEARCH FUNDS

"SEC. 198. The Administrator shall make such grants and enter into such contracts and other arrangements as may be necessary to accelerate the research necessary to develop advanced industrial processes (including atmospheric fluidized bed combustion, magnetohydrodynamics (MHD), and lime-injected multistage burner technology (LIMB)) which may result in lower levels of sulfur dioxide and oxides of nitrogen. For each of the five fiscal years commencing with the fiscal year 1987, $10,000,000 are authorized to be appropriated from the fund established under subpart 4 for purposes of this section.".

SEC. 102. CONFORMING AMENDMENTS.

(a) ENFORCEMENT.—Section 113(a)(3) of the Clean Air Act is amended by inserting ", or is in violation of any requirement in effect pursuant to part E" after "inspections, etc.)".

(b) CIVIL ACTIONS.—Section 113(b) of the Clean Air Act is amended by inserting after and below paragraph (5) the following:

"Whenever any person violates any requirement in effect pursuant to part E, the Administrator may commence a civil action for permanent or temporary injunction or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both.".

(c) CRIMINAL PENALTIES.—Section 113(c)(1)(C) of the Clean Air Act is amended by inserting "or any requirement in effect pursuant to part E," before "or".

(d) JUDICIAL REVIEW.—Section 307(b)(1) of the Clean Air Act is amended by inserting ", any final action taken by the Administrator under part E of title I" after "120" in the first sentence thereof.

TITLE II—CONTROL OF EMISSIONS OF OXIDES OF NITROGEN

SEC. 201. REVISIONS OF NEW SOURCE PERFORMANCE STANDARD.

Section 111 of the Clean Air Act is amended by adding at the end thereof the following new subsection:

"(k) STANDARDS OF PERFORMANCE RELATING TO OXIDES OF NITROGEN.—(1) The Administrator shall revise the standards of performance for emissions of oxides of nitrogen

from electric utility steam generating units which burn bituminous or subbituminous coal. Such revised standards shall prohibit the emission of oxides of nitrogen from such units at a rate which exceeds—

"(A) 0.30 pounds per million Btu's of heat input, in the case of subbituminous coal; and

"(B) 0.40 pounds per million Btu's of heat input, in the case of bituminous coal,

based on a 30-day rolling average. Such revised standard shall take effect with respect to units which commence construction after the date of the enactment of the National Acid Rain Control Act.

"(2) As used in this subsection, the terms 'electric utility steam generating unit', 'bituminous coal', and 'subbituminous coal' have the same meanings as when used in 40 CFR part 60, subpart D, as in effect on January 1, 1983.

"(3) The Administrator shall promulgate standards of performance under this section for emissions of oxides of nitrogen and sulfur dioxide from all fossil fuel fired steam generating units which are new sources within the meaning of subsection (a)(2) and which are capable of combusting more than 50 million Btu's per hour heat input of fossil fuel (either alone or in combination with any other fuel). The standards under this section applicable to fossil fuel fired steam generating units which are capable of combusting more than 250 million Btu's per hour heat input may vary from the standards applicable to units which are not capable of such combustion.".

SEC. 202. EMISSIONS FROM MOBILE SOURCES.

(a) TRUCKS AND TRUCK ENGINES.—Section 202 of the Clean Air Act is amended by adding at the end thereof the following new subsection:

"(g) OXIDES OF NITROGEN EMISSIONS FROM LIGHT-DUTY TRUCKS AFTER 1988.—(1) Effective with respect to vehicles and engines manufactured during and after the model year 1988, the regulations under subsection (a) applicable to emissions of oxides of nitrogen from trucks and truck engines the gross vehicle weight of which does not exceed 8,500 pounds shall contain standards which provide that such emissions may not exceed—

"(A) 1.2 grams per vehicle mile for gross vehicle weight not in excess of 6,000 pounds; and

"(B) 1.7 grams per vehicle mile for gross vehicle weight in excess of 6,000 pounds.

"(2) Effective with respect to vehicles and engines manufactured during and after the model year 1988, the regulations under subsection (a) applicable to emissions of oxides of nitrogen from trucks and truck engines the gross vehicle weight of which exceeds 8,500 pounds shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower-hour.

"(3) Subparagraphs (B) and (E) of subsection (a)(3) shall not apply to any standard established under this subsection.".

(b) CONFORMING AMENDMENT.—Section 202(a)(3)(A)(ii) is amended by inserting ", and except as otherwise provided in subsection (g)" after "(E)".

TITLE III—ACID DEPOSITION DAMAGE MITIGATION PROGRAM

SEC. 301. STATE PLANS AND FEDERAL ASSISTANCE.

(a) RESTORATION PROGRAM.—Any State may prepare, and submit to the Administrator of the Environmental Protection Agency for approval and to the Director of the United States Fish and Wildlife Service for comment—

(1) a survey of water quality deterioration in such State which has resulted from acid deposition;

(2) a proposal for research on mitigating the effects of acid deposition on terrestrial and aquatic ecosystems; and

(3) proposed methods and procedures to restore the quality of water in such State which has deteriorated as a result of acid deposition.

(b) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—From the fund established under section 196 of the Clean Air Act, the Administrator, after consultation with the Director of the United States Fish and Wildlife Service, shall provide financial assistance to States in order to carry out methods and procedures for restoration which have been approved by the Administrator under this section.

(2) 80 PERCENT LIMIT.—The amount granted under this section to any State for any fiscal year shall not exceed 80 percent of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(3) APPORTIONMENT AMONG STATES.—The Administrator shall provide for an equitable distribution of sums appropriated under this section among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the restoration of water quality which has deteriorated as a result of acid deposition. The amount of any grant to a State under this section shall be in addition to, and not in lieu of, any other Federal financial assistance.

BACKGROUND ON S. 95, THE KERRY ACID RAIN BILL

Acid rain damage to aquatic ecosystems, including many fresh water lakes and streams, has been well documented in Europe and eastern North America. The problem, once thought to be an issue only for New England, is quickly revealing itself as one with national and international implications. In addition to the northeastern states and eastern Canada, recent studies indicate sensitivity to aquatic acidification in the Southeast, areas of the Rocky Mountains, and the Pacific Northwest. The EPA's just released Eastern Lakes Survey confirms the research of many experts and surprised many by documenting extensive damage throughout Florida. The National Academy of Sciences projects that, "At current rates of emissions of sulfur and nitrogen oxides, the number of affected lakes can be expected to more than double by 1990, and to include larger and deeper lakes."

Extensive forest damage and growth decline throughout North America and Europe are believed to be the result of acid precipitation. Declines in the United States have been documented in high elevation forests in the Northeast, Ohio and as far south as North Carolina. It may already be too late to reverse the long-term decline of much of the central European forests from gaseous pollutants. The emission reductions that countries such as West Germany are undertaking may not save the forests since the pollution effects appear to be cumulative and recovery time long. Central Europe's experiences should serve as a hard lesson for the United States. (During an acid rain fact-finding visit to Europe in January 1984, Senator Kerry visited the Black Forest in Germany and was told by German officials and scientists that much of the damage could be permanent.)

The air pollutants associated with acid rain can have direct effects on human health. Evidence indicates that even current levels of sulfur dioxide can produce adverse health effects in some people. Those at greatest risk include people with allergies, children, individuals with bronchitis and more severe respiratory and cardiovascular diseases, the elderly and smokers. It is also suspected that pollutant levels that have been accepted as safe when pollutants are in isolation, may become hazardous when the pollutants are combined—as is the case with acid rain.

Acid deposition at current levels is damaging materials—metal, stone and exterior coatings—as well as many important historic and cultural resources.

Acid rain contributes to a deterioration of visibility, particularly in those areas where the pollutants are initially emitted.

ELEMENTS IN S. 95, THE NATIONAL ACID RAIN CONTROL ACT

Given the magnitude of the effects of acid rain and the growing consensus in the scientific community that it is not confined to a few "dead" lakes in New England, comprehensive, immediate action is indicated. The Kerry Bill will accomplish the needed emissions reductions while being sensitive to issues of coal miner job displacement, cost responsibilities, equity and other regional concerns. The bill will also allow the flexibility needed to encourage advanced fossil fuel combustion technology.

S. 1983 includes:

A twelve million ton reduction in annual sulfur dioxide (SO_2) emissions—the amount of reduction needed to adequately protect natural and manmade resources.

A three million ton reduction in oxides of nitrogen (NO_x) emissions—reduction of these emissions is particularly important to the future health of our forests.

Emissions reductions across the continental United States—because there are symptoms of acid rain throughout the country, national reductions are needed.

State flexibility to design reduction plans which best fit their needs—by not requiring any specific technologies, states can design plans which reduce emissions at lower costs to consumers.

A specified plant-by-plant emission limit will be imposed in the event that a state fails to produce an plan based on regulations in the bill and acceptable to EPA—this will ensure reductions as well as minimize opportunities for delay.

A fund to subsidize the cost of capital equipment to reduce emissions based on a payment of $147 ton reduced—an innovative payment formula which favors the installation of capital equipment to avoid coal miner job displacement while fixing the subsidy at a level which will promote the use of newer, less costly technologies.

A three-tiered graduated fee on electricity generation for collecting the subsidy—a new proposal which creates equity by shifting the burden from areas of the country where sulfur emissions are currently lower to those areas that have greater emissions and will consequently receive more benefits from the subsidy fund.

SUMMARY OF S. 95, THE NATIONAL ACID RAIN CONTROL ACT

PURPOSE

The National Acid Rain Control Act will amend the Clean Air Act to reduce sulfur dioxide emissions by 12 million tons per year

and nitrogen oxide emissions by 3 million tons per year by 1995 in the 48 contiguous states and the District of Columbia. These reductions will lessen the damage to public health and the environment from acid deposition caused by these pollutants.

CONTROL OF SULFUR DIOXIDE EMISSIONS

Section 181

Sulfur dioxide reductions will be achieved through: (1) direct federally mandated reductions; (2) state plans which provide for additional reductions; and (3) implementation of a program which subsidizes the capital costs of control technologies to mitigate any potential economic impacts and loss of coal mining jobs.

Section 191

The EPA Administrator will compute each state's share of the reduction using the best available data or the inventory of emissions developed in the Memorandum of Intent on Transboundary Air Pollution signed by the U.S. The state's share depends on boiler emissions greater than 1.2 lbs. SO_2/MMBTU heat input and excess process emissions.

STATE CONTROL PLANS

Section 192

Each of the 48 contiguous states and the District of Columbia must submit a plan to the EPA Administrator which describes how emission reductions will be achieved. The state plan must call for a phased reduction so that 7/12 of the state's share of reductions will be achieved before 1992, and the entire share by 1995. The state may allow a source to substitute emissions of NO_x for SO_2 at a ratio of 2:1.

REQUIREMENTS FOR STATES WHICH DO NOT HAVE APPROVED REDUCTION PLANS

Section 193

In any state which does not submit, receive approval, or implement their plan, major stationary sources will have to comply with an emission limitation equal to 1.2 lbs. of SO_2 per million Btu's of heat input.

ACID DEPOSITION CONTROL FUND

Section 196

A trust fund will be established in the U.S. Treasury into which fees collected from owners or operators of fossil fuel fired electric utility generating plants within the 48 contiguous states will be deposited. Payments from the fund will be used for the following purposes: (1) payment for capital costs incurred by these facilities in meeting reduction requirements at a rate of $147 per ton of SO_2 emission reduced; (2) payment of $10 million per year for accelerated research on cleaner burning industrial processes; and (3) payment of $25 million per year for acid deposition mitigation programs. These payments will be used to reduce electric rate increases payable by customers of the utility.

Section 197

The Administrator will apply the following fee schedule:

1982 State average sulfur dioxide emission rates

	Fees
Less than or equal to 1.2 pounds per million Btu's	[1] 0.50
Greater than 1.2 pounds per million Btu's of heat input but less than 2.0 pounds per million Btu's of heat input	[1] 1.0
Greater than 2.0 pounds per million Btu's of heat input	[1] 1.6

[1] Mills per killowatt-hour.

ACCELERATED RESEARCH ON CLEANER BURNING INDUSTRIAL PROCESSES

Selection 198

Beginning in 1987, $10 million will be authorized for 5 fiscal years for research which develops industrial processes to lower levels of SO_2 and NO_x.

Section 201

Revises performance standards for emission of nitrogen oxides from electric utility steam generating as follows: prohibits emission of NO_x at a rate of more than 0.30 lbs/mill. Btu's of heat input using sub-bituminous coal; and 0.40 lbs/mill Btu's of heat input using bituminous coal.

Section 202

After 1987, emissions from light-duty trucks weighing less than 8,500 lbs cannot exceed 1.2 g/vehicle mile for gross vehicle weight not in excess of 6,000 pounds, and 1.7 g/vehicle mile for gross vehicle weight in excess of 6,000 pounds. For trucks exceeding 8,500 lbs. NO_x emissions may not exceed 4.0 g/brake horsepower-hour.

ACID DEPOSITION DAMAGE MITIGATION PROGRAM

States will be reimbursed 80% of funds used for mitigation measures to restore aquatic and terrestrial resources.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 96. A bill to amend titles XVIII and XIX of the Social Security Act to provide that psychiatric nurse practitioner or psychiatric clinical nurse specialist services are covered under part B of Medicare and are a mandatory benefit under Medicaid, and for other purposes; to the Committee on Finance.

PROVIDING CERTAIN PSYCHIATRIC NURSE SERVICE COVERAGE

Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation to amend our Nation's Medicare and Medicaid Programs to ensure that psychiatric nurse practitioners and psychiatric clinical nurse specialists will be deemed truly autonomous practitioners under both of these programmatic initiatives.

In our judgment, for too long a period of time now, our various Federal statutes have required that these professional practitioners can only perform under the supervision of, or referral from, members of another profession.

During the past decade, we have been able to modify the Department of Defense CHAMPUS Program in order to ensure that these individuals will be truly autonomous providers and, it is my hope that we will be able to modify Medicare and Medicaid in a similar fashion in the foreseeable future.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 96

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

SECTION 1. COVERAGE OF PSYCHIATRIC NURSE PRACTIONER OR PSYCHIATRIC CLINICAL NURSE SPECIALIST SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking out "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (k); and

(3) by adding at the end thereof the following new subparagraph:

"(L) psychiatric nurse practitioner or psychiatric clinical nurse specialist services;".

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"PSYCHIATRIC NURSE PRACTITIONER OR PSYCHIATRIC CLINICAL NURSE SPECIALIST SERVICES

"(ff)(1) The Term 'psychiatric nurse practitioner or psychiatric clinical nurse specialist services' means services performed by a psychiatric nurse practitioner or psychiatric clinical nurse specialist (as defined in paragraph (2)) which the psychiatric nurse practioner or psychiatric clinical nurse specialist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed, whether or not the psychiatric nurse practitioner or psychiatric clinical nurse specialist is under the supervision of, or associated with, a physician or other health care provider.

"(2) The term 'psychiatric nurse practitioner or psychiatric clinical nurse specialist' means an individual who—

"(A) is a registered nurse and is licensed to practice nursing in the State in which the psychiatric nurse practitioner or psychiatric clinical nurse specialist services are performed; and

"(B)(i) holds a master's degree or higher degree in psychiatric nursing or a related field from an accredited eductional institution, or

"(ii) is certified as a psychiatric nurse practitioner or psychiatric clinical nurse specialist by the duly recognized professional nurses association.".

(c) LIMIT ON PAYMENT OF BENEFITS.—Section 1833(c) of such Act (42 U.S.C. 13951(c)) is amended by striking out all that follows "purpose of subsections (a) and (b)" and inserting in lieu thereof "no more than $1,000.".

(d) EFFECTIVE DATE.—The amendments made by this section shall be affective with respect to services performed on or after the first day of the first month which begins more than 60 days after the date of the enactment of this Act.

SEC. 2. COVERAGE OF PSYCHIATRIC NURSE PRACTITIONER OR PSYCHIATRIC CLINICAL NURSE SPECIALIST SERVICES AS A MANDATORY MEDICAID BENEFIT.

(a) COVERAGE OF SERVICES.—

(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1393d(a)) is amended—

(A) by striking out "and" at the end of paragraph (20);

(B) by redesignating paragraph (21) as paragraph (22); and

(C) by inserting after paragraph (20) the following new paragraph:

"(21) psychiatric nurse practitioner or psychiatric clinical nurse specialist services (as defined in section 1861(ff)(1)); and".

(b) CONFORMING CHANGES.—

(1) Section 1902(a) of such Act (42 U.S.C. 1396(a)) is amended—

(A) in paragraph (10)(A), by striking out "paragraphs (1) through (5) and (17)" and inserting in lieu thereof "paragraphs (1) through (5), (17), and (21)"; and

(B) in paragraph (10)(C)(iv), by striking out "paragraphs (1) through (5) and (17) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (20)" and inserting in lieu thereof "paragraphs (1) through (5), (17), and (21) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (21)".

(2) Section 1902(j) of such Act (42 U.S.C. 1396a(j)) is amended by striking "(21)" and inserting in lieu thereof "(22)".

(c) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall be effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning more than 60 days after the date of the enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 97. A bill to amend title XVIII of the Social Security Act to provide that psychologist services furnished by, or under arrangements made by, a hospice program are covered under Medicare; to the Committee on Finance.

PROVIDING HOSPICE PSYCHOLOGIST SERVICES COVERAGE

Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation which would amend the Hospice Program provisions under our Nation's Medicare law in order to expressly provide that the services of professional psychologists will be made available to individuals who reside in a hospice.

During the closing hours of the 98th Congress, the Senate Finance Committee received testimony on this proposal and, at that time, it was pointed out that primarily due to the lack of express enumeration of psychological services, hospices all too frequently do not utilize their expertise.

In our judgment, it is especially important that quality mental health services be made readily available for those individuals who decide it is necessary to enter a hospice. At that point in time, the therapeutic goal would be to ensure that these individuals are able to finish out the final days of their lives in the most humane fashion possible. I cannot help but think that it is especially during these final hours that the services of qualified mental health specialists would be most in need.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 97

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

SECTION 1. COVERAGE OF CERTAIN SERVICES PROVIDED THROUGH A HOSPICE PROGRAM.

(a) COVERAGE OF SERVICES.—Section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)) is amended—

(1) by striking out "and" at the end of subparagraph (G);

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof ", and";

(3) by adding at the end thereof the following new subparagraph:

"(I) psychologist services (as defined in subsection (ff)(1))".

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is further amended by adding at the end thereof the following new subsection:

"PSYCHOLOGIST SERVICES

"(ff)(1) The term 'psychologist services' means services peformed by an individual who is a psychologist (as defined in paragraph (2)) that such individual is legally authorized to perform under the law (or the regulatory mechanism provided by law) of the State in which such services are performed, whether or not such individual is under the supervision of, or associated with, a physician or other health care provider.

"(2) The term 'psychologist' means an individual who—

"(A) is licensed or certified at the independent practice level of psychology by the State in which such individual so practices,

"(B) possesses a doctorate degree in psychology from a regionally accredited educational institution, or in the case of an individual licensed or certified prior to January 1, 1978, possesses a master's degree in psychology and is listed in a national register of mental health service providers in psychology which the Secretary deems appropriate, and

"(C) possesses two years of supervised experience in health service, at least one year of which is postdegree.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month which begins more than sixty days after the date or the enactment of this Act.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 98. A bill to amend the Internal Revenue Code of 1986 to provide a credit for the purchase of child restraint systems used in motor vehicles; to the Committee on Finance.

PROVIDING TAX CREDIT FOR CHILD RESTRAINT SYSTEM PURCHASES

Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing legislation which would amend the Internal Revenue Code in order to provide a tax credit for the purchase of child restraint systems used in motor vehicles.

Mr. President, our proposal is modeled after a provision in the State of Hawaii's tax code which has been well-received by our constituents. It is an unfortunate fact that injuries have now replaced infectious diseases as the leading cause of death and disability among younger Americans. For example, I understand that half of all Americans aged 1 to 14 who died in 1983, died from injuries sustained in car and bicycle accidents, fires, falls, drowning, and the ingestion of toxic substances. The U.S. Department of Transportation informed me that although child safety seat use has increased from 13 percent in 1979 to almost 29 percent today, its investigations also indicate that only in about 15 percent of the cases where tethered seats are being used, are they being used correctly. Further, for nontethered restraints, in only approximately 60 percent of the time that they are being used, are they being used correctly. This is in spite of the fact that we know that if properly restrained, over 50 percent of the children who died in automobile accidents would have been saved and 65 percent would have been less severely injured.

Mr. President, I request unanimous consent that the text of my bill be printed in the RECORD.

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

S. 98

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

SECTION 1. CREDIT FOR PURCHASE OF CHILD RESTRAINT SYSTEMS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by adding at the end thereof the following new section:

"SEC. 25A. PURCHASE OF CHILD RESTRAINT SYSTEM.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the costs incurred by the taxpayer during such taxable year in purchasing a qualified child restraint system for any child of the taxpayer.

"(b) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED CHILD RESTRAINT SYSTEM.—The term 'qualified child restraint system' means any child restraint system which meets the requirements of section 571.213 of title 49 of the Code of Federal Regulation.

"(2) CHILD RESTRAINT SYSTEM.—The term 'child restraint system' has the meaning given to such term by section 571.213 of title 49 of the Code of Federal Regulations.

"(3) CHILD.—The term 'child' has the meaning given to such term by section 151(d)(3).".

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Reve-

nue Code of 1986 is amended by inserting after the item relating to section 25 the following new item:

"Sec. 25A. Purchase of child restraint system.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

By Mr. INOUYE:

S. 99. A bill to allow the Internal Revenue Code of 1986 to be applied and administered as if the 3-year basis recovery rule applicable to employees' annuities had not been repealed; to the Committee on Finance.

REINSTATING THE THREE-YEAR BASIS RECOVERY RULE

Mr. INOUYE. Mr. President, I rise today to introduce legislation to correct an egregious wrong that was done by the Tax Reform Act of 1986. As we all know, the goal of tax reform was to make needed improvements to the Tax Code to enhance the fairness and simplicity with which individual and corporations are taxed in this country. Unfortunately, in the rush to enact legislation in this area, many compromises and sacrifices were made for the sake of attracting political support. As a result, the final bill fell far short of its objectives of fairness, growth, and simplicity.

One area in which I feel the principle of fairness was most blatantly disregarded was the retroactive repeal of the 3-year basis recovery rule for employees who contribute to their own retirement plans. These retirees, most of whom are Government employees, have long contributed to their pension plans, paying taxes all along with the expectation of receiving these already taxed contributions back during the first 3 years of their retirement. Under the Tax Reform Act, not only was this 3-year rule repealed, but it was done so retroactively. Thus workers who retired after July 1, 1986, with the understanding that they would be entitled to three tax-free years of recovering the contributions they had made and paid taxes on throughout their careers were told "tough luck." Through no delinquency or oversight of their own, they found out after they retired that the rules in effect when they retired had been changed and as a result Uncle Sam will raid the nest egg they had been working so hard for. For those retirees who opted for a lump sum payment of their benefit under the 3-year recovery rule, this will mean they may suddenly be required to make a large up-front tax payment which was not even discussed when they retired. For many Government retirees, this could result in a previously unexpected tax payment of $20,000. Calling this "unfair," I feel, is a gross understatement. Treatment such as this is nothing short of criminal, and it was this provision that finally convinced me to make the difficult decision to vote against the Tax Reform Act.

The far-reaching impact of the repeal of the 3-year recovery rule will be felt by Federal, State, and local government employees all across the Nation. In my State of Hawaii, the State retirement system estimates that the change in the law will have adverse repercussions on over 80 percent of its recent retirees. Some of these retirees who had expected—and rightfully so—to pay only minimal taxes in 1986, will now find themselves taxed at rates as high as 49 percent. This, I feel, is far beyond what we should reasonably ask hard-working public servants to sacrifice for the sake of "tax reform." I sincerely hope my colleagues will join me in my effort to restore to these dedicated Americans the fair and equitable treatment they had been provided until the Tax Reform Act of 1986 was passed. Once the implications of the repeal of the 3-year rule become more clear, I feel the American public will demand that it be reinstated, and I look forward to working with my colleagues in the coming Congress to see that this happens.

By Mr. D'AMATO:

S. 100. A bill to establish an Office of Inspector General in the Nuclear Regulatory Commission, and for other purposes; to the Committee on Environment and Public Works.

IMPROVED NUCLEAR STANDARDS ACT

● Mr. D'AMATO. Mr. President, I rise today to reintroduce the Improved Nuclear Standards Act. This legislation addresses concerns vital to the health and safety of every American living near a nuclear facility.

This legislation is identical to legislation I sponsored last year, S. 2471, and I am reintroducing it today because I believe the need for its provisions is as strong as ever. Last year, the tragic accident at the Chernobyl nuclear power station showed us that the possibility of a serious radioactive release at a nuclear facility is not merely theoretical. It can happen.

The Chernobyl incident underscored the need to look for ways to ensure that nuclear powerplants use the safest possible design, construction methods, operating techniques, and evacuation plans. This includes assurances that laws currently on the books are adhered to, and that modifications to the law which can further assure our citizens the safety to which they are entitled are made as soon as new information or improved methods become available.

The Soviet Union flatly ignored the right of its citizens to live in a free and safe society. We must be sure that this never happens here.

This legislation contains five main provisions.

First. It creates the position of inspector general at the Nuclear Regulatory Commission. This position will be appointed by the President and confirmed by the Senate. The President will be required to appoint a candidate with expertise in nuclear safety issues. It combines functions currently performed by two offices at the NRC: the Office of Inspector and Auditor, and the Office of Investigations.

In addition to the customary authority provided all other inspectors general, such as management and efficiency audit responsibilities, the new NRC inspector general also will have the authority and responsibility to review all safety procedures at the NRC to ensure that the best available standards are being met. The inspector general will make an annual report to Congress regarding the adequacy of these standards. He/she also will be authorized to propose new regulations and modifications to existing regulations for the purpose of ensuring the public safety.

Mr. President, before I proceed to the other provisions in this bill, I would like to point to some specific examples as to why I believe it is important to establish this inspector general position. We are all familiar with the fact that the NRC already has an Office of Investigations to examine charges of wrongdoing at nuclear powerplants. This office, however, has been widely criticized. Many people believe that top NRC officials have sought to restrict this office, making it difficult for the Office of Investigations to accomplish its mission.

NRC Commissioner James Asselstine, who supports the concept of an inspector general at the NRC, has been quoted as saying that "The agency has had a lot of trouble in dealing with wrongdoing. There has been too much of a closeness with industry."

In 1985, Assistant Attorney General Steve Trott said in a letter to NRC Chairman Palladino that "senior personnel" at the NRC had displayed "opposition as well as resistance * * * to the detection and disclosure of deliberate wrongdoing by NRC licensees."

Former Commissioner Victor Gilinsky calls the NRC "an agency of technical people, engineers who are not oriented toward dealing with wrongdoing. They're uncomfortable in the role of policeman."

Mr. President, I'd like to quote two paragraphs from an April 8, 1986, Washington Post article which illustrate the problem. It deals with the Fermi nuclear plant in Michigan. In July of 1985, senior NRC officials praised the plant's owner, Detroit Edison Co., and awarded the utility a license to begin full-power operations. The article goes on to describe what happened next:

But the commission soon learned of a disturbing incident just eight days earlier, when an operator at the Michigan plant triggered a premature chain reaction by improperly removing control rods from the nuclear reactor. The utility told the NRC there had been an error in the control room, but at first denied that the reactor went to "critical" status, generating enough heat to achieve full power.

NRC investigators have charged in a preliminary report that Detroit Edison made "material false statements" by withholding details of the incident until after the full-power license was granted, an allegation the utility denies. But senior NRC staff members have delayed the Office of Investigations' probe for weeks by challenging the investigators' plan to refer it to the Justice Department for possible prosecution.

Finally, in June of 1986 this case was sent to the Justice Department. Yet it took from October of 1985 until June of 1986 for the Office of Investigations to get this case through the senior staff at the NRC to the Justice Department.

We cannot tolerate a situation where the staff of the Office of Investigations is constantly frustrated in their attempts to refer cases to the Justice Department. We cannot tolerate having their conclusions second-guessed by other offices within the NRC. We cannot tolerate the incredible bureaucracy which has been impeding the effectiveness of this office. Mr. President, I believe it is clear that we need to give the NRC an inspector general with the necessary independence to pursue investigations, propose improvements, and report directly to the Congress.

The other major features of the legislation I have proposed are equally important.

Second. It expands the role of the inspector general currently at the Federal Emergency Management Agency to allow him to review standards and procedures regarding emergency evacuation plans for nuclear power facilities, and for both the inspector general and the Director of FEMA to make recommendations directly to Congress regarding the adequacy of these standards and procedures and their implementation.

Third. It requires FEMA to conduct an annual test of the evacuation plan for each operating nuclear power facilty in the United States. Currently, these tests are conducted once every 2 years, even though once-a-year tests were the standard until 1985.

Fourth. It requires that, as part of the licensing procedure for every commercial nuclear power facility, FEMA must make a finding that the public safety can be assured by the evacuation plan. This finding also will be required after each annual test. If FEMA cannot make this finding, then the plant must cease operation until corrective measures have been taken, until a new test has been conducted, and until the finding that public safety can be assured has been made.

This provision is particularly applicable to Shoreham, the controversial nuclear power plant on Long Island in New York, where FEMA's report contains no such finding, and for which the NRC will be making its licensing decision without a recommendation from FEMA.

Fifth. Finally, this bill requires that utilities bear all non-Federal costs associated with the annual testing of emergency evacuation plans. Currently, these large costs are often borne by State and local governments; that is, by homeowners and local taxpayers.

Mr. President, many of our citizens live in fear. Unfortunately, this is a justified fear. Americans question whether what happened at Chernobyl could happen here. It is my hope that, with prompt passage of this legislation, we can take a major step toward reassuring our citizens.●

By Mr. INOUYE:

S. 101. A bill to amend titles XVIII and XIX of the Social Security Act to provide that a nurse practitioner or clinical nurse specialist may, in collaboration with a physician, certify or recertify the need for certain services, to provide for coverage of certain items and services furnished by a nurse practitioner or clinical nurse specialist, and for other purposes; to the Committee on Finance.

CERTIFICATION AND RECERTIFICATION OF THE NEED FOR CERTAIN SERVICES

Mr. INOUYE. Mr. President, today I am introducing legislation to modify our Nation's Social Security Act in order to ensure that the services of all categories of nurse practitioners and clinical nurse specialists will be readily available to our Nation's nursing homes under both Medicare and Medicaid.

As our Nation's elderly continue to represent a larger segment or our overall population, it is becoming increasingly important for us to establish comprehensive health care programs targeted toward their unique needs. In addition, in the wake of Medicare payment reforms in 1983, the length of stay in hospitals has dropped dramatically. Patients are being discharged earlier, but in many cases are still in need of nursing care in skilled nursing facilities or intermediate care facilities. These dramatic changes in the nursing home area are the impetus behind my introduction of the Advanced Nursing Services in Nursing Homes Act of 1986.

The act would let nurse practitioners and clinical nurse specialists, working in collaboration with a physician, to certify and recertify the need for certain services in nursing homes, as well as perform the mandatory nursing home patient visits under both Medicare and Medicaid. This bill would also provider payment for certain services furnished by a nurse practitioner or clinical nurse specialist.

The results of numerous studies demonstrate the positive impact that the use of health care teams in nursing homes, which include nurse specialists, has had on quality of care and cost effectiveness. For example, a recent Massachusetts study found that when nursing home patients received care by a health care team, rather than solely by a physician, the following results occurred: More timely visits, reduced hospitalizations for emergency and outpatient services, reduced total inpatient hospital days, and reduced overall medical care costs. The study concluded that under the health care team approach, nursing home patients received more timely appropriate and cost-effective care.

Similarly, a Wyoming study found that when a gerontological nurse practitioner was employed at a facility, hospital transfers were reduced substantially. Accompanying that decrease was an increase of discharges from the nursing home back to the community. Another finding of the study was that gerontological nurse practitioners improved the public image of the nursing home as evidenced by a survey of community residents. Most importantly, via their emphasis on health promotion, disease prevention, early diagnosis, treatment and rehabilitation, gerontological nurse practitioners were able to improve the quality of patient care.

A major barrier to the increased use of nurse practitioners and clinical nurse specialists in nursing homes is embodied in outmoded Federal reimbursement policies that currently do not reimburse providers of nursing home primary care other than physicians. Clearly, a major incentive to transfer the place of care from hospital to nursing home must be a reimbursement policy that recognizes the utility and fundamental economy of ongoing care in the nursing home via reimbursement for nurse practitioners and clinical nurse specialists.

The bill which I am proposing today also promotes cost-effective provision of health care by paying for nursing home visits by nurse practitioners and clinical nurse specialists at a rate equal to 75 percent of the prevailing charge paid for similar services in the same locality. In addition, under my proposal the nursing home resident would personally save money because they would not have to make copayments to nurse practitioners and clinical nurse specialists; mandatory assignment would also be required under Medicare.

The act creates a win-win situation by: Containing Medicare and Medicaid Program costs, increasing the quality of care provided to nursing home resi-

dents, recognizing the expanded role that nurse practitioners and clinical nurse specialists are qualified to play in providing care in the nursing home, and saving nursing home residents money.

I would like to thank the American Nurses' Association for assistance in drafting this legislation, and I am looking forward to having this bill become public law as soon as possible.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 101

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

SECTION 1. CERTIFICATION AND RECERTIFICATION OF THE NEED FOR CERTAIN SERVICES.

(a) MEDICARE CERTIFICATIONS AND RECERTIFICATIONS FOR CERTAIN SERVICES.—Section 1814(a) of the Social Security Act (42 U.S.C. 1395f(a)) is amended—

(1) in paragraph (2) by striking "(2) a physician" and inserting in lieu thereof "(2) a physician, or, in the case of services described in subparagraph (B), a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician,", and

(2) in the matter following paragraph (7) by striking "a physician makes" and inserting in lieu thereof "a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes".

(b) MEDICAID CERTIFICATIONS AND RECERTIFICATIONS FOR CERTAIN SERVICES.—Section 1902(a)(44) of such Act (42 U.S.C. 1396a(a)(44)) is amended—

(1) in subparagraph (A)—

(A) by striking "physician certifies" and inserting in lieu thereof "physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician) certifies", and

(B) by striking "the physician, or a physician assistant or nurse practitioner under the supervision of a physician," and inserting in lieu thereof "a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician,"; and

(2) in subparagraph (B) by striking "a physician;" and inserting in lieu thereof "a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician;".

(c) SUPERVISION OF HEALTH CARE FURNISHED IN SKILLED NURSING FACILITIES.—Section 1861(j)(4) of such Act (42 U.S.C. 1395x(j)(4)) is amended—

(1) in subparagraph (A) by striking "a physician," and inserting in lieu thereof "a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician,", and

(2) in subparagraph (B) by striking "a physician" and inserting in lieu thereof "a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician,".

(d) DEFINITION.—

(1) Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new paragraph:

"Nurse Practitioner and Clinical Nurse Specialist

"(ff)(1) An individual shall be treated as a nurse practitioner or clinical nurse specialist if the individual—

"(A) is licensed to practice professional nursing;

"(B) performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law); and

"(C)(i) holds a masters degree in nursing and is certified or eligible for certification by a national professional nursing organization,

"(ii) holds a masters degree in a related field and is certified by a national professional organization, or

"(iii) has completed a nurse practitioner continuing education program and is certified by a national professional nursing organization.

"(2) A nurse practitioner or clinical nurse specialist works in collaboration with a physician where the nurse and physician act pursuant to an agreement that allocates responsibility for decisions and actions, but allows each professional to retain responsibility for their respective actions and engage in such actions independently.".

(2) Section 1861(aa) of such Act (42 U.S.C. 1395x(aa)) is amended in paragraph (3)—

(A) by striking "and the term 'nurse practitioner' " and "or nurse practitioner", and

(B) by striking "mean" and inserting in lieu thereof "means".

(3) Section 1861(s)(2)(H) of such Act (42 U.S.C. 1395x(s)(2)(H)) is amended in clause (i) by striking "physician assistant or by a nurse practitioner (as defined in subsection (aa)(3))" and inserting in lieu thereof "physician assistant (as defined in subsection (aa)(3)) or by a nurse practitioner".

(e) EFFECTIVE DATE.—

(1) The amendments made by subsections (a), (c), and (d) of this section shall apply to items and services furnished on or after the date of enactment of this Act.

(2)(A) Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply to medical assistance provided on or after the date of enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements of the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the additional requirements before the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 2. COVERAGE OF CERTAIN ITEMS AND SERVICES FURNISHED BY A NURSE PRACTITIONER OR CLINICAL NURSE SPECIALIST.

(a) PAYMENT OF BENEFITS.—Section 1833(a)(2) of the Social Security Act (42 U.S.C. 1395l(a)(2)) is amended—

(1) in subparagraph (B) by striking "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)",

(2) in subparagraph (C) by striking "and",

(3) in subparagraph (D) by inserting "and" after "tests;", and

(4) by adding at the end thereof the following new subparagraph:

"(E) with respect to items and services described in section 1861(s)(2)(L), the amount paid shall be equal to 100 percent of the amount determined as the reasonable charge for such items and services under section 1842(b)(10).".

(b) CONTRACTS WITH CARRIERS.—Section 1842(b) of such Act (42 U.S.C. 1395u(b)) is amended by adding at the end thereof the following new paragraph:

"(13) In providing payment for the items and services described in section 1861(s)(2)(L), each carrier shall require that payment be made in the manner described in paragraph (3)(B)(ii), except that the reasonable charge shall be determined as 75 percent of the prevailing charge paid for similar items and services in the same locality.".

(c) DEFINITION.—Section 1861(s)(2) of such Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (J),

(2) by adding "and" at the end of subparagraph (K), and

(3) by adding at the end thereof the following new subparagraph:

"(L) services furnished by a nurse practitioner or clinical nurse specialist in a skilled nursing facility and services and supplies furnished as an incident to such services;".

(d) CONFORMING CHANGE.—Section 1861(h) of such Act (42 U.S.C. 1395x(h)) is amended by inserting ", and excluding any item or service described in subsection (s)(2)(L)" before the period.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after the date of enactment of this Act.

SEC. 3. COVERAGE OF CERTAIN ITEMS AND SERVICES FURNISHED BY A NURSE PRACTITIONER OR CLINICAL NURSE SPECIALIST.

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended in paragraph (5)—

(1) by inserting "(A)" after the paragraph designation; and

(2) by striking "elsewhere;" and inserting in lieu thereof "elsewhere; and (B) services furnished in an intermediate care facility or skilled nursing facility by a nurse practitioner or clinical nurse specialist (as defined in section 1861(ff)(1)) working in collaboration with a physician;".

(b) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance provided on or after the date of enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements of the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the additional requirements before the first day of the first calendar year beginning after the close of the first regular session of the

State legislature that begins after the date of the enactment of this Act.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 102. A bill to amend the Job Training Partnership Act to include American Samoans in the Native American Employment and Training Programs; to the Committee on Labor and Human Resources.

INCLUDING AMERICAN SAMOANS IN NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation to amend the native American provision of the Job Training Partnership Act—Public Law 97-300—our Federal Employment and Training Program, in order to expressly authorize that American Samoans will be deemed eligible for these important programs. As a provision of Public Law 97-300, the U.S. Department of Labor was directed to conduct a comprehensive report on the unique employment needs of these native American people. Mr. President, when the U.S. Senate passed this important legislation, we had included a provision which would have authorized programs for those American Samoans residing in Hawaii as participants. In order to obtain sufficient information to carefully consider our proposal, the conferees instead agreed to direct the Department to conduct this comprehensive report. This report has now been submitted to the Congress and confirms that, in fact, American Samoans experience very serious employment problems, especially in Hawaii and California.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 401(a)(1) of the Job Training Partnership Act (hereafter in this Act referred to as the "Act") is amended—

(1) by striking out "and"; and

(2) by inserting before the semicolon a comma and the following: "and American Samoan communities".

(b) Section 401(c)(1)(B) of the Act is amended by inserting after "Hawaiian natives" the following: "and American Samoan Natives".

(c) Section 401(h)(1) of the Act is amended by inserting after "Native Americans" the first time it appears a comma and the following "including American Samoans".

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 103. A bill to establish the position of Associate Director for Special Populations in the National Institute on Alcohol Abuse and Alcoholism and in the National Institute on Drug Abuse; to the Committee on Labor and Human Resources.

ESTABLISHING THE POSITION OF ASSOCIATE DIRECTOR FOR SPECIAL POPULATIONS

Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing legislation which would amend the U.S. Public Health Service Act in order to formally establish a position of Associate Director for Special Populations in the National Institute on Alcohol Abuse and Alcoholism [NIAAA] and in the National Institute on Drug Abuse [NIDA].

During our deliberations on the 1980 Mental Health Systems Act (Public Law 96-398), the Congress of the United States established a position of Associate Director for Minority Concerns within the National Institute of Mental Health [NIMH]. For the past several years, the Senate Appropriations Committee has directed this individual to develop a comprehensive report for us highlighting her accomplishments to date and to provide us with legislative recommendations for future action.

At the time that we enacted this particular provision, we also gave serious consideration to establishing similar positions within the other two institutes of the Alcohol, Drug Abuse, and Mental Health Administration [ADAMHA]. In fact, such legislation passed the U.S. Senate. Unfortunately, our proposal for those institutes did not become public law; however, I feel that time has now come to once again renew our efforts in this area. Without question, members of our Nation's minorities have truly unique and pressing concerns in both the alcohol abuse and drug areas which must be affirmatively addressed.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. S. 103

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 502 of the Public Health Service Act is amended by adding at the end thereof the following new subsection:

"(e)(1) The Director shall designate an Associate Director for Special Populations.

"(2) The Secretary, acting through the Associate Director for Special Populations, shall—

"(A) develop and coordinate prevention, treatment, research, and administrative policies and programs to assure increased emphasis on the needs of women and minorities for the prevention and treatment of alcoholism and alcohol abuse and related problems;

"(B) support programs and projects relating to the delivery of services to women and minorities for the prevention and treatment of alcoholism and alcohol abuse and related problems, including demonstration programs and projects;

"(C) develop a plan to increase the representation of women and minorities in service delivery and manpower programs for the prevention and treatment of alcoholism and alcohol abuse and related problems;

"(D) support programs of basic and applied social and behavioral research on the problems of women and minorities relating to alcoholism and alcohol abuse;

"(E) study the effects of discrimination by institutions against alcoholics and alcohol abusers;

"(F) develop systems to assist women and minority individuals who are alcoholics or alcohol abusers in adapting to, and coping with, the effects of discrimination;

"(G) support and develop research, demonstration, and training programs designed to eliminate institutional discrimination against alcoholics and alcohol abusers; and

"(H) provide increased emphasis on the concerns of women and minorities in training programs, service delivery programs, and research activities of the Institute.".

(b) Section 503 of such Act is amended by adding at the end thereof the following new subsection:

"(e)(1) The Director shall designate an Associate Director for Special Populations.

"(2) The Secretary, acting through the Associate Director for Special Populations, shall—

"(A) develop and coordinate prevention, treatment, research, and administrative policies and programs to assure increased emphasis on the needs of women and minorities for the prevention and treatment of drug abuse and related problems;

"(B) support programs and projects relating to the delivery of services to women and minorities for the prevention and treatment of drug abuse and related problems, including demonstration programs and projects;

"(C) develop a plan to increase the representation of women and minorities in service delivery and manpower programs for the prevention and treatment of drug abuse and related problems;

"(D) support programs of basic and applied social and behavioral research on the problems of women and minorities relating to drug abuse;

"(E) study the effects of discrimination by institutions against drug abusers;

"(F) develop systems to assist women and minority individuals who are drug abusers in adapting to, and coping with, the effects of discrimination;

"(G) support and develop research, demonstration, and training programs designed to eliminate institutional discrimination against drug abusers; and

"(H) provide increased emphasis on the concerns of women and minorities in training programs, service delivery programs, and research activities of the Institute.".

(c) The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act or October 1, 1987, whichever is later.

By Mr. INOUYE:

S. 104. A bill to recognize the organization known as the National Academies of Practice; to the Committee on the Judiciary.

FEDERAL CHARTER FOR THE NATIONAL ACADEMIES OF PRACTICE

Mr. INOUYE. Mr. President, today I am introducing legislation to provide a Federal charter for the National Academies of Practice.

The National Academies of Practice represents outstanding practitioners in

each of the various health care disciplines: dentistry, medicine, nursing, optometry, osteopathy, podiatry, social work, psychology, and veterinary medicine.

When fully established, each of the various national academies will possess 100 distinguished practitioners selected from their peers. It is my expectation that this umbrella organization will be able to provide the Congress of the United States and the executive branch with considerable health policy expertise, especially from the perspective of those individuals who are in the forefront of actually providing necessary care across our Nation.

Mr. President, I request unanimous consent that the text of the bill be printed in the RECORD.

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

S. 104

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

CHARTER

SECTION 1. The National Academies of Practice organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a charter.

POWERS

SEC. 2. The National Academies of Practice (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

PURPOSES OF CORPORATION

SEC. 3. The purposes of the corporation shall be to honor persons who have made significant contributions to the practice of applied psychology, dentistry, medicine, nursing, optometry, osteopathy, podiatry, social work, veterinary medicine, and other health care professions, and to improve the practices in these professions by disseminating information about new techniques and procedures.

SERVICE OF PROCESS

SEC. 4. With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carriers on its activities in furtherance of its corporate purposes.

MEMBERSHIP

SEC. 5. Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. 6. The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

SEC. 7. The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

RESTRICTIONS

SEC. 8. (a) No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

LIABILITY

SEC. 9. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

BOOKS AND RECORDS; INSPECTION

SEC. 10. The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right of vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 11. The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(64) National Academies of Practice.".

ANNUAL REPORT

SEC. 12. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit for such fiscal year required by section 3 of the Act referred to in section 11 of this Act. The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

SEC. 13. The right to alter, amend, or repeal this charter is expressly reserved to the Congress.

DEFINITION OF "STATE"

SEC. 14. For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. 15. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code.

TERMINATION

SEC. 16. If the corporation shall fail to comply with any of the restrictions or provisions of this Act the charter granted hereby shall terminate.

By Mr. INOUYE:

S. 105. A bill to amend title 38, United States Code, to provide for the payment of incentive special pay to Veterans' Administration psychologists who obtain certain board certification in a professional specialty; to the Committee on Veterans' Affairs.

PAYMENT OF INCENTIVE SPECIAL PAY TO CERTAIN VETERANS' ADMINISTRATION PSYCHOLOGISTS

Mr. INOUYE. Mr. President, today I am introducing legislation which would provide psychologists who are currently serving within the Veterans' Administration with the same pay bonus that their physician colleagues receive once they obtain board certification.

The Veterans Health Care Amendments of 1984 (Public Law 98-528) contained a provision which provided the Administrator of the Veterans' Administration [VA] with the authority to provide such a pay bonus if he or she so desired. Unfortunately, the Administration has decided not to implement this provision and the measure which I am introducing today would make this mandatory.

Mr. President, I request unanimous consent that the text of my bill be printed in the RECORD.

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

S. 105

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subchapter I of chapter 73 of title 38, United States Code, is amended—

(1) by redesignating section 4119 as section 4120; and

(2) by inserting after section 4118 the following new section:

"§ 4119. Incentive special pay for psychologists

"(a) The Administrator shall pay incentive special pay to any psychologist appointed under this chapter who—

"(1) executes an agreement with the Administrator to complete a specified period of service in the Department of Medicine and Surgery; and

"(2)(A) is awarded a diploma as a Diplomate in Clinical Psychology or as a Diplomate in Counseling Psychology by the American Board of Professional Psychology; or

"(B) obtains an additional advanced academic degree, such as a masters degree in public health, which the Administrator determines is in the best interest of the Veterans' Administration.

"(b)(1) The amount of incentive special pay which the Administrator pays to any

psychologist under this section may not exceed—

"(A) $2,500 per annum in the case of any full-time psychologist; and

"(B) a proportional amount of $1,500 per annum in the case of any part-time psychologist, as provided under paragraph (2) of this paragraph.

"(2) The proportional amount of the incentive special pay payable under paragraph (1)(B) of this subsection shall be calculated on the basis of the ratio which the part-time employment of such psychologist in the Department of Medicine and Surgery bears to full-time employment.

"(C)(1) Any agreement entered into by a psychologist under subsection (a)(1) of this section shall specify a period of one year of service in the Department of Medicine and Surgery or such longer period of service, not exceeding four years, as the psychologist requests. Any psychologist who has entered into an agreement under this section and has not failed to refund any amount which such psychologist became obligated to refund under any such agreement shall be eligible to enter into a subsequent agreement under this section.

"(2)(A) Any agreement entered into by a psychologist under subsection (a)(1) of this section shall provide that the psychologist, in the event that such psychologist voluntarily, or because of misconduct, fails to complete at least one year of service, or such longer period of service as is provided for in the first sentence of paragraph (1) of this subsection, pursuant to such agreement, shall be required to refund the total amount received under this section, unless the Chief Medical Director determines, in accordance with regulations prescribed under subsection (f) of this section, that such failure is necessitated by circumstances beyond the control of the psychologist.

"(B) Any such agreement shall specify the terms under which the Veterans' Administration and the psychologist may elect to terminate such agreement.

"(3) Any psychologist who enters into an agreement under this section is eligible to receive incentive special pay beginning on the date on which the agreement is entered into, or the date on which the psychologist becomes employed, whichever date is later.

"(d) Any amount of incentive special pay payable under this section shall be paid in biweekly installments.

"(e)(1) Except as provided in paragraphs (2) and (3) of this subsection, any additional compensation provided as incentive special pay under this section shall not be considered as basic pay for the purposes of sections 5551, 5552, and 5595 of title 5, chapters 81, 83, and 84 of such title, or any other provision of law creating an entitlement to benefits based on basic pay.

"(2) Additional compensation paid as incentive special pay under this section to any full-time employee shall be included in basic pay for the purposes of chapters 83 and 84 of title 5. Notwithstanding the preceding sentence, special pay paid to any full-time employee shall be included in average pay (as defined in section 8331(4) or 8401(3), as the case may be, of such title) for the purposes of computing the amount of any benefit under either such chapter only if—

"(A) the benefit is paid under section 8337 of such title, subsection (d) or (e) of section 8341 of such title, subchapter V of chapter 84 of such title, or section 8442(b), 8443(a), or 8445 of such title; or

"(B) the employee has completed not less than 15 years of full-time service in the Department of Medicine and Surgery (except that, regardless of the length of such employee's service, no incentive special pay may be included by reason of this clause in average pay in computing an annuity that commences (or any lump-sum payment that is payable) before October 1, 1988, and only one-half of any incentive special pay paid under this section may be included by reason of this clause in average pay in computing an annuity that commences (or any lump-sum payment that is payable) on or after October 1, 1988, but before October 1, 1993).

"(3) Any additional compensation provided as incentive special pay under this section shall be considered as annual pay for the purposes of chapter 87 of title 5, relating to life insurance for Federal employees.

"(f) The Administrator shall prescribe regulations to carry out this section.".

"(b) The table of sections at the beginning of such chapter is amended by striking out the item relating to section 4119 and inserting in lieu thereof the following:

"4119. Incentive special pay for psychologists.
"4120. Relationship between this subchapter and other provisions of law.".

SEC. 2. The amendments made by the first section shall take effect on October 1, 1987.

By Mr. INOUYE:

S. 106. A bill to amend title 10, United States Code, to provide that the Chief of the Army Nurse Corps be appointed in the regular grade of brigadier general; to the Committee on Armed Services.

REGARDING THE APPOINTMENT OF THE CHIEF OF THE ARMY NURSE CORPS

Mr. INOUYE. Mr. President, today I am introducing legislation to amend title 10 of the United States Code, in order to provide that the individual who is selected as Chief of the Army Nurse corps shall, by statute, be appointed in the regular grade of brigadier general.

In my judgment, such a statutory modification would provide this important corps with the type of congressional recognition which it so richly deserves.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 106

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3069(b) of title 10, United States Code, is amended by adding at the end thereof the following new sentence: "If the officer appointed as the Chief holds a lower regular grade, such officer shall be appointed in the regular grade of brigadier general.".

SEC. 2. The amendment made by this Act shall become effective on the first day of the first month following the month in which this Act is enacted.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 123. A bill to amend title XVIII of the Social Security Act to provide that psychologist services are covered under part B of Medicare; to the Committee on Finance.

PROVIDING MEDICARE COVERAGE FOR PSYCHOLOGIST SERVICES

● Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing legislation which would amend the Medicare definition of physician to include our Nation's professional psychologists. The measure which we are introducing defers to the State Practice Acts in determining the scope of practice of individual psychologists; however, we have insisted that the practitioner possess at least a doctoral degree.

Mr. President, today approximately 30 percent of our States' chief mental health officers are psychologists and this profession has been recognized as an autonomous one under both the Federal Employees Health Benefit Act and the Department of Defense CHAMPUS Program for more than a decade. They hold similar status under the Federal Criminal Code.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 123

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

SECTION 1. COVERAGE OF PSYCHOLOGIST SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) is amended in the first sentence—

(1) by striking out "or" before "(5)"; and

(2) by adding before the period the following: ", or (6) a psychologist (as defined in subsection (ff)) who is acting within the scope of his or her license when performing such function".

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"(ff) The term 'psychologist' means an individual who—

"(1) is licensed or certified at the independent practice level of psychology by the State in which such individual so practices,

"(2) possesses a doctorate degree in psychology from a regionally accredited educational institution, or in the case of an individual licensed or certified prior to January 1, 1978, possesses a master's degree in psychology and is listed in a national register of mental health service providers in psychology approved by the Secretary, and

"(3) possesses at least two years of supervised experience in health service, at least one year of which is postdegree.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month which begins more than sixty days after the date of the enactment of this Act.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 124. A bill to amend title XVIII of the Social Security Act to provide that certified nurse-midwife services are covered under part B of Medicare.

PROVIDING MEDICARE COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES

● Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation which would modify the Medicare Program to ensure that the services of certified nurse-midwives would be readily available to those beneficiaries who desire them.

Presently, certified nurse-midwives are deemed autonomous providers under the Department of Defense CHAMPUS Program, as well as under the Medicaid Program.

The legislation which we are introducing today would not only make the services of certifed nurse-midwives readily available to the approximately 1,000 future mothers who are eligible for Medicare, but more importantly, will make it expressly clear throughout the Medicare and Medicaid statutes that certified nurse-midwives are truly autonomous providers. Not only does nurse-midwifery have an outstanding track record, but it has consistently been demonstrated to be highly cost effective and well respected by its clientele.

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

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

S.124

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

SECTION 1. COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking out "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (K); and

(3) by adding at the end thereof the following new subparagraph:

"(L) certified nurse—midwife services;"

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"CERTIFIED NURSE-MIDWIFE SERVICES

"(ff)(1) The term 'certified nurse-midwife services' means services furnished by a certified nurse-midwife (as defined in paragraph (2)) which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

"(2) The term 'certified nurse-midwife' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.".

(c) CONFORMING CHANGES.—

(1) Section 1905(a)(17) of such Act (42 U.S.C. 1396d(a)(17)) is amended by striking out "as defined in subsection (m)" and inserting in lieu thereof "as defined in section 1861(ff)".

(2) Section 1905 of such Act (42 U.S.C. 1396d) is amended by striking out subsection (m).

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month which begins more than sixty days after the date of the enactment of this Act.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 126. A bill to amend titles XVIII and XIX of the Social Security Act to provide that gerontological nurse practitioner or gerontological clinical nurse specialist services are covered under part B of medicare and are mandatory benefit under medicaid, and for other purposes.

COVERAGE OF CERTAIN GERONTOLOGICAL NURSE SERVICES UNDER MEDICARE

● Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation to modify our Nation's Social Security Act in order to ensure that the services of gerontological nurse practitioners and gerontological clinical nurse specialists will be readily available under Medicare and Medicaid.

There can be no question that, as our Nation's elderly continue to become a larger segment of our overall population, it is becoming increasingly important for us to establish comprehensive health care programs targeted toward their unique needs. Today, there is a definite shortage of gerontological nurse practitioners, with only approximately 0.001 percent of our professional nurses possessing gerontological training. The Senate Appropriations Committee has received testimony from numerous witnesses that their services are badly needed. However, I do not feel that it is realistic to expect that we will ever be able to fill this void unless we are willing to modify the reimbursement provisions of our various Federal health care programs to ensure that nurse practitioners/clinical specialists will, in fact, be deemed autonomous providers.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 126

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

SECTION 1. COVERAGE OF GERONTOLOGICAL NURSE PRACTITIONERS OR GERONTOLOGICAL CLINICAL NURSE SPECIALIST SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1394x(s)(2)) is amended—

(1) by striking out "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (K); and

(3) by adding at the end thereof the following new subparagraph:

"(L) gerontological nurse practitioner or gerontological clinical nurse specialist services;".

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"GERONTOLOGICAL NURSE PRACTITIONERS OR GERONTOLOGICAL CLINICAL NURSE SPECIALIST SERVICES

(ff)(1) The term "gerontological nurse practitioner or gerontological clinical nurse specialist services' means services performed by a gerontological nurse practitioner or gerontological clinical nurse specialist (as defined in paragraph (2) which the gerontological nurse practitioner or gerontological clinical nurse specialist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed, whether or not the gerontological nurse practitioner or gerontological clinical nurse specialist is under the supervision of, or associated with, a physician or other health care provider.

(2) The term 'gerontological nurse practitioner or gerontological clinical nurse specialist' means an individual who—

"(A) is a registered nurse and is licensed to practice nursing in the State in which the gerontological nurse practitioner or gerontological clinical nurse specialist services are performed; and

"(B)(i) holds a master's degree in gerontological nursing or a related field from an accredited educational institution, or

"(ii) is certified as a gerontological nurse practitioner or gerontological clinical nurse specialist by the duly recognized professional nurses association.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month which begins more than 60 days after the date of the enactment of this Act.

SEC. 2. COVERAGE OF GERONTOLOGICAL NURSE PRACTITIONER OR GERONTOLOGICAL CLINICAL NURSE SPECIALIST SERVICES AS A MANDATORY MEDICAID BENEFIT.

(a) COVERAGE OF SERVICES.—

(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(A) by striking out "and" at the end of paragraph (20);

(B) by redesignating paragraph (21) as paragraph (22); and

(C) by inserting after paragraph (20) the following new paragraph:

"(21) gerontological nurse practitioner or gerontological clinical nurse specialist services (as defined in section 1861(ff)(1)); and".

(b) CONFORMING CHANGES.—

(1) Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (10)(A), by striking out "paragraphs (1) through (5) and (17)" and

inserting in lieu thereof "paragraphs (1) through (5), (17), and (21)"; and

(B) in paragraph (10)(C)(iv), by striking out "paragraphs (1) through (5) and (17) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (20)" and inserting in lieu thereof "paragraphs (1) through (5), (17), and (21) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (21)".

(2) Section 1902(j) of such Act (42 U.S.C. 1396a(j)) is amended by striking "(21)" and inserting in lieu thereof "(22)".

(c) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall be effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning more than 60 days after the date of the enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 3. REQUIREMENT OF GERONTOLOGICAL NURSING SERVICES IN CERTAIN FACILITIES COVERED BY MEDICARE AND MEDICAID.

(a) GERONTOLOGICAL SERVICE IN A SKILLED NURSING FACILITY.—Section 1861(j)(4) of the Social Security Act (42 U.S.C. 1395x(j)(4)) is amended by striking out "and" at the end of clause (A) and by inserting before the semicolon the following: ", and (C) provides that a gerontological nurse practitioner or gerontological clinical nurse specialist shall be available, on at least a consultant basis, to assure that necessary gerontological nursing services are furnished to patients".

(b) GERONTOLOGICAL SERVICES IN AN INTERMEDIATE CARE FACILITY.—The first sentence of section 1905(c) of such Act (42 U.S.C. 1396d(a)) is amended by striking out "and" at the end of clause (3) and by inserting before the period the following: ", and (5) provides that a gerontological nurse practitioner or genrontological clinical nurse specialist (as defined in section 1861(ff)(2)) shall be available, on at least a consultant basis, to assure that necessary gerontological nursing services are furnished to patients".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the first day of the first month which begins more than 60 days after the date of the enactment of this Act.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 127. A bill to amend title XVIII of the Social Security Act to provide that services furnished by a clinical social worker are covered under part B of medicare when furnished by health maintenance organization to a member of that organization.

COVERAGE OF CERTAIN HEALTH MAINTENANCE ORGANIZATION SERVICES

● Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation to amend our Nation's Medicare Program in order to ensure that when a Health Maintenance Organization [HMO] desires to utilize the services of a clinical social worker, they will be deemed truly autonomous professionals within the scope of their State practice act.

Our Nation's clinical social workers have a long and illustrious track record of providing high quality mental health care and medical social services. Social workers have been involved in the health care field since the turn of the century when the first medical social worker was employed at Massachusetts General Hospital in Boston. Today, social workers can be found in every component of the health care setting, performing such critical functions as: health education and promotion, high risk screening and assessment, case management, financial counseling, patient advocacy, family education, discharge planning, post hospitalization care and followup. And today, social work is the largest of the four core mental health professions, the others being psychology, psychiatry, and psychiatric nursing.

At the direction of Congress, both the Department of Defense Civilian Health and Medical Program of the Uniformed Services [CHAMPUS] and the Federal Employees Health Benefit Program [FEHBP] recognize clinical social workers as qualified, independent providers. We feel that the time has now come to extend that recognition to the services provided by clinical social workers when furnished in a health maintenance organization.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 127

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

SECTION 1. COVERAGE OF CERTAIN SERVICES FURNISHED BY A HEALTH MAINTENANCE ORGANIZATION UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2)(H)(ii) of the Social Security Act (42 U.S.C. 1395x(s)(2)(H)(ii)) is amended—

(1) by inserting "or by a clinical social worker (as defined in subsection (ff))" after "clinical psychologist (as defined by the Secretary)"; and

(2) by striking out "incident to his services" and inserting in lieu thereof "incident to such clinical psychologist's services or clinical social worker's services".

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"CLINICAL SOCIAL WORKER

"(ff) The term 'clinical social worker' means an individual who—

"(1) possesses a master's or doctor's degree in social work;

"(2) after obtaining such degree has performed at least two years of supervised clinical social work; and

"(3) is licensed or certified as a clinical social worker in the State in which the services are performed, or, in the case of a State which does not provide for licensure or certification, is listed in a national register of social workers who, by education and experience, qualify as health care providers in clinical social work.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month which begins more than 60 days after the date of the enactment of this Act.

By Mr. INOUYE:

S. 128. A bill to amend title 10, United States Code, to authorize former members of the Armed Forces who are totally disabled as the result of a service-connected disability to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

RELATING TO TRAVEL ON MILITARY AIRCRAFT FOR DISABLED VETERANS

● Mr. INOUYE. Mr. President, today, I am reintroducing a bill which is of great importance to a group of patriotic Americans. This legislation is designed to extend space-available travel privileges on military aircraft to those who have been totally disabled in the service of our country.

Currently, retired members of the Armed Forces are permitted to travel on a space-available basis on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Military Airlift Command. My bill would provide the same benefits for 100-percent, service-connected disabled veterans.

Surely we owe these heroic men and women who have given so much for our country a debt of gratitude. Of course, we can never repay them for the sacrifice they have made on behalf of all of us but we can surely try to make their lives more pleasant and fulfilling. One way in which we can help is to extend military travel privileges to these distinguished American veterans. I have received numerous letters from all over the country attesting to the importance attached to this issue by veterans. Therefore, I ask that my colleagues show their concern and join me in saying "thank you" by supporting this legislation.

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

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

S. 128

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 53 of title 10, United States Code, is amended by inserting after section 1031 the following new section:

"§ 1032. Travel privileges on military aircraft for certain former members of the armed forces

"A former member of the armed forces who is entitled to compensation from the Veterans' Administration for a service-connected disability rated total in degree by the Veterans' Administration is entitled, in the same manner and to the same extent as retired members of the armed forces are entitled to travel on a space-available basis on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Military Airlift Command.".

SEC. 2. The table of sections, at the beginning of chapter 53 of title 10, United States Code, is amended by inserting after the item relating to section 1031 the following new item:

"1032. Travel privileges on military aircraft for certain former members of the armed forces.".●

By Mr. INOUYE (for himself, Mr. DECONCINI, Mr. MATSUNAGA, Mr. KENNEDY, and Mr. MURKOWSKI):

S. 129. A bill to authorize and amend the Indian Health Care Improvement Act, and for other purposes; to the Select Committee on Indian Affairs.

INDIAN HEALTH CARE IMPROVEMENT ACT REAUTHORIZATION

● Mr. INOUYE. Mr. President, I rise today to introduce a bill that has a more significant and profound impact on the future of Indian people than perhaps any other legislative initiative of the 100th Congress. This bill seeks the reauthorization of the Indian Health Care Improvement Act to continue funding for the fundamental programs that are designed to improve the health status of native Americans.

The statistics do not need to be restated—the facts are appalling—the native people of this country continue to rank at the bottom of almost every health indicator. Over the last 4 years, in the pursuit of reauthorizing programs that would address this sad state of affairs, numerous hearings have been held around the country—and the testimony of tribal officials and health care providers changes little. Great strides have been realized—largely because of the Indian Health Care Improvement Act and the comprehensive health care program it authorizes—yet all acknowledge that much remains to be done. Diabetes, heart disease, hypertension, infant mortality, high rates of premature deaths and suicide continue to increase in proportions which far outpace te incidence of such problems in the general population, while funding for Indian health care is wrapped up in domestic spending cuts that mask the damage that is being done, every day, to the potentially healthy lives that our native Americans would enjoy.

As members of a government that made solemn commitments to this country's native people—commitments that envisioned a long and productive future for the Nation's first Americans—we cannot allow this deterioration in the health of Indian people to continue. They deserve more—we have promised them more. I introduce this bill today to assure that our promises will be kept.

Mr. President, this legislation has suffered a long and tortuous route through the legislative process. An earlier bill was vetoed by the President in the final days of the 98th Congress. In the ensuing 2 years, Indian tribal leaders undertook an initiative to encourage Congress and the Department of Health and Human Services to communicate on Indian health policy and to develop a bill that meets the health care needs of native people. As a result, the bill had broad bipartisan support in Congress, as well as the support of the native community. However, in the last days of the 99th Congress, the Congress failed to forward this legislation to the White House.

Indian people cannot afford to wait another 2 years while the Congress deliberates—many of their children and elders will face the premature deaths that so many of their people have suffered over the past 4 years. I ask my colleagues to join me in expediting Senate action on this important legislation. The honor of this Nation's word to its native people is at stake. But more importantly, the furture of native Americans must be assured by our action.●

By. Mr. INOUYE:

S. 130. A bill to require that imports of fresh ginger root meet all of the requirements imposed on domestic fresh ginger root; to the Committee on Agriculture, Nutrition, and Forestry.

RELATING TO IMPORTED FRESH GINGER ROOT

● Mr. INOUYE. Mr. President, today I am reintroducing legislation to help ensure that imported ginger root is of the same quality as the fresh ginger produced by American farmers.

Hawaii's production of fresh ginger root, or awapuhi pake as it is known in the Hawaiian Islands, is subject to strict standards which guarantee the highest quality. These standards have been developed by the State of Hawaii and are designed to protect consumers from inferior products.

Imported fresh ginger root is not subject to similar standards. Consequently, American consumers cannot be certain of receiving the same high quality as the Hawaiian product. In addition, the standards which apply to Hawaiian-grown ginger place it at a disadvantage with imported crops. It is ironic, and unwarranted, that regulations which Hawaii adopted to protect consumers are hurting the ability of domestic producers to compete with inferior imports.

Mr. President, I want to make clear that this measure is not designed to prohibit or even decrease the amount of fresh ginger imported into the United States. Rather, its purpose is to help make certain that the imported product is of the same high quality as the domestic product. This will protect the consuming public while allowing domestic producers to compete on an equitable basis.

I commend this bill to my colleagues and urge the establishment of a Federal marketing order for fresh ginger root. I also ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 130

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8e of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended by inserting "fresh ginger root," after "filberts,".●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 131. A bill to amend title XVIII of the Social Security Act to clarify that payment may be made under part A for diagnostic or therapeutic services furnished by a psychologist under an arrangement with a hospital to an inpatient of such hospital who is entitled to benefits under such part; to the Committee on Finance.

COVERAGE OF CERTAIN SERVICES FURNISHED BY A PSYCHOLOGIST UNDER MEDICARE

● Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing legislation which would modify title XVIII of the Social Security Act, the Medicare Program, in order to clarify that payments may be made under part A of the program for diagnostic or therapeutic services provided by psychologists, under an arrangement with a hospital for Medicare beneficiaries.

This legislative proposal will not result in any increased Federal funding, but will codify the current regulations. In our judgment, as we continue to make every effort to curtail our Nation's escalating health care costs, it is becoming increasingly important that we ensure that we give sufficient priority to innovative approaches which have demonstrated their cost effectiveness.

This provision has twice been recommended for enactment by the Senate Finance Committee. Once it was deleted in conference, and last year, during the closing hours of the 99th Congress, it was incorporated into the

Medicare Anti-Fraud Act. Hopefully, during the 100th Congress we will be able to have it enacted into public law.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 131

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

SECTION 1. COVERAGE OF CERTAIN SERVICES FURNISHED BY A PSYCHOLOGIST UNDER PART A OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(b)(3) of the Social Security Act (42 U.S.C. 1395x(b)(3)) is amended by inserting "(including a psychologist (as defined in subsection (ff)))" after "others" the first place it appears.

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"(ff) The term 'psychologist' means an individual who—

"(1) is licensed or certified at the independent practice level of psychology by the State in which such individual so practices;

"(2) possesses a doctorate degee in psychology from a regionally accredited educational institution, or in the case of an individual licensed or certified prior to January 1, 1978, possesses a master's degree in psychology and is listed in a national register of mental health service providers in psychology approved by the Secretary; and

"(3) possesses at least two years of supervised experience in health service, at least one year of which is postdegree.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month that begins more than sixty days after the date of the enactment of this Act.●

By Mr. INOUYE:

S. 132. A bill to permit individuals who received National Health Service Corps scholarships to perform obligated service in such units of the Department of Defense as the Secretaries of Defense and Health and Human Services may determine by agreement; to the Committee on Labor and Human Resources.

RELATING TO NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP RECIPIENTS

● Mr. INOUYE. Mr. President, today I am introducing legislation which would permit individuals who receive National Health Service Corps scholarships under the auspices of the Department of Health and Human Services, to perform their obligated service within the Department of Defense when the two Secretaries agree to such an assignment.

This legislative proposal grew out of my earlier efforts on behalf of one of my constituents, a physician, who is more than willing to complete his obligated service; however, for family reasons and long-term career aspirations, he wanted to serve his time within one of the military services. Unfortunately, however, such an assignment did not appear to fall within the current authorization authority and, accordingly, I am introducing legislation to provide this flexibility for the Departments of Health and Human Services and Defense.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 132

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 338B(d) of the Public Health Service Act is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraph (2), the"; and

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

"(2) The Secretary may enter into agreements with the Secretary of Defense for the assignment of individuals required to perform obligated service to such units of the Department of Defense as may be agreed upon by the Secretary of Defense and the Secretary. Such agreements may provide for such an assignment for all or part of an individual's period of obligated service, and shall contain such terms and conditions as the Secretary of Defense and the Secretary consider appropriate.".●

By Mr. INOUYE:

S. 133. A bill to require the Secretary of Health and Human Services to establish a scholarship program to enable professional nurses to obtain advanced degrees in professions related to the practice of nursing; to the Committee on Labor and Human Resources.

ADVANCED NURSE EDUCATION ACT

● Mr. INOUYE. Mr. President, today I am introducing legislation to authorize a new nurse training program which would provide $5 million annually for scholarships and/or fellowships for those professional nurses who wish to pursue advanced degrees in a related health profession, such as health law, a masters in public health administration, or psychology.

Under the provisions of the proposal which I am submitting today, the recipient of these scholarships would be required to serve 1 year for each year of support which they receive in a health delivery system administered by either a State or nonprofit organization or, in the alternative, the recipients could serve in a designated medically underserved area pursuant to regulations issued by the Department of Health and Human Services.

During the past several decades, I have been increasingly impressed by the extent to which our Nation's professional nurses are, indeed, the true backbone of the health care delivery system that we know today. I have also become very impressed at the extent to which their nursing expertise has very positive ramifications for other elements of our system and, accordingly, I wish to provide members of the nursing profession with the opportunity to be as creative and flexible as possible during their professional careers.

Mr. President I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 133

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 "Advanced Nurse Education Act of 1987".

ESTABLISHMENT OF SCHOLARSHIP PROGRAM

SEC. 2. Part B of title VIII of the Public Health Service Act is amended by adding at the end thereof the following new subpart:

"Subpart III—Advanced Education in Related Professions

"SCHOLARSHIP PROGRAM

"SEC. 845. (a) The Secretary shall establish a scholarship program to enable professional nurses (hereafter in this subpart referred to as the 'scholarship program') to pursue masters and doctoral degrees in fields related to the practice of nursing (including fields such as law, public health, and psychology).

"(b) To be eligible to participate in the scholarship program, an individual must—

"(1) be accepted for enrollment, or be enrolled, as a full-time student (A) in an accredited (as determined by the Secretary) educational institution in a State and (B) in a course of study or program, offered by such institution and approved by the Secretary, leading to a masters degree or a doctoral degree in a field related to nursing (as determined by the Secretary);

"(2) submit an application to participate in the scholarship program; and

"(3) sign and submit to the Secretary, at the time of submittal of such application, a written contract (described in subsection (e)) to accept payment of a scholarship and to serve (in accordance with this subpart) for the applicable period of obligated service.

"(c) In disseminating application forms and contract forms to individuals desiring to participate in the scholarship program, the Secretary shall include with such forms—

"(1) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under section 847 in the case of the individual's breach of the contract; and

"(2) such other information as may be necessary for the individual to understand the individual's prospective participation in the scholarship program.

The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the scholarship program. The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the scholarship program on a date sufficiently

early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

"(d)(1) An individual becomes a participant in the scholarship program only upon the Secretary's approval of the individual's application submitted under subsection (b)(2) and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(3).

"(2) The Secretary shall provide written notice to an individual promptly upon the Secretary's approving, under paragraph (1), of the individual's participation in the scholarship program.

"(e) The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

"(1) an agreement that—

"(A) subject to paragraph (2), the Secretary agrees to provide the individual with a scholarship (described in subsection (f)) in each such school year or years for a period of years (not to exceed four school years) determined by the individual, during which period the individual is pursuing a course of study described in subsection (b)(1)(B); and

"(B) subject to paragraph (2), the individual agrees—

"(i) to accept provision of such a scholarship to the individual;

"(ii) to maintain enrollment in a course of study described in subsection (b)(1)(B) until the individual completes the course of study;

"(iii) while enrolled in such course of study, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study); and

"(iv) to serve for a time period (hereinafter in the subpart referred to as the 'period of obligated service') equal to one year for each school year for which the individual was provided a scholarship under the scholarship program, in a public or nonprofit private health care facility or, if approved by the Secretary, in a private health care facility in a medically underserved area (as designated by the Secretary);

"(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subpart;

"(3) a statement of the damages to which the United States is entitled, under section 847 for the individual's breach of the contract; and

"(4) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with the provisions of this subpart.

"(f)(1) A scholarship provided to a student for a school year under a written contract under the scholarship program shall consist of—

"(A) payment to, or (in accordance with paragraph (2)) on behalf of, the student of the amount of—

"(i) the tuition of the student in such school year; and

"(ii) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the student in such school year; and

"(B) payment to the student of a stipend of $400 per month (adjusted in accordance with paragraph (3)) for each of the 12 consecutive months beginning with the first month of such school year.

"(2) The Secretary may contract with an educational institution, in which a participant in the scholarship program is enrolled, for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A). Payment to such an educational institution may be made without regard to section 3324 of title 31, United States Code.

"(3) The amount of the monthly stipend, specified in paragraph (1)(B) and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Secretary for each school year ending in a fiscal year beginning after September 30, 1988, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5, United States Code) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

"OBLIGATED SERVICE

"SEC. 846. (a) Each individual who has entered into a written contract with the Secretary under section 845 shall provide service in the full-time clinical practice of such individual's profession in a facility described in section 845(e)(1)(B)(iv) for the period of obligated service provided in such contract.

"(b) If an individual is required under subsection (a) to provide service as specified in section 845(e)(1)(B)(iv) (hereafter in this subsection referred to as 'obligated service'), the Secretary shall, not later than 90 days prior to the date on which the individual is scheduled to complete the course of study for which the individual received a scholarship under the scholarship program, approve or disapprove the position in which the individual proposes to provide such obligated service. If the Secretary disapproves such position, such individual shall, in accordance with procedures established by the Secretary, arrange the provision of such service in another position approved by the Secretary.

"BREACH OF SCHOLARSHIP CONTRACT

"SEC. 847. (a) An individual who has entered into a written contract with the Secretary under section 845 and who—

"(1) fails to maintain an acceptable level of academic standing in the educational institution in which the individual is enrolled (such level determined by the educational institution under regulations of the Secretary),

"(2) is dismissed from such educational institution for disciplinary reasons,

"(3) voluntarily terminates the training in such an educational institution for which the individual is provided a scholarship under such contract, before the completion of such training, or

"(4) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to the individual, or on behalf of the individual, under the contract.

"(b) Except as provided in paragraph (2), if (for any reason not specified in subsection (a)) an individual breaches a written contract entered into this subpart by failing either to begin such individual's service obligation in accordance with section 846 or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A=3\varphi(t-s/t)$$

in which 'A' is the amount the United States is entitled to recover, 'φ' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; 't' is the total number of months in the individual's period of obligated service; and 's' is the number of months of such period served by the individual in accordance with section 846. Any amount of damages which the United States is entitled to recover under this subsection shall, within the one-year period beginning on the date of the breach of the written contract, (or such longer period beginning on such date as specified by the Secretary for good cause shown) be paid to the United States.

"(c)(1) Any obligation of an individual under the scholarship program (or a contract thereunder) for service or payment of damages shall be canceled upon the death of the individual.

"(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the scholarship program (or a contract thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

"(3) Any obligation of an individual under the scholarship program (or a contract thereunder) for payment of damages may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment of such damages is required.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 848. To carry out this subpart, there are authorized to be appropriated $5,000,000 for fiscal year 1988 and each of the succeeding fiscal years.".●

By Mr. INOUYE:

S. 134. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect to be conducted by a clinical social worker; to the Committee on the Judiciary.

ALLOWING CERTAIN PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATIONS TO BE CONDUCTED BY CLINICAL SOCIAL WORKERS

● Mr. INOUYE. Mr. President, today I am introducing legislation to amend the "mental competency" provisions of the Federal Criminal Code, in order to authorize the use of the expertise of clinical social workers by our Nation's Federal judiciary.

Mr. President, the legislative recommendation which I am making today is highly consistent with the policy recommendations of the American Bar Association's Criminal Justice Mental

Health Standards and, in my judgment, reflects the most current state of the art within our mental health community.

Mr. President, I request unanimous consent that the text of my bill be printed in the RECORD.

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

S. 134

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (b) of section 4247 of title 18, United States Code, as amended by Public Law 98-473, is amended by—

(1) striking out "or" after "certified psychiatrist" and inserting in lieu thereof a comma; and

(2) inserting after "clinical psychologist," the following: "or clinical social worker,".●

By Mr. INOUYE:

S. 135. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect to be conducted by a psychiatric nurse practitioner or a clinical nurse specialist; to the Committee on the Judiciary.

ALLOWING CERTAIN PSYCHIATRIC EXAMINATIONS TO BE CONDUCTED BY A PSYCHIATRIC NURSE PRACTITIONER

● Mr. INOUYE. Mr. President, today I am introducing legislation which would amend the mental status provision of the Federal Criminal Code to ensure that the services of well-qualified psychiatric nurse practitioners or psychiatric nurse clinical specialists will be made available to our Federal judiciary.

Mr. President, the recommendation which I am making today is consistent with the policy recommendations included in the American Bar Association's Criminal Justice Mental Health Standards and reflects the state of the art within our Nation's mental health programs.

Although relatively few in number, our Nation's psychiatric nurses have an excellent track record in providing quality mental health evaluations over the past decades and, accordingly, I am confident that their expertise will be well received by the Federal judiciary.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 135

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (b) of section 4247 of title 18, United States Code, as amended by Public Law 98-473, is amended by—

(1) striking out "or" after "certified psychiatrist" and inserting in lieu thereof a comma; and

(2) inserting after "clinical psychologist," the following: "psychiatric nurse practitioner, or clinical nurse specialist,".●

By Mr. INOUYE (for himself, Mr. DECONCINI, and Mr. MATSUNAGA):

S. 136. A bill to improve the health status of native Hawaiians, and for other purposes; to the Select Committee on Indian Affairs.

TO IMPROVE HEALTH STATUS OF NATIVE HAWAIIANS

● Mr. INOUYE. Mr. President, today Senators DECONCINI, MATSUNAGA, and I are introducing legislation to address the pressing health care needs of our Nation's native Hawaiians.

The legislation which we are introducing today is an outgrowth of hearings that were held by the Select Committee on Indian Affairs and the result of several studies which have been conducted by the Department of Health and Human Services over the past several years.

It is a most unfortunate reality that native Hawaiians are disproportionately represented on the wrong end of almost every health indicator that we have. For example, native Hawaiians experience a disproportionately high rate of chronic ailments, including heart conditions, hypertension, asthma, diabetes, gout, and bronchitis. Native Hawaiian women have a significantly greater number of pregnancy risk factors, such as teenage pregnancies and teen births, illegitimate births, and pregnant women have late or no prenatal care.

The native Hawaiian infant mortality rate is higher than any other major ethnic group in the State of Hawaii. The National Cancer Institute [NCI] reported that native Hawaiians have the highest incidence of cancer of any segment of our population.

Mr. President, the bill which we are introducing today would go a long way in having the Federal Government accept Federal responsibility for these native American people and, further, gives a high priority to the establishment of various prevention activities, which as we all know, is really the key to reversing these statistics.

In the closing hours of the 99th Congress, the U.S. Senate passed this bill unanimously; however, the House of Representatives did not have time to act on it. Hopefully, during this session of Congress we will be able to have this important initiative enacted into public law.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 136

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

FINDINGS

SECTION 1. The Congress finds that—

(1) the Federal Government retains the legal responsibility to enforce the administration of a public trust responsibility for the betterment of the conditions of Native Hawaiians by the State of Hawaii;

(2) in furtherance of the State of Hawaii's public trust responsibility for the betterment of the conditions of Native Hawaiians, contributions by the Federal Government to the provision of health education and health services to maintain and improve the health status of Native Hawaiians are consistent with the historical and unique legal relationship of the Federal Government with the government that represented the indigenous native people of Hawaii;

(3) it is the policy of the Federal Government to raise the health status of Native Hawaiians to the highest possible level and to encourage the maximum participation of Native Hawaiians in the planning and management of health services in order to achieve this objective;

(4) Federal support for programs that provide health care to Native Hawaiians has resulted in a reduction in the prevalence and incidence of preventable illnesses among Native Hawaiians and in a reduction in premature deaths of Native Hawaiians; and

(5) further improvement in the health status of Native Hawaiians is necessary on the basis of findings that—

(A) Native Hawaiians experience the highest age-sex standardized mortality rate in the State of Hawaii,

(B) Native Hawaiians experience a lower life expectancy than any other population group in the State of Hawaii,

(C) Native Hawaiians experience a higher rate of infant mortality, congenital abnormalities and underweight infants than any other population in the State of Hawaii,

(D) Native Hawaiians have the greatest risk of diabetes, heart disease, and some forms of cancer than any other population in the State of Hawaii,

(E) Native Hawaiians experience the onset of diabetes, heart disease, and hypertension at earlier ages than other populations in the State of Hawaii,

(F) Native Hawaiians have significantly higher rates of heart disease and hypertension than other populations in the State of Hawaii,

(G) Native Hawaiians have one of the highest cancer rates of any population in the United States and Native Hawaiians have the poorest survival rates from cancer than any other population in the State of Hawaii,

(H) Native Hawaiian pregnant women rank the highest of all populations of pregnant women in the State of Hawaii in—

(i) receiving late or no prenatal care,

(ii) smoking and alcohol consumption during pregnancy,

(iii) toxemia and urinary tract infections during pregnancy, and

(iv) complications of pregnancy over age 35,

(I) Native Hawaiians have higher rates of suicide among young adults and elderly males than the statewide population as a whole,

(J) Native Hawaiian children have one of the highest periodontal disease rates and

the poorest dental hygiene of any other population in the State of Hawaii,

(K) Native Hawaiians have higher proportion of alcohol and narcotics use and school performance impairment than the statewide population as a whole,

(L) Native Hawaiians have higher levels of stress than the statewide population as a whole based on leading stress indicators,

(M) Native Hawaiians are underrepresented in rates of participation in health education, health promotion, screening, and referral programs,

(N) utilization of mental health services by Native Hawaiians is significantly below that of other populations in the State of Hawaii, and

(O) Native Hawaiians are underrepresented in the health professions.

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The term "disease prevention" includes—

(A) immunizations,

(B) control of high blood pressure,

(C) control of sexually transmittable diseases,

(D) prevention and control of diabetes,

(E) pregnancy and infant care, including prevention of fetal alcohol syndrome,

(F) control of toxic agents,

(G) occupational safety and health,

(H) accident prevention,

(I) fluoridation of water, and

(J) control of infectious agents.

(2) The term "health promotion" includes—

(A) cessation of tobacco smoking,

(B) reduction in the misuse of alcohol and drugs,

(C) improvement of nutrition,

(D) improvement in physical fitness,

(E) family planning, and

(F) control of stress.

(3) The term "Native Hawaiian" means any individual who has any ancestors that were natives, prior to 1778, of the area that now comprises the State of Hawaii.

(4) The term "Native Hawaiian organization" means any organization—

(A) which serves and represents the interests of Native Hawaiians,

(B) which is recognized by the Office of Hawaiian Affairs of the State of Hawaii and E Ola Mau for the purpose of planning, conducting, or administering programs (or portion of programs) authorized under this Act, and

(C) in which Native Hawaiian health professionals significantly participate in the planning, management, monitoring, and evaluation of health services.

(5) The term "Native Hawaiian educational institution" means any educational institution that—

(A) serves and represents the interests of Native Hawaiians, and

(B) has as a primary and stated purpose the provision of educational services to Native Hawaiians.

(6) The term "Advisory Board" means the Native Hawaiian Health Promotion and Disease Prevention Advisory Board established under section 3(b).

(7) The term "Secretary" means the Secretary of Health and Human Services.

HEALTH PROMOTION AND DISEASE PREVENTION

SEC. 3. (a)(1) For fiscal year 1989, and for each fiscal year thereafter, the Secretary shall, in consultation with the Advisory Board established under subsection (b), enter into contracts with Native Hawaiian organizations under which the Secretary shall provide funds to Native Hawaiian organizations to establish and administer programs of health promotion and disease prevention designed to serve Native Hawaiians.

(2) The program that is to be established and administered under each contract entered into under paragraph (1) shall—

(A) provide necessary preventive-oriented health services, including maternal and child health care and mental health care, through the establishment of community health centers, subject to the availability of appropriations authorized under section 4(a)(3)(B);

(B) provide for the collection of data related to the prevention of diseases and illnesses among Native Hawaiians, including the prevention of fetal alcohol syndrome, hypertension, heart disease, and diabetes;

(C) provide for medical and general health-related research into the diseases that are most prevalent among Native Hawaiians including, but not limited to, heart disease, hypertension, cancer, and diabetes;

(D) provide for research into the mental health problems that are most prevalent among Native Hawaiians including, but not limited to, alcoholism, substance abuse, reduction of stress, and child abuse;

(E) provide for education in health promotion and disease prevention in the Native Hawaiian population by Native Hawaiian community outreach workers and Native Hawaiian nurses;

(F) provide for health planning in areas which shall include, but not be limited to, health planning in maternal and child health, nutrition, disease prevention, health promotion, health education, and mental health; and

(G) provide training for Native Hawaiian community health outreach workers as paraprofessionals in the provision of health care and health education in Native Hawaiian communities by means of a curriculum which—

(i) combines education in the theories of health care with supervised practical experience in the provision of health care,

(ii) provides instruction and practical experience in health promotion and disease prevention activities, particularly—

(I) nutrition,

(II) physical fitness,

(III) weight control,

(IV) cessation of tobacco smoking,

(V) stress management,

(VI) control of alcohol and substance abuse, including prevention of fetal alcohol syndrome,

(VII) control of high blood pressure,

(VIII) prevention and control of diabetes,

(IX) prevention of lifestyle related accidents,

(X) prenatal and postnatal infant health care, and

(XI) maternal health care, and

(iii) provides instruction in the most current and effective social, educational, and behavioral approaches to the establishment and maintenance of good health habits.

(b)(1) There is hereby established the Native Hawaiian Health Promotion and Disease Prevention Advisory Board.

(2)(A) The Advisory Board shall be composed of—

(i) an individual appointed to the Advisory Board by the Secretary from among nominations submitted to the Secretary by the Governor of the State of Hawaii, and

(ii) individuals representing each of the following organizations who are appointed to the Advisory Board by the Secretary from among nominations submitted by each of the following organizations:

(I) Alu Like, Inc.;

(II) the Office of Hawaiian Affairs of the State of Hawaii;

(III) E Ola Mau or any other organization composed of Native Hawaiian health care professionals;

(IV) the University of Hawaii School of Medicine;

(V) the University of Hawaii School of Public Health;

(VI) the University of Hawaii School of Nursing;

(VII) the Hawaii State Department of Health;

(VIII) the Kamehameha Schools, Bernice Pauahi Bishop Estate;

(IX) the Liliuokalani Trust;

(X) the Hawaii Nurses Association;

(XI) the Hawaii Medical Association;

(XII) the Hawaii State Department of Social Services and Housing;

(XIII) the Waianae Coast Comprehensive Health Center, or its successor organization, the Hawaii State Association of Community Health Centers;

(XIV) the Hawaii Psychological Association;

(XV) the Hawaii Psychiatric Association;

(XVI) the Hawaii Social Work Association;

(XVII) the Hawaii Society of Public Health Educators;

(XVIII) the Hawaii Dietetic Association;

(XIX) the Hawaii State Board of Education;

(XX) the Department of Hawaiian Home Lands;

(XXI) the Hawaii Dental Association; and

(XXII) any other organization designated by the Secretary for purposes of this subparagraph.

(B)(i) Except as provided in clause (ii), the term of office for each member of the Advisory Board shall be 3 years.

(ii) Of the initial members of the Advisory Board—

(I) the member representing the Governor of Hawaii and the members representing organizations listed in clauses (I), (II), (III), (IV), (V), and (VI) of subparagraph (A)(ii) shall have a term of 3 years,

(II) the members representing the organizations listed in clauses (VII), (VIII), (IX), (X), (XI), (XII), and (XIII) of subparagraph (A)(ii) shall have a term of 2 years, and

(III) the members representing all other organizations listed in subparagraph (A)(ii) shall have a term of 1 year.

(C) A vacancy on the Advisory Board shall be filled in the same manner in which the original appointment was made. A member so appointed shall serve for the remainder of the term of office to which such member is appointed.

(D) Individuals nominated for, and appointed to, the Advisory Board under subparagraph (A) should, to the extent feasible, be Native Hawaiians.

(E) The members of the Advisory Board shall elect a chairman from among the members of the Advisory Board.

(3) The Advisory Board—

(A) shall oversee—

(i) the awarding of contracts under subsection (a)(1),

(ii) the administration of programs for which contracts are entered into under subsection (a)(1), and

(iii) the grants awarded under subsection (c), and

(B) shall prepare and submit to the Secretary reports for each calendar quarter on the oversight conducted under subparagraph (A), and

(C) shall prepare and submit to the Congress, through the Secretary, annual reports containing recommendations on activities that—

(i) are designed to address the health care needs of Native Hawaiians, and

(ii) may be conducted by—

(I) the State of Hawaii,

(II) the Federal Government,

(III) community health centers,

(IV) Native Hawaiian organizations, or

(V) private health care providers.

(4) The provisions of section 14, and subsections (e) and (f) of section 10, of the Federal Advisory Committee Act (5 U.S.C. Appendix 2) shall not apply with respect to the Advisory Board.

(c)(1) Subject to the availability of funds appropriated under the authority of paragraph (3), the Secretary shall provide grants to Native Hawaiian organizations for the purpose of developing the management capabilities of such organizations to plan and operate the health promotion and disease prevention program that is to be established under contracts entered into under subsection (a).

(2) The total amount of grants that may be made to any Native Hawaiian organization under paragraph (1) shall not exceed $75,000.

(3) There are authorized to be appropriated $600,000 for fiscal year 1987, and each fiscal year thereafter, for the purpose of funding grants under paragraph (1).

(d)(1) The Secretary is authorized to enter into an agreement with any Native Hawaiian organization (or any Native Hawaiian educational institution) under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such Native Hawaiian organization (or such Native Hawaiian educational institution) to such Native Hawaiian organization (or to such Native Hawaiian educational institution) on detail for the purpose of providing education in health promotion and disease prevention to Native Hawaiian children who are underserved.

(2) Any assignment of personnel made by the Secretary under any agreement entered into under the authority of paragraph (1) shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(e)(1) The Secretary shall establish in the State of Hawaii, as a demonstration project, a Native Hawaiian Program for Health Promotion and Disease Prevention for the purpose of exploring ways to meet the unique health care needs of Native Hawaiians.

(2) The demonstration program that is to be established under paragraph (1) shall—

(A) provide necessary preventive-oriented health services, including health education and mental health care,

(B) develop innovative training and research projects,

(C) establish cooperative relationships with the leadership of the Native Hawaiian community, and

(D) ensure that a continuous effort is made to establish programs which can be of direct benefit to other Native American people.

(3) The Secretary is authorized to enter into contracts with Native Hawaiian organizations for the purpose of assisting the Secretary in meeting the objectives of the demonstration program that is to be established under paragraph (1).

(4) The Secretary shall submit to the Congress an annual report on the status and accomplishments of the program during each of the fiscal years 1987, 1988, and 1989.

(5) There are authorized to be appropriated $500,000 for each of the fiscal years 1987, 1988, and 1989, for the purpose of carrying out the provisions of this subsection.

(f)(1) The Secretary shall include in any contract which the Secretary enters into with any Native Hawaiian organization under this section such conditions as the Secretary considers necessary to ensure that the objectives of such contract are achieved.

(2) The Secretary shall develop procedures to evaluate compliance with, and performance of, contracts entered into by Native Hawaiian organizations under this section.

(3) The Secretary shall conduct an annual onsite evaluation of each Native Hawaiian organization which has entered into a contract under this section for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under such contract.

(4) If, as a result of the evaluations conducted under paragraph (3), the Secretary determines that a Native Hawaiian organization has not complied with or satisfactorily performed a contract entered into under this section, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under this section with another Native Hawaiian organization that serves the same population of Native Hawaiians which is served by the Native Hawaiian organization whose contract is not renewed by reason of this paragraph.

(5) In determining whether to renew a contract entered into with a Native Hawaiian organization under this section, the Secretary shall—

(A) review the records of the Native Hawaiian organization and the reports submitted by the Advisory Board under subsection (b)(3)(B) with respect to such organization, and

(B) shall consider the results of the onsite evaluations conducted under paragraph (3).

(6) All contracts entered into by the Secretary under this section shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provision of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

(7) Payments made under any contract entered into under this section may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this section.

(8) Notwithstanding any other provision of law, the Secretary may, at the request or consent of a Native Hawaiian organization, revise or amend any contract entered into by the Secretary with such organization under this section as necessary to carry out the purposes of this section, except that whenever such organization requests retrocession of any contract entered into under this section, such retrocession shall become effective upon a date specified by the Secretary that is not more than 120 days after the date of the request by such organization or at such later date as may be mutually agreed to by the Secretary and such organization.

(9)(A) For each fiscal year during which a Native Hawaiian organization receives or expends funds pursuant to a contract entered into under this section, such organization shall submit to the Secretary a quarterly report on—

(i) activities conducted by the organization under the contract,

(ii) the amounts and purposes for which Federal funds were expended, and

(iii) such other information as the Secretary may request.

(B) The reports and records of any Native Hawaiian organization which concern any contract entered into under this section shall be subject to audit by the Secretary and the Comptroller General of the United States.

(10) The Secretary shall allow as a cost of any contract entered into under this section the cost of an annual private audit conducted by a certified public accountant.

(11) The authority of the Secretary to enter into contracts under this section shall be to the extent, and in amounts, provided for in appropriation Acts.

COMMUNITY HEALTH CENTERS; NATIONAL HEALTH SERVICE CORPS PROGRAM

SEC. 4. (a)(1) The Secretary is authorized—

(A) to designate Native Hawaiians as a medically underserved population for purposes of section 330 of the Public Health Service Act (42 U.S.C. 254c),

(B) to provide planning grants (no more than 8 in number and of no more than $100,000 per grant) to Native Hawaiian organizations, or to any organization of health care professionals serving Native Hawaiians, for the purpose of planning community health centers to serve the health needs of Native Hawaiian communities, and

(C) to establish community health centers under section 330 of such Act to serve the health needs of Native Hawaiian communities.

(2) The Secretary shall consult with the Governor of Hawaii regarding any grants that may be made under section 330(c)(1) of the Public Health Service Act (42 U.S.C. 254c(c)(1)), or under paragraph (1)(B), for the planning and developing of community health centers to serve the health needs of Native Hawaiian communities.

(3) In addition to any other amounts authorized to be appropriated for carrying out section 330 of the Public Health Service Act, there are authorized to be appropriated for fiscal year 1987—

(A) $800,000 for the purpose of providing planning grants authorized under paragraph (1)(B), and

(B) $2,800,000 for the purpose of establishing under section 330 of the Public Health Service Act no more than 8 community health centers to serve the health needs of Native Hawaiian communities,

such sums to remain available until expended, without fiscal year limitation. No more than $350,000 of the funds authorized to be appropriated under subparagraph (B) may be expended for each community health center.

(b) The Secretary is authorized to designate Native Hawaiians as a population group which has a health manpower shortage for purposes of subpart II of part C of title III of the Public Health Service Act.

HEALTH SERVICE SCHOLARSHIP PROGRAM

SEC. 5. (a) Subject to the availability of funds appropriated under the authority of subsection (c), the Secretary shall provide scholarship assistance to students who—

(1) meet the requirements of section 338A(b) of the Public Health Service Act (42 U.S.C. 254l(b)), and

(2) are Native Hawaiians.

(b) The scholarship assistance provided under subsection (a) shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 338A of the Public Health Service Act (42 U.S.C. 254l).

(c) There are authorized to be appropriated $1,800,000 for fiscal year 1987, and for each fiscal year thereafter, for the purpose of funding the scholarship assistance provided under subsection (a).

HEALTH CARE REFERRAL SERVICES FOR NATIVE HAWAIIANS

SEC. 6. (a)(1) The Secretary shall enter into contracts with Native Hawaiian organizations for the provision of health care referral services for Native Hawaiians. Any such contract shall include requirements that the Native Hawaiian organization successfully undertake to—

(A) determine the population of Native Hawaiians who are, or could be, recipients of health care referral services,

(B) determine the current health status of Native Hawaiians served by the Native Hawaiian organization,

(C) determine the current health care needs of Native Hawaiians served by the Native Hawaiian organization,

(D) identify all public and private health services resources which are, or could be, available to Native Hawaiians,

(E) determine the use of public and private health services resources by Native Hawaiians,

(F) assist Native Hawaiians in becoming familiar with such health services resources and in utilizing such health services resources,

(G) provide basic health education to Native Hawaiians, including education in health promotion and disease prevention through a community health outreach program that uses Native Hawaiian community health outreach workers,

(H) establish and implement manpower training programs to accomplish the referral and education tasks set forth in subparagraphs (F) and (G),

(I) identify any disparity between the health needs of Native Hawaiians that are not being met and the resources available to meet such needs, and

(J) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of Native Hawaiians.

(2) The Secretary shall prescribe regulations which provide the criteria for selecting Native Hawaiian organizations with which contracts are entered into under this subsection. Such criteria shall, among other factors, include—

(A) the extent of the health care needs of Native Hawaiians served by the Native Hawaiian organization that are not being met,

(B) the size of the Native Hawaiian population served by the Native Hawaiian organization,

(C) the accessibility to, and utilization of, health care services by Native Hawaiians served by the Native Hawaiian organization,

(D) the extent, if any, to which the activities that are required to be undertaken under paragraph (1) would duplicate—

(i) any previous or current public or private health services project that was, or is, funded by any means other than a contract entered into under this section, or

(ii) any project funded by means of a contract entered into under this section,

(E) the capability of the Native Hawaiian organization to—

(i) perform the activities that are required to be undertaken under paragraph (1), and

(ii) enter into a contract with the Secretary under this subsection,

(F) the satisfactory performance and successful completion by the Native Hawaiian organization of other contracts entered into with the Secretary under this section,

(G) the appropriateness and likely effectiveness of conducting the activities that are required to be undertaken under paragraph (1), and

(H) the extent of existing participation, or likely future participation, in the activities that are required to be undertaken under paragraph (1) by appropriate health and health-related Federal, State, local, and other agencies.

(b)(1) The Secretary may enter into contracts under this subsection with Native Hawaiian organizations which have not entered into a contract with the Secretary under subsection (a). The purpose of entering into a contract under this subsection shall be to determine—

(A) the matters described in paragraph (2) in order to assist the Secretary in assessing the health status and health care needs of Native Hawaiians served by the Native Hawaiian organization, and

(B) whether the Secretary should enter into a contract under subsection (a) with the Native Hawaiian organization.

(2) Any contract entered into by the Secretary under this subsection shall include requirements that the Native Hawaiian organization—

(A) document the health care status and health care needs of Native Hawaiians served by the Native Hawaiian organization,

(B) with respect to Native Hawaiians served by the Native Hawaiian organization, determine the matters described in subparagraphs (B), (C), (D), and (H) of subsection (a)(2), and

(C) complete performance of the contract within one year after the date on which the Secretary and the Native Hawaiian organization enter into such contract.

(c)(1) The Secretary shall include in any contract which the Secretary enters into with any Native Hawaiian organization under this section such conditions as the Secretary considers necessary to encourage the establishment of programs which make health care services more accessible to Native Hawaiians.

(2) The Secretary shall develop procedures to evaluate compliance with, and performance of, contracts entered into by Native Hawaiian organizations under this section. Such procedures shall include provisions for carrying out the requirements of this section.

(3) The Secretary shall conduct an annual onsite evaluation of each Native Hawaiian organization which has entered into a contract under subsection (a) for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

(4) If, as a result of the evaluations conducted under paragraph (3), the Secretary determines that a Native Hawaiian organization has not complied with or satisfactorily performed a contract entered into under subsection (a), the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under subsection (a) with another Native Hawaiian organization that serves the same population of Native Hawaiians which is served by the Native Hawaiian organization whose contract is not renewed by reason of this paragraph.

(5) In determining whether to renew a contract entered into with a Native Hawaiian organization under subsection (a), or whether to enter into a contract with a Native Hawaiian organization under subsection (a) which has completed performance of a contract entered into under subsection (b), the Secretary shall—

(A) review the records of the Native Hawaiian organization and the reports submitted under subsection (e), and

(B) in the case of a renewal of a contract entered into under subsection (a), shall consider the results of the onsite evaluations conducted under paragraph (3).

(d)(1) No contract entered into under this section may provide for a total amount of payments under the contract by the Federal Government that exceeds $125,000.

(2) All contracts entered into by the Secretary under this section shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provision of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

(3) Payments made under any contract entered into under this section may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this section.

(4) Notwithstanding any other provision of law, the Secretary may, at the request or consent of a Native Hawaiian organization, revise or amend any contract entered into by the Secretary with such organization under this section as necessary to carry out the purposes of this section, except that whenever such organization requests retrocession of any contract entered into under this section, such retrocession shall become effective upon a date specified by the Secretary that is not more than 120 days after the date of the request by such organization or at such later date as may be mutually agreed to by the Secretary and such organization.

(5) All contracts entered into under this section with Native Hawaiian organizations, and all regulations prescribed under this section, shall include provisions to assure the fair and uniform provision to Native Hawaiians of health care referral services and assistance under such contracts by such organizations.

(e)(1) For each fiscal year during which a Native Hawaiian organization receives or expends funds pursuant to a contract entered into under this section, such organization shall submit to the Secretary a quarterly report on—

(A) in the case of a contract entered into under subsection (b), disparities identified and recommendations made under subparagraphs (I) and (J) of subsection (a)(1),

(B) activities conducted by the organization under the contract,

(C) the amounts and purposes for which Federal funds were expended, and

(D) such other information as the Secretary may request.

(2) The reports and records of any Native Hawaiian organization which concern any contract entered into under this section shall be subject to audit by the Secretary and the Comptroller General of the United States.

(3) The Secretary shall allow as a cost of any contract entered into under subsection (a) the cost of an annual private audit conducted by a certified public accountant.

(f)(1) The authority of the Secretary to enter into contracts under this section shall be to the extent, and in an amount, provided for in appropriation Acts.

(2) There are authorized to be appropriated $625,000 for fiscal year 1987, and for each fiscal year thereafter, for the purpose of funding contracts entered into under this section.

ACCESS TO MEDICARE AND MEDICAID SERVICES

SEC. 7. (a) The Secretary shall, in consultation with Native Hawaiian organizations, conduct a study of any barriers which may exist to the participation of Native Hawaiians in programs established under title XVIII of the Social Security Act (medicare) or under title XIX of the Social Security Act (medicaid).

(b) By no later than the date which is one year after the date of enactment of this Act, the Secretary shall submit to the Congress a report on the study conducted under subsection (a). Such report shall include—

(1) recommendations for legislation which—

(A) would remove any barriers to participation identified in such study, and

(B) would encourage participation by Native Hawaiians in the programs described in subsection (a), and

(2) estimates of—

(A) the potential number of Native Hawaiians eligible for medicare,

(B) the potential number of Native Hawaiians eligible for medicaid,

(C) the number of Native Hawaiians participating in the medicare program, and

(D) the number of Native Hawaiians participating in the medicaid program.

GENERAL AUTHORIZATION

SEC. 8. There are authorized to be appropriated for fiscal year 1987, and for each fiscal year thereafter, such sums as may be necessary to carry out the provisions of this Act for which a specific authorization of appropriations is not otherwise provided for in this Act.

PACIFIC BASIN DISEASE RESEARCH INSTITUTE

SEC. 9. (a) The Secretary shall make a grant under section 720(a)(1) of the Public Health Service Act to the University of Hawaii in Honolulu, Hawaii, for the construction of a building for a Pacific Basin disease research institute. Notwithstanding sections 702(b) and 721(c) of such Act, the Secretary is not required to secure the advice of the National Advisory Council on Health Professions Education with respect to such grant.

(b) The Federal share of the necessary costs of construction, as determined by the Secretary, of the building described in subsection (a), shall be 50 percent.

(c) To carry out this section, there are authorized to be appropriated $5,000,000. Amounts appropriated under this section shall remain available until expended.●

By Mr. INOUYE:

S. 137. A bill to direct the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Armed Services.

DETERMINATIONS BY THE SECRETARY OF THE ARMY IN RELATION TO FILIPINO CLAIMS OF SERVICE

● Mr. INOUYE. Mr President, today I am reintroducing a bill to direct the Secretary of the Army to determine the validity of the of the claims of certain Filipinos who assert that they performed military service on behalf of the United States during World War II, and for other purposes.

During the course of World War II, many Filipinos—guerrillas and active servicemen—fought on behalf of U.S. interests. In 1948, the U.S. Government stuck from official U.S. Army records the names of thousands of Filipinos who served during this time, denying these individuals the rights, benefits, and privileges they so richly deserve.

The legislation I am proposing today would permit these "excluded veterans" to submit their claims to the proper authorities for reevaluation—resolution—on a case-by-case basis. Upon submission of sufficient documentation of service with the U.S. Army or organized guerrilla forces, these individuals should be duly recognized as veterans and entitled to benefits and assistance from the U.S. Government.

The removal of their names from official Army records was an injustice to these individuals who helped the United States during World War II. For some, this bill is too late since death has taken its toll. However, the enactment of this legislation would confirm our commitment to these Filipinos who fought so hard to maintain United States freedom.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 137

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

SECTION 1. DETERMINATIONS BY THE SECRETARY OF THE ARMY.

(a) IN GENERAL.—Upon the written application of any person who is a national of the Philippine Islands, the Secretary of the Army shall determine whether such person performed any military service in the Philippine Islands in aid of the Armed Forces of the United States during World War II which qualifies such person to receive any military, veterans', or other benefits under the laws of the United States.

(b) INFORMATION TO BE CONSIDERED.—In making a determination for the purpose of subsection (a), the Secretary shall consider all information and evidence (relating to service referred to in subsection (a)) available to the Secretary, including information and evidence submitted by the applicant, if any.

SEC. 2. CERTIFICATE OF SERVICE.

(a) ISSUANCE OF CERTIFICATE OF SERVICE.—The Secretary shall issue a certificate of service to each person determined by the Secretary to have performed service described in section 1(a).

(b) EFFECT OF CERTIFICATE OF SERVICE.—A certificate of service issued to any person under subsection (a) shall, for the purpose of any law of the United States, conclusively establish the period, nature, and character of the military service described in the certificate.

SEC. 3. APPLICATIONS BY SURVIVORS.

An application submitted by a surviving spouse, child, or parent of a deceased person described in section 1(a) shall be treated as an application submitted by such person.

SEC. 4. LIMITATION PERIOD.

The Secretary may not consider for the purpose of this Act any application received by the Secretary more than two years after the date of the enactment of this Act.

SEC. 5. PROSPECTIVE APPLICATION OF DETERMINATIONS BY THE SECRETARY OF THE ARMY.

No benefits shall accrue to any person for any period prior to the date of the enactment of this Act as a result of the enactment of this Act.

SEC. 6. REGULATIONS.

The Secretary shall issue regulations to carry out sections 1, 3, and 4.

SEC. 7. RESPONSIBILITIES OF THE ADMINISTRATION OF VETERANS' AFFAIRS.

Any entitlement of a person to receive veterans' benefits by reason of this Act shall be administered by the Veterans' Administration pursuant to regualtions issued by the Administrator of Veterans' Affairs.

SEC. 8. DEFINITIONS

As used in this Act—

(1) the term "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946; and

(2) the term "Secretary" means the Secretary of the Army.●

By Mr. INOUYE (for himself and Mr. BOREN):

S. 138. A bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to permit distribution of certain State-inspected meat and poultry products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FEDERAL MEAT AND POULTRY PRODUCTS INSPECTION ACT

● Mr. INOUYE. Mr. President, it is my pleasure to reintroduce legislation on behalf of myself and Senator BOREN, which would allow State-inspected meat and poultry products to enter interstate commerce. This bill would permit the sale of State-inspected meats to consumers in neighboring States and to federally inspected plants. However, it would continue the

practice of barring State-inspected meats from international trade, where by treaty all meat must be federally inspected.

Under present law, State meat inspection plants must either meet or exceed Federal standards for wholesomeness, cleanliness, and freedom from chemical residues. However, quality State-inspected meats are often barred from nearby markets by virtue of an arbitrary State line that bisects a local community. The bill we are offering will correct this inequity by allowing State-inspected meats equal access to American meat and poultry markets.

State-inspected meat and poultry plants may be smaller than the average federally inspected plant, but they produce just as good a product. They may follow different procedures under State law and use different equipment, but it would be a mistake to assume that their products are inferior. Take for example the requirement that all federally certified plants must provide an inspector with a private office. This may be feasible for some of the larger plants which can tailor their specifications to Federal requirements, but what about the small family packer who has been making specialty meats for decades? His procedures and end-product are as good as anyone else's, and he meets all of the necessary laws, but what if he does not have space for a separate inspector's office? Should we deny that producer the right to ship his products in interstate commerce? Is this fair to either the small producer or the nearby consumer who would like to buy his products but cannot because he happens to live in a different political jurisdiction?

Consumer confidence in our Nation's meat and poultry products continues to be at an all-time high, and this bill works to maintain that confidence. However, it would end the discrimination against State-inspected meats which enjoy the confidence of consumers in 27 States throughout the country.

The benefits of this legislation are clear. First, consumers would be rewarded with a greater variety of wholesome meats at competitive prices. Second, livestock producers would not have to ship their animals clear across State to reach a Federal plant: they could use local, State-inspected facilities and still get their meat into interstate commerce, thus saving a great deal in transportation costs and helping smaller meatpacking plants stay in operation. Third, State plants would no longer be pushed to join the Federal meat inspection system. This would save the U.S. Department of Agriculture and the American taxpayer money by keeping meat-inspection programs in the hands of individual States.

Mr. President, this bill has received favorable comment from the USDA and the Secretary of Agriculture, who recommended that it be enacted into law. Hearings were also held on an identical measure, S. 593, in the 98th Congress, Senate hearings 98-471, July 21, 1983. Allowing State-inspected meat and poultry products into interstate commerce is long overdue, and I urge my colleagues to join us in passing this important piece of legislation.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 138

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 "Federal Meat and Poultry Products Inspection Act of 1987".

FEDERAL MEAT INSPECTION ACT

SEC. 2. (a) Section 301 of the Federal Meat Inspection Act (21 U.S.C. 661) is amended—

(1) by striking out "solely for distribution within such State" in subparagraph (1) of paragraph (a);

(2) by adding at the end of subparagraph (2) of paragraph (a) the following new sentence: "In carrying out the provisions of this Act, the Secretary may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any State or Territory or the District of Columbia commissioned by the Secretary for such purposes.";

(3) by striking out "with respect to the operations and transactions within such State which are regulated under subparagraph (1)," in subparagraph (3) of paragraph (c) and inserting in lieu thereof "with respect to all establishments within its jurisdiction which do not operate under Federal inspection under title I of this Act and at which any cattle, sheep, swine, goats, or equines are slaughtered or their carcasses or parts or products thereof are prepared for use as human food and with respect to the distribution of carcasses, parts thereof, meat, or meat food products of such animals within the State,"; and

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

"(e) Notwithstanding any other provisions of this Act—

"(1) Carcasses, parts thereof, meat, and meat food products of cattle, sheep, swine, goats, or equines prepared under State inspection in any state not designated under paragraph (c) of this section, and prepared in compliance with the meat inspection law of the State, shall be eligible for sale or transportation in commerce and shall be eligible for entry into and use in the preparation of products in establishments at which Federal inspection is maintained under title I of this Act, in the same manner and to the same extent as products prepared at such establishments. Such State inspected articles, and federally inspected articles prepared, in whole or in part, from such State inspected articles, shall not be eligible for sale or transportation in foreign commerce and shall be separated at all times from all other federally inspected articles in any federally inspected establishment which engages in the preparation, sale, or transportation of carcasses, or parts thereof, meat, or meat food products, for foreign commerce.

"(2) All carcasses, parts thereof, meat, and meat food products that are inspected under a program of inspection pursuant to the law of a State not designated under paragraph (c) of this section shall be identified as so inspected only by official marks which (A) clearly identify the State as the State which performed the inspection, and (B) are of a design prescribed by the State. Federally inspected articles prepared, in whole or in part, from such State inspected articles shall be identified as so inspected only by the same official marks as prescribed by the Secretary for articles slaughtered or prepared under title I of this Act.

"(3) The operator of any establishment which is operated under Federal inspection may transfer to State inspection and the operator of any establishment which is operated under State inspection may transfer to Federal inspection if—

"(A) the operator gives written notice to both the appropriate Federal and State officials of the proposed transfer; and

"(B) the Secretary determines that such transfer will effectuate the purposes set forth in section 2 of this Act and will not adversely affect the stability of the total State and Federal inspection systems.

A transfer of inspection authority under this paragraph may not become effective until October 1 of any year and until at least one hundred and eighty days have elapsed after notice of the proposed transfer has been given to the appropriate Federal and State officials. The Secretary may, in his discretion, make individual exceptions for any applicant for Federal inspection under title I of this Act who presents clear and convincing evidence that he intends to, and will be able to, engage in foreign commerce to the extent that Federal inspections would be required, to engage in such commerce.".

(b) The second sentence of section 408 of such Act (21 U.S.C. 678) is amended to read as follows: "Marking, labeling, packaging, or ingredient requirements in addition to, or different than those made under this Act may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under Federal inspection under title I of this Act or with respect to articles prepared for commerce at any State inspected establishment in accordance with the requirements under section 301(e) of this Act; but any State or Territory or the District of Columbia may, consistent with the requirements of this Act, exercise concurrent jurisdiction with the Secretary over articles distributed in commerce, or otherwise subject to this Act, for the purposes of preventing the distribution for human food purposes of any such articles which are not in compliance with the requirements of this Act and are outside of any federally or State inspected establishment, or, in the case of imported articles, which are not at such an establishment after their entry into the United States.".

POULTRY PRODUCTS INSPECTION ACT

SEC. 3. (a) Section 5 of the Poultry Products Inspection Act (21 U.S.C. 454) is amended—

(1) by striking out "solely for distribution within such State" in subparagraph (1) of paragraph (a);

(2) by striking out "with respect to the operations and transactions within such State which are regulated under subparagraph (1)

of this paragraph (c)," in subparagraph (3) of paragraph (c) and inserting in lieu thereof "with respect to all establishments within its jurisdiction which do not operate under Federal inspection under this Act and at which any poultry are slaughtered or any poultry products are processed for use as human food and with respect to the distribution of poultry products within the State,"; and

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

"(e) Notwithstanding any other provisions of this Act—

"(1) Poultry products processed under State inspection in any State not designated under paragraph (c) of this section, and processed in compliance with the poultry products inspection law of the State, shall be eligible for sale or transportation in commerce and shall be eligible for entry into and use in the preparation of poultry products in establishments at which Federal inspection is maintained under this Act, in the same manner and to the same extent as poultry products processed at such establishments. Poultry products complying with the requirements under the poultry products inspection laws of States not designated under paragraph (c) in which the products were processed shall be considered as complying with this Act. Such State inspected poultry products, and federally inspected poultry products processed, in whole or in part, from such State inspected poultry products, shall not be eligible for sale or transportation in foreign commerce and shall be separated at all times from all other federally inspected poultry products in any federally inspected establishment which engages in the processing, sale, or transportation of poultry products for foreign commerce.

"(2) All poultry products that are inspected under a program of inspection pursuant to the law of a State not designated under paragraph (c) of this section shall be identified as so inspected only by official marks which (A) clearly identify the State as the State which performed the inspection, and (B) are of a design prescribed by the State. Federally inspected poultry products processed, in whole or in part, from such State inspected poultry products shall be identified as so inspected only by the same official marks as prescribed by the Secretary for poultry products processed under sections 1 through 4, 6 through 10, and 12 through 22 of this Act.

"(3) The operator of any establishment which is operated under Federal inspection may transfer to State inspection and the operator of any establishment which is operated under State inspection may transfer to Federal inspection if—

"(A) the operator gives written notice to both the appropriate Federal and State officials of the proposed transfer; and

"(B) the Secretary determines that such transfer will effectuate the purposes set forth in section 2 of this Act and will not adversely affect the stability of the total State and Federal inspection systems.

A transfer of inspection authority under this paragraph may not become effective until October 1 of any year and until at least one hundred and eighty days have elapsed after notice of the proposed transfer has been given to the appropriate Federal and State officials. The Secretary may, in his discretion, make individual exceptions for any applicant for Federal inspection under title I of this Act who presents clear and convincing evidence that he intends to, and will be able to, engage in foreign commerce to the extent that Federal inspection would be required, to engage in such commerce.".

(b) The second sentence of section 23 of such Act (21 U.S.C. 467e) is amended to read as follows: "Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this Act may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment subject to Federal inspection under this Act or with respect to articles prepared for commerce at any State inspected establishment in accordance with the requirements under section 5(e) of this Act. Further storage or handling requirements found by the Secretary to unduly interfere with the free flow of poultry products in commerce shall not be imposed by any State or Territory or the District of Columbia. However, any State or Territory or the District of Columbia may, consistent with the requirements of this Act, exercise concurrent jurisdiction with the Secretary over articles distributed in commerce, or otherwise subject to this Act, for the purpose of preventing the distribution for human food purpose of any such articles which are not in compliance with the requirements under this Act and are outside of any federally or State inspected establishment, or, in the case of imported articles, which are not at such an establishment after the entry into the United States.".

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 139. A bill to direct the Secretary of Transportation to approve modifications of certain interstate highway transfer concept plan; to the Committee on Commerce, Science, and Transportation.

MODIFICATION OF CERTAIN INTERSTATE HIGHWAY TRANSFER CONCEPTS

Mr SARBANES. Mr. President, today Senator MIKULSKI and I are introducing legislation to enable the State of Maryland to proceed with construction of the final 18-mile gap in the National Freeway in western Maryland. Specifically the legislation would allow the State to add the National Freeway to its interstate highway transfer concept plan. A companion measure to this bill is being introduced in the House by Representative BEVERLY BYRON.

This legislation is needed to provide additional flexibility in transportation programs reflecting changes in transportation needs and priorities. Under current law States are allowed to withdraw interstate routes and use these funds for substitute highway and transit projects providing that a "concept program" which identifies the proposed substitute projects is approved. The law however does not allow changes to this concept program after September 30, 1983, with certain exceptions.

At the current rate of authorizations, it will take until 1993 to fund the outstanding interstate substitution entitlements. Interstate substitute concept plans were, however, developed in 1982 or 1983. Thus States were required to predict, nearly 10 years in advance, what transportation projects might require funding in the early 1990's. However, priorities and local, State, and Federal Government programs change. Given these factors, States should have flexibility in programming projects to meet priority needs.

This legislation is particularly important to Maryland based on its decision not to proceed with construction of the North Corridor Busway project, which was part of the Baltimore area concept program, and to fund instead the National Freeway and other highway and transit improvements. These projects cannot use interstate substitution funds if they are not added to the "concept plan." The Federal Highway Administration has concurred that the National Freeway is an eligible project for interstate substitution funds provided that the legislative change described above is made to allow additions to the interstate substitution concept program.

The National Freeway is the last and most important part of the highway linking western Maryland with the Port of Baltimore. It has been one of the highest priorities of the administration of Gov. Harry Hughes, and Governor-elect William Donald Schaefer has already indicated that he has placed it at the top of his transportation agenda. I would like to see the National Freeway completed as quickly as possible, and this bill is an essential element of that effort.

In the 99th Congress, both the Senate and House highway reauthorization bills included appropriate language to allow modifications to concept programs after September 30, 1983, and I am hopeful that provisions similar to those which we are proposing today will be included in the highway/transit reauthorization bill for the 100th Congress.

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 140. A bill to amend title XVIII of the Social Security Act to provide that psychologist services are covered under part B of Medicare; to the Committee on Finance.

COVERAGE OF PSYCHOLOGIST SERVICES UNDER PART B OF MEDICARE

● Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation to amend the Medicare Act to provide for the direct reimbursement of our Nation's professional psychologists for outpatient services rendered to needy beneficiaries.

For the past decade, we have been attempting to modify the mental health provisions of the Medicare law to ensure that a truly interdisciplinary reimbursement system is made avail-

able. It is our hope that by focusing upon outpatient benefits during this session of Congress, we will be able to ensure that necessary quality care is made available and, further, that in so doing we will eventually be able to decrease the level of expenditure allocated toward inpatient care.

The measure which we are offering today is consistent with the status of psychology under both the Department of Defense CHAMPUS Program and the Federal Employees Health Benefit Program.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 140

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

SECTION 1. COVERAGE OF PSYCHOLOGIST SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) is amended in the first sentence—

(1) by striking out "or" before "(5)"; and

(2) by adding before the period the following: ", or (6) a psychologist (as defined in subsection (ff)) who is acting within the scope of his or her license when performing such function, but only with respect to outpatient services."

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"(ff) The term 'psychologist' means an individual who—

"(1) is licensed or certified at the independent practice level of psychology by the State in which such individual so practices,

"(2) possesses a doctorate degree in psychology from a regionally accredited educational institution, or in the case of an individual licensed or certified prior to January 1, 1978, possesses a master's degree in psychology and is listed in a national register of mental health service providers in psychology approved by the Secretary, and

"(3) possesses at least two years of supervised experience in health service, at least one year of which is postdegree.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month which begins more than sixty days after the date of the enactment of this Act.●

By Mr. INOUYE:

S. 141. A bill to authorize reduced postage rates for certain mail matter sent to Members of Congress; to the Committee on Governmental Affairs.

REDUCED POSTAGE RATES FOR CERTAIN MATERIAL SENT TO MEMBERS OF CONGRESS

● Mr. INOUYE. Mr. President, I rise today to reintroduce a bill to provide for the issuance of a special 1-cent postage stamp to be used for correspondence with Members of Congress.

Mr. President, ours is a democratic Government—a representative Government and thus, by definition, one dependent on the continuing operation of a two-way communication system between the people of this country and their elected Representatives.

Each Member of the Congress is directly responsible to those people in his State or district whom he represents. He must not only keep communication channels open but, more importantly, he must be responsive to the concerns he receives through these channels. The most practical means of transmitting these constituent concerns in through the mail. It is most difficult for many of us to imagine ourselves in a situation where the desire to express an opinion is frustrated because we must think twice about spending money on a postage stamp.

Unfortunately, we must face the fact that many of our Nation's citizens are forced to consider the purchase of a 22-cent postage stamp for the purpose of expressing a grievance, or opinion or idea, as something beyond their means.

The issuance of a 1-cent stamp for this purpose would effectively remove this prohibition and allow all citizens to apprise their Representatives and Senators of their individual thoughts and position on the issues facing our Nation. This measure would amend the Postal Reform Act of 1970 to provide for the issuance of these 1-cent stamps to be sold at U.S. post offices. The bill also authorizes appropriations necessary to account for the difference in postal revenue resulting from the sale of 1-cent stamps as opposed to prevailing postage rates for mail matter addressed to Congressmen which does not exceed 4 ounces in weight.

Recognizing the necessity of open communication between elected officials and the people, Congress adopted the franking system allowing congressional communication between elected officials to constituents. We have neglected, however, to provide our constituents with a convenient and affordable means to access to their Senators and Congressmen. It is difficult to overstate the importance of this concept of individual expression. Each and every citizen has the right and the responsibility to participate in the democratic system, through both the ballot box and through correspondence with their Representatives between elections.

Because the effective operation of our political system is dependent upon open communication, I am hopeful that this bill will receive the early approval of the Congress.

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

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

S. 141

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 32 of title 29, United States Code, is amended by adding at the end thereof the following new section:

"§ 3221. Mail matter sent to Members of Congress

"(a) Any person may send any piece of mail matter, not exceeding four ounces in weight, for postage of 1 cent to (1) any Member of the Senate representing the State, and (2) the Member of the House of Representatives representing the district, in which such person resides, if that person uses a special stamp issued by the Postal Service for any such matter. The Postal Service shall issue special 1-cent stamps to be used in sending such matter, and such stamps shall only be sold at post offices.

"(b) For the purposes of this section—

"(1) 'district' includes Puerto Rico and the District of Columbia;

"(2) 'Member of the House of Representatives' includes a Representative, Delegate, and Resident Commissioner; and

"(3) a Member of the House of Representatives elected at large from a State having more than one district shall be considered a Member elected from each district of that State.".

(b) The analysis of such chapter is amended by adding after the item relating to section 3220 the following new item:

"3221. Mail matter sent to Members of Congress.".

(c) Section 2401(c) of such title is amended by inserting "3221," after "3217,".

(d) This Act shall take effect January 1, 1988.●

By Mr. INOUYE (for himself, Mr. DECONCINI, Mr. MATSUNAGA, and Mr. MURKOWSKI):

S. 142. A bill to amend the Native American Programs Act of 1974 to authorize appropriations for fiscal years 1987 through 1991; to the Select Committee on Indian Affairs.

NATIVE AMERICAN PROGRAMS AMENDMENTS

● Mr. INOUYE. Mr. President, I am pleased to introduce today a bill that would reauthorize the funding of programs under the Native American Programs Act of 1974 through 1991.

Mr. President, this legislation will assure continuation of an important program for off-reservation groups, including rural, urban, Native Alaskan, and native Hawaiian organizations, as well as reservation-based Indian tribes, to enable them to engage in activities that will promote and enhance social and economic self-sufficiency. Under the Native American Programs Act, each tribe or off-reservation native American group has the opportunity and the responsibility to decide for itself what its social and economic priorities are, and how they will address these areas. The Administration for Native Americans is truly a program that promotes and endorses self-determination for native Americans.

Mr. President, this bill was introduced in the 99th Congress, but was vetoed in the closing days of the Congress. I am optimistic that this bill can

be expedited in the early days of the 100th Congress.

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

S. 142

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 "Native American Programs Amendments of 1987".

SEC. 2. REVIEW OF APPLICATIONS FOR ASSISTANCE.

The Native American Programs Act of 1974 (42 U.S.C. 2991-2992d) is amended—

(1) in the first sentence of section 803(a) by inserting ", on a single year or multiyear basis," after "financial assistance",

(2) by redesignating sections 813 and 814 as sections 815 and 816, respectively,

(3) by redesignating sections 806 through 812, as sections 807 through 813, respectively, and

(4) by inserting after section 805 the following new section:

"PEER REVIEW OF APPLICATIONS FOR ASSISTANCE

"SEC. 806. (a)(1) The Secretary shall establish a formal peer review process for purposes of evaluating applications for financial assistance under sections 803 and 805 and of determining the relative merits of the projects for which such assistance is requested.

"(2) Members of peer review panels shall be appointed by the Secretary from among individuals who are not officers or employees of the Administration for Native Americans. In making appointments to such panels, the Secretary shall give preference to American Indians, Hawaiian Natives, and Alaskan Natives.

"(b) Each peer review panel established under subsection (a)(2) that reviews any application for financial assistance shall—

"(1) determine the merit of each project described in such application;

"(2) rank such application with respect to all other applications it reviews for the fiscal year involved, according to the relative merit of all of the projects that are described in such application and for which financial assistance is requested; and

"(3) submit to the Secretary a list that identifies all applications reviewed by such panel and arranges such applications according to rank determined under paragraph (2).

"(c) Whenever the Secretary approves an application for financial assistance under section 803 or 805, the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and the President pro tempore of the Senate written notice—

"(1) identifying such application;

"(2) containing a copy of the list submitted to the Secretary under subsection (b)(3) in which such application is ranked;

"(3) specifying which other applications ranked in such list have been approved by the Secretary under sections 803 and 805; and

"(4) if the Secretary has not approved each application superior in merit, as indicated on such list, to the application with respect to which such notice is transmitted, containing a statement of the reasons relied upon by the Secretary for—

"(A) approving the application with respect to which such notice is transmitted; and

"(B) failing to approve each pending application that is superior in merit, as indicated on such list, to the application described in subparagraph (A).".

SEC. 3. PROCEDURAL REQUIREMENTS.

(a) RULE MAKING.—The Native American Programs Act of 1974 (42 U.S.C. 2991-2992d) is amended by inserting after section 813, as so redesignated by section 2, the following new section:

"ADDITIONAL REQUIREMENTS APPLICABLE TO RULE MAKING

"SEC. 814. (a) Notwithstanding subsection (a) of section 553 of title 5, United States Code, and except as otherwise provided in this section, such section 552 shall apply with respect to the establishment and general operation of any program that provides loans, grants, benefits, or contracts authorized by this title.

"(b) The last sentence of section 553(b) of title 5, United States Code, shall not apply with respect to any rule (including any general statement of policy) that is—

"(1) proposed under this title;

"(2) applicable to any program, project, or activity authorized by, or carried out under, this title; or

"(3) applicable to the organization, procedure, or practice of an agency (as defined in section 551(a) of title 5, United States Code) and that would affect the administration of this title.

"(c) Notwithstanding section 553(d) of title 5, United States Code, no rule (or general statement of policy) that—

"(1) is issued to carry out this title;

"(2) applies to any program, project, or activity authorized by, or carried out under, this title; or

"(3) is applicable to the organization, procedure, or practice of an agency (as defined in section 551(1) of title 5, United States Code) and that will affect the administration of this title;

may take effect until 30 days after the publication required under the first 2 sentences of section 553(b) of title 5, United States Code.

"(d) Each rule to which this section applies shall contain after each of its sections, paragraphs, or similar textual units a citation to the particular provision of statutory or other law that is the legal authority for such section, paragraph, or unit.

"(e) Except as provided in subsection (c), if as a result of the enactment of any law affecting the administration of this title it is necessary or appropriate for the Secretary to issue any rule, the Secretary shall issue such rule not later than 180 days after the date of the enactment of such law.

"(f) Whenever an agency publishes in the Federal Register a rule (including a general statement of policy) to which subsection (c) applies, such agency shall transmit a copy of such rule to the Speaker of the House of Representatives and the President pro tempore of the Senate.".

(b) DEFINITION OF RULE.—Section 815 of the Native American Programs Act of 1974 (42 U.S.C. 2992c), as so redesignated by section 2, is amended—

(1) in paragraph (3) by striking out "and" at the end thereof,

(2) by redesignating paragraph (4) as paragraph (5), and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) the term 'rule' has the meaning given it in section 551(4) of title 5, United States Code, as amended from time to time; and".

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

Section 816(a) of the Native American Programs Act of 1974 (42 U.S.C. 2992d(a)), as so redesignated by section 2 of this Act, is amended by striking out "1986" and inserting in lieu thereof "1991".

By Mr. INOUYE (for himself and Mr. DECONCINI):

S. 143. A bill to establish a temporary program under which parenteral diacetylmorphine will be made available through qualified pharmacies for the relief of intractable pain due to cancer; to the Committee on Labor and Human Resources.

COMPASSIONATE PAIN RELIEF ACT

● Mr. INOUYE. Mr. President, today Senator DECONCINI and I are introducing legislation which is directed to relieving the suffering of a small but significant number of our citizens; patients who are terminally ill with cancer and whose pain has not been effectively mitigated with currently available medications.

For many years, the thought of cancer and its accompanying pain have sent chills of fear through all of us; likewise, the thought of heroin and its addictive qualities produces similar fears. In my judgment, we are in a position now where we can make a logical and thoughtful decision to legalize the therapeutic use of heroin for the terminally ill cancer patient suffering intractable pain while at the same time safeguarding against the diversion of the drug into illicit channels.

The legislation we are introducing today is supported by thousands of Americans and is identical to that which was sponsored by 13 of my colleagues during the 99th Congress. Furthermore, I am pleased to report that to a great extent, it reflects the evolution and thinking of our Nation's health care system as evidenced by the editorial in the January 14, 1982, issue of the prestigious New England Journal of Medicine, which urged more flexiblity in the use of addictive drugs in the treatment of pain. This thinking is also present in an official statement made by the American Psychiatric Association which endorses the "principle that the effectiveness of relief of pain in terminal cancer patients should take priority over a concern about 'addiction' of the terminal cancer patient and should take priority over a concern about medication diversion to addicts." A later article in the New England Journal of Medicine of August 23, 1984, by Dr. Allen Mondzac, reviewed the unique characteristics of heroin and its valuable clinical role where it is available.

The need for this legislation is dramatic. Although over the past two decades a great deal of progress has been made in treating cancer, each year an estimated 800,000 Americans are diagnosed as having cancer, and over 400,000 die from the disease. Most of

these individuals will have received competent and compassionate medical care, and many will receive adequate relief of pain. Unfortunately, the reality is also that a certain number of cancer patients do not obtain relief of pain from the currently available analgesic medication—even the strongest narcotics. An NIH panel that convened in May 1986, heard testimony that 50 to 60 percent of patients with cancer pain live the last part of their lives with unrelieved severe pain. As a minimal figure, it has elsewhere been estimated that about 20 percent of terminal cancer patients suffer significant pain. Of this 20 percent, it has been estimated that 10 percent do not obtain relief with presently prescribed medications. In human terms, these percentages mean that as many as 8,000 Americans may die in agony this year because of the intractable pain associated with terminal cancer. I have been assured by my medical colleagues that in many cases this pain can be alleviated with the therapeutic use of heroin, making the last weeks, months, or days of these patients more bearable. These dying patients are not now given the option of dying with dignity because of our Nation's continued and overriding fear of the term "heroin." In my judgment, this fear alone has prevented us, the lawmakers of our Nation, from making clear and rational decisions regarding the limited use of this long-proven and already available substance.

Heroin has been proven effective with a number of patients in relieving pain. Research completed at Georgetown University's Vincent T. Lombardi Cancer Research Center has found heroin to be an effective analgesic for the control of cancer-related pain. In particular, it has been reported to be more potent than morphine in relieving cancer pain. Less than half of the dose of heroin produces the same pain relief as a dose of morphine. In the terminal phase of cancer, many patients cannot take medication by mouth, and may require injections. As the disease progresses, individuals may require higher doses at more frequent intervals, to provide relief. This is when it would be desirable to have the option of using heroin in treating pain, since heroin is more potent and more soluble than morphine salts, and an effective dose can be administered in considerably smaller volumes. Thus, doctors have informed me that it is less painful to have such an injection—an important consideration in the emaciated patient with little tissue mass remaining. Further, the onset of action of the heroin is also more rapid than morphine because of its solubility, giving relief of pain and a sense of well-being sooner. It is most unfortunate that the use of heroin for these patients has not been allowed up to this date. This legislation will enable physicians to treat the dying cancer patient who suffers from intractable pain with a proven, effective medication.

The time has now come to address the issue of why heroin should not be readily available as a therapeutic medication for our Nation's physicians in very specific situations when we have dying cancer patients who are suffering extreme pain. William Buckley has described our irrational maintenance of the prohibition against such uses of heroin in very real terms. As he pointed out:

> The irony is that anybody in a major city can acquire the knowledge necessary to buy heroin from a dirty little drug pimp, but licensed doctors may not adminster the identical drug to men and women—and children—literally dying from excruciating pain.

Our colleagues on the House Subcommittee on Health and the Environment held hearings on a similar bill on September 4, 1980. At that time, a number of practicing physicians and others asked that the Federal controls on heroin be eased to permit the prescription of heroin for patients for whom more conventional pain killers were inadequate. It was further pointed out that in Great Britain, heroin has been used for years for these patients and that it has been shown to be particularly effective for those 10 percent of terminal cancer patients who require injected medication. British physicians consider heroin to be an indispensible potent narcotic analgesic in the treatment of advanced cancer. Use of heroin in specific situations is also permitted in Belgium, New Zealand, China, and many other civilized nations.

Since this information was made public in the House hearings the editorial writers of our country have taken up the issue, as reflected in supportive statements by, among a number of others, the New York Times, the Washington Post, the Washington Times, the Los Angeles Times, the San Francisco Chronicle, the San Francisco Examiner, the Honolulu Star-Bulletin, the Honolulu Advertiser, the Chicago Sun-Times, the Cleveland Plain Dealer, the Rocky Mountain News, and the Richmond Times-Dispatch. Both National Review and the New Republic have backed the proposal. The American Nurses' Association has come out strongly endorsing this merciful action. Within the past year, as a result of widespread support among physicians and the general public, heroin has become available in Canada for terminal cancer patients.

The bill I am introducing today will give a very high priority to relief from intractable pain for terminal cancer patients. It authorizes the Secretary of the Department of Health and Human Services to establish demonstration programs which will permit the use of heroin by terminally ill cancer patients only, when suffering from pain which is not effectively treated with currently available analgesic medications.

My bill has more than adequate safeguards to prevent the drug from being introduced to the general public. For example, a diagnosis must first be made by the attending physician that his or her patient is ill with cancer and is suffering from pain which is not being effectively treated with other available analgesic medications. This diagnosis must be reviewed and approved by a medical review board of the hospital which will dispense the heroin. The heroin used in the program will be from that supply now confiscated under current laws. The Secretary of Health and Human Services is further authorized to establish additional regulations for the safe use and storage of heroin, to prevent its diversion into illicit channels. This program will be in force for a 5-year period and periodic reporting is required of the Secretary on the activities under the bill.

I strongly believe that this proposal will provide substantial benefits to those who are in intractable pain from terminal cancer and I am hopeful that my colleagues on the Senate Labor and Human Resources Committee will give this measure their prompt and most serious consideration.

Mr. President, I request unanimous consent that the text of this bill and attached relevant articles be printed in the RECORD.

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

S. 143

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 "Compassionate Pain Relief Act".

SEC. 2. The Congress finds the following:

(1) Cancer is a progressive, degenerative, and often painful disease which afflicts one out of every four Americans and is the second leading cause of death.

(2) In the progression of terminal cancer, a significant number of patients will experience levels of intense and intractable pain which cannot be effectively treated by presently available medication. The effect of the pain often leads to a severe deterioration in the quality of life of the patient and heartbreak for the patient's family.

(3) The therapeutic use of parenteral diacetylmorphine is not permitted in the United States but extensive clinical research has demonstrated that it is a potent, highly soluble painkilling drug when properly formulated and administered under a physician's supervision.

(4) Making parenteral diacetylmorphine available to patients through controlled channels as a drug for the relief of intractable pain due to terminal cancer is in the public interest. Diacetylmorphine is successfully used in Great Britain and other countries for relief of pain due to cancer.

(5) The availability of parenteral diacetylmorphine for the limited purposes of controlling intractable pain due to terminal cancer will not adversely effect the abuse of illicit drugs or increase the incidence of pharmacy thefts.

(6) The availability of parenteral diacetylmorphine will enhance the ability of physicians to effectively treat and control intractable pain due to terminal cancer.

(7) It is appropriate for the Federal Government to establish a temporary program to permit the use of pharmaceutical dosage forms of parenteral diacetylmorphine for the control of intractable pain due to terminal cancer.

SEC. 3. (a) Not later than three months after the date of the enactment of this Act, the Secretary of Health and Human Services (hereinafter in this Act referred to as the "Secretary") shall issue regulations establishing a program under which parenteral diacetylimorphine may be made available to hospital pharmacies and other such pharmacies as may be prescribed by the Secretary for dispensing pursuant to written prescriptions of physicians to individuals for the relief of intractable pain due to terminal cancer (hereinafter in this section referred to as "the program"). For purposes of the program, an individual shall be considered to have terminal cancer if there is histologic evidence of a malignancy in the individual and the individual's cancer is generally recognized as a cancer with a high and predictable mortality. It is the intent of Congress that the Secretary primarily utilize hospital pharmacies for the dispensing of parenteral diacetylmorphine under the program, but the Congress recognizes that humanitarian concerns might necessitate the provision of parenteral diacetylmorphine through pharmacies other than hospital pharmacies in cases in which a significiant need is shown for such provision and in which adequate protection is available against the diversion of parenteral diacetylmorphine.

(b) The Secretary shall provide for the manufacture of parenteral diacetylmorphine for dispensing under the program using adequate methods in, and adequate facilities and controls for, the manufacturing, processing, and packing of such drug to preserve its identity, strength, quality, and purity.

(c) Under the program parenteral diacetylmorphine may only be made available, upon application, to pharmacies registered under section 302 of the Controlled Substances Act that also meet such qualifications as the Secretary may by regulation prescribe. An application for parenteral diacetylmorphine shall—

(1) be in such form and submitted in such manner as the Secretary may prescribe; and

(2) contain assurances satisfactory to the Secretary that—

(A) the applicant meets such special requirements as the Secretary may prescribe respecting the storage and dispensing of parenteral diacetylmorphine; and

(B) parenteral diacetylmorphine provided under the application will be dispensed through the applicant upon the written prescription of a physician registered under section 302 of the Controlled Substances Act to dispense controlled substances in schedule II of such Act.

(d) Requirements prescribed by the Secretary under subsections (b) and (c)(2)(A) shall be designed to protect against the diversion into illicit channels of parenteral diacetylmorphine distributed under the program.

(e) A physician registered under section 302 of the Controlled Substances Act may prescribe parenteral diacetylmorphine for individuals for the relief of intractable pain due to terminal cancer. Any such prescription shall be in writing as prescribed by the Secretary by regulations.

(f) The Federal Food, Drug, and Cosmetic Act and titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 shall not apply with respect to—

(1) The importing of opium,

(2) the manufacture of parenteral diacetylmorphine, and

(3) the distributon and dispensing of parenteral diacetylmorphine,

in accordance with the program.

SEC. 4. (a) Not later than the second month beginning after the date of the enactment of this section and every third month thereafter until the program is established under section 3, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on the activities undertaken to implement the program. Each year after the program is established and while the program is in effect, the Secretary shall report to such committees on the activities under the program during the period for which the report is submitted.

(b) Upon the expiration of fifty-six months after the date the program is established, the Comptroller General of the United States shall report to the committees referred to in subsection (a) on the activities under the program during such fifty-six month period.

SEC. 5. The program established under section 3 shall terminate upon the expiration of sixty months after the date the program is established.

SEC. 6. The Secretary of Health and Human Services shall transmit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than six months after the date of the enactment of this Act—

(1) describing the extent of research activities on the management of pain which have received funds through the National Institutes of Health,

(2) describing the ways in which the Federal Government supports the training of health personnel in pain management, and

(3) containing recommendations for expanding and improving the training of health personnel in pain management.

SEC. 7. The Secretary may at any time six months after implementation of the program modify or terminate the program if in the Secretary's judgment the program is no longer needed or if modifications or termination is needed to prevent substantial diversion of the diacetylmorphine.

[From the Washington Post, Mar. 26, 1984]

AN ACT OF MERCY

Chances are that Congress won't accomplish much in this presidential election year, but there is one piece of business that it should not fail to complete. It should pass legislation—with an impressive and growing bipartisan list of sponsors in both houses—that would legalize the carefully controlled use of heroin in the treatment of cancer patients dying in intractable pain.

One of the curiosities of medical practice in this country is that hundreds of billions are spent to prolong life, but relatively little attention is paid to making sure that patients survive in a tolerable degree of comfort and alertness. Modern medicine keeps promising better painkillers, and new methods of administration may offer patients more continuous relief from currently available drugs. But—as experts testifying recently before Chairman Henry Waxman's health subcommittee strongly asserted—many patients now die in needless agony because they are denied access to heroin, the one drug that could relieve their pain.

Heroin has come into increasing use as a painkiller in Great Britain in recent years because of its demonstrated superiority in treating certain cancer patients. Heroin acts faster than morphine and other widely used painkillers, and it can also be administered in smaller doses—an important consideration in treating emaciated patients. Moreover, unlike other potent drugs, it does not make the patient comatose, depressed, nauseous or hallucinatory. As a result, patients are able to remain alert, communicate with other family members and, because anxiety and depression are relieved, may also live longer.

Heroin was banned from medical practice in this country in 1924 because of fears that it would be diverted to illegal street use—an unwarranted fear that still motivates opponents of the proposed legislation. Since only very small quantities of the drug would have to be kept by hospitals—most cancer patients do not suffer intractable pain—the same precautions used to guard other street-valuable drugs would be adequate to prevent misuse. To be on the safe side the proposed legislation adds still further controls.

Right now hundreds, perhaps thousands, of cancer patients are racked with pain while their families watch in despair. In testifying before the Waxman committee, Dr. Allen Mondzac, chairman of the D.C. Medical Society's Cancer Committee, noted that "right now, in America, we know of a drug which is the most potent, effective, soluble and rapidly active narcotic ever created. It is not available. I do not understand this." Neither do we.

[From the Los Angeles Times, Nov. 9, 1983]

RELIEF FOR THE TERMINALLY ILL

Abhorrence of heroin and the national commitment to eradicate its abuse have led to an unreasonable resistance to legislation that would permit the use of this drug in the one justifiable form—to relieve the agony of terminally ill cancer patients. There is now an opportunity to correct that, and to open to hundreds of Americans a relief from the terrible pain that responds to no other analgesic.

Senator Daniel K. Inouye (D-Hawaii) has taken the lead with the support of 15 other senators, Republicans and Democrats, brought together by the overwhelming evidence that doctors require this added tool if they are to relieve the otherwise intractable pain of many cancer patients. One of the group, Sen. Dennis DeConcini (D-Ariz.), is now planning to offer the proposal as an amendment to the National Institutes of Health reauthorization act. It deserves the support of all members of Congress.

Under present regulations, doctors must rely on morphine in controlling pain. It has proved effective in most cases. Tests in the United States, reported last year in scientific journals, found the two drugs of equal effectiveness. But many patients develop a tolerance to morphine over a prolonged period, and the drug loses its effectiveness.

Heroin has proved effective in these cases. In Great Britain, where doctors have the option of morphine or heroin, the use of heroin is increasing rapidly because of its demonstrated superiority in certain cases. Forty-seven nations now permit the medical use of heroin.

One advantage of heroin is its potency. "A small subgroup of patients requiring large, intramuscular injections could benefit from heroin because it is more water-soluble as well as more potent than morphine," it was reported in Medical News. In cases of this sort, more massive injections of morphine forced into the emaciated bodies of the dying patient can be a source of additional severe pain.

Nothing in the proposed legislation can address a fundamental problem in the United States. That problem is the failure of many physicians to comprehend pain control, now a highly developed specialization in the medical profession. Ignorance of new techniques and reliance on programs geared to timetables rather than to the comfort of patients have left many people unnecessarily in intractable pain, according to experts.

The proposed legislation would limit heroin to terminal cancer patients in licensed hospitals, with peer review required for any doctor's decision to use it. That may prove unreasonably restrictive, particularly because it would deny applications in the home-oriented hospice program how being funded by Medicare. But it is a start. And Inouye's staff is convinced that the understandable horror of heroin abuse precludes going farther at this time.

"We have to take whatever we can get," according to Judith H. Quattlebaum, president of the National Committee on the Treatment of Intractable Pain. To do less would be a cruel rejection of this additional tool for controlling acute suffering.

THE VALUE IN HEROIN

Heroin is a curse for otherwise healthy addicts. But it is also a potent analgesic, valued by many physicians in treating the pain of terminally ill cancer patients. That is why Representative Henry Waxman's bill authorizing strictly limited use in hospitals and hospices deserves support.

First synthesized in Britain in 1874, heroin replaced morphine as the most popular injectable painkiller. It was legally used—and abused—in the United States until 1924, when Congress outlawed its import and manufacture.

Since then, dozens of other powerful analgesics have been synthesized, most of them addicting. But in Britain, heroin remains the painkiller of choice whenever addiction risk is a secondary consideration, and for good reason.

According to Dr. Allen Mondzac, director of the Warwick Cancer Clinic at George Washington University, heroin's high potency combined with its solubility make it the most efficient drug for controlling pain in extremely ill patients. In addition, the euphoric effect that so attracts addicts counteracts the depression experienced by chronic users of other painkillers.

The Reagan Administration, fearing that the drug would be diverted to the illegal market, opposes Government manufacture of heroin and distribution through hospital and hospice pharmacies. There is undoubtedly some risk that a trickle of Government heroin would be added to the river of illegally imported narcotics. But as long as physicians believe that heroin is better than any other drug for easing the trauma of dying cancer patients, that risk ought to be worth taking.

[From the News American, Baltimore, Md., Mar. 25, 1982]

HEROIN FOR THE TERMINALLY ILL

(By William F. Buckley, Jr.)

Finally, somebody has got around to introducing an amendment to the Controlled Substances Act, designed to make it possible to administer heroin to some patients dying of cancer. The hero in the case is Sen. Daniel Inouye of Hawaii, and the word "hero" is not used flippantly, because inevitably there will be those who accuse the senator of adding to the drug problem. A little thought, and a little patience, will dispose of these charges, but not everyone is willing to give a little thought, or to show a little patience, in discussing the problem of heroin. What would be ideal is to bring together the critics of Mr. Inouye's bill and some human beings who, as I write, are screaming (I do not use a metaphor) with pain.

Here are some interesting figures brought out by Sen. Inouye in his speech introducing S. 2013. There are 400,000 Americans alive today who within the next 12 months will die of cancer. Eighty thousand of those condemned will suffer "significant" pain. And of these, 8,000 will experience agony that is not mitigated by such prescriptions as are currently allowed. After a while, morphine just doesn't work with some people.

Why it took so long to come through with a medically reliable experiment is something to wonder about, inasmuch as the use of heroin has been outlawed since 1924. Anyway, thanks to the Vince Lombardi Cancer Research Institute of Georgetown, an experiment was conducted. Forth-eight cancer patients suffering serious pain were injected, one-half with heroin, one-half with morphine, by nurses who did not know which substance they were administering. It transpired that the patients rated heroin as two and one-half times more effective than morphine in bringing relief.

This experiment, together with accumulated testimony from Great Britain and from 37 other countries that tolerate carefully supervised use of heroin brought an endorsement from the *New England Journal of Medicine* and subsequently from the American Psychiatric Association.

Senator Inouye's bill, backed now by 15 members of the Senate, an ideologically uncolored coalition ranging from left (Sen. Carl Levin, D-Mich.) to right (Sen. Steven Symms, R-Idaho), is cautious in several wholly understandable respects. The medical doctor in charge of a patient for whom the use of heroin might be appropriate must first himself recommend the drug's use and then submit his recommendation to a medical review board. If the recommendation is there sustained, the hospital will dispense the heroin from supplies made available by the Department of Health and Human Services from the abundant heroin now confiscated under current laws.

A strict accounting is envisioned, so that the amount of heroin released must correspond with the amount administered. Moreover, Senator Inouye's bill calls for reconsideration of the program after five years. It is difficult to think of anything he left out, save possibly a provision that anyone receiving the heroin and not dead within 90 days must be given an overdose.

It is difficult, Mr. Inouye having stepped forward and broken the taboo, to imagine Congress not acting favorably on this proposal. If it does so, although the legislative credit goes to Mr. Inouye, the moral credit goes to Mrs. Judith Quattlebaum, the president of the National Committee on the Treatment of Intractable Pain (9300 River Road, Potomac, Md. 20854).

She has fought for this bill for five years. During that period, 40,000 Americans have died in needlessly aggravated pain. She has dogged legislators, accumulated scientific evidence, written to newspapers (the bill has received a number of editorial endorsements, including a most vigorous one from the Detroit News and the Federal Times).

Almost every week, an additional senator steps forward to associate himself with the Inouye bill. So will it prove, I think, popular in the House.

It has been remarked that nothing is easier to get used to than other people's pain. This is unhappily correct, and perhaps necessarily so, because if one were as much involved in mankind as John Donne said we should be, there could be no happiness, ever. With Mrs. Quattlebaum we'll be entitled to such happiness as is due to those helpful in relieving the misery of others.

[From the New England Journal of Medicine]

IN DEFENSE OF THE REINTRODUCTION OF HEROIN INTO AMERICAN MEDICAL PRACTICE AND H.R. 5290—THE COMPASSIONATE PAIN RELIEF ACT

(By Allen M. Mondzac, M.D.)

Heroin has been in continuous use since its creation in England by Wright in 1874. The drug was synthesized by acetylating morphine and is therefore a semisynthetic narcotic. Its chemical name is diacetylmorphine, or diamorphine. It was named heroin by the Bayer Company of Germany, which first marketed it widely, in 1898. The drug met with great success and was used as a narcotic analgesic, antitussive, and antidyspnea agent. Heroin was widely prescribed, and many users became addicted. This result was inevitable since little was understood about narcotics and drug addiction.

In what can be described as a panic reaction of the federal government to curb the growing problem of opiate addiction in America, the manufacture and importation of heroin was banned in the United States by the Harrison Narcotics Act of 1924. The legislation was intended to supplant the 1914 Harrison Act, which restricted the use of cocaine and opiates to medical purposes and required a licensed physician's prescription to obtain the drugs. After passage of the 1924 law, although use was not prohibited, it dropped off considerably. In 1956 all hospitals and private physicians who had retained heroin had to relinquish it. Jefferson Hospital in Philadelphia obtained permission from the Bureau of Narcotics and Dangerous Drugs to keep its supply, which it had used judiciously since 1924, until it relinquished the remainder in 1960. Since that time there has been no legal heroin in the United States. It should be noted that in Britain the medical use of heroin continued despite the American legislation and has increased, especially for pain control. In 1970 Congress passed Public Law 91-513, which gave the Office of the Attorney General power to move heroin from schedule I to schedule II, if it so desired.

Since 1974 a grass-roots movement led by the National Committee for the Treatment of Intractable Pain, headed by its founder, Judith Quattlebaum, has been trying to make heroin available again in the United

States for pain control. The Compassionate Pain Relief Act (H.R. 5290), introduced by the Honorable Henry Waxman in February 1984, is the culmination of 10 years of work by the committee. The bill provides a mechanism for the reintroduction of heroin into American medicine.

I would like to discuss the chemical and pharmacologic properties of heroin that makes it unique, and then the benefits of H.R. 5290 and how its passage into law will help American society.

Heroin has been studied very little, considering that it has been used for 100 years. Scientists have seemed afraid to tamper with this strong opiate. Most studies have compared it with morphine.[1 3] They have shown that diacetylmorphine has an earlier onset of action than morphine, causes less nausea and vomiting, and induces more sedation.[4] When heroin is given orally it is rapidly and completely absorbed and deacetylated promptly in the liver to morphine and 6-alpha-mono-acetylmorphine. It acts as a pro-drug for morphine.[5] Most researchers consider oral heroin to be the same as morphine, although the pharmacokinetics of an important metabolite of heroin, 6-acetylmorphine, have never been studied in human beings.[3] The absorption of oral heroin is 1.5 times greater than that of morphine, and the potency of heroin is 2.5 times greater. Increasing the dose of oral morphine can abolish this difference in potency, but it is assumed that the increased dose will be tolerated. These facts have not been addressed in the literature. Furthermore, in the most widely cited study comparing oral heroin and morphine and showing them to be equal, both treatment groups received other medications for pain (steroids, phenothizines, antidepressives, and benzodiazepines).[1] The author of this study [1] questioned his findings and suggested that other results might be obtained if the narcotics were used in a purely single-drug study. This observation has been ignored by workers who have used these data to demonstrate the similarity of heroin to morphine. Therefore, oral heroin, which has not been adequately studied, may be more than just pro-drug for morphine and may yet have an important role in pain relief.

When given parenterally, heroin is markedly different from morphine. Both heroin and acetylated morphine are detectable in the blood after injections.[3] The rapid organ clearance and uptake by the brain, limited only by blood flow, allow high levels of heroin to be reached in the brain, where the drug is hydrolyzed to 6-acetylmorphine and morphine and where these metabolites are retained. This phenomenon is undoubtedly due to the chemical structure of heroin and to plasma binding and lipid solubility.[5] These data irrefutably distinguish heroin from morphine and account for the unique and superior properties of parenteral heroin: rapidly of onset, power to sedate, lack of nausea, increased potency (2.5 times greater than morphine),[4] and high potential for addiction.

Although trials comparing long-term oral heroin administration with long-term oral morphine administration have been carried out,[1] such studies have not been performed with parenteral heroin and morphine. Twycross, who reportedly showed the similarity of the two oral drugs in his self-admittedly flawed study,[1] denies the feasibility of a similar comparison of the parenteral drugs. He states "it has never been suggested that morphine is better than diamorphine [heroin] and . . . results would still leave diamorphine with the practical advantage of being more soluble." [4] This high solubility is one of heroin's other unique chemical properties; up to 120 mg can be given in an injection of 0.2 ml, and the average therapeutic dose can be dissolved in less than 0.1 ml. Because of the limited solubility of morphine, doses including equivalent analgesia would require a 20-ml injection—an unwieldy and painful procedure if the injection is given subcutaneously or intramuscularly. Twycross estimates that, excluding patients who receive heroin for less than 24 hours, 10 to 19 percent of cancer patients in a hospice setting may need the drug, when only solubility and injection size are used as criteria for need.[4] The solubility of heroin, combined with its rapid onset, short duration of effect, little or no induction of nausea, and high analgesic potency make it the drug of choice when parenteral narcotics are needed.

Unfortunately research in the United States that compares parenteral morphine with parenteral heroin has been limited to single-dose studies in postoperative patients [2] or patients with chronic pain.[3 6] These widely cited studies show no clinical difference between parenteral morphine and heroin. This conclusion is very misleading because these studies have no relation to the repeated use of heroin for chronic pain. There has been no study in cancer patients that has evaluated regular use of parenteral heroin for chronic pain.

Because of the unique properties that heroin possesses, one can easily agree with researchers in the field who state that even with the present, limited knowledge of narcotic actions, there is a group of patients who will requre heroin because of its solubility [4] and unique properties [7] and because of the biovariability in response to narcotics that may exist among patients with cancer.[6 9]

Because of its solubility, Dilaudid (hydromorphone) has been proposed as a substitute for heroin.[7 10] A new ultrasoluble form of hydromorphone, called Dilaudid-HP, has been marketed by Knoll Pharmaceuticals. Although Dilaudid has been shown to be more potent than morphine, there are unfortunately no studies comparing Dilaudid or Dilaudid-HP with heroin in clinical situations. The one available study, which compares single-dose Dilaudid with heroin for preoperative patients, indicated that Dilaudid has more side effects and less analgesic efficacy than heroin.[11] Because of the well-recognized individual variations in drug tolerance and analgesic response, the place of Dilaudid-HP in the analgesic armamentarium is unclear. It is not acceptable as a substitute for heroin at present.

H.R. 5290—The Compassionate Pain Relief Act—provides a means to reintroduce heroin into American medicine. If this measure becomes law, American doctors will join with British colleagues in having a choice about the right analgesic for their patients. Physicians in this country will be given the freedom and responsibility to provide heroin to patients who need it—those who are not helped by the available drugs for pain.

The Waxman bill provides a comprehensive and intelligent system for distributing heroin. Since all evidence seems to point to the superiority of parenteral to oral heroin, the bill provides for the availability of the parenteral form only. H.R. 5290 also states specifically that heroin would be available only to patients with cancer in "situation where conventional analgesics are ineffective or contraindicated," which would limit the number of potential users and the amount of heroin that would be in circulation or in any pharmacy at a given time. Fear of criminal diversion of even this limited amount of heroin to addicts has clouded the thinking of the Department of Health and Human Services, the American Medical Association, and the American College of Physicians. All these institutions are opposed to reintroducing heroin into medical practice because of this fear. In the light of the pioneer work of Beaver [7] and Twycross,[12] the fear of addiction and dependency among patients should no longer be an issue. In fact, the widely accepted narcotics Dilaudid and morphine have a potential for addiction that is identical to that of heroin.

The Waxman bill as amended and approved in March 1984 by the Committee on Energy and Commerce would allow distribution of heroin by prescriptions written by physicians registered under Section 302 of the Controlled Substances Act, and then only through hospice or hospital pharmacies. This would drastically limit the number of pharmacies that would stock heroin, and should quiet the fears of those who say that there will be widespread thefts of legal heroin. Hospital pharmacies have always stocked morphine. Dilaudid, barbiturates, and amphetamines. Indeed, some now stock marijuana (delta-9-tetrahydrocannabinol) tablets for nausea, which are distributed through hospital pharmacies under a program of the National Cancer Institute and the Drug Enforcement Administration. Data from the Drug Enforcement Administration for 1982 show that robberies at retail pharmacies accounted for 96 percent of robberies for drugs, but that robberies of hospital pharmacies represented only 3 percent of robberies in the same period.[13] In the United Kingdom, where heroin consumption for pain is rising (from 51 kg in 1971 to 150 kg in 1982),[14] theft from pharmacies is not a problem. Chief Inspector H. B. Spear of the Home Office (Great Britain) submitted testimony to the Waxman committee, stating that "the lawful availability of heroin poses no greater security threat than for other similar drugs." He also noted that when thefts did occur, they involved the whole stock of drugs, not just heroin. In the Waxman bill, the rules for physicians writing prescriptions for heroin would be more stringent than those in effect in Britain, since British doctors can prescribe both oral and parenteral forms for the treatment of any medical condition except addiction (for which only specifically appointed doctors may prescribe).

Since one could argue that the crime-ridden, lawless, frontier-style, gun-slinging amoral United States is not like well-behaved, decorous Great Britain, opponents of the bill believe that criminal diversion would occur here in spite of police surveillance of hospital and hospice pharmacies stocking heroin. Professor Arnold Trebach, a noted criminologist, has pointed out some interesting data in his testimony before the Waxman committee, on the projected impact of such criminal diversion. Taking the ratio of morphine use to heroin use in Britain (7:3) and applying it to the use of morphine in the United States in 1982, he estimated that the amount of heroin that might be used under the Waxman bill would be 228 kg per year. After quoting estimates by government agencies that 4 to 10 metric tons of illegal heroin come into the United States every year, he assumed that if through some disaster the 228 kg of legal

heroin were diverted by criminals and added to the amount on the street, it would account for only 4 percent of the total amount of illegal heroin in the United States. This startling statistic indicates how unimportant the problem of criminal diversion is as compared with actual heroin use. Furthermore, it shows that under controlled distribution, the Waxman bill would not cause any major increase in existing addiction problems, pharmacy thefts, or criminal activity.

The bill wisely calls for a review of heroin use every three months by the Secretary of Health and Human Services and the House Health Subcommittee and also sets up a trial period of four years. These provisions would allow ongoing review to provide guidelines for the future.

Since I have stated what the bill would not do, I will now state its most important effects and why I am in favor of it. (1) It would give American doctors a wider choice of analgesics to use. (2) It would remove from American doctors the stigma and the terror laid on the profession by the 1924 Harrison Narcotics Act, which held that doctors could not safely and prudently prescribe a potent narcotic like heroin. (3) It would end the antiquated posture of the drug-enforcement bureaucracy, which prevents cancer patients from receiving a narcotic that they may need medically. (4) It would allow creative researchers of pain relief to stop trying to prove that heroin is not good and to discover why it is good and to use that knowledge constructively. It would enable them to understand why during the largest evaluation of heroin in vivo—the British experience since 1874—doctors gave heroin to 30 percent of all cancer patients in hospices. (5) Finally, the bill shows that the government would accept addicting and potent narcotics and trust physicians and patients with them. In this atmosphere, new ideas, new drugs, and new approaches would develop.

The "heroin movement" created in 1974 by the National Committee for the Treatment of Intractable Pain has fostered the atmosphere that now exists in the United States, where pain research, terminal care, and studies on the comfort of patients are beginning. Now, pain control is discussed openly on rounds; nurses and doctors are starting to be concerned, not about addiction, but about giving enough of the right narcotic to the suffering patient. American medicine is ready to have heroin again.

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[From the National Committee on the Treatment of Intractable Pain]

ROLLIN/SHAPIRO TO AID NCTIP

Betty Rollin is the author of Last Wish, a book about her mother—dying, slowly, in great pain, of cancer—and about Betty's wrenching emotions as she helped her mother have her last wish: to die with dignity, by suicide, before losing control of her life to the unrelenting pain.

Ms. Rollin responded to a NCTIP query about possible common goals and efforts enthusiastically, and met twice with Judy Quattlebaum, Barbara DeMarneffe, and Selma Shapiro, a New York public relations professional. The crucial point where their efforts overlapped was that the terrible decision about suicide might not face cancer patients if preventing terminal cancer pain were given a high enough priority and heroin were available.

A public relations plan has been fashioned, built around Betty's September nationwide tour to introduce the paperback edition of *"Last Wish."* She will mention NCTIP's work when possible in her public and television appearances.

Selma Shapiro has devoted her professional career to public relations in the literary world. She now has established her own firm but was previously vice president of publicity and public relations at Random House.

NCTIP thanks these two compassionate and generous women for their encouragement and support.

MAJOR ARTICLE ON HEROIN APPEARS IN HEALTH LAW JOURNAL

Congress, rather than the courts, must act to legalize the medicinal use of heroin, according to a recent article in The Journal of Contemporary Health Law and Policy. "It is time for Congress to mitigate the law enforcement message of the past decades and offer a new perception of a compassionate, balanced, and hopeful drug policy for this nation," concludes author Suzanne Marcus Stoll.

Reprints of "Why Not Heroin? The Controversy Surrounding the Legalization of Heroin for Therapeutic Purposes" are available from NCTIP. Please send at least $3 to cover costs.

[From the Journal of Contemporary Health Law and Policy]

WHY NOT HEROIN? THE CONTROVERSY SURROUNDING THE LEGALIZATION OF HEROIN FOR THERAPEUTIC PURPOSES

(By Suzanne Marcus Stoll)

INTRODUCTION

"Right now, in America, we know of a drug which is the most potent, effective, soluble, and rapidly active narcotic ever created. It is not available. I do not understand this." [1]

A noted oncologist testified before a House Subcommittee to encourage the legalization of heroin for the purpose of easing the pain experienced by many terminally ill cancer victims.[2] The issue is an emotionally charged one in which medical, legal, ethical, personal, and societal values collide. Proponents of limited legalization of heroin are led by the relatives of cancer victims and their legal and medical advocates.[3] Among them are many distinguished members of the medical and research communities who maintain that heroin is the most soluble and potent narcotic for pain relief,[4] that it clearly works for some patients for whom all else fails,[5] and that its therapeutic use presents no appreciable risk to the community.[6]

Legal advocates of heroin's therapeutic use contend that the judicially recognized constitutional right of privacy extends to the relevant medical decision,[7] that the prohibition of heroin for therapeutic purposes represents a deprivation of due process for cancer victims,[8] and that, in some instances, the common law defense of necessity justifies the use of illicit drugs.[9]

Opponents are equally vocal. They include the institutional regulators of licit and illicit drugs: the Department of Health and Human Services (HHS) and its specialized arm, the Food and Drug Administration (FDA), and the Drug Enforcement Administration (DEA), which is responsible for categorizing drugs into one of five levels of abuse potential.[10] Upon recommendation from HHS, the DEA scheduled heroin into Schedule I. This is the most restrictive class, and prohibits all use except for closely controlled research.

Official government sources now maintain that heroin is not preferable to morphine for pain relief [11] and that the advent of new synthetic narcotics makes the heroin issue moot.[12] Representatives of the medical profession, including the American Medical Association, report that more efficacious drugs exist for the same purpose and that ineffective pain management techniques are the problem for cancer patients, rather than the prohibition of a pain-killing drug.[13] Finally, law enforcement officials as well as pharmacists and many citizens are fearful that heroin will be diverted from the pharmacy to the street.[14]

The American debate over the medicinal use of heroin has raged for over sixty years, but its current focus is more refined than ever before: Should heroin be available in hospital and hospice pharmacies to provide analgesic alternatives for patients experiencing severe pain from terminal cancer? [15] It is estimated that eight thousand to forty thousand Americans suffer every year from

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Footnotes at end of article.

pain so profound that no currently available medication is effective.[16] For them, the modern link between cancer and heroin may be the avenue to relief. For others, the cancer-heroin association ironically pairs America's most feared disease with its most feared drug of abuse.

Because the heroin dilemma strikes a nerve in the American public, the legalization of heroin for therapeutic purposes has become a focal point in the lay press [17] as well as for legal and medical experts. Americans are acutely aware that one of every four people will be afflicted with some form of cancer during his lifetime and that nearly everyone will be affected by the impact of the disease on family members or friends. In this context, congressional initiatives to legalize heroin for specific therapeutic purposes have sparked greater public interest than similar bills in the past. The Compassionate Pain Relief Act was, however, defeated during the closing days of the 98th Congress.[18]

This note will demonstrate a two-pronged approach to the legalization of heroin for therapeutic purposes. The first approach requires a more favorable judicial interpretation of the right of privacy as inclusive of the medical choice to take unauthorized or illicit drugs to alleviate intractable pain in dying patients. Parallels to the laetrile controversy offer guidance as to how heroin will fare in the courts: the choice to elect heroin therapy as a function of the right of privacy is likely to fall victim to compelling state interests. Still, the right of privacy is the best judicial ground upon which to establish a basis and seek future inroads.

The second and more promising approach is through congressional action. Public policy demands that all available effective cancer treatments be part of the physician's armamentarium to fight the disease. Congress can bypass the administrative logjam of the FDA's "new drug" procedures and provide for limited access for those patients whose conditions justify the use of heroin.

Furthermore, this note will trace the history of heroin's prohibition in this country and the medical issues at stake in the current controversy. It will proceed to explore the constitutional basis for legalizing heroin on a limited basis. Finally, it will focus on congressional efforts to provide a compassionate response to a profoundly human dilemma and conclude that the advocates of heroin's medical use still face major obstacles in their efforts to gain limited legal status for the controversial drug.

THE HISTORY

In 1914, the Harrison Narcotics Act banned the recreational use of heroin in the United States in conjunction with an international initiative to stem the growing number of opium addicts.[19] While the Act specifically prohibited the recreational use of the drug, it left the door open for the prescription of heroin by doctors "in good faith" and "in the legitimate practice of (the) profession." [20]

The physician's right to prescribe heroin, however, was soon proscribed by two significant Supreme Court decisions. In 1918, the Court held in *Webb* v. *United States* [21] that it was never appropriate for a doctor to prescribe heroin to addicts. In the *United States* v. *Behrman*,[22] four years later, doctors were held strictly liable for prescriptions which "could only result in the gratification of a diseased appetite for those pernicious drugs." [23] While the statute in question in *Behrman* specifically excluded physicians from its prohibition against drug dealing, the government charged "facts sufficient to show that the accused was not within the exception." [24] The Court concluded that the defendant physician was in violation of the Act because he indiscriminately prescribed the drug to a known addict.

In 1924, the House Ways and Means Committee held hearings to amend the Harrison Act, whose intent was to further restrict the importation of opium for exclusively medicinal purposes.[25] Public concern about growing addiction problems and criminal conduct associated with the drug fanned the furor in favor of the simply worded amendment: "Provided, that no crude opium may be imported for the purpose of manufacturing heroin." [26] Testimony from the American Medical Association (AMA) and the then United States Surgeon General illustrated the low regard into which heroin had fallen. The Surgeon General alleged that the drug erased all moral sense while the physicians speaking for the AMA indicated that codeine was a good substitute for heroin.[27] In short, the medical testimony was more sensational than it was substantive [28] and the ban on heroin reflected its growing disrepute in the medical community.

The diversion question was also confused by the emotion and tenor of the testimony. While evidence was introduced that, of ten thousand addicts in New York State, only two percent could trace their addiction to medical treatment, the momentum to outlaw all heroin use was underway. Testimony that seventy-six thousand ounces of heroin were sold on New York's black market, while only fifty-eight ounces were prescribed by all of the physicians in the state during the same period, was disregarded by those calling for the complete abolition of the drug.[29]

One commentator has suggested that the 1924 hearings were a miscarriage of justice resulting in a deprivation of due process for many Americans from that time until the present. In testimony before the House Subcommittee on Health and the Environment in 1984, Arnold Trebach, author of "The Heroin Solution," said of the early hearings, "No original or empirical evidence was introduced to demonstrate that there was a connection between the creation of addicts and the presence of this drug in medical practice." [30]

In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act which repealed the Harrison Narcotics Act and provided a new framework of drug enforcement. Title II of the new Act mandated the establishment of five schedules of drugs based on degree of abuse potential, known effects, harmfulness, and level of accepted medical use.[31] Heroin was classified in Schedule I, the most restrictive category, and has remained there despite congressional attempts to reschedule it to allow more latitude in testing and medical use.[32]

Schedule I criteria are identified as follows:

1. The drug or other substance has a high potential for abuse.

2. The drug or other substance has no currently accepted medical use in treatment in the United States.

3. A lack of accepted safety precautions for use of the drug or other substance under medical supervision.[33]

During the 1980 hearings by the House Select Committee on Narcotics Abuse and Control, the scheduling dilemma of substances such as heroin and specifically marijuana (also Schedule I) was dramatized in a dialogue between Congressman Stephen Neal and a panel of cancer researchers:

Mr. NEAL. Well, just for the record, it's my understanding . . . that the assumption for a drug to be in Schedule I is that it has no medical use. And just for the record, I want to make it clear that you all, the three of you, are saying there are very definite medical uses for these substances.

Dr. SALLAN. Most definitely.

Dr. GARB. Sir, I would add there are a lot more than three of us . . . .

Mr. NEAL. Well, now, would you say this about THC only, or about THC and marijuana?

Dr. SALLAN. I would say it about both, but I have much less certainty about marijuana because it doesn't have the same scientific rigor in the study at this time.

Mr. NEAL. Well, then, we need more study, but to get the study, we need a substance available to you to study, but as long as it's under Schedule I, it will not be available, because the assumption will be that there is no medical use. It's a Catch-22 situation, it seems to me.[34]

While Congressman Neal fairly characterized the "no medical use" irony, the United States government did make accommodations for two testing situations to analyze the effectiveness of heroin in medical use. These two studies, the Memorial Sloane Kettering Study and the Georgetown Study, will be discussed in the following section.

The United States experience with heroin contrasts sharply with that of the United Kingdom. Over ninety-five percent of all licit heroin is prescribed in England where the drug has been widely used in hospices for pain control.[35] Currently, heroin is used in a 3:7 ration with morphine. Its status as the medication of choice in severe pain situations has increased over the decades.[36]

In addition to England, twenty-six nations specifically allow for medical channeling of heroin by qualified physicians.[37] Eleven more apply the same restrictions to heroin use as other narcotic analgesics and ten more nations have given specific government approval to the use of heroin.[38] The United States, however, allows morphine a relatively favorable Schedule II classification in spite of its heroin-like narcotic properties while classifying marijuana as a Schedule I drug along with heroin. Clearly, the United States maintains a model of drug control more suited to law enforcement than to medical concerns. In spite of the positive experience of doctors and patients in twenty-seven other nations, many American lawmakers, doctors, and citizens still fear that the controlled introduction of heroin into medical practice would undermine the American system of drug enforcement and implicitly condone drug production and trafficking on an international scale.[39]

THE MEDICAL CONTROVERSY

Pain as a sympton involves at least fifty per cent of cancer victims and may become a serious management problem for at least fifteen to twenty per cent of those individuals.[40] It is this proportion of cancer patients for whom heroin would provide an essential pain-killing alternative. Dr. William Beaver, who conducted the most recent government-sponsored study of heroin's therapeutic value at Georgetown Medical Center, noted: "There will be individual patients who respond better to heroin for reasons we do not understand." [41] Since no two analgesics have properties that are identical, pa-

tients with different reactions may tolerate one analgesic and not another. "This fact alone justifies a variety of alternative drugs available," [42]

Comparisons between heroin, morphine, and other analgesics usually break down into several distinct categories:

1. Potency—Heroin is highly potent (2.7 times more potent than morphine) thus allowing smaller doses to be administered to produce equivalent pain relief. This consideration is extremely important when administering a drug to patients with wasted muscle mass.[43] Those who oppose heroin's use cite a new strong form of Dilaudid as being equally effective.[44]

2. Onset—Heroin's action is rapid and produces relief quicker than other drugs. Again, critics maintain that more effective pain management would offset this advantage.[45]

3. Attitude—Heroin produces euphoric feelings in most patients rather than the depression and anxiety that often follow morphine intake. Mood elevation differences, however, were not perceived as significant in the latest two studies of the drug.[46]

In the Beaver study, conducted at Georgetown University Vincent T. Lombardi Cancer Research Center, fifty-two patients with incurable cancer received one injection of heroin and another of morphine to combat pain. The results indicated heroin to be more potent, more soluble, and faster acting.[47]

The Sloane Kettering study, conducted by Dr. Raymong Houde, treated post-operative pain in cancer patients.[48] Results indicate that heroin was about twice as potent as morphine, that it provided a peak effect earlier than morphine, that doses with equal analgesic effects provided comparable improvements in various elements of mood, but that the peak arrived sooner with heroin. Furthermore, pain relief and mood improvement were less sustained after heroin at equal doses and in the researcher's opinion, heroin had no unique advantage for the relief of pain in patients with cancer.[49]

It is clear that the medical controversy over heroin's therapeutic use would not exist but for the criminal aspects of heroin's identity. Even its detractors find that heroin is neither more advantageous nor disadvantageous than other legal alternatives for the relief of pain. Where the issue of addiction is moot, as in the case of terminally ill patients, unwillingness to include heroin as a therapeutic option is a reaction to its character as a potentially addicting drug.

According to oncologist Allen Mondzac, "With each patient, there is a potential for using up all of the existing drugs." [50] The availability of heroin would extend the physician's potential pain-killing remedies to one more effective therapy. Heroin's current outlaw status denies doctors and patients that alternative.

THE LEGAL ISSUES

The Right to Privacy—Griswold v. Connecticut

The decision to use heroin to mitigate the agony of cancer pain enjoys no explicit constitutional protection. The complicated interplay of personal autonomy, illicit drug use, human suffering, and medical necessity creates a legal paradox that is at once intensely intimate and starkly public in nature. The question is basic: whether a person's choice to use heroin should be fundamentally protected against coercion by law.[51] The answer lies in the developing right of privacy which has been held to encompass something beyond the issues of marital choice, procreation, conception, and child-rearing and to embrace "an interest in independence in making certain kinds of important decisions." [52] No decision can be more profound than that implicit in the heroin dilemma.

The right of privacy was first judicially recognized in *Griswold v. Connecticut* in 1965.[53] *Griswold* raised the question of whether a married couple living in Connecticut could be imprisoned for using birth control. Under the operative state statute, the use of any device to prevent conception was criminal. The Supreme Court struck down the statute, declaring that "marriage is . . . intimate to the degree of being sacred," [54] and is subject to constitutional protections under the privacy right "older than the Bill of Rights."[55] Justice Douglas, speaking for the majority, located substantive protection for marital intimacy in a "zone of privacy" created by several fundamental guarantees emanating from penumbras of the first, third, fourth, fifth, and ninth amendments.[56]

Justice Goldberg's *Griswold* concurrence identified the source of the privacy right in the ninth amendment and defined a test to determine whether a fundamental right worthy of constitutional protection exists. He directed judges to look to the "collective conscience of the people" to find whether a principle is so firmly rooted as to be ranked fundamental. The inquiry explored whether the right involved is of such a character that it cannot be denied without violating those "fundamental principles of liberty and justice which lie at the base of all of our civil and political institutions." [57] With the same breadth of philosophical conviction, Justice Harlan located the privacy right among those "basic values implicit in the concept of ordered liberty," [58] and suggested a fourteenth amendment due process analysis to determine whether such a right has been violated.

The *Griswold* Court concluded that a married couple's right to use contraceptives is fundamental and protected by the constitutional right of privacy, however abstract and circuitous the route to that protection. Seven years later, the same right was extended to unmarried persons in *Eisenstadt v. Baird.*[59]

As the court construes the right to privacy, its decisions rest on a recognition of values implicit in our way of life and philosophy as a nation, rather than on any strict construction of a concept. The celebrated Brandeis statement in *Olmstead v. United States* [60] conveyed the tone that would underlie so many future decisions.

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." [61]

The distance between the subjective recognition of collective and natural values and a concrete source for the protection of those values led the *Griswold* Court to explore several constitutional constructions. It is that same distance, still untraveled, that deprives the current heroin issue of a humane solution.

Development of the Right of Privacy

The evolution of the privacy right continued in the famous "abortion cases" of 1973: *Roe v. Wade* [62] and *Doe v. Bolton.*[63] In *Roe,* the Court concluded that the right to personal privacy includes the right to an abortion but that "this right is not unqualified and must be considered against important state interest in regulation." [64] The balancing test of a fundamental right versus a compelling state interest became the hallmark of personal health and privacy decisions in the courts. In his *Roe* concurrence, Justice Douglas explicitly includes within the term "liberty" in the Fourteenth Amendment "the freedom to care for one's own health and person . . . subject to regulation on a showing of 'compelling state interes'." [65] His observation is a forerunner of the complex health and enforcement questions that characterize the heroin dilemma today.

The balancing test of *Roe v. Wade* is operative in *Whalen v. Roe* [66] four years later. *Whalen* clearly establishes the state's right to regualte dangerous drugs in the face of individual privacy interests. The Court upheld a New York statute requiring the registration of all medical prescriptions for addictive drugs to control abuse. The Court distinguished the state's interest in recordkeeping from the individual's right to decide what drugs to take: "within dosage limits . . . the decision to prescribe, or to use, if left entirely to the physician and the patient." [67] Yet, while acknowledging the "individual interest in avoiding disclosure of personal matters," [68] the Court nonetheless upheld the right of the state to maintain the names of those selecting certain substances. In the view of the Court, the state's interest in recordkeeping, while compelling disclosure, was justified and fell short of invading an individual's liberty right.[69] Thus, the Court recognized relative levels of intrusion into personal decision-making, further emphasizing the less than absolute nature of the fundamental right of privacy.

Choice of Treatment

The choice of treatment as an element of the right of privacy may be considered in three separate contexts. The first is the right to choose from among approved methods of treatment, a well-established legal right which threatens no state interest and implies informed consent on the part of the patient.

The right to refuse treatment is the second and more complex issue. It was tested as early as 1904 when a man named Jacobsen refused a smallpox vaccination on the basis of every man's right to control the sanctity of his body.[70] The Court held that the state's interest in preventing the spread of disease overrode Jacobsen's personal right to refuse treatment. The Court implied that the right to refuse treatment would be upheld only when the individual's choice is informed, and society's interest would not be harmed.

In *In re Quinlan,*[71] the court's focus was limited to the right to decline life-prolonging treatment when the patient has no realistic hope of returning to "any semblance of cognitive or sapient life." [72] The issue was further complicated by the patient's comatose state and her subsequent inability to represent her own interests before the court. The court held that her father could decide to cease life-prolonging activity in order to safeguard her right to die with dignity.[73] The constitutional law commentator Laurence Tribe pointed out the inherent

irony in the court's decision: that given the vegetative state that alone justified the court's holding, "attributing 'rights' to the patient at all was problematic." [74] The decision more realisically concerned the desires of parents and society to allow freedom of medical decision-making when individuals without consciousness linger only through extraordinary life-prolonging means.[75] The *Quinlan* case did not confer the right to terminate care to those who are conscious and for whom death is not imminent. In effect, the court recognized that a balancing of state and individual interests in the context of life-prolonging medical care is affected by the degree of illness suffered by the victim and the fading hope of a cure.[76]

The third choice of treatment situation—the right to choose a medical treatment that is not approved by the state—has led to a number of decisions surrounding the drug laetrile [77] and has loomed at the center of the marijuana controversy.[78] Judicial resolution of this third category of decision-making may well determine the future of heroin as a therapeutic agent. The leading case in the area is *Rutherford v. United States.*[79]

Rutherford v. United States

In *Rutherford,* several terminally-ill cancer patients sued to enjoin the United States from interfering with their access to laetrile. The United States District Court for the Western District of Oklahoma issued an injunction against the Food and Drug Administration (FDA) on the basis that patients were denied freedom of choice and were deprived of life, liberty, or property without due process of law.[80] The court held that the FDA's licensing requirements for new drugs made it virtually impossible for laetrile to become legally accessible.

On appeal, the United States Court of Appeals for the Tenth Circuit looked closely at FDA procedures and focused on the approval process for "new" drugs and the grandfather clause exemptions under the Food and Drug Act. Its inquiry raised the following questions: 1) Was laetrile marketed on October 9, 1962, as a cancer drug and was it then generally recognized as safe? 2) Was laetrile recognized or used as a cancer drug under the same conditions of present use during the period when the Food and Drug Act of 1906 was in effect from June of 1906 until June of 1938?[81] If either question could be answered affirmatively, laetrile would be exempt under the grandfather clause.[82]

The tenth circuit remanded the case to the Food and Drug Administration in order to produce an administrative record supporting its determination that laetrile was a "new" drug, though it did not explore the constitutionality of the "new" drug procedures. In 1977, in response to the court's order, the FDA released its findings that laetrile was not generally recognized as safe and effective or exempt under the 1962 grandfather clause.

On appeal, the district court ruled that the FDA's classification of laetrile as a "new" drug was "arbitrary, capricious, and an abuse of discretion, and, as a matter of law, unsupportable."[83] The judges notes that laetrile had been used and sold commercially in the United States for over twenty-five years and had been generally recognized as safe.[84]

As to the constitutional aspects, the court looked to the "abortion cases"[85] for the premise that a right of privacy exists under the Constitution. As Douglas said in *Doe,* "that right has no more conspicuous place than in the physician-patient relationship." [86] The district court determined that fundamental civil liberties were at issue in *Rutherford,* and that the choice to use laetrile, regardless of its correctness, should be the sole prerogative of the person whose body was being ravaged by disease.[87]

Again, the United States appealed the decision of the district court to the tenth circuit which sustained the district court's injunction, thus allowing the interstate sale and use of laetrile for terminally ill patients to continue.[88] The appeals court did not directly address the constitutional issue. On appeal to the Supreme Court, the tenth circuit was reversed and the case remanded for further proceedings on those issues.[89]

In its opinion, on procedures for terminally ill patients the Court held that the Congress could reasonably have intended to shield terminal patients from ineffectual or unsafe drugs, and that any other interpretation of the FDA regulations would substitute the opinion of the Court for that of Congress. "For the terminally ill, as for anyone else, a drug is unsafe if its potential for inflicting death or physical injury is not offset by the possibility of therapeutic benefit."[90] The Supreme Court did not address the privacy issue.

On remand, the Tenth Circuit revived the balancing test to weigh the "protected right" to select a medical treatment against the governmental interest in protecting public health. The court found that the state's interest outweighed such personal medial decisions. The constitutional conflict was thus temporarily resolved.[91]

Rutherford represents a weakening of the individual's privacy interest in choosing medical treatment. Unlike the early *Jacobsen* case,[92] no public danger existed in granting laetrile's commerce. Unlike the "abortion decisions," other lives would not be affected by an individual's choice of treatment. Only victims of cancer themselves would be affected by the prohibition on laetrile's use. The compelling state interest could be construed only as protecting terminally ill patients from their own informed choice. Thus, while it has been held that an individual can refuse treatment to sustain life, he is not yet free to select an unauthorized treatment in the face of death.

People v. Privatera

People v. Privatera,[93] a California Supreme Court decision, reaches the same conclusion. The California court determined that the right to use laetrile is not governed by the fundamental right of privacy because it is not among those decisions enumerated in the "privacy cases." [94] As such, the court had only to find a rational basis for the statute proscribing laetrile's use, which it fulfilled by citing a history of misleading representations about cancer cures.

In a dissent more remarkable than the decision, Chief Justice Rose Bird asserted that "choice of treatment is one of the most important decisions a person may ever make, touching intimately on his or her being." [95] Her opinion and that of the district court in *Rutherford* represent the eloquent dissent in a line of decisions that subordinate the individual's freedom of choice in medical decisions to the state's perceived goals.

Thus, the prevailing tone of judicial decisions leads to negative assumptions about the future of heroin therapy via the judiciary. Because heroin's status is not just unauthorized, but forbidden, the recognition of a fundamental right to use the drug for medical reasons would conflict with the state's interest in prohibiting its existence on nearly every occasion. Only a contention that the current prohibition is overbroad would prevent the state's interest from outweighing every personal consideration.

The Marijuana Connection

"It isn't absolutely necessary to be a masochist to do research on marijuana today, but it certainly helps." [96]

Marijuana, like heroin, is a Schedule I drug. Under federal law, it is deemed to have no medical usefulness while having high potential for abuse.[97] It is subject to the following restrictions:

The DEA has established quotas on lawful production of marijuana and its active ingredient THC.

The drug may be manufactured only by an individual or company registered with the DEA.

A researcher seeking to study the drug must obtain registration from the DEA.

The drug must be kept in a vault.

Record keeping is required.

Trafficking the drug is a felony.

The drug is available for research only and may not be prescribed.[98]

In addition, marijuana falls under FDA's "new drug" category and is subject to its regulatory provisions.

Marijuana and THC are currently being tested for their ability to relieve pain, insomnia, anxiety, asthma, epilepsy, glaucoma, and the side-effects of chemotherapy.[99] In addition, the National Cancer Institute's Division of Cancer Treatment now provides THC to physicians for use in controlled situations. As such, the Schedule I classification has become a contradiction in terms. The proven medical uses for marijuana are growing every day.

Hearings in Congress have focused on the subject of down-scheduling marijuana to conform with current knowledge about the drug's effectiveness.[100] Marijuana progress bears watching by advocates of heroin's legalization. While the public's response to marijuana continues to be volatile, public fear is less profound than with the use of heroin and the potential beneficiaries of therapeutic marijuana use are more numerous. Nevertheless, according to former FDA Chief Counsel Richard Cooper,

[t]he medical future of both THC and heroin is not entirely clear . . . A potential manufacturer will have to gather the relevant data and organize them into new drug applications that meet the FDA standards. It may turn out that the biggest obstacle to the therapeutic use of marijuana and heroin is the lack of interest in the drug on the part of drug companies.[101]

Medical Necessity Defense

Federal courts have consistently held that possession and sale of marijuana are not protected by the right to privacy.[102] However, the common law defense of necessity has been held to extend to medical necessity in the case of a Washington, D.C., man who used marijuana to treat his deteriorating glaucoma condition.[103]

In 1975, Bob Randall was arrested and charged with unlawful possession of marijuana. He sought acquittal on the strength of a medical necessity defense. The District of Columbia Superior Court dismissed the charge, stating that a person whose use of marijuana is a matter of medical necessity is not criminally liable for its unlawful possession.[104] While the necessity defense historically depended on an immediate threat to life, a fear of deteriorating health was later considered to be a justifiable ground for the defense.[105]

The court stated that "necessity is the conscious, rational act of one who is not guided by his own free will. It arises from a determination by the individual that any reasonable man in his situation would find the personal consequences of violating the law less severe than the consequences of compliance." [106] The court noted that the defense is not available to one who has brought the circumstances upon himself.[107] Thus, a heroin addict who would argue the defense of necessity would be unlikely to prevail.[108] In addition, if there was a less stringent alternative, the defense would fall.[109] Finally, the harm avoided must be more serious than what is performed to escape it.[110]

The D.C. court's analysis focused on a balancing of interests between Randall's desire to preserve his sight and the government's interest in maintaining its regulations of marijuana. Noting "how far-reaching is the right of an individual to preserve his health and bodily integrity," [111] the court concluded that blindness is a greater evil than breaking the prohibition on marijuana. In dismissing the case, the court also noted that no innocent party was injured and Randall had not brought his condition upon himself. The United States did not appeal.

The court's acceptance of Randall's defense is significant as a qualified affirmation of the right to protect one's health. Within the context of the case, an analogy between the use of marijuana and the use of heroin is a logical one. If the only means to combat intractable pain is heroin, then the medical necessity defense successfully employed by Randall might prevail for one who breaks the prohibition on heroin due to an advanced condition of cancer. However, the defense is limited to individuals caught in the medical-legal bind. It is no answer to the larger question of legalization that must be confronted by lawmakers if any true progress is to take place.

CONGRESSIONAL ACTION

While the courts have only addressed the heroin conflict by implication, Congress has squarely dealt with the issue. The Compassionate Pain Relief Act, H.R. 5290, was designed to establish a temporary program under which "parenteral diacetylmorphine (heroin) would be made available through qualified pharmacies for the relief of intractable pain due to cancer." [112] The bill was introduced by Congressman Henry Waxman of California, Chairman of the Subcommittee on Health and the Environment of the Committee on Energy and Commerce. It was defeated by a vote of 355 to 55 on September 19, 1984, after several hours of passionate debate.[113] According to Congressman Waxman, the lopsided vote was a consequence of political timing:

"People were afraid to vote in any way, shape or form for anything that sounded like legalization of heroin. They were afraid they would be campaigned against on the issue." [114]

H.R. 5290 was not the first congressional attempt to deal with the availability of heroin for therapeutic purposes. In 1980, Congressmen Waxman of California and Congressmen Madigan of Illinois jointly and separately introduced legislation to make heroin available on a limited basis. Hearings were held before the Subcommittee on Health and the Environment of the Interstate and Foreign Commerce Committee.[115] Again in 1983, Waxman introduced legislation which was the subject of more hearings and was subsequently reintroduced as the clear bill which the House defeated in September, 1984. Its Senate companion, S. 209, was introduced by Senator Inouye of Hawaii and never reached a vote on the Senate floor.

The Waxman bill was a model of qualified legalization. H.R. 5290 would have required the Secretary of Health and Human Services to establish a temporary four-year research program during which heroin would be provided to terminally ill cancer patients through a limited number of pharmacies upon the written prescription of a licensed physician. The program would be monitored by the Government Accounting Office (GAO). An amendment by Congressman Hughes of New Jersey would have tightened the bill even further by requiring that the patient for whom heroin is prescribed would not respond to any other available drug, that a physician's decision to prescribe heroin be reviewed by a medical panel, and that the program be drawn into the system of regulation of the Controlled Substances Act. The Hughes Amendment was not passed.[116]

The politics of the Compassionate Pain Relief Act were unusual and embittered. The Reagan administration opposed the bill, stating that equally potent drugs were available and diversion was a real and present danger.[117] The American Medical Association opposed the bill while the American Nurses' Association favored its passage.[118] Rhetoric on the House floor volleyed between calls for compassion and warnings of dire consequences if the bill were to become law.[119] One opposing legislator even suggested that "we are going to have many pushers telling young kids, 'Look, this (heroin) cannot be that bad for you. After all, doctors and hospitals are using it all over the country.' " [120]

Opponents also decried the fact that H.R. 5290 bypassed the Food and Drug Administration's "new drug" approval process by providing for government manufacture and distribution of the drug. Advocates maintain that so few patients are potentially involved that no drug company is likely to undertake the major effort and expense to meet the FDA regulations, especially in light of heroin's unsavory reputation.[121]

It was the criminal identity of heroin and the threat of cross-over from pharmacy to "street" and from "street" back to the sick and dying that emerged as the focus of the debate in an election year. Chairman Rangel of the Select Committee on Narcotics Abuse and Control led the opposition suggesting that "a lot of people . . . would openly advocate that we just take the profits out of heroin and just start legalizing the entire illicit drug manufacturing and transactions in the United States." [122] A letter from Secretary of Health and Human Services Margaret Heckler was quoted, emphasizing the Reagan administration position that legalizing would pose serious public safety, enforcement, and security problems and that health care professionals would be placed in jeopardy by the direct link to criminal activity.[123]

Chairman Dingell of the Energy and Commerce Committee that reported favorably on the bill disposed of the Administration's major objection metaphorically.

"Let us take a little bit of a look at the question of diversion: 4.3 tons of illegal heroin come into this country. That is the equivalent of two elephants in weight. If you were to take the entire amount of heroin that is going to be coming into this country under carefully controlled conditions to meet the needs of the hopelessly dying cancer patients, you would probably have the equivalent of a pimple on the posterior of one of those elephants." [124]

The fact that the illicit heroin supply would not be significantly increased even in the worst case analysis did not prove persuasive to a majority of voting members. The debate had an evangelical tenor that had less to do with facts than with the emotional impact of heroin on the American psyche. According to one Waxman staffer, the "all-out-attack" waged by the administration not only helped to create a fervor among the bill's detractors, but also cost the proponents five months that proved strategically devastating.[125] Allegations that the administration used illegal lobbying techniques to defeat the bill are now under investigation by the Office of the Inspector General.[126]

The lay press rallied behind the Compassionate Pain Relief Act. *The Washington Post* headlined its September 22d editorial *Cruel Cowardice* and commented that "demagoguery carried the day." [127] *The New York Times* editorialized that Congress preferred symbolic action, "no matter how cruel the effect on the dying." [128] Papers from *The Fort Lauderdale News* to the *San Jose Mercury News* had endorsed the measure in weeks and months preceding the vote.[129] In an acerbic commentary on the subject, Editor Smith Hempstone of *The Washington Times* wrote, "[t]he absolute medical ban on heroin makes about as much sense as denying a man about to be electrocuted a cigarette on the grounds that the Surgeon General has determined smoking is injurious to the health." [130]

Proponents of the Compassionate Pain Relief Act are hopeful that more favorable timing, public support, and an off-election year will improve prospects for the bill's passage during the 99th Congress.[131]

CONCLUSION

The forty-thousand Americans who could benefit today from heroin's legalization cannot afford to wait for a broader judicial interpretation of the right to privacy. Even as the courts affirm the fundamental nature of decisions affecting one's health and well-being, they qualify the conditions and circumstances under which these decisions may be made. The strict scrutiny accorded to fundamental-right analyses seems more easily satisfied in the privacy context than where other fundamental rights are concerned: the balancing test is slanted toward compelling state interest. The persistent judicial perception that the state's interest in drug regulation overrides individual fundamental rights assures that courts will continue to defer to the authority of the FDA and DEA in the scheduling and control of heroin's use in this country.

Only a re-evaluation of the government's interest could alter this judicial posture. A closer look at the actual dangers of heroin's diversion from pharmacy to street use would reveal an exaggerated fear of expanded illicit trade. A recognition that the addictive potential of heroin is no issue for the dying would undermine the contention that its use is deleterious to the target population. But the courts will not re-define the nature of the government's interest in the sweeping prohibition on heroin. The judicial system will not substitute its judgment for the will of Congress so clearly demonstrated in 60 years of legislative history.

The only imminent hope for cancer victims lies with the Congress and not the courts. The dramatic defeat of the Compassionate Pain Relief Act of 1984 is a major

setback which, according to Judith Quattlebaum of the National Committee on the Treatment of Intractable Pain, is "impossible to explain to cancer patients."[132] Congressional advocates have, however, reintroduced the measure in the 99th Congress with an eye toward more advantageous timing.[133]

It is time for Congress to mitigate the law enforcement message of the past decades and offer a new perception of a compassionate, balanced, and hopeful drug policy for this nation. The quality of American lives depends on it.

FOOTNOTES

1. *The Compassionate Pain Relief Act; Hearings on H.R. 4762, Before the Subcommittee on Health and the Environment of the House Comm. on Energy and Commerce*, 98th Cong., 2d Sess. 550 (1984) [hereinafter cited as *Hearings*].

2. Dr. Mondzac has been an oncologist for fifteen years, chairs the Cancer Committee of the D.C. Medical Society, serves as Clinical Associate Professor of Medicine at George Washington University, and is a member of the board of Directors of the National Committee on the Treatment of Intractable Pain. *Hearings, supra* note 1, at 546.

3. The National Committee on the Treatment of Intractable Pain (NCTIP) is an advocacy group formed in 1977 to lobby for congressional action to legalize heroin for limited therapeutic use. Its members and Board include medical and legal professionals as well as families of cancer victims. The organization has 6,000 members. National Committee on the Treatment of Intractable Pain, P.O. Box 9553, Friendship Station, Washington, D.C. 20016 (301) 983-1710. Judith H. Quattlebaum, President.

4. *Hearings, supra* note 1, at 555, *See also* Mattingly & Conley, *The Medical Prescription of Heroin for Terminal Cancer Patients*, 9 LAW. MED. J. 337 (1981).

5. Shapiro, *The Right of Privacy and Heroin Use for Painkilling Purposes by the Terminally Ill Cancer Patient*, 21 ARIZ. L. REV. 41, 42-48 (1979). *See also* Neal, *Why Can't the Dying Have Heroin?* NEW YORK, Oct. 2, 1978, at 76, 79.

6. *Hearings, supra* note I, at 550.

7. Shapiro, *supra* note 5, at 56.

8. S. TREBACH, THE HEROIN SOLUTION 81 (1982).

9. Note, *Medical Necessity as a Defense to Criminal Liability; United States v. Randall*, 46 GEO. WASH. L. REV. 273 (1978).

10. The Controlled Substances Act of 1970 establishes critiera for five separate schedules of controlled substances. Schedule I imposes the most severe controls; Schedule V, the least restrictive. Controlled Substances Act, Pub. L. No. 91-513, 21 U.SC. § 801 *et seq.* (1982).

11. *Hearings, supra* note 1, at 454. (Statement of Edward N. Brandt, Jr., M.D.).

12. *Hearings. supra* note 1, at 454. (Statements of Edward N. Brandt, Jr., M.D., and Kathleen M. Foley, M.D.).

13. *Hearings, supra* note 1, at 560, 599. (Statement of Kathleen Foley, M.D.).

14. Letter from Joseph A. Oddis to Congress, (May 16, 1984) (voicing opposition to H.R. 5290, amended bill to legalize heroin for therapeutic purposes.) *See also* Neal, *supra* note 5, at 84-88.

15. H.R. 5290 was amended to provide heroin only to terminally ill patients.

16. J. Quattlebaum, Dying in Agony in America (March 25, 1983) (Paper presented at the College of Physicians and Surgeons, Columbia University, N.Y.C.).

17. Editorials favoring legislation have appeared in newspapers across the country. *See, e.g.*, St. Paul Pioneer Press, May 13, 1984, at 2B, col. 1; Ft. Lauderdale News, May 4, 1984, at 18A, col. 1; San Jose Mercury News, Apr. 9, 1984, at 6B, col. 1; The Washington Post, Mar. 26, 1984, at 18, col. 1.

18. The bill was defeated by a vote of 355 to 55 on September 19, 1984. 130 CONG. REC. H. 9791 (daily ed., 1984).

19. NATIONAL COMMITTEE ON THE TREATMENT OF INTRACTABLE PAIN, *Authorizing the Medical Prescription of Heroin for Terminal Cancer Patients Under Controlled Circumstances* 1-3 (1979).

20. *Hearings, supra* note, at 3 (statement of Arnold Trebach, J.D., Ph.D.).

21. Webb v. United States, 249 U.S. 96 (1918).

22. United States v. Behrman, 258 U.S. 280 (1922).

23. *Id.* at 289.

24. *Id.* at 287.

25. *Hearings Before the Committee on Ways and Means, House of Representatives, on H.R. 7079, A Bill Prohibiting the Importation of Crude Opium for the Purpose of Manufacturing Heroin*, 68th Congress, 1st Sess. (1924).

26. *Id.* at 1.

27. *Id.* at 32, 13.

28. *Id. See also Hearings, supra* note 1, at 571 (statement of Arnold Trebach, J.D., Ph.D.).

29. *Hearings, supra* note 1, at 571.

30. *Hearings, supra* note 1, at 572 (Statements of Arnold Trebach, J.D., Ph.D.). *See also* A. TREBACH, THE HEROIN SOLUTION (1982).

31. 21 U.S.C. § 812 (1982).

32. Legislation in the 97th Congress (H.R. 2642) focused on re-scheduling heroin, rather than establishing a government administered program such as proposed in the latest heroin legislation.

33. Controlled Substances Act, 21 U.S.C. § 801 (1982).

34. Report of the Select Committee on Narcotics Abuse and Control, *Health Consequences of Marijuana Abuse: Recent Findings and the Therapeutic Uses of Marijuana and the Use of Heroin to Reduce Pain*, H.R. Rep. 96-2-5, 96th Cong., 2d Sess. 32 (1980).

35. National Committee on the Treatment of Intractable Pain, *supra* note 19, at 7-9. *See also* Mondzac *In Defense of the Reintroduction of Heroin into American Medical Practice and H.R. 5290—The Compassionate Pain Relief Act*, 311 NEW ENG. J. MED. 535 (1984).

36. *Hearings, supra* note 1, at 10 (statement of Arnold Trebach, J.D., Ph.D.).

37. J. QUATTLEBAUM, INFORMATION ON MEDICAL USES OF HEROIN IN OTHER NATIONS 4 (1983).

38. *Id.*

39. H.R. 9765, 98th Cong., 2d Sess., 130 CONG. REC. 118 (1984).

40. *Hearings, supra* note 1, at 1 (statement of William Regelson, M.D.).

41. *Hearings, supra* note 1, at 4 (statement of Betsy Hague, R.N., M.S.N., quoting Dr. William Beaver, "Are Synthetic Narcotics Adequate Substitutes for Opium-Derived Alkaloids?").

42. *Id.*

43. Satchell, *When Heroin is the Right Drug*, PARADE MAGAZINE, May 16, 1982, at 12.

44. *See supra* note 12.

45. AM. MED. NEWS, Mar. 23, 1984, at 20, col. 3.

46. *Id.*

47. Dr. Beaver commented, "[t]here's no point in doing more research. In fact, we knew pretty much before we started this study what we would find out." *Supra* note 43, at 12.

48. There has been disagreement in the medical community over the validity of comparisons between post-operative patients, as in the Houde study, and those suffering chronic cancer pain, as in the Beaver study. It is the chronic and terminally ill sufferers for whom the legalization effort is being waged. *See Hearings, supra* note 1, at 2 (statement of William Regelson, M.D.).

49. Kalko, *Analgesic and Mood Effects of Heroin and Morphine in Cancer Patients with Postoperative Pain*, 34 NEW ENG. J. MED. 1501 (1981).

50. *Hearings, supra* note 1, at 547. (statement of Allen Mondzac, M.D.).

51. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 892 (1977).

52. *Id.* at 886.

53. Griswold v. Connecticut, 381 U.S. 479 (1965).

54. *Id.* at 486.

55. *Id.*

56. *Id.* at 485.

57. *Id.* at 493.

58. *Id.* at 500.

59. Eisenstadt v. Baird, 405 U.S. 438 (1972).

60. Olmstead v. United States, 277 U.S. 438 (1928).

61. *Id.* at 478 (Brandeis, J. dissenting).

62. Roe v. Wade, 410 U.S. 113 (1973).

63. Doe v. Bolton, 410 U.S. 179 (1973).

64. Roe, 410 U.S. at 154-55.

65. *Id.*

66. Whalen v. Roe, 429 U.S. 589 (1977).

67. *Id.* at 603.

68. *Id.* at 599.

69. *Id.* at 598-606.

70. Jacobsen v. Massachusetts, 197 U.S. 11 (1904).

71. In Re Quinlan, 70 N.J. 10, 355 A. 2d 647, *cert. denied*, 429 U.S. 922 (1976).

72. *Id.* at 39, 355 A. 2d at 663.

73. *Id.* at 41-42, 335 A. 2d at 664.

74. *See supra* note 51, at 936.

75. *Id.*

76. Quinlan, 70 N.J. at 41, 355 A. 2d at 664.

77. Several law review articles focus on the laetrile controversy and provide insight into choice of treatment questions. *See* Comment, *The Uncertain Application of the Right of Privacy in Personal Medical Decisions: The Laetrile Cases*, 42 Ohio St. L.J. 523 (1981); Note, *The Right of Privacy Does Not Include the Right to Laetrile*, 2 Whittier L. Rev. 599 (1980); Note, *Regulating Laetrile: Constitutional and Statutory Implications*, 5 U. Dayton L. Rev. 155 (1980); Leitner, *Laetrile and the Law: An Analysis of Rutherford v. United States*, 5 Okla. City L. Rev. 11 (1980).

78. Cooper, *Therapeutic Use of Marihuana and Heroin: The Legal Framework*, 35 Food Drug Cosm. L.J. 68 (1980).

79. Rutherford v. United States has the following judicial history: Rutherford v. United States, 399 F. Supp. 1208 (W.D. Okla. 1975) (remanding to the FDA), *aff'd*, 542 F.2d 1137 (10th Cir. 1976) (affirming the district court's remand to the FDA), 424 F. Supp. 105 (W.D. Okla. 1977) (remanding to the FDA), 429 F. Supp. 506 (W.D. Okla. 1977) (again remanding to the FDA and enjoining the FDA from interfering with importation and use of laetrile by plaintiffs), 438 F. Supp. 1287 (W.D. Okla. 1977) (again remanding to FDA and enjoining FDA from interference with plaintiff's use), *aff'd*, 582 F.2d 1234 (10th Cir. 1978) (affirming the district court's remand to and injunction of FDA), *rev'd*, 442 U.S. 544 (1979) (reversing and remanding to court of appeals), 616 F.2d 455 (10th Cir. 1980) (remanding to district court to reverse injunction against FDA), *cert. denied*, 494 U.S. 937 (1980).

80. 399 F. Supp. 1208 (W.D. Okla. 1975), *aff'd and remanded*, 542 F.2d 1137 (10th Cir. 1976).

81. 542 F.2d 1137, 1142 (10th Cir. 1976).

82. 42 Fed. Reg. 39 (1977).

83. 438 F. Supp. at 1295.

84. *Id.*

85. *See supra* notes 56-57.

86. 410 U.S. 179, 208, (1973).

87. 438 F. Supp. at 1300.

88. 582 F.2d 1234 (10th Cir. 1978).

89. 442 U.S. 544 (1979).

90. *Id.* at 556.

91. 616 F.2d 455, 457 (10th Cir. 1980).

92. *See supra* note 70.

93. People v. Privatera, 23 Cal. 3d 697, 591 P.2d 919, 153 Cal. Rptr. 431 (1979), *cert. denied* 444 U.S. 949 (1979).

94. The court referred to marriage, procreation, contraception, family relationships, child rearing, and education. 23 Cal. 3d 702, 591 P.2d at 922, 153 Cal. Rptr. at 434.

95. 23 Cal. 3d 711, 591 P.2d at 927, 153 Cal. Rptr. at 439 (Bird, C.J., dissenting).

96. Cohen, *Marijuana as Medicine*, PSYCHOLOGY TODAY, Apr. 1978, at 60.

97. Ironically, severe dependence liability is a criterion for Schedule II and not Schedule I.

98. Cooper, *supra* note 78, at 70.

99. Cohen, *supra* note 96, at 60.

100. *Marijuana Therapy*, 21 MED. WORLD NEWS 39 (Apr. 28, 1980). *See also* Randall, *Medical Uses of Marijuana: Pending Legislation and Review of the Literature*, Congressional Research Service (1982).

101. Cooper, *supra* note 78, at 82.

102. For survey of federal court decision on the subject, *see* Leary v. United States, 544 F.2d 1266 (5th Cir. 1977); United States v. Horsley, 519 F.2d 1264 (5th Cir. 1975), *cert. denied*, 424 U.S. 944 (1976); United States v. Kiefer, 477 F.2d 349 (2d Cir.), *cert. denied*, 414 U.S. 831 (1973).

103. United States v. Randall, 104 Daily Wash. L. Rep. 2249 (D.C. Sup. Ct. Nov. 24, 1976). Randall's use of marijuana to treat glaucoma foreshadowed an important medical potential for the drug. Experiments to determine the therapeutic value of marijuana in reducing the intraocular pressure in glaucoma have produced encouraging results. Council on Scientific Affairs, *Marijuana: Its Health Hazard and Therapeutic Potential*, 16 J.A.M.A. 246 (1981).

104. *Randall*, 104 Daily Wash. L. Rep. at 2254.

105. For a discussion of the medical necessity defense, *see* Note, *Medical Necessity as a Defense to Criminal Liability: United States v. Randall*, 46 GEO. WASH. L. REV. 273 (1978).

106. 104 Daily Wash. L. Rep. at 2249-51.

107. *Id. at 2252.*

108. United States v. Moore, 486 F.2d 1139 (C.C. Cir. 1973).

109. 104 Daily Wash. L. Rep. at 2252.

110. *Id.*

111. *Id.* at 2253.

112. H.R. 5290, 98th Cong., 2d Sess. 1 (1984). *See* H.R. Rep. No. 98-689, 98th Cong., 2d Sess. 1, 2 (1984).

113. 130 CONG. REC. 118, H. 9791 (daily ed. Sept. 19, 1984).

114. The Washington Post, Sept. 20, 1984, at 3A, col. 4.

115. *Hearings before the Subcommittee on Health and the Environment of the Committee on Interstate and Foreign Commerce*, 96th Cong., 2d Sess. (1980).

116. 130 Cong. Rec. 118, HR. 9780-81 (daily ed. Sept. 19, 1984).

117. *Hearings, supra* note 1, 462.

118. *Hearings, supra* note 1, at 603.

119. 130 Cong. Rec. 117-118, (daily ed. September 18, 19, 1984).

120. 130 Cong. Rec. 118, H9774 (daily ed. Sept. 19, 1984) (statement of Congressman Walker).

121. Government manufacture of heroin might compete with the marketing of hydromorphone (trade name "Dilaudid"), a domestic drug. Dilaudid is currently the drug of choice for the treament of severe, intractable pain. Although both Dilaudid and heroin are effective analgesics, the controversy centers on the availability of heroin for use in those cases where Dilaudid has proved ineffective.

122. 130 Cong. Rec. 118, H9765 (daily ed. Sept. 19, 1984).

123. *Id.* at H9764.

124. *Id.* at H9771.

125. Revealed in a conversation with Health subcommittee staffers after defeat of the bill.

126. 130 Cong. Rec. 118, H9771-72 (daily ed. Sept. 19, 1984). Chairman Dingell placed in the record letters to regional Health and Human Resources directors explaining how to contribute to the defeat of H.R. 5290.

127. The Washington Post, Sept. 22, 1984, at A-22, col. 1.

128. The New York Times, Sept. 27, 1984, at A-22, col. 1.

129. San Jose Mercury News, Apr. 9, 1984, at 6B, col. 1; Ft. Lauderdale News May 4, 1984, at 18A, col. 1.

130. The Washington Times, March 28, 1984, at 1c, 2c, col. 1.

131. Conversation with Health Subcommittee staffers following bill's defeat.

132. Phone conversation with Judith Quattlebaum following defeat of H.R. 5290, October, 1984.

133. Senator Inouye of Hawaii has introduced the bill on the Senate side while Congressman Waxman of California will introduce a companion bill on the House side shortly. Cong. Rec. Jan. 3, 1985, Part II. Conversation with Joanne Leety, Administrative Assistant to Senator Inouye, March 1, 1985.

By Mr. INOUYE:

S. 144. A bill to amend the District of Columbia Code to provide for the service of psychiatric nurse practitioners and psychiatric nurse clinical specialists on the District of Columbia Commission on Mental Health; to the Committee on Governmental Affairs.

PROVIDING FOR THE SERVICE OF CERTAIN PSYCHIATRIC NURSES

● Mr. INOUYE. Mr. President, I am introducing legislation today to amend the District of Columbia Mental Health Commission to authorize the Superior Court of the District of Columbia to utilize the mental health expertise of our Nation's psychiatric nurses.

During the closing hours of the 99th Congress, we were able to amend the Mental Health Commission to ensure that qualified psychiatrists and clinical psychologists could be used by the court. The recommendation which I am making today would expand the flexibility of the judiciary in order to ensure that the most up-to-date state-of-the-art knowledge is readily available to them.

My recommendation is highly consistent with the policy of the American Bar Association's criminal justice mental health standards.

Mr. President, I request unanimous consent that the text of my bill be printed in the RECORD.

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

S. 144

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 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 the following: "Eight members of the Commission shall be physicians, psychiatrists, psychologists, psychiatric nurse practitioners, or psychiatric nurse clinical specialists practicing in the District of Columbia who have had not less than five years' experience in the treatment of mental illnesses.".●

By Mr. INOUYE:

S. 145. A bill to increase the role of the Secretary of Transportation in administering section 901 of the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

S. 146. A bill to further the development and maintenance of and adequate and well-balanced American merchant marine by requiring that certain mail of the United States be carried on vessels of U.S. registry; to the Committee on Commerce, Science, and Transportation.

S. 147. A bill to revise the laws regarding the transportation of Government cargoes in U.S.-flag vessels; to the Committee on Commerce, Science, and Transportation.

S. 148. A bill to amend the Shipping Act, 1916, to provide for jurisdiction over common carriers by water engaging in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States; to the Committee on Commerce, Science, and Transportation.

RELATING TO THE U.S. MERCHANT MARINE

● Mr. INOUYE. Mr. President, today I am reintroducing four measures which are intended to help restore the U.S. Merchant Marine to its place of preeminence among the world's merchant fleets, and to help ensure that our fourth arm of defense is adequate in time of war or other national emergency. One of these measures which requires that mail of the United States be carried on U.S.-flag vessels passed the Senate unanimously in the last Congress. The others would:

Help ensure that U.S.-flag operators have the same competitive edge in our international trades that their foreign-flag counterparts have in theirs by strengthening our current laws relating to U.S.-flag preference for Government impelled cargo.

Centralize authority in the Secretary of Transportation for administering and implementing Public Law 664, which requires that at least 50 percent of Government-generated cargoes be shipped on privately owned U.S.-flag commercial vessels to the extent such vessels are available at fair and reasonable rates.

Make certain common carriers by water in foreign commerce subject to the tariff-filing requirements of the Shipping Act of 1984 and to the jurisdiction of the Federal Maritime Commission [FMC]. The carriers affected are those that engage in the ocean transportation of property originating in or destined for a U.S. point by way of a port in a nation contiguous to the United States if the carrier advertises or solicits the transportation within the United States.

The result of the bill would be to put the described carriers in the same position for purposes of filing tariffs as carriers that move property by way of U.S. ports.

Section 8 of the Shipping Act of 1984 requires each common carrier and conference serving U.S. ports to file with the FMC tariffs showing its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. These carriers and conferences may not increase rates except on 30 days notice, and may not quote a reduction until the rate is on file at the FMC.

Section 10 of the act enumerates certain prohibited conduct. Among other things common carriers and conferences are prohibited from: Charging or receiving compensation inconsistent with rates shown in their tariffs or service contracts; rebating or refunding any portion of their rates; and extending or denying privileges except in accordance with their tariffs.

Within broad guidelines, carriers are free to fix the form and level of rates shown in their tariffs. However, having established a given rate, a carrier must make that rate available to all shippers similarly situated. For example, if rate is predicated on a given amount of cargo, any shipper tendering that amount of cargo is entitled to the rate. If carriers operating through contiguous nations are currently offering discriminatory rates to preferred shippers, this bill would clearly expose them to the prohibitions of the Shipping Act.

However, carriers that do not operate through a U.S. port are not now subject to these restrictions. They are, therefore, free to quote whatever rate is necessry in order to obtain cargo. They can discriminate between shippers and change rates without advance notice.

These differences give those carriers that service U.S. shippers through Ca-

nadian ports a competitive advantage over carriers using U.S. ports.

Mr. President, I wish to emphasize that individually and collectively these measures are just the beginning of what needs to be done to revitalize our U.S. merchant marine. Nevertheless, we must start somewhere, and if we are unwilling to take even these small steps, it is unlikely we will do everything that is necessary.●

By Mr. INOUYE:

S. 149. A bill to provide for the service of clinical social workers on the District of Columbia Commission on Mental Health; to the Committee on Governmental Affairs.

RELATING TO THE SERVICE OF CLINICAL SOCIAL WORKERS ON THE D.C. COMMISSION ON MENTAL HEALTH

● Mr. INOUYE. Mr. President, today I am introducing legislation which would amend title 21 of the D.C. Code to authorize the inclusion of clinical social workers among those professionals appointed to serve on the Mental Health Commission of the D.C. Superior Court.

The Mental Health Commission plays a prominent role in the District's mental health commitment process. It is responsible for hearing petitions for extended involuntary commitment brought by mental health facilities, and for making recommendations to the court in response to private petitions to commit. In both cases, the Commission must make a determination as to whether or not he or she is likely to injure him or himself and/or others as a result of the mental illness.

This is a determination which I believe can and should be made by a team of qualified mental health professionals. Clinical social workers, who are licensed or certified in 39 States and jurisdictions, are specifically trained in the diagnosis and treatment of mental disorders. In fact, their expertise extends beyond psychopathology to areas such as psychosocial development, emotional dysfunction, unconscious motivation, environmental stress, and interpersonal relationships. It is not surprising that clinical social workers have increasingly been recognized by our courts as core mental health professionals who are competent to provide expert mental health testimony and to perform mental health assessments.

In my judgment, the time has come to amend the D.C. Code to allow clinical social workers to serve on the Mental Health Commission.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 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 the following: "Eight members of the Commission shall be physicians, psychiatrists, psychologists, or clinical social workers practicing in the District of Columbia who have had not less than five years' experience in the treatment of mental illnesses.".●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 150. A bill to provide financial assistance to community colleges and to Kamehameha Schools/Bishop Estate for demonstration grants designed to address the special needs of gifted and talented elementary and secondary school students who are Indian or native Hawaiian, and for other purposes; to the Select Committee on Indian Affairs.

NATIVE AMERICAN GIFTED AND TALENTED EDUCATIONAL ASSISTANCE ACT

● Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation which would authorize a special demonstration program targeted toward the unique needs of American Indian and native Hawaiian gifted and talented elementary and secondary school students.

In the closing hours of the 99th Congress, the Senate Select Committee on Indian Affairs received testimony from Dr. Keith Mielke, vice president for research, Children's Television Workshop, describing the extent to which it might be possible for them to develop creative programs targeted toward the needs of these native American peoples once this proposal becomes public law.

Mr. President, during the 99th Congress the House of Representatives passed legislation entitled the Gifted and Talented Children's and "Youth Education Act of 1986," which envisions a Federal "capacity building" effort to identify and educate gifted and talented children. Further, that legislation, which authorizes $10 million for the first year, would also establish a national center for research and development in the education of gifted and talented children and youth.

As our colleagues in the House of Representatives pointed out, the U.S. Department of Education's own report "A Nation at Risk" highlighted the pressing needs of gifted and talented children. The measure which we are introducing today would provide a special focus on the truly unique needs of native American gifted and talented individuals.

Mr. President, I request unanimous consent that the text of Dr. Mielke's testimony and of the bill be printed in the RECORD.

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

S. 150

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 "Native American Gifted and Talented Educational Assistance Act of 1985".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to make demonstration grants designed to address the special educational needs of elementary and secondary school students who are Indian or Native Hawaiian.

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) The term "elementary school" has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

(2) The term "local educational agency" has the same meaning given that term under section 198(a)(10) of the Elementary and Secondary Education Act of 1965.

(3) The term "Indian" has the same meaning given that term under section 453 of the Indian Education Act.

(4) The term "junior or community college" has the same meaning given that term under section 322(a)(4) of the Higher Education Act of 1965.

(5) The term "Native Hawaiian" means any individual whose ancestors were natives of the area which consisted of the Hawaiian Islands prior to 1778.

(6) The term "secondary school" has the same meaning giving that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965.

(7) The term "Secretary" means the Secretary of Education.

(8) The term "State" has the same meaning given that term by section 198(a)(16) of the Elementary and Secondary Education Act of 1965.

(9) The term "tribally controlled community college" has the same meaning given that term by section 2(4) of the Tribally Controlled Community College Assistance Act of 1978.

DEMONSTRATION GRANTS FOR GIFTED AND TALENTED ELEMENTARY AND SECONDARY INDIAN SCHOOL STUDENTS

SEC. 4. The Secretary is authorized to make grants to, and to enter into contracts with, junior or community colleges, including tribally controlled community colleges, for demonstration projects designed to address the special needs of elementary and secondary school students who are Indians.

DEMONSTRATION GRANTS FOR GIFTED AND TALENTED ELEMENTARY AND SECONDARY HAWAIIAN NATIVE SCHOOL STUDENTS

SEC. 5. The Secretary is authorized to make grants to, and to enter into contracts with, junior or community colleges, and/or Kamehameha Schools/Bishop Estate, for demonstration projects designed to address the special needs of elementary and secondary school students who are Hawaiian Natives.

PROJECT ACTIVITIES AND CONDITIONS

SEC. 6. (a) Demonstration projects assisted under this Act may include—

(1) the identification of the special educational needs of gifted and talented children who are eligible for assistance under this Act,

(2) the conduct of educational activities which held reasonable promise of making substantial progress toward meeting the

educational needs of such gifted and talented children;

(3) the use of public television in meeting the special educational needs of such gifted and talented children, such as utilizing the expertise of the Children's Television Workshop;

(4) leadership programs designed to replicate programs for such children throughout the appropriate area, including the dissemination of information on the demonstration projects conducted with assistance under this Act; and

(5) appropriate research, evaluation and related activities pertaining to the special needs of such gifted and talented children.

(b)(1) No grant may be made and no contract may be entered into under this section unless an application is submitted to the Secretary in such form, in such manner and containing or accompanied by such information as the Secretary determines necessary to carry out the provisions of this section.

(2) Each such application shall be accompanied by the comments of each local educational agency which has students who are enrolled in the schools of such agency and who will participate in the project for which assistance is sought.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. (a) There are authorized to be appropriated $5,000,000 for the fiscal year 1986 and each of the three succeeding fiscal years.

(b) Of the sums available for each fiscal year $4,000,000 shall be available for grants under section 4 benefiting elementary and secondary school students who are Indians, and $1,000,000 shall be available for grants under section 5 benefiting elementary and secondary school students who are Hawaiian Natives.

TESTIMONY BY KEITH W. MIELKE, PH.D., VICE PRESIDENT FOR RESEARCH, CHILDREN'S TELEVISION WORKSHOP

EDUCATIONAL ASSISTANCE FOR GIFTED AND TALENTED CHILDREN

I am Keith Mielke, Vice President for Research at the Children's Television Workshop in New York. I am here to speak in support of the concept of special programs for gifted and talented children. In particular, our experience is most relevant to the area where such programs might utilize educational television materials. Such special programs are described in the proposed legislation cited as the "Native American Gifted and Talented Educational Assistance Act of 1985."

I should state at the outset that I am not a specific expert either in the special needs of the gifted and talented or in the special needs of Indians or Native Hawaiians. The perspective that I do bring draws upon the unique experience of the Children's Television Workshop, which has been addressing special needs of children for almost two decades now. The hope and the belief is that this general experience may be helpful in this specific case. It is not anticipated that CTW would produce any television materials that might result from the proposed legislation, but we would be willing then, as we are now, to share knowledge and experiences which could be helpful.

CTW designs and produces educational materials that use mass media such as television. The first educational television series for children produced at CTW was "Sesame Street" which premiered in 1969. "Sesame Street" is designed to help preschool children get ready for classroom experience. This was followed by "The Electric Company," which was basic reading instruction aimed at children 7-10 years of age. Then CTW produced a science series for 8-12's called "3-2-1 Contact," and our most recent series, which is about mathematics, will premiere next January. These four series comprise a considerable body of experience in the design, production, and evaluation of educational materials for children. As stated before, if this experience can be of any assistance in the planning of programs for the gifted and talented, then we are delighted to share it with you.

There are several comments now I'd like to make about the proposed legislation. One form of demonstration project that would qualify for funding would be the use of public television in meeting the special educational needs of gifted and talented children. CTW is honored to have been cited as exemplifying the use of television in meeting special needs of children.

In my opinion, certain media options are true opportunities to be explored and certain other media options do not appear to be feasible given the nature of television and the budget levels being considered.

Let's look first at the constraints. The funding available for mass media programming is typically tied to the numbers of people being served. Specialized needs of any subgroup, even important needs like those of the gifted and talented, tend not to generate adequate funding for original, exclusive, specialized programming on mass media such as broadcast television. "Sesame Street", for example, is expensive in absolute numbers—about $10 million per year—but is quite inexpensive in its delivered cost per viewer—less than a penny per child per program. It is the attraction of very large audiences that makes possible that economy of scale where high production and pedagogical values can be justified. Within these general audience programs we do include segments for children with special needs, such as hearing impaired, mental retardation, physically handicapped, and so forth, but the overall show retains its appeal to all children, and that is critical to its level of funding.

A very promising option in addressing the special needs of the gifted and talented at much lower costs would be to select media materials already available and tailor them with special utilization materials. For example, if an adult program such as "Nova" might be appealing to a gifted and talented child if only certain bridging concepts could be mastered, then a special utilization kit could be designed for that purpose, and special training could be developed for adult leaders to guide the children through the process. Conceivably, these adult leaders could be teachers, paraprofessionals, or parents. This same approach of tailoring existing programs for the gifted and talented might also be made for very young children using our CTW programs in science and mathematics. I note in the Hawaii Public Television Guide that an enormous number of programs are broadcast that are potentially useful in this manner, but they would need to be tailored through special utilization materials.

The procedures we use at CTW to design and produce educational materials should also apply to utilization packages for the gifted and talented. My function at CTW, for example, is to oversee our in-house research, which is involved at all stages of a project. This includes needs assessments and goal-setting at the very beginning of a project. It includes representing the children's viewpoint when materials are designed. It goes on to the testing of prototype materials for appeal and comprehension with target-age children, and it culminates in the evaluations of completed programs. These same steps and issues will be encountered in the proposed programs for the gifted and talented. All of these procedures can be shared with whichever institutions and groups eventually put the materials together for the gifted and talented.

If the needs assessment could first identify who has what set of needs in the gifted and talented category, and if this would then be followed by designing a responsive protocol or set of procedures that involved both media materials and a guide for adult leaders, then the possibility exists to reach great efficiencies with a reproducible model that is very effective. That is my fundamental suggestion, and there is reason to be optimistic about its outcome. At CTW, for example, we have a community outreach division called Community Education Services, or CES. One of many special utilization efforts by CES has been to design special materials on fire safety along just the lines I am proposing here: they combine television materials on videotape, along with a carefully constructed guide for a local group leader. Other subject areas addressed by Community Education Services at CTW include the special needs of children whose fathers are in prison, special life-saving messages appropriate for children in the areas of lead poisoning and natural hazards. I base the argument that this model would be useful here for the gifted and talented, not on specific experience with gifted and talented, but on the field-tested procedures we have successfully employed in so many different subject-matter areas.

Once prototype materials are produced, it is inevitable that they can be improved through evaluations under field conditions. Again, the particular materials for the gifted and talented may be new, but the issues are not.

I have been speaking so far only about CTW experiences with preschool children and children up to twelve years of age, because that's where our series are aimed. There are also needs and opportunities in high schools that are coming to the attention of the in-school television community. Because of budget pressures, some high schools have had to cut back on specialized courses such as Chinese language studies that were previously made available for gifted and talented students. The schools now conclude that the only way they can afford these services is to spread the expense more broadly by televised courses or the use of other technologies. Furthermore, small schools in rural areas perceive that the only way they would ever be able to offer some of these specialized courses, in good economic times or bad, is by way of technology such as television. For younger and older children, therefore, educational television has something worthwhile to consider.

In summary, the Children's Television Workshop supports the concept of special efforts, materials and activities to meet the needs of gifted and talented children. We have a wide variety of experience at the Children's Television Workshop in designing, producing and utilizing educational materials that are targeted to special audiences, and we would be delighted to share this expertise with you in any way that you would find helpful.

I would also be happy to respond to any questions you might have for me at this time. Thank you.●

By Mr. INOUYE:

S. 151. A bill to permit educational institutions with graduate programs in clinical social work to apply for grants and contracts to provide educational assistance to individuals from disadvantaged backgrounds.

RELATING TO CERTAIN EDUCATIONAL ASSISTANCE TO DISADVANTAGED INDIVIDUALS

● Mr. INOUYE. Mr. President, today I am introducing legislation which would provide that Council on Social Work Education accredited schools of social work be deemed eligible to receive grants under the Health Careers Opportunity Program [HCOP].

This program has been instrumental in enabling minority students to enter and successfully complete education and training programs in other health professions. In my judgment, it is very important that our Nation's minority students be given that same opportunity to be trained in schools of social work for health-care careers.

Social workers are a necessary and integral part of the health-care team; they are uniquely qualified to perform a variety of vital functions. In addition to psychotherapy, counseling, and prevention of psychosocial problems related to illness, social workers are involved in discharge planning, high-risk screening, post-hospitalization care, and followup. Social workers are advocates for patients; they are specifically trained to identify, coordinate, and access appropriate services and resources.

I believe that social workers are necessary to effective health care. I also believe that minority participation in the provision of social work services would greatly strengthen our health care system's ability to respond to all segments of the community, and thus enhance our delivery of health care services overall. Making schools of social work eligible for grants under the Health Careers Opportunity Program would be an important step toward realizing these goals.

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

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

S. 151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 787(a) of the Public Health Service Act (42 U.S.C. 295g-7(a)) is amended by inserting "or clinical social work" after "psychology" in paragraph (1).

(b) The last sentence of paragraph (2) of such section is amended by inserting "or clinical social work" before the period.

(c) Such section is further amended by adding at the end thereof the following new paragraph:

"(3) For purposes of this section, the term 'graduate program in clincial social work' means a graduate program in a public or nonprofit private institution in a State which—

"(A) provides training leading to a masters' degree or a doctoral degree in clinical social work or an equivalent degree;

"(B) prepares the individual receiving such degree for licensure by a State as a clinical social worker; and

"(C) is accredited in the manner described in section 701(5).".●

By Mr. INOUYE:

S. 152. A bill to clarify that graduate programs in clinical psychology are health professions schools for purposes of title VII of the Public Health Service Act.

CLARIFYING CERTAIN PROGRAMS AS HEALTH PROFESSIONS SCHOOLS

● Mr. INOUYE. Mr. President, I am introducing legislation today to ensure that our Nation's psychology graduate training programs will be able to apply for the various special projects initiatives funded by the Department of Health and Human Services and, in particular, the Health Resources and Services Administration.

The measure which I am proposing would essentially include psychology along with the listing of the other health professions schools. Until the past Congress, for most of these initiatives, psychology training programs were, in fact, eligible as one of the allied health professional schools. However, when we decided to eliminate psychology from the allied health definition, it was listed in the Federal Code under its own subsection—subsection 14—rather than included in the more traditional listing. As a result of this, it has come to my attention that psychology training programs are not eligible for the Department's geriatric training initiatives, even though there is clearly a truly pressing need for ensuring our Nation's senior citizens with quality mental health care.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 152

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 701(4) of the Public Health Service Act is amended by inserting after the first sentence the following new sentence: "The term 'school of psychology' means a graduate program in clinical psychology (as defined in paragraph (14)).".●

By Mr. INOUYE:

S. 153. A bill to specify that health maintenance organizations may provide the services of clinical social workers.

CLINICAL SOCIAL WORKER SERVICES AT HMO'S

● Mr. INOUYE. Mr. President, I am introducing legislation today to amend the health maintenance organization [HMO] authorization statute to make clear that, within these important institutions, our Nation's clinical social workers are to be deemed recognized providers of care.

Mr. President, the legislative proposal which I am recommending today will not cost any additional funds, as these practitioners are already serving our Nation in HMO's, providing a wide variety of services, such as health education and health promotion, health risk screening and assessment, case management, and psychotherapy. In essence, what my proposal does is to accord the social worker profession the professional recognition which it so richly deserves.

Mr. President, I request unanimous consent that the text of my bill be printed in the RECORD.

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

S. 153

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraphs (1) and (2) of section 1302 of the Public Health Service Act are amended by inserting "clinical social worker," after "psychologist," each place it appears.

(b) Paragraph (4) of such section is amended by striking out "and psychologists" and inserting in lieu thereof "psychologists, and clinical social workers".

(c) Paragraph (5) of such section is amended by inserting "clinical social work," after "psychology,".●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 154. A bill to authorize the Secretary of Health and Human Services to make grants for the planning, development, establishment and operation of poison control centers.

POISON CONTROL CENTER PROGRAM

● Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing legislation to authorize the Secretary of the Department of Health and Human Services to make grants for planning and operating poison control centers.

I understand that more than 5 million poisonings occur each year in our Nation and that poisoning continues to remain the fourth most frequent cause of accidental death after motor vehicle accidents, drownings, and burns. Poisonings result in approximately 12,000 deaths per year. Unfortunately, about 90 percent of the reported cases involve children thereby making poisonings the most common pediatric emergency.

Presently, there are nearly 500 poison control or poison information centers already established in our Nation, many of which are colocated

with hospital facilities, universities or public health authorities. Some of these are presently receiving Federal funding under the provisions of the Emergency Medical Services Block Grant Program. I understand that in the areas of high military concentration, such as Hawaii, military families can make up a high proportion of their clientele. In fact, in Honolulu, approximately 25 percent of our poison center's transactions are for local military personnel and their dependents, whom I might add often do not pay local taxes.

Mr. President, previous studies which have been brought to my attention conclusively indicate that when all poisoning episodes are considered, regional poison centers have been found to significantly reduce pediatric visits to hospital emergency rooms. For example, one study indicated that of those parents who did not call the poison center, 44 percent went to an emergency room, whereas less than 1 percent of the parents who did call the center went to the hospital. Essentially, various scientific and medical experts have informed me that a well-staffed poison center can effectively manage 85 percent of the acute poisonings which occur over the telephone. Simply stated, by spending money up front to establish poison centers, we will in the long run save considerable funds in hospital expenses. In fact, I understand that approximately 600,000 hospital visits or admissions are attributed to poisonings annually.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 154

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part B of title III of the Public Health Service Act is amended by inserting after section 314 the following new section.

"POISON CONTROL CENTERS

"SEC. 315. (a) The Secretary may make grants to appropriate public and private nonprofit entities for the planning, development, establishment, and operation of poison control centers.

"(b) A poison control center planned, developed, established, or operated with a grant under this section shall, with respect to the locality in which such center is established—

"(1) provide services for the appropriate and expeditious management and treatment of individuals who have consumed poisons or an overdose of drugs;

"(2) establish a twenty-four-hour telephone line, at no charge to the caller, to—

"(A) answer requests for information concerning poisions and drugs;

"(B) receive requests concerning, and make recommendations for, the treatment in the home of individuals who have consumed poisons or an overdose of drugs;

"(C) coordinate the referral to hospital emergency rooms of individuals who have consumed poisons or an overdose of drugs who need such referrals, by contacting and providing appropriate information to the staffs of such emergency rooms;

"(D) provide information to health care professionals involved in the treatment of individuals who have consumed poisons or an overdose of drugs; and

"(E) monitor the treatment at home of individuals who have consumed poisons or an overdose of drugs in order to assure that adequate care is provided to such individuals;

"(3) create and implement educational programs in order to improve public awareness of problems relating to the consumption of poisons and drugs and methods to prevent such consumption; and

"(4) collect date relating to the operations of the center, including information concerning the individuals served by such center.

"(c) To carry out this section, there are authorized to be appropriated such sums as may be necessary.".●

By Mr. INOUYE:

S. 155. A bill to limit the costs resulting from acts of negligence in health care and to improve the level of health care services in the United States, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH CARE PROTECTION ACT

● Mr. INOUYE. Mr. President, during the past several Congresses, I have introduced legislation entitled the Health Care Protection Act which, if enacted, would establish uniform Federal standards for a network of health care malpractice screening panels across the Nation.

The bill, which I am again reintroducing today, is an outgrowth of our deliberations during the 1975 crisis in the medical malpractice insurance area. At that time, we appeared to have a crisis of availability; however, today, there would appear to be a growing crisis in affordability.

I was most pleased that during both the 98th and 99th Congresses, various committees with jurisdiction, in both the House of Representatives and the Senate, held formal hearings on the professional liability/medical malpractice issue. This is a very complex matter; however, I do feel it is one which we must affirmatively address in the near future if we ever hope to curtail the ever-escalating costs of health care in our Nation.

I am also pleased that during our deliberations on the fiscal year 1987 appropriations bill for the Department of Health and Human Services, the conferees agreed to include $1 million in the Secretary's program policy account for him to develop creative approaches to professional liability problems. This initiative was the result of considerable assistance which I received from Representative JOHN PORTER of the U.S. House of Representatives.

Mr. President, I request unanimous consent that the text of this bill, as well as a statement developed for me by Spectrum Emergency Care, Inc., be printed in the RECORD.

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

S. 155

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 "Health Care Protection Act of 1987".

SEC. 2. CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the health care professions and the health care industry serve needs vital to the continuing health and welfare of the American people and form a vital part of commerce between the States;

(2) every person needs ready and economical access to medical and other health care services for full participation in American society and for full exercise of individual rights;

(3) the health care professions and the health care industry apply national standards of health care to State and regional needs and circumstances;

(4) the need to compensate persons injured by avoidable acts of health care negligence or malpractice and the resultant costs of malpractice insurance significantly increase the costs of medical and other health care services and products;

(5) divergent systems for insuring against, and for litigating and compensating, health care malpractice claims further raise the cost of needed malpractice insurance and prevent speedy compensation of injured persons;

(6) a large majority of the cost of premiums paid for malpractice insurance goes to investigating or litigating malpractice claims in State courts, while less than one-third of the premium costs are used to compensate persons injured by malpractice;

(7) many more incidents of health care malpractice occur than result in a claim for damages, and many valid claims for compensation are prevented because of the high costs of trial, and, conversely, many claims of malpractice are unjustified but result in settlements or awards for damages out of sympathy for the physical condition of the claimant;

(8) the costs of insurance protection against malpractice, and the risk of liability for compensation, burden both the health care providers and their patients and raise the cost of health care goods and services;

(9) the costs and risks referred to in paragraph (8) also increase the costs to the United States Government of carrying out its programs for aiding the people and the States in meeting health care needs, and affect the extent to which the United States may be financially liable for health care services afforded by its own officers or employees, including the military services and veterans and public health care programs;

(10) failure to compensate adequately persons injured by health care malpractice adversely affects the general health and welfare of the people of the United States and burdens commerce between the States;

(11) many States have experimented successfully with nonjudicial malpractice claims systems using screening panels to

reduce the costs of processing malpractice claims;

(12) the examination, prior to litigation, of claims regarding health care malpractice by malpractice screening panels organized by the States according to uniform Federal standards will aid materially in reaching just and timely resolutions of such claims at much lower administrative and litigation costs than the costs now incurred under the existing system of direct tort litigation and malpractice insurance;

(13) members of the public and responsible public officials of the States are entitled to be informed in all instances in which health care malpractice is found by a malpractice screening panel or a court, in order to protect against the risk of further malpractice and to minimize the necessary costs of insurance protection;

(14) a small percentage of health care providers account for a disproportionately high percentage of all malpractice claims, and for an even higher percentage of insurance payments to persons injured by health care malpractice; and

(15) because insurance premiums are usually set for an entire specialty group in a given region, the high-risk health care providers do not bear a financial burden proportionate to the amount of injury such providers cause, and therefore no effective financial incentive exists for the safe practice of medicine and other health care specialties.

(b) STATEMENT OF PURPOSE.—The purpose of this Act is to provide minimum Federal standards for the creation by each State of health care malpractice screening panels and procedures that will reduce the costs to the public and to the health care professions of malpractice, and that will provide full and expeditious compensation to the victims of health care malpractice.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) "malpractice" means malpractice, or professional negligence, by an individual or group that provides health care services or goods and that is required by State law to be licensed or certified to provide such services or goods within the State;

(2) "panel" means a malpractice screening panel established pursuant to section 5;

(3) "division" means a division of a malpractice screening panel that is authorized to hear and decide malpractice claims pursuant to this Act;

(4) "State insurance commissioner" means the officer or agency of State government charged with licensing or regulating the business of providing insurance against claims of malpractice within the State; and

(5) "State program" means the State program for compensation of and reduction of health care malpractice described in section 4.

SEC. 4. UNIFORM STANDARDS FOR COMPENSATION FOR HEALTH CARE MALPRACTICE.

(a) STATE PROGRAM FOR COMPENSATION.—Each State shall be encouraged to establish, within four years after the date of enactment of this Act, a program for compensation and reduction of health care malpractice that complies with the provisions of this Act, and that consists of the establishment of malpractice screening panels in accordance with section 5 and the establishment of a State health care facility risk management program in accordance with section 7. The State may establish the State program by legislative, executive, or judicial action, as authorized by the laws and constitution of the State.

(b) ATTORNEY GENERAL REGULATIONS.—The Attorney General shall have authority to promulgate regulations for the interpretation and implementation of this Act. Within one year after the date of enactment of this Act, the Attorney General shall issue regulations concerning the certification of State programs in accordance with section 8 and for payments to States under section 9.

SEC. 5. MALPRACTICE SCREENING PANELS.

(a) ESTABLISHMENT.—Each State shall be encouraged to establish one or more malpractice screening panels to hear all claims of health care malpractice against persons in the State who are licensed or certified by the State to provide health care services or who provide health care services for which State law requires a license or certification. Each State shall, after consultation with the Attorney General, publish a list of the health care professions that are so licensed or certified and the health care professions of which members provide health care services so licensed or certified. If the State establishes more than one panel, the jurisdiction of the panels may be divided by geographic area within the State or by health care specialty.

(b) MEMBERSHIP AND APPOINTMENT.—(1) A malpractice screening panel shall have at least three members, chosen and appointed under the laws or constitution of the State. A State may require that a panel sit as a single body or may authorize the panel to sit in smaller divisions of at least three members. Each panel, and each division before which a claim is heard, shall include at least one licensed or certified health care professional, one person admitted to practice law in the courts of the State, and one layperson who represents consumers and is not affiliated with a health care practitioner or health service institution, and may include such other members as the State shall provide. The State may annex a panel to a court of the State. The State shall specify the method of selection and assignment of members of each panel and any division thereof in a manner that assures that each panel and division will afford a full and fair hearing to all parties to any claim brought before it. The members of each panel shall be selected without regard to gender, race, religion, or national origin.

(2) The State shall provide that any member or employee of a panel or division is immune from suit for defamation, libel, or slander, arising from the performance of his official duties with the panel or division, unless malice or actual knowledge of the falsity of a defamatory statement is proved.

(c) JURISDICTION AND RULES OF PROCEDURE.—The State shall be encouraged to provide for the following:

(1) Each panel shall have original and exclusive jurisdiction within the State, or such area of the State or health care specialty as State law shall provide, to hear and decide any claim for damages resulting from injury or death incurred as a consequence of health care malpractice by an individual, group, or organization that is required to be licensed or certified by the State in order to provide health care goods or services in that State.

(2) Except as provided in subsection (j) or as provided for claims against the United States, every claim within the jurisdiction of a panel shall be filed with, heard, and decided by, the panel.

(3) The existence or absence of requisite injury, causation, negligence, malpractice, or any other element of a claim, or defense to a claim, shall be determined under the law of the State, but the State shall authorize each panel and the person who appoints the panel to establish rules of procedure for fair and expedited hearing and decision of claims. All such rules of procedure shall be published and made available to the public.

(d) CLAIM AND ANSWER.—Each State shall be encouraged to provide that a claim for damages resulting from injury or death incurred as a consequence of health care malpractice shall be filed with a panel within the State in which the malpractice allegedly occurred. The State shall specify the procedure for filing a claim, including a procedure for transfer to the appropriate panel of a claim improperly filed with a court or with the wrong panel, and shall require that a copy of the claim and any accompanying documents be served at the time the claim is filed on each person alleged to have caused the injury, each of whom shall be named as a defendant. The State shall require that each defendant answer the claim in timely fashion and completely. The State shall provide that a filed claim (1) fully describe the alleged malpractice that gave rise to the claim, the nature and extent of the injury that resulted, and the manner in which the injury took place, (2) list the names of all persons who may be liable for the malpractice and describe each person's role in the malpractice, and (3) list the names of all expert witnesses who will be called in support of the claim, including their qualifications.

(e) SCREENING AND PRELIMINARY INVESTIGATION.—The panel or division to which the claim is assigned shall promptly review each claim and answer. If in the course of its review the panel or division determines that particular evidence will be needed to decide the claim, the panel or division shall notify the claimant and each defendant, and provide the claimant and defendants an opportunity to provide the evidence at or before the hearing on the claim. The panel or division may, on its own motion, engage expert consultants or witnesses during review or at a hearing, and the testimony or reports of such consultants or witnesses shall be admitted into evidence.

(f) DISCOVERY.—The panel or division may permit discovery and motion practice prior to the hearing required by subsection (g) only as specifically provided by State law for malpractice screening panels. The panel or division shall not permit discovery that, in relation to the size and nature of the claim, will burden unduly the claimant, the defendant, or any third party, or that will delay unduly the resolution of the claim.

(g) HEARING.—The panel or division shall, within one hundred and eighty days after the date on which a claim is filed, conduct a hearing on the claim. One continuance, not to exceed ninety days, may be granted to any party upon a showing that extraordinary circumstances which are not within that party's control warrant delay in the interests of justice. At the hearing, each party may be represented by counsel. The claimant shall be required to present all evidence supporting the claim, and each defendant shall be required to present all evidence rebutting or defending against that claim. Notwithstanding the rules of evidence applicable in the State's courts, the panel or division may hear and consider any relevant and material evidence, except that a State may establish and publish rules or procedures preventing the introduction of irrelevant, unprobative, or unduly repetitious evidence. A State may establish and publish such procedures for the conduct of panel

hearings as comport with the due process of law and with this section. A panel or division shall be authorized to compel the appearance of witnesses and the production of documents or other evidence.

(h) PANEL OR DIVISION DECISION.—After hearing all the evidence presented by the claimant and each defendant, the panel or division shall decide whether or not the malpractice was proved, and, if the malpractice was proved, whether the injury resulted from proved malpractice of one or more of the defendants. Within thirty days after the conclusion of the hearing of the evidence (unless a delay is necessary due to extraordinary circumstances), the panel or division shall transmit a written decision to the claimant and each of the defendants. The decision shall include a statement of the findings of fact and conclusions of law on which the panel or division based its decision and determined any award under subsection (i).

(i) AWARDS OF DAMAGES.—If a panel or division finds compensable injury resulting from health care malpractice by one or more defendants, the panel or division shall determine the amount of damages owed under State law to the claimant by each liable defendant, and shall enter an order against each such defendant to pay an award in that amount. An award by a panel or division is due upon entry of the award, and a State may provide for judicial enforcement of an award that is not paid promptly. In court proceedings to enforce an order to pay an award, the only issue shall be whether payment has been made according to the terms of the order. The decision of a panel or division shall not be subject to review, except to review an allegation of fraud or of unlawful conflict of interest by a member of the panel or division that made the decision. A State shall provide that, notwithstanding any other provision of law but subject to any State law limiting the amount of recoverable damages—

(1) a panel or division may provide that any award for continuing or prospective damages of $100,000 or more be made in the form of suitable annual or other periodic payments as actual damages are incurred;

(2) a panel or division may provide that any award for damages of $200,000 or more may be satisfied by establishing a trust fund or purchasing an annuity for the life of each person to whom the award is made or during the continuance of the compensable injury or disability, with a reversionary interest in the persons liable for the award; and

(3) the timing and amounts of periodic payments or of payments from a trust fund or annuity shall be such as to avoid hardship to, and assure full compensation of, each person to whom the award is made, as determined by the panel or division.

(j) TRIAL DE NOVO IN STATE COURT.—(1) Each State shall provide that any party to a claim decided by a panel or division shall be entitled to trial de novo on the claim before a State court of appropriate jurisdiction on motion filed within sixty days after the party receives the panel's or division's decision under subsection (h). The decision of the panel or division and its written statement and order to pay an award shall be admissible as evidence in such trial on motion of any party to the panel or division hearing. Any right of trial by jury shall be preserved. If a trial de novo is held at the request of a party, that party may be liable for all costs of trial and for reasonable attorney's fees to opposing parties if, after final judgment in the State court, that party has not substantially prevailed in the action.

(2) For purposes of paragraph (1), a party has substantially prevailed in a trial de novo if—

(A) the party was a defendant at the panel or division hearing and is found by the court not to be liable for damages, or to be liable for damages in an amount which is less than the amount of the defendant's liability (as established by the panel or division) by an amount which is equal to 20 per centum of the amount of such liability or $6,000, whichever is greater; or

(B) the party was the claimant at the panel or division hearing, and the court awards damages to that claimant in an amount which exceeds the amount awarded to that claimant by the panel or division by an amount which is equal to 20 per centum of the amount awarded to the claimant by the panel or division or $6,000, whichever is greater.

(k) SETTLEMENT BEFORE DECISION OR AWARD.—The parties to a claim filed with a panel or division may enter into a settlement agreement at any time prior to the date on which the panel or division transmits a decision under subsection (h) with respect to the claim. A written copy of the agreement shall be filed with the panel or division. Any such settlement shall not provide for attorney's fees in excess of the amount authorized under section 7. Upon receiving a copy of the agreement, the panel shall close its file on the claim and shall transmit the report with respect to the settlement agreement required under subsection (l).

(l) REPORT OF FINDINGS OF MALPRACTICE OR NEGLIGENCE.—(1) The State shall require that—

(A) if a panel, division, or court finds, in making a determination with respect to a claim, that one or more defendants has committed health care malpractice, or

(B) if a settlement agreement is filed with a panel or division under subsection (k),

the panel, division, or court shall, within thirty days after the panel, division, or court makes such finding or such settlement agreement is filed under subsection (k), transmit a report with respect to such finding or settlement agreement to the State insurance commissioner and the State licensing or certification board or professional conduct body, if any, with jurisdiction over the licensed or certified health care profession or industry of each defendant for which a finding of malpractice has been made or who is involved in such settlement agreement.

(2) The report required by paragraph (1) shall include—

(A) the written statement of the panel or division under subsection (h) with respect to the claim, or the verdict or opinion of the court with respect to the claim, as the case may be;

(B) any order of award of the panel, division, or court with respect to the claim; and

(C) a copy of any settlement agreement filed under subsection (k).

(3) The State insurance commissioner shall make each report received under paragraph (1) available for public inspection by any person, shall take such further action with respect to the report of malpractice as State law authorizes, and shall promptly notify each insurance company or association offering malpractice insurance for the licensed or certified profession or business within the State of—

(A) the panel's, division's, or court's finding of malpractice, including the name of each person found to have committed malpractice, the nature of the person's liability, and the amount of any award; and

(B) the terms of any settlement agreement entered into under subsection (k).

(4) The State shall provide that insurance companies or associations are authorized to adjust their rates for persons who are held liable by a panel, division, or court for malpractice, or who have entered into two or more settlement agreements under subsection (k) that require payments to claimants for malpractice within a three-year period prior to the date on which any such person applies for malpractice insurance.

(m) FILING CLAIM TOLLS STATUTE OF LIMITATION.—The State shall provide that a statute of limitation pertaining to a claim relating to malpractice is tolled from the date on which the claim is filed under subsection (d) until the date which is sixty days after the date on which the panel or division transmits a decision under subsection (h).

SEC. 6. AWARD OF ATTORNEYS' FEES IN MALPRACTICE ACTIONS.

(a) LIMITATIONS ON FEES.—Each State shall provide that in any action or claim filed under this Act in which the claimant receives an award of damages, the amount of payments to the claimant's attorney shall not exceed—

(1) one-third of the amount of an award of less than $100,000;

(2) one-quarter of the amount of an award between $100,000 and $200,000;

(3) 20 per centum of the amount of an award between $200,000 and $300,000; or

(4) 15 per centum of the amount of an award in excess of $300,000.

(b) FEES PAYABLE FROM PERIODIC PAYMENTS.—Each State shall provide that where a panel or division orders payment of an award of damages in accordance with the methods set forth in paragraph (1), (2), or (3) of section 5(i), payments of any contingent fee to the claimant's attorney shall be made out of the periodic payments therein provided for and shall in no instance be a larger fraction of such periodic payment than the proportion borne by the total fee payable under subsection (a) to the total amount of damages awarded.

(c) MISCELLANEOUS.—This section does not require that fees for malpractice claims be contingent fees, nor does it authorize the award of fees against a liable party except where authorized by section 5(j) or under State law.

(d) PENALTIES.—If an attorney in an action or claim under this Act accepts payment for services in such action or claim in an amount which exceeds the amount provided by this section, the attorney shall forfeit three times the amount of the excess, plus costs of recovery, to the State in any civil action for recovery brought by the State in any Federal district court within the State. The Federal district courts shall have original and exclusive jurisdiction of such actions for recovery.

SEC. 7. HEALTH CARE FACILITY RISK MANAGEMENT PROGRAMS.

(a) DEVELOPMENT OF PROGRAM.—Each State shall be encouraged to develop a program to require each licensed hospital, outpatient facility other than the office of an individual practitioner, and residential health care organization or facility within the State to employ a risk management program consistent with the provisions of this section. Each Federal health care institution in a State

shall comply with the State program approved by the Attorney General of the United States under section 8. A State health care facility risk management program shall be consistent with State law and shall meet the minimum requirements set forth in subsection (b).

(b) MINIMUM REQUIREMENTS.—(1) The State health care facility risk management program shall require that each licensed hospital or residential health care organization or facility adopt procedures for—

(A) identifying and reporting to a risk management committee or office approved by the State all known or suspected incidents of malpractice by that hospital, organization, or facility, by the staff of the hospital, organization, or facility, or by persons using facilities with the permission of the hospital, organization, or facility; and

(B) identifying the causes of such incidents and suspected incidents.

(2) Each risk management committee or office approved by the State shall prepare a case file on each incident of malpractice as soon as such incident is reported, and shall investigate the merits of any likely claim of malpractice while the evidence and the reports of witnesses with respect to such claim are readily available. The case files and reports of investigations shall be made available to the patient and to the hospital or residential health care organization or facility. The reports shall be reviewed by the hospital, organization, or facility to identify actions which can be taken to reduce the risk of further incidents of the same nature.

(c) ADDITIONAL PROVISIONS.—Two or more licensed hospitals or residential health care organizations or facilities may jointly establish or use the same risk management committee or office if such committee or office has been approved by the State. Risk management committees or offices approved by the State may exchange information concerning risk experience, prevention, and management, except that such committees or offices shall not be used—

(1) for the exchange of price information in a manner forbidden by the antitrust laws of the United States;

(2) to fix prices for health care or insurance services; or

(3) to divide markets in a manner forbidden by the antitrust laws of the United States.

SEC. 8. CERTIFICATION OF QUALIFYING PROGRAM.

(a) CERTIFICATION REQUIRED.—Within two years after the date of enactment of this Act, the Governor of each State shall certify to the Attorney General of the United States whether the State has adopted a State program which in the opinion of the Governor is in compliance with the provisions of this Act. The Governor shall attach to the certification copies of all relevant State laws, rules, procedures, and regulations which are a part of the State program.

(b) EVALUATION OF CERTIFICATION.—The Attorney General shall examine each certification within sixty days after its receipt, and shall approve the certification if the certification demonstrates that the State is in substantial compliance with this Act. If the Attorney General determines that a State program is not substantially in compliance with this Act, the Attorney General shall, within fifteen days after making such determination, notify the Governor of such determination and shall recommend revisions which would bring the State program into compliance with the provisions of this Act.

(c) TERMINATION OF ALLOCATION.—If, within thirty months after the date of enactment of this Act, a State has not submitted a certification described in subsection (a) to the Attorney General, or if a State has submitted a certification described in such subsection to the Attorney General and such certification has not been approved by the Attorney General, the Attorney General shall notify the Governor of the State that the State's allocation under section 9(d) shall be terminated unless, within six months after the Attorney General transmits such notice, the State submits a certification described in subsection (a) to the Attorney General and the Attorney General approves such certification.

(d) ACTION IN THE EVENT OF NONCERTIFICATION.—If, within four years after the date of enactment of this Act, a State program of one or more States has not been approved under subsection (b), the Attorney General shall transmit a report with respect to such State programs to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the President of the United States. The report shall include the recommendations of the Attorney General with respect to such State programs.

(e) ACTION IN THE EVENT OF NONCOMPLIANCE.—If the Attorney General determines at any time that a State program which has been approved under subsection (b) no longer complies with this Act, the Attorney General shall notify the Governor of the State of such determination, and the State shall repay to the United States any amount paid to the State under section 9(a) which has not been used by the State prior to the date on which the State receives notice of the Attorney General's determination. The State shall make such repayment within sixty days after receiving such notice.

SEC. 9. PAYMENTS TO STATES WITH COMPLYING PROGRAMS.

(a) PAYMENTS BY ATTORNEY GENERAL.—Within ninety days after approving a certification of a State under section 8(b), the Attorney General shall pay to that State the amount specified in subsection (d). Payment shall be made in a single installment to the State officer, agency, or organization authorized by State law to receive such payment.

(b) USE OF PAYMENTS.—Payments made under subsection (a) shall be used by the State to support and pay the costs of establishing and operating one or more malpractice screening panels under section 5 and to reimburse the State for the costs of developing and submitting the State program. Any amount of a payment made under subsection (a) which is not used in accordance with the preceding sentence may be used by the State to—

(1) identify the causes of health care malpractice incidents within the State and develop means and programs to prevent or reduce the severity and frequency of avoidable injuries to patients;

(2) review the structure, authority, and operations of approved State malpractice claims plans, risk-management committees, professional standards review organizations, professional licensing bodies, and professional conduct bodies for licensed or certified health care professionals and industries, and develop or implement needed improvements in such plans, committees, organizations, and bodies; and

(3) develop or offer courses or materials relating to—

(A) recognized standards for the safe and approved practice of any licensed or certified health care profession or industry within the State; and

(B) means by which the risks of avoidable injury to patients may be reduced and the standards of health care practice improved.

(c) REPORT OF GOVERNOR.—Within one year after the date on which a State receives a payment under subsection (a), the Governor of the State shall report to the Attorney General on the State's use of such payment. Upon request, the Governor of any such State shall provide the Attorney General with the description of any State activity carried out under subsection (b).

(d) AMOUNT OF PAYMENTS.—The Attorney General shall allocate among the States the amounts appropriated to make payments under this section as follows:

(1) The Attorney General shall allocate $250,000 from the amounts appropriated to carry out this Act for each fiscal year to each State, except that if—

(A) the amount appropriated for any fiscal year to carry out this Act is less than $12,500,000, the Attorney General shall proportionately reduce the amount allocated to each State; and

(B) if the amount appropriated for any fiscal year to carry out this Act exceeds $12,500,000, the Attorney General shall allocate to each State, from the amount which equals the difference between the amount appropriated for such fiscal year to carry out this Act and $12,500,000, an amount which bears the same ratio to the total amount of such difference as the population of the State bears to the population of all States.

(2) If, under section 8(c), a State's allocation under this Act is terminated, or if, under section 8(e), a State is required to repay to the United States any amount, the amount of such terminated allocation or repayment shall be reallocated by the Attorney General in accordance with paragraph (3).

(3) Except as provided in paragraph (4), amounts which are subject to reallocation pursuant to paragraph (2) shall be reallocated and paid to States which the Attorney General determines, in the Attorney General's discretion, are most in need of additional funds to support the State program. In reallocating amounts under this paragraph, the Attorney General shall consider all relevant circumstances, including—

(A) a high incidence of malpractice claims within a State;

(B) unique or unusual types of claims requiring exceptional expense to a State;

(C) long distances or other geographical barriers within a State which increase travel and administrative costs for the State program;

(D) particular claims in a State involving unusual problems of proof or presenting new issues of scientific fact or professional standards;

(E) particular claims or patterns of claims in a State involving similar or related injuries to a large number of persons similarly situated; and

(F) special litigation or management needs which occur in a State in order to comply with existing State law or State constitutional requirements.

(4) Amounts subject to reallocation pursuant to paragraph (2) may also be allocated and paid by the Attorney General to any State for the purpose of assisting in the development or implementation of a modified State program, or for studies of the oper-

ations of the State program. The results of any such study shall be reported to the Attorney General.

SEC. 10. JUDICIAL REVIEW.

Any decision by the Attorney General—

(1) that a State program is not in compliance with this Act,

(2) to terminate the allocation of a State under this Act,

(3) to require a State to repay funds provided under this Act, or

(4) to reallocate funds under this Act,

shall be final and not subject to judicial review.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Justice $25,000,000 for fiscal year 1988 and each succeeding fiscal year to carry out the purposes of this Act. Funds appropriated to carry out this Act for a fiscal year shall remain available until expended.

MEDICAL MALPRACTICE LIABILITY INSURANCE FOR EMERGENCY PHYSICIANS: NEED FOR REFORM

A POSITION PAPER FOR THE CONGRESSIONAL RECORD

(By Spectrum Emergency Care, Inc., a Subsidiary of ARA Services, Inc., Aug. 28, 1986)

During the fifteen years that Spectrum Emergency Care has operated as a contract management corporation in the field of emergency medicine, we have seen many great advances in emergency care, including the growth of emergency medicine as a specialty. We have also seen develop a set of growing major problems: increasing numbers of lawsuits filed and costs per claim, soaring malpractice liability insurance costs, and the lack of adequate insurance available to physicians. These have combined to change deleteriously the practice of emergency care, have unnecessarily increased the cost to patients, and have discouraged physicians from practicing.

Spectrum Emergency Care, Inc., is a St. Louis-based company that provides physician staffing and management services for over 350 hospital emergency departments across the country. Spectrum has been in operation since 1971 and has offices in San Diego, Boston, Dallas, Chicago, Colorado Springs, Memphis, Tampa, Duluth, Silver Spring, and Columbus, Ohio. Spectrum became a subsidiary of ARA Services, Inc., in 1979. ARA Services is an international, diversified service management company headquartered in Philadelphia which provides basic services for industry, institutions, and consumers, including food and refreshments, health care, child care, uniform rental, maintenance, distribution of publications, and transportation.

We believe there is a liability crisis in all of health care, but over the last three years the impact upon the field of emergency medicine has been particularly severe. Costs per patient visit have skyrocketed, often going from $1 per visit for *occurrence* insurance to in excess of $6 per visit for *claims made* insurance (the latter form traditionally being a less expensive and less satisfactory form of malpractice liability insurance). Availability has also become a serious problem, with very few insurance companies remaining in the market. In fact, in some states, such as Illinois and Colorado, there is really only one source from which to purchase insurance.

Joe Gatewood, M.D., F.A.C.E.P., Spectrum's Medical Director, is particularly concerned that the amout of awards for noneconomic damages are not only escalating uncontrollably, but often bear no relation to the injuries involved. Rather, they often have more to do with who has the "deep pocket" and with an attempt to use the tort system to cure social problems. He agrees with President Reagan's concern that the laws have become "twisted and abused" to produce "outcomes that impede our economic life."

We strongly urge the Congress to pass federal tort reform legislation modeled along the lines of the AMA proposal. We are concerned that if tort reform is not successful, the insurance market will dramatically worsen, resulting in fewer physicians willing to practice emergency care and with those remaining forced to practice an increasingly expensive, defensive art.

Tort reform is particularly needed to convince the major reinsurance market in London to continue writing catastrophic coverage policies in the United States. Over the last 18 months, our discussions with London underwriters and brokers have convinced us of their concerns, as have the reactions they have taken: changing to a claims made form of insurance for almost all of their policies and increasing costs at an occurrence based equivalent of approximately 100% annually. They are concerned about the "lottery" atmosphere which has crept into the American tort system and jury awards. We believe that without changes in the law and attitudes in this country, the major London underwriters, Lloyds and Weavers, will gradually withdraw from the U.S. market.

The tort reform legislation we support would include:

1. *Elimination of "joint and several" liability:* Misuse of this principle of law has possibly been the single largest source of injustice in this country's system of tort law. We applaud the results of the California referendum, in which voters (by the astronomical ratio of 62 to 38 percent) put limits on the "deep pockets" theory. The impact of Proposition 51 in California will be to lessen the ability of plaintiffs to collect outrageous damages from one defendant who has a very low level of liability but adequate insurance simply because another defendant in the same suit has no insurance to pay for the high level of negligence of which he is found guilty. This often results in the twisted outcome President Reagan has noted.

2. *Caps on noneconomic damages:* Kirk Johnson of the AMA is correct when he says this will substantially decrease the cost of professional liability insurance. This is supported by Patricia Danzon, Ph.D., of the Wharton School, who believes that malpractice claims could be reduced by as much as 20-25% with damage caps.

3. *Better defined boundaries for compensation for economic damages:* These should be tied to factors such as a person's age, life expectancy, severity of injury, and a realistic assessment of loss of earnings. Also, damages should be discounted for collateral sources of payment.

4. *Discourage frivoulous lawsuits and limit fees earned by lawyers on a contingency basis:* We believe that the current system of contingency fees has helped fuel the "lottery mentality" and has resulted in suits which should never have been filed. Not only has this helped clog the legal system, but has dramatically increased defense costs. In our company alone, cost of defending claims has tripled from 1979 to 1983 in spite of the fact that 62% of our claims are closed with no indemnity payment.

In summary, we are pleased to note that already lawmakers in 32 states have enacted bills in an effort to lessen this crisis. However, local judicial interpretation of these laws may override the expressed will of the people and their elected legislators. Therefore, federal legislation is required to speed tort reform and to ensure consistency among states. Solving this crisis in short order is essential because it impact worsens daily.

To those, such as the Association of Trial Lawyers, who say there is no medical malpractice crisis in America, we suggest they:

Ask the emergency department physician in Cook County who will pay $22,012 for a first year's claims made premium (and the tail, to cover future years' exposure, will be an additional $31,180). This physician averages approximately $90,000 in gross income.

Ask the expectant mother in New York who finds that her trusted obstetrician no longer delivers babies because he cannot get insurance.

Ask the emergency department physician who now must report on hospital staff applications the one, two, or more settlements made on his behalf, based on cases in which there was no negligence but in which the insurance companies were forced to settle to avoid the cost of expensive legal defense.

Ask the patient who no longer finds his family physician (or the emergency department physician) as trusting and sympathetic because this doctor is forced to view each patient as a potential lawsuit.

We strongly urge this Congress to pass a much needed tort reform bill, resulting in a health care system which operates more fairly, more efficiently, and more humanely for everyone.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 156. A bill to amend chapter 89 of title 5, United States Code, to provide authority for the direct payment or reimbursement to qualified clinical social workers to clarify certain provisions of such chapter with respect to coordination with State and local law, and for other purposes; to the Committee on Governmental Affairs.

AUTHORITY TO PAY OR REIMBURSE CERTAIN ADDITIONAL HEALTH CARE PROFESSIONALS

● Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing legislation to clarify the conditions under which the services of clinical social workers will be made available to our Nation's Federal employees and their families.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 156

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

AUTHORITY TO PAY OR REIMBURSE CERTAIN ADDITIONAL HEALTH CARE PROFESSIONALS

SECTION 1. Section 8902(k) of title 5, United States Code, is amended—

(1) in paragraph (1), by inserting "(except if, or to the extent that, any such supervision or referral is required under State or

local law, or regulations issued thereunder, as described in subsection (m)(1)(B))" after "practitioner";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (5), respectively;

(3) by inserting after paragraph (1) the following:

"(2)(A) When a contract under this chapter requires payment or reimbursement for services which may be performed by a qualified clinical social worker, an employee, annuitant, family member, or former spouse covered by the contract shall be—

"(i) free to select, and shall have direct access to, such a qualified clinical social worker without supervision or referral by another health practitioner. The provisions of this subsection shall not apply to group practice prepayment plans; and

"(ii) entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.";

(4) in paragraph (3) (as so redesignated by paragraph (2)) by striking "As" and inserting "Subject to subsection (m)(1))(B), as"'

(5) by inserting after paragraph (3) (as so redesignated by paragraph (2)) the following:

"(4) When a contract under this chapter requires payment or reimbursement for services of a health practitioner covered by paragraph (2) or (3), the terms and conditions governing such payments or reimbursements shall (except to the extent otherwise permitted under paragraph (3)(A)) be the same as the terms and conditions applicable under contracts under this chapter requiring payments or reimbursements for services of health practitioners covered by paragraph (1)."; and

(6) by amending paragraph (5) (as so redesignated by paragraph (2)) to read as follows:

"(5) The provisions of this subsection shall not apply to prepayment plans described in section 8903(4) of this title.".

EFFECTIVE DATE

SEC. 3. The amendments made by this Act shall be effective with respect to contracts entered into or renewed for calendar years beginning after the date of the enactment of this Act.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 157. A bill to amend the Native American Programs Act of 1974 to authorize the provision of financial assistance to agencies serving native American Pacific islanders, including American Samoan natives; to the Select Committee on Indian Affairs.

FINANCIAL ASSISTANCE TO NATIVE AMERICAN PACIFIC ISLANDERS

● Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing legislation to amend the Native American Programs Act of 1974 to authorize the provisions of financial assistance to agencies serving native American Pacific islanders, including American Samoans.

American Samoans are like any other native American people: they have unique problems in the areas of health, education, employment, and other social areas. For example, according to the U.S. Census Bureau, the percentage of American Samoans living in poverty in the United States is 27.5 percent, compared to 9.6 percent of the total U.S. population. The incidence of extreme poverty for Samoans is 140-percent higher than for the country as a whole.

In California, 21 percent of Samoan families are below the poverty level, compared with 8.7 percent of all California families. In my home State of Hawaii, 37.5 percent of Samoan families are below the poverty level, compared with 7.8 percent of all families.

The unemployment of Samoans in the United States is much higher than the general population. The 1980 census indicates that 9.7 percent of all Samoans in the labor force are unemployed. In California, 10.1 percent of all Samoans in the labor force are unemployed, a rate of 150 percent of the overall State unemployment rate of 6.5 percent. In Hawaii, the unemployment rate of Samoans is 10.2 percent, more than double the rate of the State as a whole.

In Public Law 97-300, the Job Training Partnership Act, the U.S. Congress expressed concern about the unique and special problems facing the American Samoans in the United States. It is now time to fulfill our Federal responsibility to these needy people. Including American Samoans in the Native American Programs Act will upgrade the standard way of living for these people, and it will provide necessary financial resources for us to address the problems the Samoan people are facing. These native American people represent a true Federal responsibility.

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

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

S. 157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) section 802 of the Native American Programs Act of 1974 is amended by inserting ", Native American Pacific Islanders (including American Samoan Natives)," after "Hawaiian Natives".

(2) Section 803 of such Act is amended by inserting "Native American Pacific Islanders (including American Samoan Natives)," after "Hawaiian Natives,".

(3) Section 807 of such Act is amended by inserting "or Territory" after "State" each place it appears.

(b) The amendments made by subsection (a) shall apply to fiscal years beginning after the date of enactment of this Act.●

By Mr. INOUYE:

S. 158. A bill to authorize the sale of certain fish in the State of Hawaii; to the Committee on Commerce, Science, and Transportation.

AUTHORIZATION OF CERTAIN FISH SALES IN HAWAII

● Mr. INOUYE. Mr. President, I am reintroducing legislation today to help the troubled tuna cannery in Hawaii obtain a sufficient volume of competitively priced tuna to run a viable business.

Under existing Federal law, the Nicholson Act (46 U.S.C. 251) prohibits foreign-flag vessels from landing fish in the United States if these fish are caught by foreign-flag vessels on the high seas. The only exception is for fish landed in the United States pursuant to a treaty or convention to which the United States is a party. Unfortunately, such a treaty is not in effect with the relevant Asian countries, and the Hawaiian tuna packers have been in dire straits due to a lack of resource and lack of business.

Just over 2 years ago, the Hawaiian cannery employed 420 people, with a payroll of over $5 million. It purchased over $2 million worth of fish annually from Hawaiian fishermen and contributed greatly to the State's economy, paying taxes and purchasing equipment. Today the cannery sits dormant, shutdown when Castle & Cooke quit its seafood division, best known as Bumble Bee, in late 1984. After 49 years of being a vital part of the Hawaiian fishing industry, buying surplus catch from Hawaii's fishermen and producing a marketable product, the cannery became uneconomical and had to be closed.

All hope is not lost for the tuna cannery, however, as new efforts are being made to reopen and revitalize the facility. There are plans to colocate the tuna canning lines and ice plant with other elements of the Hawaiian fishing industry, such as the daily fish auction and local fishmarkets. Such a complex could serve as a nexus for the local fishing industry and attract other merchants and seafood establishments. This would provide a big boost to the development of Hawaii's fishing industry.

To get such an operation on its fee, it would be invaluable to be able to supplement local sources of tuna with the significant catch of Japanese vessels. This would provide the volume and consistency of tuna resource necessary to sustain such a complex. Therefore I am reintroducing this legislation, which I first introduced in the 98th Congress, to achieve this goal. It is my hope that my colleagues will recognize and appreciate the unfortunate circumstances which have befallen the Hawaiian tuna industry and will lend their support to this effort to turn the tide on this decline.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 158

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 4311

of the Revised Statutes of the United States, as amended (46 U.S.C. 251) Japanese-flag vessels shall be permitted to land tuna in the State of Hawaii.●

By Mr. INOUYE.

S. 159. A bill to amend title 10, United States Code, to authorize the appointment of health care professionals to the postions of the Surgeon General of the Army, the Surgeon General of the Navy, and the Surgeon General of the Air Force; to the Committee on Armed Services.

SURGEON GENERALS OF THE ARMED FORCES

● Mr. INOUYE. Mr. President, today I am introducing legislation which would provide that various positions within the Department of Defense Health Care Program would be opened up for a range of health care providers, depending upon their administrative and clinical skills.

For example, it is my understanding that the position of Surgeon General of the U.S. Army is not limited to physicians. Instead, such an appointment may be made from officers who have shown by extensive duty in the branch concerned, or by similar duty, that they are qualified for the appointment. The Department of the Army has informed me that the phrase "branch concerned" refers to the six corps of the Army Medical Department and, thus, for example, presumably a military dentist might be appointed to that position.

The legislation which I am introducing today would ensure that each of the Surgeons General and the Assistant Secretary of Defense for Health Affairs shall, in fact, become eligible for interdisciplinary appointments.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 159

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

SECTION 1. SURGEON GENERAL OF THE ARMY.

Section 3036 of title 10, United States Code, is amended—

(1) in subsection (b), by inserting before the period at the end of the third sentence the following: "and shall be appointed as prescribed in subsection (f)"; and

(2) by adding at the end the following new subsection (f):

"(f) The President shall appoint the Surgeon General from among commissioned officers in any corps of the Army Medical Department who are educationally and professionally qualified to furnish health care to other persons, including doctors of medicine, dentistry, and osteopathy, nurses, and clinical psychologists.".

SEC. 2. SURGEON GENERAL OF THE NAVY.

Section 5137 of title 10, United States Code, is amended—

(1) in the first sentence of subsection (a), by striking out "in the Medical Corps" and inserting in lieu thereof "who are educationally and professionally qualified to furnish health care to other persons, including doctors of medicine, dentistry, and osteopathy, nurses, and clinical psychologists"; and

(2) in subsection (b), by striking out "in the Medical Corps" and inserting in lieu thereof "who is qualified to be the Chief of the Bureau of Medicine and Surgery".

SEC. 3. SURGEON GENERAL OF THE AIR FORCE.

The first sentence of section 8036 of title 10, United States Code, is amended by striking out "designated as medical officers under section 8067(a) of this title" and inserting in lieu thereof "educationally and professionally qualified to furnish health care to other persons, including doctors of medicine, dentistry, and osteopathy, nurses, and clinical psychologists".●

By Mr. INOUYE:

S. 160. A bill to amend titles 10 and 37, United States Code, to provide for constructive service credit for specialty nurses and to provide for incentive pay for speciality nurses assigned to remote locations within the Department of Defense; to the Committee on Armed Services.

SOCIAL SECURITY ACT

● Mr. INOUYE. Mr. President, today I am introducing legislation which would provide that the constructive credit provisions of the Federal Code affecting Department of Defense nurses will be appropriately utilized, given the nature of their clinical training.

The legislation which I am introducing today would also provide special incentive pay for those nurse anesthetists who have been assigned to remote locations within the Department of Defense.

Mr. President, I am confident that these provisions will be in the best interest of our military personnel and, accordingly, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 160

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

SECTION 1. CONSTRUCTIVE SERVICE CREDIT FOR SPECIALTY NURSING.

Section 533(b)(1) of title 10, United States Code, is amended by adding at the end the following new subparagraph (G):

"(G) Six months for each year of nursing experience in critical care, surgery, obstetrics, anesthesia, or any other nursing specialty, if appointed in a commissioned grade in an armed force for assignment as a nurse and if the Secretary concerned determines that the number of nurses in that armed force who are qualified in such specialty is critically below the number needed. Advanced training is not required for credit under this clause.".

SEC. 2. INCENTIVE PAY FOR SPECIALITY NURSES ASSIGNED TO REMOTE LOCATIONS.

(a) IN GENERAL.—Chapter 5 of title 37, United States Code, is amended by adding after section 302b the following new section:

"§ 302c. SPECIAL PAY: SPECIALITY NURSES ASSIGNED TO REMOTE LOCATIONS

"An officer on active duty in the Army, Navy, or Air Force who—

"(1) receives service credit for experience in a nursing speciality under section 533(b)(1)(G) of title 10; and

"(2) is assigned to duty at a place designated as a remote location by the Secretary concerned, is entitled to special pay at the rate of $---------- per month.".

(b) CONFORMING AMENDMENTS.—(1) Sections 303a and 306(e) of title 37, United States Code, are amended by inserting "302c," after 302b each place it appears.

(2) The table of sections at the beginning of chapter 5 of such title is amended by inserting after the item relating to section 302b the following new item:

"302c. Special pay: specialty nurses assigned to remote locations.".●

By Mr. INOUYE:

S. 161. A bill to provide for the review of certain authority in certificates issued under the Federal Aviation Act of 1958, and for other purposes; to the Committee on Commerce, Science, and Transportation.

FEDERAL AVIATION ACT

● Mr. INOUYE. Mr. President, I am introducting legislation today to address an outdated land counterproductive aspect of national aviation policy which is creating inequities and inefficiencies for the airline industry.

Since the advent of airline deregulation and the subsequent sunset of the Civil Aeronautics Board [CAB], many burdensome regulations and bureaucracies have been eliminated. One that has not been eliminated, however, is the system of awarding international airline route certificates. Under section 401 of the Federal Aviation Act, the authority exists for the CAB, and therefore its successor agency the Department of Transportation, to award some international route certificates on a periodic basis. On certain closed routes, the CAB has used this authority to award temporary certificates to some airlines while others held permanent certificates for the same route. This procedure has been applied inconsistently from administration to administration and has caused inequities while distorting market competition.

The examples of inequity created by the current system are quite obvious. For instance, on routes to Italy, Transworld Airlines [TWA] holds permanent certificates while Pan American World Airways has only temporary authority. On routes to Great Britain, however, TWA holds temporary certificates while Pan American enjoys permanent status. The reason for this and other discrepancies is merely that different CAB administrations have applied section 401 in different ways. The result is distorted competition on these important routes.

Under the current arrangements of section 401, an airline holding a tem-

porary certificate must face costly route challenges every 3 to 7 years regardless of its service record. These challenges require costly defenses by the incumbent carrier and very rarely result in the transfer of routes. Indeed, to my knowledge there is only one significant example, that being the CAB's removal of Pan American from its Scandinavian route in 1978. In that case, however, the airline was preparing to drop the route anyway, so the CAB action was merely a formality. On the other hand, renewal cases are almost always expensive. One recent certificate renewal cost an incumbent airline $500,000; an expense that was undoubtedly passed on to the consumer. In addition, the length of these temporary certificates is too short for an airline to recoup its investment in a route and thus makes it difficult for that airline to make the policy decisions necessary to get established on that route.

The bottom line on current international certificates policy is that it is an unnecessary burden. The deregulated airline industry is already moved by market pressures which induce airlines to attract customers with superior fares and services. The threat of periodic renewals does little, therefore, but marginally enhance existing market pressures. It is important to note, also, that many of the international routes involved are heavily regulated with fixed fares and limited numbers of flights. In such an environment, a carrier has minimal flexibility and the consumers' choices are by nature limited. Thus to take out an incumbent carrier and put in another who will be subject to the same stringent regulations does little to enhance the consumers' position. Indeed, it would tend to hurt the consumer by replacing an established carrier with one whose continued service of the route is less certain.

To address the situation I have described here, I am introducing legislation today which would transform all current "temporary" route certificates to an indefinite status. To assure that this will not in any way be anticompetitive, the legislation also strengthens and defines the procedure by which the Secretary of Transportation can replace a carrier which is providing relatively inferior service on a route. Thus if the incumbent airline is abusing its route privileges and/or another airline proves it could provide better service on the route, the authority would exist for the Secretary to replace the incumbent carrier. This could be done by application of another carrier or by motion of the Secretary. This is in addition to existing authority established in the Federal Aviation Act allowing the Secretary of Transportation to review carrier performance and replace negligent carriers.

This legislation will in no way effect the State Department's ongoing negotiations to increase international route authority for U.S. carriers. These negotiations have historically been the means by which domestic carriers have been able to enter new routes. Petitioning to replace an incumbent carrier on a route is only resorted to when these negotiations are delayed or proven fruitless. In the majority of cases, however, where it is proven that an additional carrier can service the route effectively, the State Department has been successful in securing that route authority. A recent example of this is People Express Airlines' entry into the Newark to London market as a result of U.S. Government intervention.

All of these arguments make a strong case, I feel, for the swift passage of this legislation. During the last Congress the Commerce Committee held a very successful hearing on this legislation, with the chairman and ranking member of the Aviation Subcommittee expressing their support for the bill. Unfortunately, concerns relating to a very separate issue—the policy of buying and selling of airport slots—were raised last year, leading to some confusion over the certificates issue. As a result no action was taken on this legislation before adjournment. I would like to briefly address this issue at this point so that the same confusion does not reappear this year.

The Department of Transportation released a proposal last year to initiate a buy/sell policy for takeoff and landing slots at high-density airports such as Washington National, O'Hara, and LaGuardia. There were major problems with this proposal and the Commerce Committee took action to delay its implementation. The fact that the buy/sell issue has superficial parallels to the certificates situation created some concern, however a closer examination of the two issues shows the distinct differences between them.

First of all, there is currently a system of allocating slots at high-density airports which has proven effective. With international route certificates, the current system does not work. Indeed the system has never removed an incumbent from a route it was serving. Second, the buy/sell policy of allocating slots would provide a new windfall for the airlines currently holding slots at high-density airports by giving them what has heretofore been a public property. My certificates bill, however, does not give away anything as carriers could still get bumped from the routes they serve at any time. It would also not provide a windfall, but rather would eliminate an unnecessary financial burden. Finally, there is only a finite number of slots at high-density airports and thus airlines without slots would be completely cut off from this resource. Conversely, new international routes are often negotiated with other nations and existing routes can be transferred to new airlines by the authority of the DOT. For these and other reasons, I feel it is clear that the certificates issue should not be confused with the airport slots issue which should, and will, be addressed separately.

In closing I would like to stress this legislation's importance in streamlining the postderegulation aviation environment. By correcting inefficiencies and inequities in the current system, this bill will allow U.S. airlines to better compete with foreign carriers, none of which are subject to temporary route renewals. This bill will also clearly and strongly define the Secretary of Transportation's authority to replace carriers on routes they are serving inadequately. I believe that this is better aviation policy than forcing airlines who have served a route responsibly and effectively for years to jump through hoops which almost never result in improved service but which always involve costly paperwork and red tape cutting.

I ask unanimous consent that this bill in its entirety be printed in the RECORD.

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

S. 161

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 401(d) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371(d)) is amended by adding at the end thereof the following:

"(10)(A) On and after the date of enactment of this paragraph, a termination date in any certificate to engage in foreign air transportation which was issued under this section and is in effect on such date of enactment shall have no effect.

"(B) The Secretary of Transportation may, upon application or on the Secretary's own motion, review the authority to provide foreign air transportation between a particular point or points in any certificates to which subparagraph (A) of this paragraph applies. The Secretary may suspend such authority, and grant authority to provide such foreign air transportation to a qualified applicant for such authority, if the Secretary finds, after notice and an opportunity for a hearing on the record, that the applicant has demonstrated that it can and will provide a substantially improved combination of service and fares or rates in the market or markets, and if the Secretary finds that—

"(i) restrictions arising from the provisions of a bilateral air transport agreement or other agreement or understanding with a foreign country, or otherwise imposed by a foreign country, preclude or make it impracticable for the Secretary to authorize an additional carrier in a particular foreign air transportation market or markets; and

"(ii) suspension and grant to the applicant of such authority would otherwise be con-

sistent with the public convenience and necessity.

"(C) The Secretary may dismiss any application for suspension and grant of authority under subparagraph (B) of this paragraph if the Secretary is not satisfied from the materials submitted with the application that—

"(i) the applicant is qualified;

"(ii) it is probable that the applicant could and would provide substantially improved air service in a restricted market; or

"(iii) proceeding with consideration of the application would otherwise be in the public interest.

"(D) The authority of the Secretary under subparagraphs (B) and (C) of this paragraph shall be in addition to, and shall in no way limit, the Secretary's existing authority under paragraph (8) of this subsection or under subsection (p) of this section.".●

Mr. INOUYE:

S. 162. A bill to amend title 37, United States Code, to provide for special pay for psychologists in the commissioned corps of the Public Health Service; to the Committee on Governmental Affairs.

SPECIAL PAY FOR PSYCHOLOGISTS

● Mr. INOUYE. Mr. President, I am introducing legislation today to amend the U.S. Public Health Service Act to provide those psychologists who are in the Public Health Service Regular or Reserve Corps with the same board-certification/specialty designation pay bonus as their physician colleagues presently receive.

It is my understanding that there are approximately 24 psychologists in the U.S. Public Health Service and, further, that 2 of these individuals have received their board certification from the American Board of Professional Psychology.

In my judgment, it would be most appropriate for the Federal Government to encourage excellence within the ranks of those who provide care to Federal beneficiaries. Further, from a public policy frame of reference, it is important that each of the disciplines be treated in a comparable manner.

Mr. President, I request unanimous consent that a letter I received from Dr. Robert Windom, Assistant Secretary for Health, U.S. Department of Health and Human Services, describing the extent to which our Nation's physicians currently receive this pay bonus, be printed in the RECORD along with the text of my bill.

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

S. 162

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 5 of title 37, United States Code, is amended by inserting after section 302b the following new section:

"§ 302c. Special pay: psychologists in the Public Health Service Corp

"(a) A member who is—

"(1) an officer in the Regular or Reserve Corps of the Public Health Service and is designated as a psychologist; and

"(2) has been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology,

is entitled to special pay, as provided in subsection (b).

"(b) The rate of special pay to which an officer is entitled pursuant to subsection (a) shall be—

"(1) $2,000 per year, if the officer has less than 10 years of creditable service;

"(2) $2,500 per year, if the officer has at least 10 but less than 12 years of creditable service;

"(3) $3,000 per year, if the officer has at least 12 but less than 18 years of creditable service;

"(4) $4,000 per year, if the officer has at least 14 but less than 18 years of creditable service; or

"(5) $5,000 per year, if the officer has 18 or more years of creditable service.".

"(b)(1) Section 303a of title 37, United States Code, is amended by inserting "302c," after "302b," each place it appears.

"(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 302b the following new item:

"302c. Special pay: psychologists in the Public Health Service Corps.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1987 or on the date of the enactment of this Act, whichever is later, and shall apply with respect to pay periods beginning on or after that effective date.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
PUBLIC HEALTH SERVICE,
Washington DC, August 12, 1986.

The Hon. DANIEL K. INOUYE,
U.S. Senate,
Washington, DC.

DEAR SENATOR INOUYE: This is in response to your letter of July 22 requesting information about Board Certified Pay (BCP) paid to medical officers of the Commissioned Corps of the Public Health Service (PHS).

Pursuant to 42 U.S.C. 210(a)(2) commissioned medical and dental officers on active duty in the PHS Commissioned Corps are authorized special pay in the same amounts as, and under the same terms and conditions which apply to, special pay paid to commissioned medical and dental officers of the Armed Forces under chapter 5 of title 37, United States Code. Medical officers of the Armed Forces are authorized BCP pursuant to 37 U.S.C. 302(a)(5). The amount of BCP ranges from $2,000 per year to $5,000 per year, depending on the number of years of creditable service of the officer concerned.

Our records show that during Fiscal Year 1983, 1,182 out of 2,259 medical officers were paid BCP; during Fiscal Year 1984, 1,121 out of 2,127 medical officers were paid BCP; during Fiscal Year 1985, 1,060 out of 1,961 medical officers were paid BCP; and thus far in Fiscal Year 1986, 1,078 out of 1,841 medical officers have received BCP.

Dental officers in the PHS Commissioned Corps are also eligible for BCP pursuant to 42 U.S.C. 210(a)(2) and 37 U.S.C. 302b(a)(5). The amount of BCP for dental officers ranges from $2,000 per year to $4,000 per year, depending on the amount of creditable service of the officer concerned. Currently there are 32 out of 580 active duty dental officers receiving BCP in the PHS Commissioned Corps.

No other category of officers in the PHS Commissioned Corps is eligible for BCP.

Sincerely yours,

ROBERT E. WINDOM, M.D.,
Assistant Secretary for Health.●

By Mr. INOUYE:

S. 163. A bill to provide that a student enrolled in a graduate program in psychology shall be eligible for student loans under the health professions student loan program; to the Committee on Labor and Human Resources.

HEALTH PROFESSIONS STUDENT LOANS

● Mr. INOUYE. Mr. President, today I am introducing legislation which would provide that graduate students in psychology shall be deemed eligible for our Nation's Health Manpower Student Loan Program.

The bill which I am introducing today was adopted during deliberations on the Health Manpower Reauthorization Act during the 98th Congress. Unfortunately, this bill was vetoed by the President.

In my judgment, it is very important and in our Nation's best interest that our Nation's psychology graduate students be deemed eligible for these important student loan programs, especially given the increasing clinical and scientific evidence highlighting the importance of the psychosocial aspects of health care.

Mr. President, I request unanimous consent that the text of the bill be printed in the RECORD.

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

S. 163

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 740(a) of the Public Health Service Act is amended by inserting before the period at the end thereof the following: ", or with any public or nonprofit private institution which has a graduate program in clinical psychology and which is located in a State".

(b) Section 740(b)(4) of such Act is amended by striking out "or" before "doctor of veterinary medicine", and by inserting before the semicolon at the end thereof the following: ", or a doctoral degree in clinical psychology".

(c)(1) Section 740(c)(1) is amended by inserting ", or by graduate programs in clinical psychology," after "veterinary medicine".

(2) Section 740(c)(3)(C) is amended by inserting before the semicolon a comma and "or at a graduate program in clinical psychology".

(d) Section 741(b)(1) of such Act is amended by striking out "or" before "doctor of veterinary medicine", and by inserting before the comma at the end thereof the following: ", or doctoral degree in clinical psychology".

(e) Section 741(c) of such Act is amended by inserting after "veterinary medicine," the following: "or at a graduate program in clinical psychology,".

(f) Section 741(f)(1)(A) of such Act is amended by inserting before the semicolon at the end thereof the following: ", or a doctoral degree in clinical psychology".

(g) Section 741(f)(1)(B) of such Act is amended by inserting before the semicolon at the end thereof the following: ", or at a graduate program in clinical psychology".

(h) Section 741(1) of such Act is amended by striking out "or podiatry"; each place it appears and inserting in lieu thereof "podiatry, or clinical psychology".

(i) The amendments made by this Act shall be effective with respect to loans made on or after the date of the enactment of this Act.

By Mr. INOUYE:

S. 164. A bill to transfer the National Institute of Mental Health to the National Institutes of Health; to the Committee on Labor and Human Resources.

NATIONAL INSTITUTE OF MENTAL HEALTH

Mr. INOUYE. Mr. President, today I am introducing legislation which would transfer the National Institute of Mental Health [NIMH] to National Institute of Health [NIH].

Mr. President, I have proposed such a transfer over the past several years and have been pleased that at various times, my colleagues on the Senate Appropriations Committee have also raised this issue directly with the Department of Health and Human Services.

In my judgment, the time has come to significantly increase our Federal commitment to the research and clinical training programs of the National Institute of Mental Health and, in order to accomplish that objective, I feel that it would be appropriate for the NIMH to become formally part of the NIH, which is, without question, the hallmark of our Federal research initiatives.

Mr. President, few realize that the NIMH was once part of the NIH and I feel that the time has come to return NIMH to its original home.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 164

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Institute of Mental Health Transfer Act of 1987".

SEC. 2. (a) The National Institute of Mental Health is transferred to the National Institutes of Health.

(b) Section 504 of the Public Health Service Act is repealed.

(c) Part C of title IV of such Act is amended by adding at the end thereof the following new subpart:

"Subpart 13—National Institute of Mental Health

"GENERAL PURPOSE OF THE INSTITUTE

"SEC. 464. (a) The general purpose of the National Institute of Mental Health (hereafter in this subpart referred to as the 'Institute') is to carry out the purposes of sections 301 and 303 with respect to mental illness, and to develop and conduct comprehensive health, education, training, research, and planning programs for the prevention and treatment of mental illness and for the rehabilitation of the mentally ill. The Secretary shall carry out through the Director of the Institute the administrative and financial management, policy development and planning, evaluation, and public information functions which are required for the implementation of such programs and authorities.

"ADMINISTRATION

"SEC. 464A. (a) The programs to be carried out through the Institute shall be administered so as to encourage the broadest possible participation of professionals and paraprofessionals in the fields of medicine, science, the social sciences, and other related disciplines. Special consideration shall be given to programs for training and research on the mental health needs of the elderly.

"(b) The Director of the Institute shall designate an administrative unit in the Institute to—

"(1) design national goals and establish national priorities for—

"(A) the prevention of mental illness, and

"(B) the promotion of mental health,

"(2) encourage and assist local entities and State agenices to achieve the goals and priorities described in paragraph (1), and

"(3) develop and coordinate Federal prevention policies and programs and to assure increased focus on the prevention of mental illness and the promotion of mental health.

"(c)(1) The Director of the Institute shall designate an Associate Director for Special Populations.

"(2) The Secretary, acting through the Associate Director for Special Populations, shall—

"(A) develop and coordinate prevention, treatment, research, and administrative policies and programs to assure increased emphasis on the mental health needs of women and minority populations;

"(B) support programs and projects relating to the delivery of mental health services to women and minority populations, including demonstration programs and projects;

"(C) develop a plan to increase the representation of women and minority populations in mental health service delivery and manpower programs;

"(D) support programs of basic and applied social and behavioral research on the mental health problems of women and minority populations;

"(E) study the effects of discrimination on institutions and individuals, including majority institutions and individuals;

"(F) develop systems to assist women and minority populations in adapting to, and coping with, the effects of discrimination;

"(G) support and develop research, demonstration, and training programs designed to eliminate institutional discrimination; and

"(H) provide increased emphasis on the concerns of women and minority populations in training programs, service delivery programs, and research endeavors of the Institute.

"COMMUNITY SERVICES FOR CHRONICALLY MENTALLY ILL INDIVIDUALS

"SEC. 464B. (a) The Secretary, acting through the Director of the Institute, may make grants to States, political subdivisions of States, and private nonprofit agencies for mental health services demonstration projects for the planning, coordination, and improvement of community services for chronically mentally ill individuals, seriously mentally disturbed children, and elderly individuals, and for the conduct of research concerning such services.

"(b) The Secretary may make a grant under subsection (a) for not more than three consecutive one-year periods, except that the Secretary may waive the limitation of this paragraph with respect to a particular grant if the Secretary determines that extenuating circumstances exist which merit such waiver.

"(c) For purposes of subsections (a) and (b) there are authorized to be appropriated $20,000,000 for each fiscal year.

"STATE COMPREHENSIVE MENTAL HEALTH PLANS

"SEC. 464C. The Secretary, acting through the Director of the Institute, may make grants to States for the purpose of developing State comprehensive mental health plans referred to in section 1916(e).

"SUICIDE

"SEC. 464D. (a) The Director of the Institute shall—

"(1) develop and publish information respecting the causes of suicide and the means of preventing suicide; and

"(2) make such information generally available to the public and health professionals.

"(b) Information developed, published, and distributed under this section shall especially relate to suicide among individuals under the age of 21.

"RESEARCH ON MENTAL ILLNESS

"SEC. 464E. The Secretary, acting through the Director of the Institute, may make grants to and enter into cooperative agreements and contracts with public and nonprofit private entities for research on mental illness.".

(d) Section 401(b)(1) of such Act is amended by adding at the end thereof the following new paragraph:

"(M) The National Institute of Mental Health.".

SEC. 3. (a)(1) Subsection (a) of section 501 of the Public Health Service Act is amended by striking out "Alcohol, Drug Abuse, and Mental Health Administration" and inserting in lieu thereof "Alcohol and Drug Abuse Administration".

(b) Subsection (b) of such section is amended—

(1) by striking out "Alcohol, Drug Abuse, and Mental Health Administration" and inserting in lieu thereof "Alcohol and Drug Abuse Administration"; and

(2) by striking out paragraph (3).

(c) Subsection (c) of such section is amended by striking out "Alcohol, Drug Abuse, and Mental Health" in paragraph (1) and inserting in lieu thereof "Alcohol, Drug Abuse".

(d) Subsection (e) of such section is amended—

(1) by striking out "the National Institute of Mental Health,"; and

(2) by striking out the comma after "Alcoholism".

(f) Subsection (k) of such section is amended—

(1) by striking out "Alcohol, Drug Abuse, and Mental Health" in paragraph (1) and inserting in lieu thereof "Alcohol, and Drug Abuse";

(2) by striking out "drug abuse, and mental health" in subparagraph (A) of such paragraph and inserting in lieu thereof "and drug abuse";

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(3) by striking out the comma after "Alcoholism" in the first sentence of paragraph (2)(A) and inserting in lieu thereof "and";

(4) by striking out "Drug Abuse, and the National Institute of Mental Health" in such sentence and inserting in lieu thereof "Drug Abuse"; and

(5) by striking out "drug abuse, and mental illness" each place it appears in the second sentence of such paragraph and inserting in lieu thereof "and drug abuse".

(g) The heading for such section is amended to read as follows:

"ALCOHOL AND DRUG ABUSE ADMINISTRATION"

(h) The heading for title V of such Act is amended—

(1) by striking out "THE NATIONAL INSTITUTE OF MENTAL HEALTH,"; and

(2) by striking out the comma after "ALCOHOLISM".

(i) Section 4011(b) of the Alcohol and Drug Abuse Amendments of 1986 is amended by striking out "504(h)" and inserting in lieu thereof "464D".●

By Mr. INOUYE:

S. 165. A bill to amend title 37, United States Code, to authorize special pay for certain officers of the Armed Forces who obtain certain professional board certifications as psychologists; to the Committee on Armed Services.

SPECIAL PAY FOR OFFICERS

● Mr. INOUYE. Mr. President, today I am introducing legislation which would amend the Department of Defense Authorization statute to provide a special pay incentive for those military psychologists who have obtained their board certification—diploma from American Board of Professional Psychology.

Mr. President, during the last session of Congress the Senate recommended enactment of this legislation as a provision of the fiscal year 1987 Department of Defense authorization bill. Unfortunately, this was deleted in conference; however, the conferees agreed to carefully explore the utilization of nonphysician services, such as those provided by clinical psychologists within the department. Undoubtedly, these forthcoming hearings will provide the committees with jurisdiction with a true appreciation for why this specialty pay bonus is in the best interest of the Department of Defense.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 165

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

SECTION 1. ARMED SERVICE OFFICERS SPECIAL PAY

(a) SPECIAL PAY, PSYCHOLOGISTS—Chapter 5 of title 37, United States Code, is amended by inserting after section 302b the following new section 302c:

"§ 302c. Special pay: psychologists

"(a) An officer who is—

"(1) an officer in a corps of the Army Medical Department, an officer in the Bureau of Medicine and Surgery of the Navy, or an officer of the Air Force designated as a psychologist; and

"(2) has been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology,

is entitled to special pay, as provided in subsection (b) of this section.

"(b) The rate of special pay to which an officer is entitled pursuant to subsection (a) of this section shall be—

"(1) $2,000 per year, if the officer has less than 10 years of creditable service;

"(2) $2,500 per year, if the officer has at least 10 but less than 12 years of creditable service;

"(3) $3,000 per year, if the officer has at least 12 but less than 14 years of creditable service;

"(4) $4,000 per year, if the officer has at least 14 but less than 18 years of creditable service; or

"(5) $5,000 per year, if the officer has 18 or more years of creditable service.".

(b) TECHNICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 302b the following new item:

"302c. Special pay: psychologists.".

(c) CONFORMING AMENDMENT.—Section 303a of title 37, United States Code, is amended by inserting "302c," after "302b," each place it appears.

SEC. 2. EFFECTIVE DATE. The amendments made by section 1 shall take effect with respect to pay periods beginning after September 30, 1987.●

By Mr. INOUYE:

S. 166. A bill to amend section 1086 of title 10, United States Code, to provide for payment under the CHAMPUS Program of certain health care expenses incurred by certain members and former members of the uniformed services and their dependents to the extent that such expenses are not payable under medicare, and for other purposes; to the Committee on Armed Services.

CHAMPUS PROGRAM OF HEALTH CARE EXPENSES

● Mr. INOUYE. Mr. President, today I am introducing legislation to provide continuing coverage under the Department of Defense Civilian Health and Medical Program of the Uniformed Services [CHAMPUS] for those retirees who reach the age of eligibility for Medicare.

Under our current law, when an individual CHAMPUS beneficiary becomes eligible for coverage under Medicare, he or she automatically loses his or her CHAMPUS entitlement. This is not common practice in the private sector and I understand it can be especially traumatic for those families who live overseas. My proposal would make CHAMPUS a second payor to Medicare and only require the Department to cover those services not covered by Medicare.

Legislation has now been enacted into public law, which was recommended by the Veterans' Affairs Committees, to address this problem for those CHAMPUS eligibles who derive their entitlement under the CHAMPVA program. I understand that this constitutes approximately 5 percent of the total CHAMPUS beneficiary population. Essentially, their eligibility for CHAMPUS becomes reinstituted once any part of their Medicare coverage is exhausted. My bill would provide similiar entitlement for the remaining 95 percent of the CHAMPUS population and, further, provide that CHAMPUS will cover expenses that might be in excess of those covered by Medicare.

Mr. President, I request unanimous consent that the text of my bill be printed in the RECORD.

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

S. 166

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

SECTION 1. AMENDMENT TO THE CHAMPUS PROGRAM

(a) REPEAL OF PROHIBITION ON CERTAIN PAYMENTS.—Section 1086(c) of title 10, United States Code, is amended by striking out the second sentence.

(b) AUTHORIZATION FOR PAYMENT TO EXTEND BENEFITS NOT PAYABLE UNDER ANOTHER PROGRAM.—Section 1086(d) of such title is amended to read as follows:

"(d)(1) The provisions of section 1079(j)(1) of this title shall apply to a plan covered by this section.

"(2)(A) The amount payable under a plan covered by this section for items or services for which payment is made under part A or B of title XVIII of the Social Security Act or any other insurance, medical service, or health plan referred to in section 1079(j)(1) of this title shall be reduced by the sum of—

"(i) the amount of the payment made for such items or services under such part;

"(ii) the amount of the payment made for such items or services under any such other insurance, medical service, or health plan; and

"(iii) the amount of any payment made under subsection (b).

"(B) A plan covered by this section shall not be considered a group health plan for the purposes of paragraph (2) or (3) of section 1862(b) of the Social Security Act.

"(C) A person claiming a benefit under a plan covered by this section by reason of the application of this subsection shall certify the cost charged for the items or services to which the claim relates and the amounts referred to in subparagraphs (A)(i) and (A)(ii) that relate to such items or services. A certification made under this subparagraph may be accepted for the purposes of determining the benefit payable under this section.".

SEC. 2. CONFORMING AMENDMENT.

Subsection (d) of section 613 of title 38, United States Code, is repealed.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to health care items or services provided on and after the date of enactment of this Act.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 167. A bill to amend chapter 89 of title 5, United States Code, to provide

authority for the direct payment or reimbursement to nurse midwives, nurse practitioners, and nurses, to clarify certain provisions of such chapter with respect to coordination with State and local law, and for other purposes; to the Committee on Governmental Affairs.

DIRECT PAYMENTS, REIMBURSEMENTS TO HEALTH CARE PROFESSIONALS

● Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing legislation to amend the Federal Employees Health Benefit Act to provide for direct reimbursement of our Nation's nurse practitioners, clinical specialists, nurse anesthetists, and certified nurse midwives.

Mr. President, during the 99th Congress this legislative proposal was passed by both Houses of Congress; but, unfortunately, was contained in a bill which the President ultimately vetoed. Since that time, the Office of Personnel Management [OPM] has conducted a comprehensive review of the practical consequences of providing direct reimbursement for our Nation's professional nurses and has concluded that, essentially there is no reason not to allow Federal employees to be able to select these particular practitioners if they so desire and if the practitioners are functioning within the scope of their State practice acts.

Mr. President, under the Department of Defense CHAMPUS program military dependents have had this ability for a number of years now and I feel that the time has come to provide the same type of flexibility for the Federal Employees Health Benefit Act.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 167

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

AUTHORITY TO PAY OR REIMBURSE CERTAIN ADDITIONAL HEALTH CARE PROFESSIONALS

SECTION 1. (a) Section 8902(k) of title 5, United States Code, is amended—

(1) in paragraph (1), by inserting "(except if, or to the extent that, any such supervision or referral is required under State or local law, or regulations issued thereunder, as described in subsection (m)(1)(B)" after "practitioner";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (5), respectively;

(3) by inserting after paragraph (1) the following:

"(2)(A) When a contract under this chapter requires payment or reimbursement for services which may be performed by a health practitioner referred to in subparagraph (B), an employee, annuitant, family member, or former spouse covered by the contract shall be—

"(i) free to select, and shall have direct access to, such a health practitioner without supervision or referral by another health practitioner. The provisions of this subsection shall not apply to group practice prepayment plans; and

"(ii) entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

"(B) This paragraph applies with respect to a nurse midwife, nurse practitioner, and any other nurse who is licensed or certified as such under Federal or State law, as applicable.";

(4) in paragraph (3) (as so redesignated by paragraph (2)) by striking "As" and inserting "Subject to subsection (m)(1)(B), as";

(5) by inserting after paragraph (3) (as so redesignated by paragraph (2)) the following:

"(4) When a contract under this chapter requires payment or reimbursement for services of a health practitioner covered by paragraph (2) or (3), the terms and conditions governing such payments or reimbursements shall (except to the extent otherwise permitted under paragraph (3)(A)) be the same as the terms and conditions applicable under contracts under this chapter requiring payments or reimbursements for services of health practitioners covered by paragraph (1).";

(6) by amending paragraph (5) (as so redesignated by paragraph (2)) to read as follows:

"(5) The provisions of this subsection shall not apply to prepayment plans described in section 8903(4) of this title.".

(b) It is the intent of Congress that—

(1) nothing in the amendment made by subsection (a) shall interfere with applicable institutional anesthesia practice rules, or State or local law, governing supervision of a certified registered nurse anesthetist by another health practitioner; and

(2) such amendment, as it relates to a certified registered nurse anesthetist, shall apply only with respect to a certified registered nurse anesthetist who is self-employed and licensed or certified under Federal or State law, as applicable.

(c) Regulations or instructions issued to carry out the amendments made by subsection (a) shall reflect the statement of congressional intent set forth in subsection (b).

COORDINATION WITH STATE AND LOCAL LAW

SEC. 2. Section 8902(m) of title 5, United States Code, is amended—

(1) by redesignating paragraph (1) as paragraph (1)(A); and

(2) by adding at the end of paragraph (1)(A) (as so redesignated by paragraph (1)) the following:

"(B) Nothing in this chapter nor in the provisions of any contract under this chapter shall be considered to supersede or preempt any State or local law, or any regulation issued thereunder, which relates to licensing or certification to practice medicine, nursing, or any other health profession.".

EFFECTIVE DATE

SEC. 3. The amendments made by this Act shall be effective with respect to contracts entered into or renewed for calendar years beginning after the date of the enactment of this Act.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S. 168. A bill to amend titles XVIII and XIX of the Social Security Act to provide that clinical social worker services are covered under part B of Medicare and are a mandatory benefit under Medicaid, and for other purposes; to the Committee on Finance.

SOCIAL SECURITY ACT

● Mr. INOUYE. Mr. President, today Senator SPARK MATSUNAGA and I are introducing legislation which would amend our Nation's Medicare and Medicaid Programs in order to provide for the autonomous recognition of the services of our Nation's clinical social workers.

Clinical social workers provide high quality mental health care and medical social services in virtually every component of our Nation's health care system. They are recognized as the largest profession providing mental health services and practice in private, fee-for-service settings, in mental health centers, hospitals, health maintenance organizations [HMO's], family and marital counseling agencies, and many other settings.

I am especially pleased to report that a growing number of social workers specialize in the field of aging. They plan and evaluate services for the elderly, and help them respond to financial and other changes brought on by retirement. In nursing homes, they help patients and their families adjust to illness and the need for institutionalization and health care services. Indeed, the value of social work services in nursing homes was recently reinforced by the Institute of Medicine's 1986 report, "Improving the Quality of Care in Nursing Homes," which included the following recommendation:

> The present social service condition should be changed to require that each facility with 100 beds or more be required to employ at least one full-time social worker.

Without question, clinical social workers contribute essential mental health and health care services to our population. It is my personal goal to amend every one of our Federal health care programs in order to ensure that these practitioners will be deemed truly autonomous providers.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 168

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

SECTION 1. COVERAGE OF CLINICAL SOCIAL WORKER SERVICES UNDER PART B OF MEDICARE.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking out "and" at the end of subparagraph (J);

(2) by adding "and" at the end of subparagraph (k); and

(3) by adding at the end thereof the following new subparagraph:

"(L) clinical social worker services;".

(b) DEFINITION.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end thereof the following new subsection:

"Clinical Social Worker Services

"(ff)(1) The term 'clinical social worker services' means services performed by a clinical social worker (as defined in paragraph (2)) which the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed, whether or not the clinical social worker is under the supervision of, or associated with, a physician or other health care provider.

"(2) The term 'clinical social worker' means an individual who—

"(A) possesses a master's or doctor's degree in social work,

"(B) after obtaining such a degree has performed at least two years of supervised clinical social work, and

"(C) is licensed or certified as a clinical social worker in the State in which the clinical social worker services are performed, or in those States which do not provide for licensure or certification, is listed in a national register of social workers who, by education and experience, qualify as health care providers in clinical social work.".

(C) LIMIT ON PAYMENT OF BENEFITS—Section 1833(c) of such Act (42 U.S.C. 13951(c)) is amended by striking out all that follows "purposes of subsections (a) and (b)" and inserting in lieu thereof "no more than $1,000.".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services performed on or after the first day of the first month which begins more than 60 days after the date of the enactment of this Act.

SEC. 2. COVERAGE OF CLINICAL SOCIAL WORKER SERVICES AS A MANDATORY MEDICAID BENEFIT.

(a) COVERAGE OF SERVICES.—

(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(A) by striking out "and" at the end of paragraph (20);

(B) by redesignating paragraph (21) as paragraph (22); and

(C) by inserting after paragraph (20) the following new paragraph:

"(21) clinical social worker services (as defined in section 1861(ff)(1)); and".

(b) CONFORMING CHANGES.—

(1) Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (10)(A), by striking out "paragraphs (1) through (5) and (17)" and inserting in lieu thereof "paragraphs (1) through (5), (17), and (21)"; and

(B) in paragraph (10)(C)(iv), by striking out "paragraphs (1) through (5) and (17) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (20)" and inserting in lieu thereof "paragraphs (1) through (5), (17) and (21) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (21)".

(2) Section 1902(j) of such Act (42 U.S.C 1396a(j)) is amended by striking "(21)" and inserting in lieu thereof "(22)".

(c) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall be effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning more than 60 days after the date of the enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.●

By Mr. RIEGLE:

S. 169. A bill to provide Federal grants to States for programs to identify and aid individuals who have been exposed to the drug diethylstilbestrol [DES]; to the Committee on Labor and Human Resources.

STATES; PROGRAMS FOR DIETHYLSTILBESTROL-EXPOSED INDIVIDUALS

● Mr. RIEGLE. Mr. President, today I am introducing legislation, similar to legislation I introduced in the 99th Congress, that will hopefully bring to the forefront the plight of those women and their children who have been exposed to the hormone diethylstilbestrol [DES] in our recent past.

The hormone DES was first synthesized in 1938. During the time period from 1941 to 1971, this hormone was prescribed to women to help reduce the risk of miscarriages. Despite studies in the early 1950's demonstrating that the drug was ineffective, the distribution and use continued for another 20 years. It was not until 1971, with the establishment of the definitive link between the development of a rare form of cancer of the cervix and vagina in young women and their exposure to DES of their mothers during pregnancy, that its use was finally discontinued. It is estimated that during this 30-year span of time 4 million sons and daughters were exposed in utero. Since 1971, a stream of reports related to the medical side effects of DES exposure have become known. For the record, I will briefly summarize these findings and will describe them as they relate to DES mothers, daughters, and sons, respectively.

Mr. President, with regard to DES mothers, a study by the Dartmouth Medical School has demonstrated an increased risk of breast cancer in women exposed during pregnancy. A significant aspect of this discovery was the finding that this increased risk did not become clinically evident until 20 years after the actual exposure. As these women age, this risk may become even more pronounced.

With regard to DES daughters, an association between DES exposure during pregnancy and the rare clear-cell adenocarcinoma of the cervix and vagina has been well documented and studied. Over 400 cases have been reported and approximately 1 out of every 1,000 DES daughters will develop this rare cancer before age 32. Twenty-five percent of these cancer victims may die as a result of their exposure. Because of their cancer risk, DES daughters must have special screening examinations by doctors trained in the techniques needed to detect this rare form of cancer. DES daughters also have twice the rate of dysplasia as nonexposed women: in some women, dysplasia is a precancerous condition. For this reason, DES daughters should be especially careful to have regular examinations.

Pregnancy problems are affecting the greatest number of DES daughters. Up to half of all DES daughters will have some kind of problem, including ectopic—(tubal)—pregnancy, miscarriage, and premature labor and delivery. Because of their pregnancy risks, DES daughters must be seen more frequently during pregnancy.

The health risks for DES sons have been less well studied. However, some studies have shown an increased risk of genital problems and infertility among DES sons. Current research is investigating risks associated with testicular cancer. A companion bill is to be introduced by Congressman GUARINI.

This legislation would provide support to States for efforts to identify individuals who were exposed to DES and to help these individuals lessen the serious health risks resulting from exposure to DES. Grants to States would be used to identify women who took DES during pregnancy and the children of these women and to educate the public about the importance of medical care to detect and treat conditions resulting from DES exposure. The establishment of a voluntary State registry would be used for the dissemination of information about DES. The bill also provides for the creation of State programs to help in the development of screening and diagnostic services and the dissemination of information to health care providers.

It is clear that individuals exposed to DES will require regular and periodic evaluations for the rest of their lives. This bill will greatly increase available support for educational activities and the delivery of adequate health services to those in need. With this increase in support we begin to reduce the serious health risks to DES mothers and their children.

In addition, I am introducing a Senate joint resolution which calls upon Congress and the President to proclaim the week beginning April 19, 1987, as "National DES Awareness Week." This week corresponds to the third annual DES Awareness Week sponsored by DES Action, a national organization devoted to helping those exposed to DES. This volunteer group should be commended for their efforts

as a national educational, advocacy, and referral center on behalf of individuals who have been exposed to DES. DES is currently authorized for use to treat certain types of cancer, and as "estrogen replacement therapy" for menopausal women. It is not authorized for use to suppress lactation in women who choose not to breast feed, as a postcoital contraceptive, or in animal feed. Nevertheless, these uses sometimes continue, without evidence of safety. It is only through a greater public awareness of the DES problem will we be able to ascertain the extent and scope of the problem and implement the appropriate care.

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

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

S. 169

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Health and Human Services (hereinafter in this Act referred to as the "Secretary") shall establish a program of grants to States to assist States in establishing programs—

(1) to identify women who took diethylstilbestrol while pregnant;

(2) to identify the children of such women who were exposed to diethylstilbestrol in utero;

(3) to establish a voluntary registry of such individuals to facilitate informing them of new developments related to diethylstilbestrol;

(4) to provide public education regarding the health effects associated with diethylstilbestrol and the importance of medical care to detect and treat such effects;

(5) to provide information to health professions personnel on the necessity of identifying exposed individuals, the health effects associated with diethylstilbestrol, and the provision of medical care for the detection and treatment of such health effects; and

(6) to provide screening and diagnostic services for exposed individuals for health effects associated with diethylstilbestrol.

(b) Any State receiving a grant to operate programs under subsection (a) may operate such programs directly or make grants to public or private organizations within such State to operate such programs.

SEC. 2. (a) No grant may be made under the first section unless an application therefor has been submitted to and approved by the Secretary. Such an application shall—

(1) contain such information and be submitted in such form and manner as the Secretary shall prescribe; and

(2) demonstrate to the Secretary's satisfaction that in each year of participation in the grant program the applicant will obtain the following percentages of its projected budget from non-Federal sources of funding:

(A) At least 25 per centum in the first and second years.

(B) At least 50 per centum in the third year.

(C) At least 65 per centum in the fourth and fifth years.

(b) No State shall be eligible for more than five years of funding under this Act.

SEC. 3. For each fiscal year there is authorized to be appropriated $6,000,000 to carry out this Act. Amounts appropriated under this Act shall remain available until expended.

SEC. 4. This Act shall take effect October 1, 1987.●

By Mr. RIEGLE:

S. 176. A bill to amend title XVIII of the Social Security Act to waive the late enrollment penalty under Medicare part B for any disabled individual who was covered under his own or his spouse's private employment-related health insurance; to the Committee on Finance.

WAVIER OF ENROLLMENT PENALTY FOR DISABLED SPOUSES

● Mr. RIEGLE Mr. President, today I am introducing S. 176, a bill which will eliminate an inequity which exists in the Medicare Program for Social Security disability insurance [SSDI] beneficiaries. I first introduced a similar bill in the 99th Congress, S. 1604, designed to accomplish the same objective. There is a small number of SSDI beneficiaries who are eligible for Medicare but who have failed to enroll because they have health coverage through the extension of their work related health insurance or a spouse's employment related health care plan. If these individuals ever need to enroll in the Medicare part B program, they will be subjected to a 10-percent annual penalty for their delayed enrollment. This bill will address this persistent inequity.

Mr. President, as you know Medicare is a program first enacted in 1965 as title VIII of the Social Security Act to provide financial access to vital health care services to our elderly population. In 1973, Medicare coverage was extended to disabled individuals entitled to Social Security disability insurance for 24 months or more. Since its inception, the program has experienced an enormous growth. In 1987, it is estimated that 28 million elderly and 3 million disabled individuals will receive benefits in the Medicare Program. It is estimated that Medicare expenditures will reach $83.9 billion. It is clear that this program is serving a vital source of access for our seniors and disabled individuals.

When Medicare was first enacted in 1965, a 10-percent annual surcharge was assessed against those who delayed their enrollment in the voluntary part B—supplemental medical insurance—of Medicare. This provision was enacted to create a disincentive for individuals who were planning to delay enrollment until they became ill and in need of health care services. This was a provision based on sound actuarial accounting and was designed to assure a sufficient amount of premiums to assist in the funding of the program. At that time, there was a maximum of a 30-percent penalty because the enrollment period for the part B of Medicare was limited to 3 years. In 1972, the limited enrollment period was abolished. However, Congress failed to repeal or cap the part B surcharge. We now have a small population of individuals who have incurred a substantial penalty for their late enrollment.

According to the Health Care Financing Administration [HCFA], in 1983, 169 seniors were paying a 150 percent penalty and 18 seniors were paying a 160 percent penalty. This penalty is an add-on to their monthly premium payment. There are situations where this surcharge is not only unfair and inequitable but is penalizing American citizens who are actually saving the Federal Government significant Medicare outlays.

Congress recently addressed this problem and rectified a similar circumstance where old age and survivors beneficiaries were being inappropriately penalized. Included in Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 [TEFRA] was the "Working Aged" provisions which made Medicare the "Secondary Payer" for certain elderly workers. The provisions amended the Federal Age Discrimination Employment Act [ADEA] to require employers to offer their employees aged 65 to 69 and their dependents the equivalent health care coverage as their younger employees. It became clear that it would be inappropriate to penalize these individuals and subject them to the part B premium surcharge if enrollment in the part B program would simply duplicate their work-based health care coverage. This inequity was rectified with the passage of Public Law 98-369, the Deficit Reduction Act of 1984 [DEFRA] which exempted these individuals from the surcharge.

The bill I am introducing today, S. 176, like the S. 1604 which I introduced in the 99th Congress, would address another circumstance where individuals are being inappropriately penalized. A small number of disabled individuals who are qualified for Medicare as a result of their eligibility for SSDI, receive their health care coverage through a spouse's employment related health care plan or through the continuation of their own work-related health plan. They are saving the Federal Government health care dollars by their utilization of an employment related plan to cover the expenses of their disability and health care needs and they should not be penalized for their efforts. This bill will eliminate the part B premium penalty for the disabled person and/or disabled spouse who are enrolled in a group health care plan provided by the beneficiary's former employment

or a spouse's current or former employment.

I urge all my colleagues to support this piece of legislation and help to eliminate this inequitable and unfair situation. We must persist in our efforts of making Medicare affordable, accessible and fair in its design and implementation.●

By Mr. RIEGLE:

S. 1781. A bill to provide for a system of cost sharing for health care and uncompensated care, and for other purposes; to the Committee on Finance.

HEALTH CARE FOR THE UNINSURED ACT OF 1987

● Mr. RIEGLE. Mr. President, today I am reintroducing S. 1781, the Health Care for the Uninsured Act. As I indicated in my original introductory remarks on October 21, 1985, largely reproduced below, this bill will address the need of the growing number of individuals and families in this country who are finding themselves without the financial access to health care. These Americans who are being denied access to our health care system, represent a growing segment of our population. It is now estimated that there are 37 million individuals who lack either a public and/or private form of health care coverage. This represents a 40-percent increase since 1980.

Since I first introduced a bill on this subject in December of 1982, the problem has only grown by leaps and bounds. The time is now for this Congress to get down to business and address this national tragedy. The underlying reasons for this increase in uninsuredness are complex. There has been a clear movement in recent years to increasingly look at health care simply as an economic commodity rather than a basic social necessity. This has been to the benefit to certain segments of the health care community while excluding an increasing number of Americans from our health care system. We must also look at the reductions in funding for the Federal Government's health care programs we have experienced over the last 6 years. In addition, it was recently pointed out that there are two current developments that are likely to make this bad situation even worse. First there is the recent enactment of the new immigration bill that will grant amnesty to some 3 to 6 million currently undocumented residents. Many of these individuals lack health insurance. Also, the AIDS epidemic threatens an already stressed public health system that is in no position to provide the extraordinary medical care required by AIDS patients.

The number of uninsured fails to include the millions of Americans who have inadequate insurance, which the American Medical Association recently estimated to include an additional 75 million persons under 65 years of age.

This is not an academic or statistical problem. There is scientific evidence to suggest that the lack of health insurance, and the resulting failure to seek medical attention, actually leads to needless suffering, or in some cases even death. The failure of millions of Americans to have access to health care services is an indictment of our health care system and of our political system, which, at least up to this point, has failed to respond in any systematic way to this critical problem. The Federal Government can no longer ignore what can only be called a national disgrace. Five million Americans report annually that they do not seek health care because they are unable to pay for it. Due to our inaction, Americans are needlessly suffering preventable illness and are literally experiencing premature death.

The increase we are witnessing in uninsuredness is a phenomenon that should not be ignored by those of us making public policy. As a result of Federal policy, through tax deductions and Federal health insurance, we have already made the decision to spend considerably more dollars on health care for middle- and upper-class citizens than we do for poor and working lower-middle class Americans. In fact, in our zeal to reduce spending in existing Federal health programs, we have indirectly made it significantly more difficult for those without insurance to secure health care. Hopefully, S. 177 will start the long overdue dialog on how we can solve this tragic problem during a period of Federal austerity.

The approach outlined in S. 177 is not the only way of dealing with this critical problem. It is my hope that this legislation can serve as the starting point for a comprehensive analysis of all possible solutions including the input and guidance of the business community, health care providers, consumer groups and other interested parties.

The problem of individuals and families without health insurance is documented by the increase in uncompensated care incurred by hospitals for the delivery of charity care and care to those with limited ability to pay. This increase in uncompensated care has led to the restriction and elimination of services by selected hospitals and a rise in the number of Americans who have been refused care because of a real or perceived inability to pay. As the health care market becomes more competitive, the lack of access to health care services for uninsured persons will only increase unless action is taken now.

During the consideration of my "Health Insurance for the Unemployed Workers Act of 1983," there were those who felt that we should broaden the scope of the discussion and look at the entire uninsured population and their relationship to those hospitals that deliver a disproportionate share of uncompensated care within their respective communities. Since that time, as I have mentioned, the number of individuals without insurance has grown and the ability of health care systems to serve these individuals has diminished. Therefore, I have broadened the focus of my earlier legislative initiatives on this issue to include not only the unemployed uninsured, but also the working uninsured and other individuals who lack access to health care.

S. 177, the "Health Care for the Uninsured Act of 1987"—like S. 1781 introduced in the 99th Congress—is designed to address this serious problem in a manner that will be implemented at the State level and, in keeping within the constraints created by high Federal deficits, will require no new Federal expenditures. In the remaining portion of my statement, I will in a more detailed fashion illustrate who these uninsured Americans are, the impact this lack of access to health care is having on them personally, and examine the consequences for certain hospitals serving a large number of uninsured individuals. I will then briefly review the major objectives of S. 177, and how implementation will help to alleviate this situation.

THE UNINSURED IN AMERICA

It is becoming increasingly clear that the entire population of uninsured Americans is a diverse segment of the population, spanning all age groups, employment status and income levels. In contrast to the common misconception, this is not solely a poverty or welfare issue. It is necessary to examine in detail various demographic characteristics of this population, for a better understanding of the problem so that we can move toward more equitable and insightful solutions.

EMPLOYMENT STATUS

The individuals who are uninsured find themselves in all employment categories.

First. Employed and uninsured: It is true that the majority of Americans presently have health care coverage through the workplace. A Department of Labor study of health insurance coverage in 1979, estimated that 75 percent of the civilian labor force had group health coverage through their place of employment. A 1984 survey demonstrated that 97 percent of full-time employees of medium and large firms had health insurance covering them for most categories of hospital and medical costs. So it may come as a surprise to some that the majority of the uninsured are actually employed individuals and their families.

The National Center for Health Services Research [NCHSR] has estimated that the employed may account

for close to 75 percent of the uninsured in this country. The uninsured workers most at risk are young persons with poor economic circumstances, lower level of education, and limited means to obtain coverage. They tend to come from occupations displaying seasonal employment patterns and less technically skilled positions such as in agriculture, construction, sales, and personal services. Many are self-employed or underemployed, or are working less than full-time, which makes them ineligible for coverage even if a plan is offered to full-time employees; 85 percent of the uninsured workers received wages less than $5 an hour and have annual earnings less than $10,000.

Many would say that a large proportion of the employed uninsured simply decide not to participate in an employer-sponsored plan. However, the NCHSR, demonstrated that close to 90 percent were unable to obtain insurance through their employment either because a plan was not offered or the worker was ineligible. It is essential that we not be deluded into believing that inadequate financial access to health care is a problem only faced by our unemployed population. Employment may insure access for millions of Americans, but it very much depends on the type and location of employment.

Second. Unemployed and uninsured: It was the plight of the unemployed worker and his/her family that drew our attention to the possible loss of health care coverage during he last recession. The return of double digit unemployment focused our attention on the needs of the unemployed. The 97th and 98th Congress saw multiple proposals to alleviate or reduce the burden faced by many of these families. I first introduced legislation S. 2798, 97th Congress, on December 10, 1982, during the peak of the previous recession to provide health insurance for the unemployed. It was actually the severe unemployment in my home State of Michigan that first drew my attention to the needs of those who lacked health care coverage. We were very close to seeing enactment of legislation that would have lent relief to many of the recently unemployed. The Congressional Budget Office estimated that following the most recent recession that about 5.3 million recently laid off workers had lost coverage under an employer-based health benefit plan. If the dependents of these individuals are included the number increases to 10.7 million persons who lacked health insurance coverage in December 1982 because of job loss.

Many of these employer-based health benefit plans may actually have provided for conversion from the group rate to an individual rate. Yet how many unemployed persons can afford the increased premium of an individual plan, without an employer contribution at a time when they are least able to pay. In 1984, 51 percent of the recently unemployed in the Detroit area lacked health care coverage. In addition, despite limited incomes, these families frequently fail to meet the categorical requirement of the public assistance health programs such as Medicaid, which frequently does not provide assistance to two parent families, independent of a family's financial need for services.

OTHERS

Finally, there is a substantial number of individuals with no recent involvement in the labor market. They are comprised of discouraged workers, individuals in school, and dependents who might not be covered by a spouses plan. Many of these individuals are living below the poverty threshold, yet again they fail to qualify for programs such as Medicaid and Medicare.

The employment characteristics of the uninsured family will undoubtedly vary from region to region depending on the economic circumstances, the degree of industrialization and unionization, and the specifics of individual States; public assistance programs. Yet despite this variability, it is a national problem with large numbers of uninsured individuals living in our cities, towns and rural areas.

INCOME STATUS

As can be deduced from the fact that many of these uninsured persons are working individuals and their families, this is not solely a poverty or welfare issue, though a disproportionate number of the uninsured are represented by low income families. A recent analysis of the current population survey by the Urban Institute demonstrated that 35 percent of the uninsured were from families with incomes below the poverty line. However, 65 percent had incomes above poverty with 11 percent actually having incomes 4 times the poverty threshold. Any legislative attempt to address this problem should provide access to health care coverage for all individuals, independent of their financial status. Individuals with the financial resources should be asked to pay their fair share for the care received while individuals unable to afford the full cost of health care coverage should be asked to contribute based on their ability to pay. The bill I am introducing today accomplishes this objective.

AGE DISTRIBUTION

The age distribution of the uninsured is of particular concern to me for it again spans all ages. However, it seems to affect women and children in a disproportionate manner; 11 million or close to one-third of the uninsured, are children. In addition, 17 percent of all women in the reproductive age, 15 to 44 and more than 25 percent of women in their prime child bearing years, 18 to 24, have no form of health insurance and are unlikely to be able to afford adequate care without it. There are also close to 6 million individuals who are middle aged or in their presenior years who lack coverage. This is particularly alarming, considering the increased cost of medical care required as persons grow older. It seems that the only population that we have assured adequate financial access to health care are our senior citizens, who at this point are relatively well protected by Medicare. It is estimated that of the 27 million elderly in this country, only 0.7 percent were without health care coverage. This is a commendation for a program which recently celebrated its 20th anniversary.

A SERIOUS PROBLEM—GETTING WORSE

The problem of health care for the uninsured looms heavily over the health care system. There are multiple trends at present which will only worsen the situation. These include, but are not limited to the following categories.

CONTINUED ESCALATION OF HEALTH CARE COSTS

The Department of Health and Human Services [HHS] has estimated that in 1984, our Nation spent over $387 billion on health care. This represents approximately 10.6 percent of our gross national product [GNP]. The increasing costs is also making it difficult for those who lack an employment-based plan to afford the cost of care.

THE INABILITY TO COST SHIFT

In the past, the care for those with a limited ability to pay was shifted to those who were able to pay. As we continue to move toward a competitive market for health care, it is becoming increasingly more difficult to shift the burden of charity care to other payers in both the public and private sector. This is presently seen with the transition of Medicare under the new prospective payment system [PPS] where the cost of charity care has not been incorporated into the system. The emergence of alternative delivery systems in the private sector such as health maintenance organizations [HMO's] and preferred provider organizations [PPO's], along with employers' growing interest in becoming self-insured, is making it difficult for these costs to be absorbed by other payers.

REDUCTIONS IN PUBLIC HEALTH PROGRAMS

There have been major reductions in health care program expenditures during the first 6 years of this administration. Many of these reductions have hurt children and low-income families lack adequate access to care.

METAMORPHOSIS OF THE HOSPITAL INDUSTRY

The hospital industry is in tremendous flux, which is being generated in part by the new Medicare prospective payment system, the continued efforts

to contain costs, and recent reductions in hospital utilization. Two changes are directly affecting access for those who find themselves uninsured. The first is the increase in proprietary—for-profit—hospital chains. It has been demonstrated time and again that these chains serve a disproportionately small number of individuals who lack an ability to pay. The second is hospitals' continued fulfillment of their Hill-Burton "Charity Care" obligation. It is estimated that as of January 1, 1984, 28 percent of hospitals that had received Hill-Burton funds had retired their 20-year free care obligation.

Each of the above trends will only continue to place a continued stress on the health care system. This stress is evidenced by the increasing difficulties uninsured individuals are having in gaining access to the health care system.

IMPACT OF UNINSUREDNESS

Many researchers have demonstrated that those individuals and families who lack health insurance have much different health care utilization patterns of health care services. The frequently have poorer health status, utilize less physician and hospital services. The care is fragmented, acute, and more expensive. It is usually received in hospital emergency rooms, or public hospital out-patient clinics. There is also much less use of preventative services which could reduce the need for hospitalization.

However, as the amount of uncompensated care incurred by hospitals increases, they will be less able to deliver even this less than optimal type of care. The time has come once again when those individuals lacking health insurance are being turned away. A recent Robert Wood Johnson report documented that in 1982, over 1 million families were refused care because of a presumed inability to pay. The problem of "Refusal of Care" is faced by many of those described above. The refusal can take the form of several new practices which are increasing in frequency in this country. They include: patient dumping, preadmission deposits, and the actual reduction of certain services by hospitals.

PATIENT DUMPING

Patient dumping is the practice of transferring a person in need of emergency services from one hospital to another because of the inability to pay. It is frequently from a private or proprietary hospital to a public or teaching hospital. To demonstrate the burden faced by many of these public hospitals, the public hospitals accounted for only 22 percent of hospital charges in 1984, and yet delivered 40 percent of the uncompensated care in this country. In Florida, for-profit hospitals make up nearly 50 percent of hospitals, yet accounted for only 4.2 percent of the State's care for the poor. The problem is further illustrated by the testimony of Dr. Gordon Schiff, a physician from Cook County Hospital, who stated before the Senate Special Committee on Aging, that the number of inpatient economic transfers had increased 500 percent since 1979. This same story is told from State to State across this country. Sixty Minutes, the CBS News magazine program in 1985, broadcasted a segment entitled the "Billfold Biopsy" which documented the problem of patient dumping at Parklawn Hospital in Dallas. A more recent program on Public Television entitled, "Health Care on the Critical List" documented similar practices.

PREADMISSION DEPOSITS

The practice of requiring preadmission deposits from uninsured individuals is becoming commonplace in many parts of this country. The deposit can range from anywhere from a few hundred to a few thousand dollars. If the deposit is not available, the patient is told he or she will have to look elsewhere for care. There are numerous reported cases where women in labor, or persons in need of surgery were told to seek care elsewhere.

REDUCTION OF SERVICES BECAUSE OF UNCOMPENSATED CARE

As the burden of charity care increases and is placed increasingly upon the shoulders of the public and teaching hospitals, the ability of these hospitals to deliver such care is becoming increasingly difficult. The uncompensated care incurred by hospitals in 1982, was $6.2 billion an increase of 27 percent since 1978. Many hospitals faced with financial instability may have to eliminate services which account for a large portion of uncompensated care including obstetrical and maternity care, neonatal intensive care, and out-patient ambulatory services. Once these services are eliminated at the public hospitals, where will these families go for care? The legislation I am introducing today, Health Care for the Uninsured Act of 1987, provides at least one answer to that question.

INCREASING INFANT MORTALITY

It seems inconsistent that a nation that spends over a billion a day on health care, and has the most advanced medical technology in the world, should have so many millions of individuals who lack basic access to these vital services. The impact of these discrepancies is becoming increasingly evident in the health of our Nation.

The infant mortality rate has long been used by nations as a gauge of the health of a society. In 1950, the United States ranked fifth as compared to other industrialized countries. In 1982, we had dropped to 17th. In addition, there are numerous reports of the infant mortality rate actually starting to increase in certain urban centers including Detroit, Boston, and the District of Columbia. Despite the continued improvement for white children, it appears that we will not meet the goals set for 1990 by the U.S. Public Health Services for infant mortality of minority children. Undoubtedly, the reasons are complex, but certainly two of the reasons must be the recent reduction of health care services for those in need, and a health environment which turns people away when they are most in need of services.

Summary of provisions is as follows:

HEALTH CARE FOR THE UNINSURED ACT OF 1987

[Summary of Provisions]

INTENT AND PURPOSE

The purpose of S. 177 is to utilize the existing health care delivery system to provide access to health care services for those who are unable to afford care under the current health care environment. By the use of a "pooling mechanism", an attempt will be made to address the two serious problems described above which includes:

1. Providing health care to any eligible uninsured individual in each state; and to,

2. Provide a mechanism of cost sharing among hospitals for reimbursement of a portion of the uncompensated care now being delivered.

By addressing both of these interrelated problems, we are attempting to reduce substantially the uninsured population in this country (which itself will reduce the burden on many hospitals), and to address directly the problem of charity care faced by many hospitals today.

IMPLEMENTATION

The bill is designed to involve no new federal expenditures and to allow the states a high degree of flexibility in the design and implementation of the program. The bill allows for three methods to fulfill the intent of the legislation.

1. If a state has enacted a program, or is in the process of drafting legislation which will address these problems on a statewide basis, a waiver provision is provided which will allow the state to continue with its current plans.

2. If a state has no plan, S. 177, provides a model "State Health Care Pool", which defines who is eligible, a minimum benefits package, financing mechanisms of the pool, and the various cost-sharing components.

3. Finally, if the state fails to implement either of the previous two provisions, the Federal Government will institute the "State Health Care Pool" and monitor its progress.

THE MODEL STATE HEALTH CARE POOL

As previously mentioned, the State health care pool will provide health care services to the uninsured through a Health Care Program, and reimburse hospitals for a portion of their uncompensated care in a manner proportional to the amount of uncompensated care they deliver. The pool will be financed from a variety of revenue sources so as to help maintain the solvency of the pool. These include;

First. Existing and perhaps new funding by State, counties and local municipalities;

Second. Premiums from those who utilize the Health Care Program portion of the pool. These individuals will pay the premium on a sliding scale based on their ability to pay; and

Third. A tax on the net operating revenues of the hospitals in the State, exempting certain hospitals based on the amount of care which is delivered to low-income individuals in the State, composite of Medicaid and uncompensated care. Those hospitals which are currently providing care for individuals who are unable to pay at twice the State average will be exempt. In addition, 30 percent of the funds from the health care pool will be returned to all hospitals in a manner proportional to the amount of uncompensated care which is delivered.

Mr. President, the other major provisions of S. 177, includes provisions for enrollment, needs assessment and outreach, additional cost-sharing, and the care for those with a preexisting condition. These will be further clarified in the section-by-section analysis of the bill to follow and with the text of the bill itself.

Mr. President, as I mentioned before, I am reintroducing S. 177, not as the ultimate answer to the problem of uninsuredness in this country, but as the starting point in a national debate on the issue. We must begin to address this very serious problem, and I urge all my colleagues to join in their support and cosponsorship for this bill.

Mr. President, I also request, that the section-by-section analysis and the bill itself be included in the RECORD at this point.

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

S. 177

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 "Health Care for the Uninsured Act of 1987".

SEC. 2 STATE PROGRAMS.

(a) IN GENERAL.—

(1) STATE POOLS.—Each State may establish a program pursuant to this section which provides for a health care pool to make health care available to any eligible uninsured individual in the State, and which provides for cost sharing among hospitals for uncompensated care provided by hospitals in the State.

(2) FEDERAL ALTERNATIVE.—If a State does not establish a program pursuant to this section, the Federal program established pursuant to section 5 shall apply in such State, and the tax imposed pursuant to section 4285 of the Internal Revenue Code of 1986 shall apply to hospitals in such State.

(b) STATE PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—A State program meets the requirements of this section if such program—

(A) establishes and maintains a health care pool which meets the requirements of subsection (c);

(B) is approved by the Secretary of Health and Human Services (hereinafter referred to in this Act as the "Secretary"); and

(C) provides such information to the Secretary as the Secretary may require in order to evaluate the State program.

(2) WAIVER AUTHORITY.—The Secretary may waive the requirements of this section and approve a State program if the Secretary determines that such program substantially provides the same results, with respect to uninsured individuals and hospitals which provide uncompensated care, as would the program specified in this section.

(c) STATE HEALTH CARE POOL.—A State health care pool is an entity established under State law for the purposes of—

(1) providing health care, through insurance or otherwise, to all uninsured individuals residing in the State; and

(2) sharing among all hospitals in the State the costs of uncompensated care provided by any such hospital.

(d) POOL FINANCING.—The State shall ensure the solvency of the health care pool through any combination of—

(1) premiums collected pursuant to section 3(d), but subject to the limitations contained in such section;

(2) revenues from the hospital tax required under section 4(b), but subject to the limitations contained in such section; and

(3) funds provided by the State or political subdivisions thereof.

SEC. 3. HEALTH CARE PROGRAM.

(a) IN GENERAL.—The State health care pool shall provide health care, through insurance or otherwise, to all uninsured individuals (as defined in subsection (b)) residing in the State.

(b) UNINSURED INDIVIDUAL.—For purposes of this section, an uninsured individual is any individual who—

(1) is not eligible to be covered under any employment-based health plan (provided by insurance or otherwise) by reason of his own employment or the employment of his spouse or parent, including any postemployment extended eligibility provided at the same rate and with the same employer cost sharing as are provided to employees; and

(2) is not eligible for the Medicare program under title XVIII of the Social Security Act or for medical assistance under a State Medicaid plan approved under title XIX of such Act.

(c) REQUIRED BENEFITS.—

(1) IN GENERAL.—The health care pool must provide for a program which provides, either through insurance or otherwise, including (but not limited to) the use of health maintenance organizations or State-established preferred provider arrangements, at least the following benefits:

(A) Inpatient hospital services.

(B) Emergency outpatient hospital services.

(C) Routine and emergency physician services (including those provided in health clinics).

(D) Prenatal, delivery, and post partum care.

(E) Laboratory and diagnostic X-ray services.

(F) X-ray, radium, and radioactive isotope therapy.

(G) Services of a nurse midwife, described in section 1905(a)(17) of the Social Security Act.

(H) Home health services in cases where the State determines that the coverage of such services is cost effective.

(I) Drugs or bioligicals provided as part of inpatient hospital services.

(2) AMOUNT, DURATION, AND SCOPE.—The State shall determine the amount, duration, and scope of the covered services described in paragraph (1) which shall be included under the program, but in no event shall the amount, duration, or scope of such services under the program under this section be less than the amount, duration, or scope of such services included under the State Medicaid plan for medical assistance for individuals described in section 1902(a)(10)(A) of the Social Security Act.

(d) PREMIUMS.—

(1) COLLECTION OF PREMIUMS.—Each uninsured individual who wishes to secure health care through the health care pool shall pay a premium for such coverage determined in accordance with paragraph (2).

(2) AMOUNT OF PREMIUM.—(A) The amount of the premium shall be determined on a sliding scale based upon the individual's family income as follows:

(i) In the case of an individual whose family income equals or exceeds 200 percent of the official proverty line for a family of that size (established by the Office of Management and Budget), the premium shall be equal to 120 percent of the actuarial value of the group benefit package provided.

(ii) In the case of an individual whose family income is below 100 percent of such poverty line, the premium shall be a nominal amount, or there shall be no premium.

(iii) In the case of an individual whose family income equals or exceeds 100 percent of such poverty line, but is less than 200 percent of such poverty line, the premiums shall be set based upon a sliding scale between the two premium amounts established under clauses (i) and (ii), but may not exceed 100 percent of the actuarial value of the group benefit package provided.

(B) For purposes of determining family income, the State shall require certification and periodic recertification in the same manner as is required under the State's program of aid to families with dependent children under part A of title IV of the Social Security Act, but in no case may recertification be required more often than on a quarterly basis.

(C) The Secretary shall establish a uniform definition of family income which shall apply to all States. Such definition shall be consistent with the definition used by the Office of Management and Budget for purposes of establishing the poverty line referred to in subparagraph (A).

(e) DEDUCTIBLES AND COINSURANCE.—The State may require that deductibles and coinsurance amounts be imposed for users of services under the program. If the State chooses to require such deductibles and coinsurance amounts, the combined value of the deductibles and coinsurance may not exceed 8 percent of the actuarial value of the benefit package provided.

(f) OPEN ENROLLMENT.—The health care pool shall provide for open enrollment in the program of health care, upon giving 30 days notice of the intent to enroll or disenroll.

(g) PREEXISTING CONDITIONS.—Coverage under the program may not be limited or denied by reason of any preexisting illness or medical condition.

(h) NEEDS ASSESSMENT AND OUTREACH PROGRAM.—The State shall conduct an ongoing program to—

(1) assess the need within the State for health care provided through the health care pool; and

(2) notify individuals who may be eligible for health care through the pool of the ex-

istence of such care and how to obtain such care.

SEC. 4. UNCOMPENSATED HOSPITAL CARE.

(a) IN GENERAL.—A State health care pool shall provide for sharing among all hospitals in the State of the costs of uncompensated care provided by any hospital in such State.

(b) TAX ON HOSPITAL REVENUES.—In order to comply with the requirements of section 2, the State law must require (except as otherwise provided in section 2(b)(2)) that each hospital in the State be subject to a tax on the operating net revenue of such hospital, the proceeds from which shall be used by the health care pool. Not less than 30 percent of such proceeds must be used to compensate hospitals in the State, in proportion to the amount of otherwise uncompensated care provided by each hospital.

(c) UNCOMPENSATED CARE.—For purposes of this section, uncompensated care is charity care, and other care provided by a hospital for which a bill is presented, but payment for which is not made within 6 months, after all reasonable efforts at collection have been made from the patient and from any third party which may be liable for such payment.

(d) HOSPITALS SUBJECT TO POOL AND TAX REQUIREMENTS.—(1) For purposes of this section, all hospitals located in the State shall be subject to participation in the health care pool and to the tax imposed pursuant to subsection (b), except hospitals operated by the Federal Government, psychiatric hospitals, and rehabilitation hospitals.

(2) for purposes of this section, a hospital shall be exempt from the tax imposed pursuant to subsection (b) for any taxable year if such hospital is—

(A) providing uncompensated care at a rate equal to or greater than 200 percent of the State average (as determined by the State for the most recent taxable year for which data is available); and

(B) providing care to individuals eligible for medical assistance under the State's plan approved under title XIX of the Social Security Act at a rate equal to or greater than 200 percent of the State average (as determined by the State for the most recent taxable year for which data is available).

SEC. 5. FEDERAL PROGRAM.

(a) SECRETARY SHALL ESTABLISH PROGRAM.—The Secretary of Health and Human Services shall establish a health care pool for any State which does not have in effect a State program approved pursuant to section 2(b) of this Act. Except as otherwise provided in this section, the Secretary shall operate such program in the same manner as the States are required to operate State programs under section 2.

(b) FINANCING OF PROGRAM.—

(1) IN GENERAL.—The Federal program in effect in any State pursuant to this section shall be financed by the hospital tax collected from hospitals in such State under section 4285 of the Internal Revenue Code of 1986, and from premiums collected. Not less than 30 percent of the proceeds from tax collected in any State must be used to compensate hospitals in such State for otherwise uncompensated care, in the same manner as is required under section 4, with payments to hospitals being made not less frequently than quarterly. If, after providing for a health care program and compensating all hospitals in the State for all otherwise uncompensated care, any amounts remain in the State's special account (established under paragraph (2)), such amounts shall be refunded to the hospitals in such State, in proportion to the amount of such tax paid by each hospital.

(2) SPECIAL ACCOUNTS.—(A) The Secretary of the Treasury shall establish a special account in the Treasury for each State for which the Secretary of Health and Human Services has established a program under this section. Such account shall be used to operate the health care pool established by the Secretary for such State.

(B) There are hereby appropriated into each such account—

(i) amounts equivalent to the taxes received in the Treasury under section 4285 of the Internal Revenue Code of 1986 from hospitals located in such State, and

(ii) amounts collected by the Secretary of Health and Human Services as premiums from individuals enrolled in the health care program established through the health care pool in such State.

(C) The amounts appropriated by subparagraph (B) shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c) EXCISE TAX ON HOSPITAL SERVICES.—

(1) IN GENERAL.—Chapter 33 of subtitle D of the Internal Revenue Code of 1986 (relating to miscellaneous excise taxes) is amended by inserting after subchapter C the following new subchapter:

"Subchapter D—Hospital Services

"Sec. 4285. Imposition of tax.
"Sec. 4286. Definitions.
"Sec. 4287. Time for filing return; estimated tax payments.

"SEC. 4285. IMPOSITION OF TAX.

"(a) TAX IMPOSED.—There is hereby imposed on hospital services a tax equal to 3 percent of the net hospital charges for the taxable year of any hospital which is located in a State and is not subject to a program of such State approved under section 2 of the Health Care for the Uninsured Act of 1987.

"(b) PAYMENT OF TAX.—The tax imposed by this section shall be paid by the hospital.

"SEC. 4286. DEFINITIONS.

"For purposes of this subchapter—

"(1) NET HOSPITAL CHARGES.—The term 'net hospital charges' means the excess (if any) of—

"(A) the hospital charges of the hospital for such taxable year, over

"(B) the hospital charge reductions of the hospital for such taxable year.

"(2) HOSPITAL CHARGES.—The term 'hospital charges' means the amount imposed by the hospital for hospital services, ambulatory services, and ancillary services.

"(3) HOSPITAL CHARGE REDUCTIONS.—The term 'hospital charge reductions' means the amount which equals—

"(A) uncollectable hospital charges, including bad debts,

"(B) the value of uncompensated care, and

"(C) contractual adjustments and discounts.

"(4) HOSPITAL.—The term 'hospital' shall not include—

"(A) any hospital operated by the Federal Government,

"(B) any psychiatric hospital,

"(C) any rehabilitation hospital, or

"(D) any hospital which is—

"(i) providing uncompensated care (as defined in section 4 of the Health Care for the Uninsured Act of 1987) at a rate equal to or greater than 200 percent of the State average (as determined by the Secretary of Health and Human Services for the most recent taxable year for which data is available); and

"(ii) providing care to individuals eligible for medical assistance under the State's plan approved under title XIX of the Social Security Act at a rate equal to or greater than 200 percent of the State average (as determined by the Secretary of Health and Human Services for the most recent taxable year for which data is available).

"SEC. 4287. TIME FOR FILING RETURN; ESTIMATED TAX PAYMENTS.

"(a) TIME FOR FILING RETURN.—

"(1) IN GENERAL.—Each hospital on which a tax is imposed by section 4285 for any taxable year shall file a return of such tax no later than the time for filing the return of tax imposed by chapter 1 for such taxable year.

"(2) TAXABLE YEAR.—For purposes of this chapter, the taxable year of any hospital shall be—

"(A) such hospital's taxable year for purposes of chapter 1, or

"(B) if there is no taxable year for purposes of chapter 1, the calendar year.

"(b) ESTIMATED TAX PAYMENTS.—For purposes of sections 6154 and 6655, any tax imposed by section 4285 shall be treated as a tax imposed by section 11.".

(2) CONFORMING AMENDMENT.—The table of subchapters for chapter 33 of such Code is amended by inserting after the item relating to subchapter C the following new item:

"SUBCHAPTER D.—Hospital services.".

SEC. 6. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in paragraph (2), this Act shall become effective on the first day of the nineteenth month beginning after the date of the enactment of this Act.

(2) The Secretary of Health and Human Services may delay for up to 12 months the effective date of this Act with respect to any State if the Secretary determines that such State requires extra time to comply with the requirements of this Act due to existing contracts, the schedule of the State legislature, or other factors which the Secretary determines make compliance within 18 months impossible.

(b) HOSPITAL TAX.—The tax imposed by section 4285 of the Internal Revenue Code of 1986 shall apply to taxable years ending in or after the first month for which the provisions of this Act apply to the State in which the hospital is located, but only with respect to revenues received in or after such first month.

HEALTH CARE FOR THE UNINSURED ACT OF 1987—SECTION-BY-SECTION ANALYSIS

The purpose of this bill is to utilize the existing health care delivery system to provide access to health care services for those who are currently unable to afford care under current reimbursement mechanisms. This is accomplished by the creation of insurance pools which would make health care available based on the ability to pay. It would also reimburse hospitals for a portion of their uncompensated care.

SECTION 1

Section 1, provides for the short title of the bill, which is the "Health Care for the Uninsured Act of 1987."

SECTION 2

Section 2, mandates that a mechanism be established within each state to address the health care needs of the uninsured individuals in a state, and the uncompensated care incurred by hospitals for treating this uninsured population. The bill then allows three approaches to address these problems.

1. The first approach would require the establishment of a "State Health Care Pool", which then implemented will accomplish the two stated objectives of this legislation.

2. If a state does not establish the program or receive a waiver by the Secretary of Health and Human Services (HHS), the model "State Health Care Pool", will be implemented at the Federal level.

3. The bill grants the Secretary of HHS the authority to grant a waiver to a State, if the Secretary determines that an independently formulated state plan will provide similar results as the model "State Health Care Pool". Such a program must be approved by the Secretary and the states must provide sufficient information to the Secretary to assist in such approval.

The section then outlines the operating and financing mechanisms for the "State Health Care Pool". The "State Health Care Pool", must provide health care, through insurance or otherwise and contribute to the cost of uncompensated care incurred by hospitals. To maintain its solvency, this section delineates the revenue sources including:

1. Funding by States, counties, and municipalities,

2. Premiums from those accessing the "Health Care Program" portion of the pool,

3. Revenues from a tax on the operating net revenues of the hospitals in a state.

SECTION 3

Section 3, outlines the provisions of the "Health Care Program", portion of the model "State Health Care Pool." It describes the uninsured population to be served, the collection of premiums, deductibles, and coinsurances, the minimum benefit package, and a needs assessment and outreach provision.

Uninsuredness

The uninsured population, is defined and includes those individuals and their families who are not eligible for an employment-based health care plan, and those who are not eligible for either Medicaid or Medicare.

Mininum benefit package

The minimum benefit package in the "Health Care Program", could be delivered through a variety of health care delivery systems including but not limited to traditional insurance coverage, Health Maintenance Organizations (HMO's) and Preferred Provider Organizations (PPO's).

The benefits must include Inpatient hospital services; emergency outpatient services; physician services; perinatal services; Laboratory and diagnostic X-ray services; nurse midwife services; home health care services; and inpatient drugs.

Premiums

The premium payments of each person who would seek health care coverage through the pool, will be determined on the basis of a family's financial status.

1. Those individuals with family incomes below the Federal Poverty threshold would pay no premium or a nominal premium.

2. Those individuals with family incomes greater than 200 percent of poverty, would be required to pay a premium equal to 120% of the actuarial value of the group benefit package being offered.

3. Those individuals with income between 100 and 200 percent of the poverty level, would pay a premium on a sliding scale between the two payment levels described above, but no more than 100% of the actuarial value of the group benefit package.

Deductibles and coinsurance

The State may require the deductibles and coinsurance be imposed for users of the "Health Care Program", and if implemented must not exceed 8 percent of the actuarial value of the benefit package.

Enrollment

The bill requires an open enrollment within 30 days as part of the "Health Care Program."

Preexisting conditions

The bill prohibits the denial of coverage or the limitation of benefits due to a pre-existing medical condition.

Needs assessment and outreach

Finally, the bill requires that the state conduct a needs assessment to determine the extent of their uninsured population, and that they conduct an ongoing outreach program to notify those individuals who may be eligible for entrance into the program.

SECTION 4

This section creates a mechanism for both raising revenues and reimbursing hospitals in a proportional manner for the amount of uncompensated care that is being delivered. Hospitals already providing a disproportionate share of charity would be exempt from any new revenue burdens. The exemption for disproportionate share hospitals would be determined by excluding those hospitals serving two times the state average of both Medicaid and uncompensated care patients.

With regard to returning these funds to the hospitals, the provision provides that a minimum of 30 percent of the hospital revenues collected will be used for the reimbursement of hospitals. Uncompensated care is defined as charity care and/or other care for which a bill is presented and for which no payment is received within 6 months.

SECTION 5

This section outlines the mechanism that the Secretary of HHS will use to implement the "State Health Care Pool", at the Federal level if the state fails to do so. It includes the following:

1. the establishment of a special account in the Treasury for each state to be utilized in the carrying out of the provisions of this bill,

2. the imposition of a 3% net hospital revenue tax, to assist in the financing of the pool, along with the premiums, deductibles and coinsurances previously discussed,

3. a provision that once the pool is solvent, and all uncompensated care has been reimbursed, the remaining revenues from the hospital tax will be reimbursed to the hospitals in proportion to the amount of tax originally collected.

SECTION 6

This section provides for the effective dates of the legislation beginning on the nineteenth month after the date of enactment. In addition, for states unable to respond to the new requirements under this legislation within an eighteen month period, the Secretary may delay implementation of this act for an additional 12 months.

By Mr. RIEGLE (for himself and Mr. CRANSTON):

S. 178. A bill to amend the Social Security Act to provide for improved procedures with respect to disability determinations and continuing disability reviews and to modify the program for providing rehabilitation services determined under such act to be under a disability, and for other purposes; to the Committee on Finance.

SOCIAL SECURITY DISABILITY BENEFICIARY REHABILITATION ACT OF 1987

● Mr. RIEGLE. Mr. President, today I am again reintroducing legislation—first introduced in the 98th Congress and again in the 99th Congress to reform the Social Security Disability Insurance [SSDI] program. This legislation is almost identical to S. 1721 which I introduced on October 1, 1985, together with my colleague from California [Mr. CRANSTON]. That legislation was an improved version of S. 2369, which I introduced on February 29, 1984, during the 98th Congress. Unfortunately, S. 1721 did not receive any action during the 99th Congress.

During a period extending over a year and a half, my staff and I worked with representatives from a coalition of national organizations representing disabled persons in an effort to improve the first version of this legislation. Working closely with members of my staff, and after months of meetings and review, this coalition has played a vital part in helping to design significant and needed improvement in the SSDI Program. The groups that were part of this coalition that helped design and endorse this approach are as follows:

American Psychological Association.
American Rehabilitation Counseling Association.
American Association for Counseling and Development.
American Mental Health Counselors Association.
Association for Retarded Citizens—U.S.
Epilepsy Foundation of America.
International Association of Psychosocial Rehabilitation Services.
National Alliance for the Mentally Ill.
National Association of Private Residential Facilities for the Mentally Retarded.
National Association of Social Workers.
National Association of State Mental Retardation Program Directors.
National Association of Rehabilitation Facilities.
National Council of Community Mental Health Centers.
National Easter Seal Society.
National Mental Health Association.
National Rehabilitation Counseling Association.
United Cerebral Palsy Association, Inc.

The legislation we are introducing today is designed to improve the Social Security Disability Insurance determination process in a way that better meets the needs of disabled persons while saving Federal dollars. Rarely do we have the opportunity to improve the working of a Federal pro-

gram, better meet the needs of its beneficiaries, and save Federal funds. I believe the legislation we are introducing today accomplishes all of those objectives.

RETIREMENT VERSUS DISABILITY

The origins of the Social Security Disability Program demonstrate that the program was not designed to meet the unique needs of disabled persons. The legislative history shows that the first benefits for disabled persons—enacted in 1954 in Public Law 761, 83d Congress—were not disability benefits. Rather, provisions were enacted to protect retirement benefits for totally disabled persons who were forced to leave the work force prematurely. This was the so-called disability freeze provision.

To overcome the opposition to creating a new program specifically for disabled persons, the proponents of disability insurance initially presented their proposal as a modification of the retirement program in the form of a reduction in the retirement age of disabled persons. In fact, the first cash benefits for disabled persons—enacted in 1955 in Public Law 880, 84th Congress—was part of a package to reduce the age that individuals become eligible for retirement benefits; disabled persons at age 50 and women at age 62.

In 1960—enacted as Public Law 88-778—the age limitation for cash disability benefits was eliminated. Nevertheless, the underlying basis of the program, that is, a cash benefit program providing for the early retirement of disabled persons, has never been modified. Although over the years amendments were added to the Social Security Act attempting to reorient the early retirement basis of the SSDI Program, the underlying philosophical basis remains unchanged.

CURRENT SITUATION

Mr. President, it is unfortunate that the SSDI Program is seen by many as an early retirement program for people too disabled to continue working. In June of 1980, Congress enacted Public Law 96-265 which included a provision, section 221(i), requiring the ongoing review of disability beneficiaries, the CDI's. In part, many of the difficulties that resulted from the CDI's stem from the incompatibility of an ongoing review and the underlying early retirement orientation of the SSDI Program.

Mr. President, because the modern SSDI Program has evolved from an early retirement program for disabled workers, the concept and application of the CDI's is incompatible with the underlying originating principles of the program. Most individuals perceive retirement as a permanent condition not subject to external review. Before the statutory enactment of the CDI's Social Security reviewed only those disabled beneficiaries to whom they told upon initial allowance that a reexamination would be scheduled. Those were mostly individuals who had conditions that were likely to improve.

For the vast majority of beneficiaries, a review of their disability status was not envisioned. Before enactment of the CDI provisions, beneficiaries not scheduled or diaried for review were treated in the same manner as retired beneficiaries. The only procedural check utilized to determine the continued eligibility for benefits was the voluntary self-reporting on the part of the beneficiaries. Again, for the nondiaried SSDI beneficiaries, both within the mind of the beneficiary and within the minds of the administrators of the program, entitlement was seen as lasting until death or until the beneficiary voluntarily reported a change in his or her condition, such as returning to work.

Mr. President, the political pressures that necessitated the early retirement orientation of the SSDI Program have passed, and I believe it is time to reshape the program to provide benefits for disabled persons, as opposed to early retirees. This objective can be most easily accomplished by modifying the underlying orientation away from early retirement toward benefits and services for disabled persons. This can be done largely by modifying the determination process and without expanding the universe of individuals eligible for cash benefits.

In addition, a program truly geared to the needs of disabled persons, providing them with rehabilitation services—in addition to cash benefits—will result in many disabled beneficiaries leaving the disability rolls. The result should be the savings of significant funds while directly meeting the needs of disabled persons.

A reoriented program should be designed along similar lines for disabled recipients of SSI benefits, and the bill I am introducing today accomplishes both of these objectives.

PROVISIONS OF S. 178

Mr. President, as I have mentioned, the objective of this legislation is to redirect the SSDI Program away from the retirement model and toward a program specifically designed to meet the needs of disabled workers. In doing this, we will more adequately address the needs of newly disabled Americans and reduce cash outlays, thereby helping to secure the financial integrity of the Disability Insurance Trust Fund.

The bill I am proposing does not entail a radical reworking of the existing program because Congress has in fact been moving in this direction through piecemeal reforms over the last three decades. I am simply proposing to integrate many of the previous reforms—which were just tacked on to existing procedures—into a unified system by altering the methods used for evaluating eligibility for benefits.

Under the current system, an individual applying for disability benefits is only evaluated from the narrow perspective of establishing the existence of a medical disability. An applicant has an incentive to heighten the severity of the disabling conditions while the administrators have an incentive to minimize existing maladies. Under current practice, a very complex determination is made with regard to the severity and duration of the disabling condition, and then a decision is made regarding whether a benefit is either awarded or denied. At no point in the process is the Social Security Administration providing—nor is it expected to provide—assistance to these disability applicants beyond, of course, the cash benefit for those who are eligible.

Mr. President, the provisions of S. 178 would alter the incentives contained in the current program by integrating a vocational rehabilitation evaluation into the initial and ongoing determination process. Even though such a determination is currently required under section 222 of the Social Security Act, it is ignored in practice. Since the Beneficiary Rehabilitation Program [BRP] was essentially repealed in 1981, the State disability examiners have no incentives for evaluating the rehabilitation potential of SSDI applicants.

Hence, all of the cost savings which the Social Security Administration has determined result from beneficiary rehabilitation are lost under the present evaluation procedures. It was in 1981, that the Social Security Administration found that savings to the Disability Insurance Trust Fund ranged between $1.39 and $2.72 for every $1 spent on vocational rehabilitation services for DI beneficiaries. Social Security Bulletin, February, 1981/Vol. 44, No. 2, pp. 1-8.

The legislation I am proposing today does not resurrect the Beneficiary Rehabilitation Program, which was cost effective in spite of the lack of precision the program had in providing rehabilitation funds for beneficiaries most likely to benefit from such services. What I'm proposing in this legislation is to require an initial evaluation of rehabilitation potential along with the medical determination of a disability.

Prospect beneficiaries would be divided into the following groups based upon the extent and duration of their disabling condition:

First, those with long-term or permanent disabilities—that is, those not subject to the mandatory CDI review under 221(i); or

Second, those with disabilities that are anticipated to last more than 12 months but where it is reasonable to

anticipate improvement or change in the disabling condition at some point after the 12 month period—that is, those subject to the mandatory CDI review under 221(i); or

Third, to those individuals under a disability albeit not sufficiently severe nor anticipated to last more than 12 months that is, those individuals who would be denied cash benefits under the law.

This is similar to the procedure used under current law and is basically the method used for determining for cash benefits. However, during the same period of evaluation for cash benefits, the prospective beneficiary would be assessed for rehabilitation potential, and one of the three following determinations would be made:

First, the prospective beneficiary cannot benefit from rehabilitation services; or

Second, rehabilitation services would be of benefit to the prospective beneficiary, albeit it is extremely unlikely to result in an effort to return to work and eventually in the cessation of cash disability benefits; or

Third, there is the possibility that rehabilitation services will result in an effort to return to work and thereby in the eventual cessation of cash benefits.

Mr. President, under S. 178 all individuals would be required to go through both the disability determination and rehabilitation evaluation before they would be notified of the results of either exam. The universe of individuals who would be eligible for cash benefits would include only those individuals who would be eligible under current law.

The major difference with the current program is that for the first time there would be a workable requirement that applicants be evaluated for rehabilitation potential and where appropriate, referred to rehabilitation providers. Those for whom it was determined that rehabilitation would provide some benefit but not lead to an attempt to return to work would be directed to the State agency or rehabilitation services.

For those individuals the State would provide—as required under current law—services with funds available through the State Grant Program—the section 101 program of the Rehabilitation Act. For those individuals where there is a possibility that rehabilitation services will result in successful return to work effort and therefore in the eventual cessation of benefits, Social Security will refer that individual to a rehabilitation provider, whether public or private, who can best meet the rehabilitation needs of the SSDI beneficiary.

Because a judgment has been made that these individuals have the best chance of returning to work and dropping off of the disability rolls, the cost of rehabilitating these individuals would be financed out of the Social Security Disability Trust Fund. Under this program and with the careful selection of rehabilitation candidates—as previous experience has demonstrated—the trust funds should experience a net surplus of dollars.

Mr. President, it is important to note that the scope of rehabilitation services envisioned under this legislation follows section 103, of the Rehabilitation Act, and is extremely broad. Therefore, this legislation envisions Social Security providing a wide range of rehabilitation services for individuals where the possibility of a return to work effort exists. For example, section 103(a)(4) of the Rehabilitation Act, includes within the scope of rehabilitation services, among other items:

Physical and mental restorative services, including, but not limited to, (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment * * * .

Therefore, it would be possible, under this bill, for the Social Security Administration to provide certain health services not ordinarily provided for under the Medicare or Medicaid Programs, assuming that such services would result in the removal of barriers to employment.

All of the cash beneficiaries in receipt of rehabilitation benefits would be exempt from the current CDI reviews and would be monitored by SSA through rehabilitation reports that all providers of rehabilitation services would be required by statute to provide. These reports would be required at a minimum of once every 3 years for all beneficiaries who were not permanently disabled. The rehabilitation report would include an assessment of the beneficiaries' progress in the rehabilitation program including any improvement that might affect the disability status of the beneficiary, including, but not limited to a return to work effort.

The Social Security Administration would evaluate the rehabilitation report to determine whether a review of the disability status of the beneficiary would be appropriate. All of the beneficiaries not in a rehabilitation program are reviewed within the same intervals as under current law and regulations.

In an effort to remain consistent with the SSI Program, and since similar principles apply to SSI disabled recipients, who in many cases are also in need of rehabilitation services, the bill we are introducing today also extends the modifications in the eligibility determination process to the SSI Program.

Mr. President, what I am proposing today represents a significant improvement in the Social Security Disability Program with only relatively minor modifications in the current program. S. 178 takes the final step in completing a series of reforms which Congress initiated soon after the enactment of the original program. With the modifications I am proposing today, we can, for the first time, say we have a national disability program that is designed to address the unique needs of disabled Americans.

Mr. President, I ask unanimous concent that the full text of S. 178 be printed in the RECORD at this point.

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

S. 178

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 "Social Security Disability Beneficiary Rehabilitation Act of 1987".

SEC. 2. (a)(1) Section 221(a)(1) of the Social Security Act is amended—

(A) by striking out "and of" and inserting in lieu thereof ", the disability category that best describes the condition of such individual, and";

(B) by striking out "(A)" each place it appears and inserting in lieu thereof "(i)";

(C) by striking out "(B)" each place it appears and inserting in lieu thereof "(ii)";

(D) by inserting "(A)" after the paragraph designation; and

(E) by adding at the end thereof the following new subparagraphs:

"(B) In making a determination with respect to whether an individual is under a disability (as defined in section 223(d)), the State agency making such determination or the Secretary, as the case may be, shall at the same time determine which of the following disability categories best describes the condition of such individual at the time such determination is made:

"(i) The individual is under a disability (as defined in section 223(d)) that is permanent and can not benefit from vocational rehabilitation services (as described in section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723)) or from comprehensive services for independent living (as described in title VII of such Act (29 U.S.C. 796 et seq.)).

"(ii) The individual is under a disability that is permanent, is unlikely to engage in substantial gainful activity (in the case of an individual making application for benefits under section 202(d) or 223) or any gainful activity (in the case of an individual making application for benefits under subsection (e) or (f) of section 202) in the future, but can benefit from vocational rehabilitation services or comprehensive services for independent living.

"(iii) The individual is under a disability that is permanent, can benefit from vocational rehabilitation services, and, if provided with such services, would possibly engage in substantial gainful activity or any gainful activity, as the case may be, as the result of having been provided with such services.

"(iv) The individual is under a disability that is not permanent and cannot benefit from vocational rehabilitation services.

"(v) The individual is under a disability that is not permanent, is unlikely to engage in substantial gainful activity or any gainful activity, as the case may be, in the future, but can benefit from vocational rehabilita-

tion services or comprehensive services for independent living.

"(vi) The individual is under a disability that is not permanent, can benefit from vocational rehabilitation services, and, if provided with such services, would possibly engage in substantial gainful activity or any gainful activity, as the case may be, as the result of having been provided with such services.

"(vii) The individual is under a medically determinable physical or mental impairment that is not a disability (as defined in section 223(d)), and could possibly benefit from vocational rehabilitation services provided under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

"(viii) The individual is under a medically determinable physical or mental impairment that is not a disability, and could not benefit from vocational rehabilitation services.

"(ix) The individual is not under a disability or any other medically determinable physical or mental impairment.

Determinations under this subparagraph shall be made in accordance with standards promulgated by the Secretary in consultation with the Commissioner of the Rehabilitation Services Administration of the Department of Education.

"(C) Notice to an individual of a decision by the Secretary with respect to whether an individual is under a disability (as defined in section 223(d)) shall include, in addition to the matters required to be included in the notice of such decision under section 205(b)(1)—

"(i) an explanation, in understandable language, of the reasons why the State agency or the Secretary, as the case may be, has determined that a particular disability category set forth in subparagraph (B) best describes the condition of such individual; and

"(ii) in the case of an individual with respect to whom it is determined that vocational rehabilitation services or comprehensive services for independent living would be beneficial—

"(I) a statement that such individual is eligible for such services;

"(II) a brief explanation of the disability review provisions of subsection (i) and the application of such provisions to such individual; and

"(III) information with respect to how to apply for such services.

"(D) The Secretary shall take such steps as may be necessary to ensure that—

"(i) all determinations required by this paragraph are made in a timely manner, and

"(ii) the payment of benefits to disabled individuals under this title is not delayed by reason of such determinations.".

(2) Section 221(c)(1) of such Act is amended by inserting ", that a different disability category set forth in subsection (a)(1)(B) best describes the condition of such individual," after "(as so defined)".

(3) Section 221(d) of such Act is amended by striking out "subsection (a)," and inserting in lieu thereof "subsection (a) (including a determination of the disability category set forth in subsection (a)(1)(B) that best describes the condition of an individual), or under subsection".

(4) Section 221(g) of such Act is amended by striking out "(a) shall" and inserting in lieu thereof "(a) (including determinations with respect to which of the disability categories set forth in paragraph (1)(B) of such subsection best describes the condition of an individual) shall".

(b) Section 221(i) of such Act is amended—

(1) in paragraph (1)—

(A) by inserting "and such individual is not eligible for or is not (for any reason) receiving vocational rehabilitation services or comprehensive services for independent living provided in accordance with section 222," after "disability,"; and

(B) by striking out all beginning with "years" through "administration of this title." and inserting in lieu thereof "years in the case of an individual determined under subsection (a)(1)(B) to be under a disability that is not permanent, and at least once every 7 years in the case of an individual determined under such subsection to be under a disability that is permanent."; and

(2) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following new paragraphs:

"(2) In any case in which an individual is or has been determined to be under a disability and such individual is receiving vocational rehabilitation services or comprehensive services for independent living provided in accordance with section 222, the case shall be reviewed by the applicable State agency or the Secretary (as may be appropriate), for purposes of continuing eligibility, whenever such agency or the Secretary concludes, on the basis of a report made in accordance with section 222(b)(2) that such a review is warranted.

"(3) Reviews of cases under paragraphs (1) and (2) shall be in addition to, and shall not be considered as a substitute for, any other reviews that are required or provided for under or in the administration of this title.".

(c)(1) Subsections (a) and (b) of section 222(a) of such Act are amended to read as follows:

"REFERRAL FOR SERVICES

"(a)(1) Except in the case of an individual referred to a facility pursuant to paragraph (2), the State agency making determinations of whether an individual is under a disability (as defined in section 223(d)) or the Secretary, as the case may be, shall promptly refer any individual determined to fall within a disability category set forth in clause (ii), (iii), (v), (vi), or (vii) of section 221(a)(1)(B), to (A) the State agency or agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) for necessary vocational rehabilitation services, or (B) the State unit (if any) designated under section 705 of such Act (29 U.S.C. 796d) to administer a State plan approved under title VII of such Act (29 U.S.C. 796 et seq.) for such services, as may be appropriate.

"(2)(A) If an individual is determined in accordance with paragraph (1) of section 221(a) to be under a disability and to fall within a disability category set forth in clause (iii) or (vi) of subparagraph (B) of such paragraph, the State agency or the Secretary, as the case may be, may refer such individual directly to a facility that has been certified by the Secretary as qualified to be a provider of vocational rehabilitation services and shall make payments directly to such facility for vocational rehabilitation services furnished to such individual.".

"(B)(i) Any individual who—

"(I) is referred under this paragraph to a provider of vocational rehabilitation services, and

"(II) is dissatisfied for any reason with the services of the provider,

may request that the State agency or the Secretary, as the case may be, refer him or her to another provider of such services.

"(ii) The State agency or the Secretary, as the case may be, shall promptly make a determination with respect to such request and notify the individual of the determination. If the request is denied, the notice required by this clause shall contain a statement, in understandable language, of the reason or reasons for the denial of the request.

"(iii) Any individual making a request under this subparagraph shall be entitled to a hearing on the determination made under clause (ii) with respect to the request to the same extent as provided in section 205(b) for decisions of the Secretary, and to judicial review of the final decision made after the hearing, as is provided in section 205(g).

"ELIGIBILITY FOR SERVICES; REPORTING BY REHABILITATION FACILITIES, INDEPENDENT LIVING FACILITIES, AND CERTIFIED PROVIDERS

"(b)(1) An individual determined in accordance with paragraph (1) of section 221(a) to be under a disability or other medically determinable physical or mental impairment and to fall within a disability category set forth in clause (iii), (vi), or (vii) of subparagraph (B) of such paragraph (other than an individual referred to (and receiving vocational rehabilitation services from) a provider in accordance with the provisions of paragraph (2) of subsection (a) of this section) shall be eligible for vocational rehabilitation services provided under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

"(2) An individual determined in accordance with paragraph (1) of section 221(a) to be under a disability and to fall within a disability category described in clause (ii) or (v) of subparagraph (B) of such paragraph shall be eligible for vocational rehabilitation services provided under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) or comprehensive services for independent living provided under title VII of such Act (29 U.S.C. 796 et seq.).

"(3)(A) A facility that—

"(i) is a rehabilitation facility and provides vocational rehabilitation services to an individual described in paragraph (1) or (2) of this subsection (other than an individual determined in accordance with paragraph (1) of section 221(a) to fall within the disability category set forth in subparagraph (B) (vii) of such paragraph) under a State plan approved under title I of the Rehabilitation Act of 1973, or

"(ii) provides comprehensive services for independent living to an individual described in paragraph (2) of this subsection under a State plan approved under title VII of such Act (29 U.S.C. 796 et seq.),

shall report promptly to the agency of such State that determines whether an individual is under a disability (as defined in section 223(d)) or the Secretary, as the case may be—

"(I) the termination of the provision of such services to such individual (and the reason or reasons for such termination); and

"(II) any significant change in the impairment of such individual and any change in the employment status of such individual that might warrant a review with respect to the disability of such individual in accordance with section 221(i).

"(B) A rehabilitation facility that provides vocational rehabilitation services under a plan approved under title I of the Rehabilitation Act of 1973 to an individual deter-

mined in accordance with paragraph (1) of section 221(a) to be under a disability and to fall within the disability category set forth in clause (v) or (vi) of subparagraph (B) of such paragraph shall, in addition to submitting any reports required under subparagraph (A) with respect to such individual, submit a report once every 3 years that evaluates—

"(i) the progress of such individual toward the achievement of the goals established with respect to such individual and included in the individualized written plan of vocational rehabilitation developed for such individual pursuant to paragraph (1) of subsection (e);

"(ii) the likelihood that such individual will engage in substantial gainful activity or any gainful activity, as the case may be, in the future as the result of such services; and

"(iii) any other matters that are relevant to determination or redetermination of the disability status of such individual.

"(C) Failure by a facility described in subparagraph (A) (i) or (ii) to report a change in the condition of an individual described in paragraph (1) or (2) (other than an individual determined to fall within the disability category set forth in clause (vii) of section 221(a)(1)(B)), that such facility knows or has reason to know would result in a determination that such individual is no longer under a disability, shall be a misdemeanor and, upon conviction thereof, shall be punishable by a fine of up to $10,000.

"(D) Any provision of this paragraph that is applicable to a rehabilitation facility shall also apply to a provider of vocational rehabilitation services to which individuals are referred in accordance with paragraph (2) of subsection (a).".

(2) Section 222 of such Act is further amended by striking out subsection (d) and inserting in lieu thereof the following new subsections:

"COSTS OF SERVICES FROM TRUST FUNDS

"(d)(1) For purposes of making vocational rehabilitation services and comprehensive services for independent living more readily available to disabled individuals who are—

"(A) entitled to disability insurance benefits under section 223,

"(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

"(C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

"(D) entitled to widower's insurance benefits under section 202(f) prior to attaining age 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals, the Managing Trustee shall transfer funds from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the manner prescribed in paragraphs (2) and (3).

"(2) The Managing Trustee shall, from time to time during each fiscal year, transfer from the Trust Funds such sums as may be necessary to enable the Secretary to make payments to State agencies administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) and to facilities certified under subsection (a)(2) as providers of vocational rehabilitation services for the reasonable and necessary costs of furnishing vocational rehabilitation services to individuals determined to be under a disability in accordance with paragraph (1) of section 221(a) and to fall within a disability category set forth clause (iii) or (vi) of subparagraph (B) of such paragraph (including services during the waiting periods of such individuals). Payments made under this paragraph shall be made in advance and shall be subject to adjustment on account of underpayments and overpayments.

"(3) The Managing Trustee shall transfer from such Trust Funds each fiscal year such sums as may be necessary to enable the Secretary to reimburse State agencies administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973 and State units designated under section 705 of such Act (29 U.S.C. 796d) to administer plans approved under title VII of such Act for the reasonable and necessary costs of furnishing vocational rehabilitation services or comprehensive services for independent living (including services furnished during waiting periods) under such a plan to individuals determined to be under a disability in accordance with paragraph (1) of section 221(a) of this Act, to fall within a disability category described in clause (ii) or (v) of subparagraph (B) of such paragraph, and to have engaged in substantial gainful activity or any gainful activity, as the case may be, for a continuous period of nine months as a result of such services. The determination that such services contributed to the return of an individual to substantial gainful activity, or any gainful activity, as the case may be, and the determination of the costs to be reimbursed under this paragraph, shall be made by the Commissioner of Social Security in accordance with criteria formulated by the Commissioner. Payments made under this paragraph shall be subject to adjustment on account of underpayments and overpayments.

"(4) Money paid from the Trust Funds under this subsection for the reimbursement of the costs of providing services to individuals who are entitled to benefits under section 223 (including services during the waiting periods of such individuals), or who are entitled to benefits under section 202(d) on the basis of the wages and self-employment income of such individuals, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Secretary shall determine according to such methods and procedures as the Secretary may deem appropriate—

"(A) the total amount to be transferred for the cost of services under this subsection, and

"(B) subject to the provisions of the preceding sentence, the amount that should be charged to each of the Trust Funds.

"INDIVIDUALIZED WRITTEN PLANS OF VOCATIONAL REHABILITATION; STANDARDS FOR PROVIDERS

"(e)(1)(A) A facility that provides vocational rehabilitation services or comprehensive services for independent living to an individual eligible under this section for such services shall do so in accordance with an individualized written plan of vocational rehabilitation for such individual.

"(B) Notwithstanding section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722), the individualized written plan of vocational rehabilitation required by subparagraph (A) shall be developed, implemented, and reviewed in a manner that is, to the greatest extent practicable and consistent with the provisions of this title, the same as the manner in which plans required by section 1507 of title 38, United States Code, are developed, implemented, and reviewed.

"(2)(A) A facility that provides vocational rehabilitation services or comprehensive services for independent living to an individual eligible under this section for such services shall meet such standards as the Secretary may by regulation prescribe.

"(B) In promulgating regulations under subparagraph (A), the Secretary shall consult with the Commissioner of the Rehabilitation Services Administration of the Department of Education and, to the greatest extent practicable and consistent with the purposes of this section, shall incorporate the standards applicable to facilities and providers of such services under titles I and VII of the Rehabilitation Act of 1973 on the day before the date of the enactment of this subsection.

"DEFINITIONS

"(f)(1) For purposes of this section—

"(A) except as provided in paragraph (2), the term 'rehabilitation facility' shall have the meaning given to such term in section 7 (11) of the Rehabilitation Act of 1973 (29 U.S.C. 706 (11));

"(B) the term 'vocational rehabilitation services' shall have the meaning given to such term in section 103 of such Act (29 U.S.C. 723); and

"(C) the term 'comprehensive services for independent living' shall have the meaning given to such term in title VII of such Act (29 U.S.C. 796 et seq.).

"(2) Vocational rehabilitation services and comprehensive services for independent living provided pursuant to this section may be limited in type, scope, or amount in accordance with regulations promulgated by the Secretary in order to ensure that such services are consistent with the purposes of subsection (d).".

(d)(1) Section 222(c)(4)(A) of such Act is amended to read as follows:

"(A) the ninth month in which the individual renders services (whether or not such nine months are consecutive) of any fifteen-month period beginning on or after the first day of such period of trial work; or".

(2) Section 222(c) of such Act is amended—

(A) by striking out "(3) and (4)" in paragraph (1) and inserting in lieu thereof "(3), (4), and (6)"; and

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

"(6) In the case of an individual determined in accordance with paragraph (1) of section 221(a) to be under a disability (as defined in section 223(d)) and to fall within a disability category set forth in clause (iii) or (vi) of subparagraph (B) of such paragraph, subparagraph (A) of paragraph (4) of this subsection shall be applied—

"(A) by substituting 'twelfth' for 'ninth'; and

"(B) by substituting 'twelve' for 'nine'.".

(e) Section 223(d)(4) of such Act is amended by adding at the end thereof the following new sentence: "In determining whether earnings derived from services performed by an individual demonstrate the individual's ability to engage in substantial gainful activity, earnings derived from transitional work, supported work, and services performed in a sheltered workshop shall not be taken into account unless such earnings equal or exceed an amount equal to twice the amount of earnings that (but for this sentence) would result in a determination that such individual is able to engage in substantial gainful activity.".

(f)(1) This section and the amendments made by this section shall become effective on the day that is 180 days after the date of the enactment of this Act.

(2)(A) The amendments made by subsection (a) of this section shall apply to any determination made under subsection (a), (b), or (g) of section 221 of the Social Security Act (including a determination made for purposes of a continuing eligibility review required by subsection (i) of such section) on or after the date on which such amendments become effective.

(B) The amendments made by subsections (b), (c), and (d) of this section shall apply to any individual with respect to whom a determination is made under subsection (a), (c), or (g) of section 221 of the Social Security Act on or after the date on which such amendments become effective.

(3)(A) Subsections (c) and (d) of section 222 of the Social Security Act, as in effect on the day before the date on which the amendments made by this section become effective, shall continue to apply to any individual—

(i) who on such day is entitled to benefits under subsection (d), (e), or (f) of section 202 of such Act by reason of disability or to disability insurance benefits under section 223 of such Act, and

(ii) with respect to whom a determination has not been made under subsection (a), (c), or (g) of section 221 of such Act (as amended by subsection (a) of this section) after such day.

(B)(i) Any individual described in subparagraph (A) who desires to have his or her case reviewed in accordance with the procedures established by the amendments made by subsection (a) of this section may request that a determination be made under the applicable subsection of section 221 of the Social Security Act (as so amended).

(ii) The Secretary of Health and Human Services shall take such steps as may be necessary to ensure that (I) any individual described in subparagraph (A) is informed of the right of such individual to request a review under clause (i) and (II) a prompt determination is made with respect to any individual requesting such a review.

(4) The amendments made by subsection (e) shall apply with respect to months beginning on or after the date on which this section becomes effective.

Sec. 3. (a)(1) Section 1614 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(g)(1) In making a determination under paragraph (2) or (3) of subsection (a) with respect to whether an individual is a blind or disabled individual, the State agency making such determination or the Secretary, as the case may be, shall at the same time determine which of the following disability categories best describes the condition of such individual at the time such determination is made:

"(A) The individual is a blind or disabled individual whose impairment is permanent and who can not benefit from vocational rehabilitation services (as described in section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723)) or from comprehensive services for independent living (as described in title VII of such Act (29 U.S.C. 796 et seq.)).

"(B) The individual is a blind or disabled individual whose impairment is permanent, who is unlikely to engage in substantial gainful activity in the future, but who can benefit from vocational rehabilitation services or comprehensive services for independent living.

"(C) The individual is a blind or disabled individual whose impairment is permanent, who can benefit from vocational rehabilitation services, and who, if provided with such services, would possibly engage in substantial gainful activity as the result of having been provided with such services.

"(D) The individual is a blind or disabled individual whose impairment is not permanent and who can not benefit from vocational rehabilitation services.

"(E) The individual is a blind or disabled individual whose impairment is not permanent, who is unlikely to engage in substantial gainful activity in the future as the result of such services, but who can benefit from vocational rehabilitation services or comprehensive services for independent living.

"(F) The individual is a blind or disabled individual whose impairment is not permanent, who can benefit from vocational rehabilitation services, and who, if provided with such services, would possibly engage in substantial gainful activity as the result of having been provided with such services.

"(G) The individual is not a blind or disabled individual but is under a medically determinable physical or mental impairment, and could possibly benefit from vocational rehabilitation services provided under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 etc. seq.).

"(H) The individual is under a medically determinable physical or mental impairment, but is not a blind or disabled individual and could not benefit from vocational rehabilitation services.

"(I) The individual is not a blind or disabled individual and is not under any other medically determinable physical or mental impairment.

Determinations under this paragraph shall be made in accordance with standards promulgated by the Secretary in consultation with the Commissioner of the Rehabilitation Services Administration of the Department of Education.

"(2) Notice to an individual of a decision under paragraph (2) or (3) of subsection (a) with respect to whether such individual is a blind or disabled individual shall include, in addition to the matters required to be included in the notice of such decision under section 1631(c)(1)—

"(A) an explanation, in understandable language, of the reasons why the State agency or the Secretary, as the case may be, has determined that a particular disability category set forth in paragraph (1) best describes the condition of such individual; and

"(B) in the case of an individual with respect to whom it is determined that vocational rehabilitation services or comprehensive services for independent living would be beneficial—

"(i) a statement that such individual is eligible for such services; and

"(ii) information with respect to how to apply for such services.

"(3) The Secretary shall take such steps as may be necessary to ensure that—

"(A) all determinations under this subsection and paragraphs (2) and (3) of subsection (a) are made in a timely manner, and

"(B) the payment of benefits to blind and disabled individuals under this title is not delayed by reason of such determinations.".

(2) Section 1631(c)(1) of such Act is amended—

(A) by inserting after the second sentence the following: "Each decision by the Secretary with respect to whether an individual is disabled for purposes of receiving benefits under this title shall also contain a statement, in understandable language, of the reasons the individual has been determined to fall within a particular disability category set forth in section 1614(g)(1)."; and

(B) by striking out "or the amount of such individual's benefits" and inserting in lieu thereof "the amount of such individual's benefits, or the disability category set forth in section 1614(g)(1) that best describes the condition of such individual".

(b) Section 1615 of such Act is amended to read as follows:

"SERVICES FOR BLIND AND DISABLED INDIVIDUALS

"SEC. 1615. (a)(1) Except in the case of an individual referred to a facility pursuant to paragraph (2), the State agency making determinations under paragraphs (2) and (3) of section 1614(a) with respect to whether an individual is a blind or disabled individual or the Secretary, as the case may be, shall promptly refer any individual determined to fall within a disability category set forth in subparagraph (B), (C), (E), (F), or (G) of section 1614(g)(1) to (A) the State agency or agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) for necessary vocational rehabilitation services, or (B) the State unit (if any) designated under section 705 of such Act (29 U.S.C. 796d) to administer a State plan approved under title VII of such Act (29 U.S.C. 796 et seq.) for such services, as may be appropriate.

"(2)(A) If an individual is determined in accordance with paragraph (2) or (3) of subsection (a) of section 1614 to be a blind or disabled individual and to fall within a disability category described in subparagraph (C) or (F) of subsection (g)(1) of such section, the State agency or the Secretary, as the case may be, may refer such individual directly to a facility that has been certified by the Secretary as qualified to be a provider of vocational rehabilitation services and shall make payments directly to such facility for vocational rehabilitation services furnished to such individual.

"(B)(i) Any individual who—

"(I) is referred under this paragraph to a provider of vocational rehabilitation services, and

"(II) is dissatisfied for any reason with the services of the provider,

may request that the State agency or the Secretary, as the case may be, refer him or her to another provider of such services.

"(ii) The State agency or the Secretary, as the case may be, shall promptly make a determination with respect to such request and notify the individual of the determination. If the request is denied, the notice required by this clause shall contain a statement, in understandable language, of the reason or reasons for the denial of the request.

"(iii) Any individual making a request under this subparagraph shall be entitled to a hearing on the determination made under clause (ii) with respect to the request to the same extent as provided in section 205(b) for decisions of the Secretary, and to judicial review of the final decision made after the hearing, as is provided in section 205(g).

"(b)(1) An individual determined in accordance with paragraph (2) or (3) of subsection (a) of section 1614 to be a blind or disabled individual or to have some other medically determinable physical or mental impairment, and to fall within a disability category described in subparagraph (C), (F),

or (H) of subsection (g)(1) of such section (other than an individual receiving vocational rehabilitation services in accordance with the provisions of paragraph (2) of subsection (a) of this section) shall be eligible for vocational rehabilitation services provided under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

"(2) An individual determined in accordance with paragraph (2) or (3) of subsection (a) of section 1614 to be a blind or disabled individual and to fall within a disability category set forth in subparagraph (B) or (E) of subsection (g)(1) of such section shall be eligible for vocational rehabilitation services provided under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) or comprehensive services for independent living provided under title VII of such Act (29 U.S.C. 796 et seq.).

"(3)(A) A facility that—

"(i) is a rehabilitation facility and provides vocational rehabilitation services to an individual described in paragraph (1) or (2) of this subsection (other than an individual determined to fall within the disability category described in section 1614(g)(1)(G)), under a State plan approved under title I of the Rehabilitation Act of 1973, or

"(ii) provides comprehensive services for independent living to an individual described in paragraph (2) of this subsection under a State plan approved under title VII of such Act (29 U.S.C. 796 et seq.),

shall report promptly to the agency of such State that determines whether an individual is a blind or disabled individual or to the Secretary, as the case may be—

"(I) the termination of the provision of such services to such individual (and the reason or reasons for such termination); and

"(II) the return to work of such individual.

"(B) Any provision of this paragraph that is applicable to a rehabilitation facility shall also apply to a provider of vocational rehabilitation services to which individuals are referred in accordance with paragraph (2) of subsection (a).

"(c)(1) The Secretary is authorized to make payments to State agencies administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) and to facilities certified under subsection (a)(2) as providers of vocational rehabilitation services for the reasonable and necessary costs of furnishing vocational rehabilitation services to individuals determined to be blind or disabled individuals under paragraph (2) or (3) of subsection (a) of section 1614 and to fall within a disability category set forth in subparagraph (C) or (F) of subsection (g)(1) of such section (including services during the waiting periods of such individuals). Payments made under this paragraph shall be made in advance and shall be subject to adjustment on account of underpayments and overpayments.

"(2) The Secretary is authorized to reimburse State agencies administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973 and State units designated under section 705 of such Act (29 U.S.C. 796d) to administer plans approved under title VII of such Act for the reasonable and necessary costs of furnishing vocational rehabilitation services or comprehensive services for independent living (including services furnished during waiting periods) under such a plan to individuals determined to be blind or disabled individuals under paragraph (2) or (3) of subsection (a) of section 1614, to fall within a disability category described in subparagraph (B) or (E) of subsection (g)(1) of such section, and to have engaged in substantial gainful activity for a continuous period of nine months as a result of such services. The determination that such services contributed to the return of an individual to substantial gainful activity, and the determination of the costs to be reimbursed under this paragraph shall be made by the Commissioner of Social Security in accordance with criteria determined by the Commissioner in the same manner as under section 222(d)(3). Payments made under this section shall be subject to adjustment on account of underpayments and overpayments.

"(d)(1)(A) A facility that provides vocational rehabilitation services or comprehensive services for independent living to an individual eligible under this section for such services shall do so in accordance with an individualized written plan of vocational rehabilitation for such individual.

"(B) Notwithstanding section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722), the individualized written plan of vocational rehabilitation required by subparagraph (A) shall be developed, implemented, and reviewed in a manner that is, to the greatest extent practicable and consistent with the provisions of this title, the same as the manner in which plans required by section 1507 of title 38, United States Code, are developed, implemented, and reviewed.

"(2)(A) A facility that provides vocational rehabilitation services or comprehensive services for independent living to an individual eligible under this section for such services shall meet such standards as the Secretary may by regulation prescribe.

"(B) In promulgating regulations under subparagraph (A), the Secretary shall consult with the Commissioner of the Rehabilitation Services Administration of the Department of Education and, to the greatest extent practicable and consistent with the purposes of this section, shall incorporate the standards applicable to facilities and providers of such services under titles I and VII of the Rehabilitation Act of 1973 on the day before the date of the enactment of this subsection.

"(e)(1) For purposes of this section—

"(A) except as provided in paragraph (2), the term 'rehabilitation facility' shall have the meaning given to such term in section 7(11) of the Rehabilitation Act of 1973 (29 U.S.C. 706(11));

"(B) the term 'vocational rehabilitation services' shall have the meaning given to such term in section 103 of such Act (29 U.S.C. 723); and

"(C) the term 'comprehensive services for independent living' shall have the meaning given to such term in title VII of such Act (29 U.S.C. 796 et seq.).

"(2) Vocational rehabilitation services and comprehensive services for independent living provided pursuant to this section may be limited by the Secretary to the same extent as services of such type are limited under section 222(f)(2).".

(c) Section 1614(a)(3)(D) of such Act is amended by adding at the end thereof the following new sentence: "In determining whether earnings derived from services performed by an individual demonstrate the individual's ability to engage in substantial gainful activity, earnings derived from transitional work, supported work, and services performed in a sheltered workshop shall not be taken into account unless such earnings equal or exceed an amount equal to twice the amount of earnings that (but for this sentence) would result in a determination that such individual is able to engage in substantial gainful activity.".

(d)(1) This section and the amendments made by this section shall become effective on the day that is 180 days after the date of the enactment of this Act.

(2)(A) The amendments made by subsection (a) of this section shall apply to any determination made under paragraph (2) or (3) of subsection (a) of section 1614 of the Social Security Act and any determination made for purposes of a continuing eligibility review required by section 416.989 of title 20, Code of Federal Regulations, on or after the date on which such amendments become effective.

(B) The amendments made by subsection (b) of this section shall apply to any individual with respect to whom a determination is made under paragraph (2) or (3) of subsection (a) of section 1614 of the Social Security Act or pursuant to section 416.989 of title 20, Code of Federal Regulations, on or after the date on which such amendments become effective.

(3)(A) Section 1615 of the Social Security Act, as in effect on the day before the date on which the amendments made by this section become effective, shall continue to apply to any individual—

(i) who on such day is entitled to benefits under section 1611(a) of such Act by reason of blindness or disability, and

(ii) with respect to whom a determination has not yet been made pursuant to section 416.989 of title 20, Code of Federal Regulations, after such day.

(B)(i) Any individual described in subparagraph (A) who desires to have his or her case reviewed in accordance with the procedures established by the amendments made by subsection (a) of this section may request that a determination be made pursuant to section 416.989 of title 20, Code of Federal Regulations.

(ii) The Secretary of Health and Human Services shall take such steps as may be necessary to ensure that (I) any individual described in subparagraph (A) is informed of the right of such individual to request a review under clause (i) and (II) a prompt determination is made with respect to any individual requesting such a review.

(4) The amendments made by subsection (c) shall apply with respect to months beginning on or after the date on which this section becomes effective.●

By Mr. BURDICK (for himself, Mr. MOYNIHAN, Mr. BENTSEN, Mr. BAUCUS, Mr. LAUTENBERG, Mr. BREAUX, Ms. MIKULSKI, Mr. REID, Mr. STAFFORD, Mr. SYMMS, Mr. WILSON, and Mr. CHAFEE):

S. 185. A bill to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes; to the Committee on Environment and Public Works.

THE FEDERAL-AID HIGHWAY ACT OF 1987

Mr. BURDICK. Mr. President, I am introducing legislation today to reauthorize the Federal-Aid Highway Program. I believe that passage of the highway bill, like the clean water bill, is a top priority for the Environment and Public Works Committee, and I

hope that both bills will move quickly toward enactment.

I am pleased that Senators MOYNIHAN, BENTSEN, BAUCUS, LAUTENBERG, BREAUX, MIKULSKI, REID, STAFFORD, and SYMMS have joined me in cosponsoring the Federal-Aid Highway Act of 1987.

Over the past few years Congress has repeatedly missed highway funding deadlines because of deadlocks in conference. It happened again last October. Highway apportionments which should have been made on schedule on October 1, 1986 have in effect been frozen. For the past 3 months all the States have had to postpone or change their highway construction plans. If Congress fails to act within the next several weeks, the entire 1987 construction season could be lost. That would have a devastating impact on the economy, transportation mobility, and jobs.

As my colleagues know, the Federal-Aid Highway Program is entirely funded through a highway user financed trust fund. This is a program that pays for itself. However, the moneys cannot be spent—despite the fact that they're still being collected—until legislation is passed reauthorizing the program. Our highway and bridge needs are serious, and any delay only makes construction and repair work more difficult and even more expensive.

The Federal-Aid Highway Act of 1987 contains the same funding levels as in last year's Senate bill. A total of approximately $52 billion will be provided in new authorizations for the highway program over the 4-year life of the bill. The annual obligation limitation is $12.35 billion, with an estimated $800 million per year outside the ceiling for the emergency relief and minimum allocation categories.

In 1986, the Nation observed the 30th anniversary of the Interstate Construction Program. Originally, it was believed that the Interstate System could be completed in 13 years at a cost of $27 billion. Although the Interstate is now over 97 percent complete, it has taken more than twice as long to build and has cost $108 billion—about four times as much as initial estimates.

I strongly believe that completion of the Interstate is long overdue and that in the next few years the system must finally be finished. In the meantime, I am committed to retaining the one-half-percent minimum for the 25 or so States that have completed or nearly completed their Interstate work. Those are the States that worked hard toward timely completion of their Interstate roads, and they should not be penalized now for that commitment.

The Federal-Aid Highway Program has worked well all these years because it is self-financed, and it is based on a strong partnership between Federal and State Governments. Financing has been provided at the Federal level and the program itself has been administered at the State level.

I continue to believe that States and local governments know their transportation priorities and needs best. That is why I am concerned about the proliferation of "demonstration projects" paid for entirely with Federal funds. A little over 4 years ago when the last major highway act was signed into law, 10 projects were included. Last year, the House bill contained 100 projects. The regular highway program is underfunded, in my view, and it will be even more so if these kinds of projects are allowed to mushroom.

In July 1985, the Transportation Subcommittee began a series of 10 hearings on reauthorization of the Federal-Aid Highway Program. We heard testimony from Members of Congress; the Congressional Budget Office; elected and appointed officials from Federal, State, and local governments; industry groups; environmentalists; and citizens' groups. Hearings were held here in Washington and out West.

I believe the Transportation Subcommittee and later the full committee have worked diligently to develop responsive and responsible legislation. The Senate highway bill passed the Senate on September 24, 1986, by a vote of 99 to 0. The Federal-Aid Highway Act of 1987 is in most respects the same legislation as that adopted so decisively last year.

The American Association of State Highway and Transportation Officials [AASHTO] has just completed a survey to which all 50 States and the District of Columbia responded. The AASHTO findings for the 1987 construction season are as follows:

If legislation is enacted by February 1, 424 Federal-aid highway projects costing $683 million will already have been lost.

If the date is March 1, 767 projects valued at $1.19 billion will have to be postponed beyond 1987.

By September 1, 5,094 projects worth $8.225 billion will have been lost for the 1987 season.

Copies of the AASHTO survey are being distributed to each Member's office, and the specific impacts on each of the States is described in detail.

Last week the Highway Users Federation [HUF] termed this a "major national highway problem." The HUF reports that already half of the States are out of interstate funds and that funding for the primary program has nearly been depleted nationwide.

I look forward to working with Senator MOYNIHAN, the new chairman of the Water Resources, Transportation, and Infrastructure Subcommittee; Senator STAFFORD, the ranking member of the Committee; Senator SYMMS, the ranking member of the subcommittee, and all members of the Environment and Public Works Committee on this important legislation.

The Federal-Aid Highway Program is essential to the economic and social well-being of this country. Any further delays will make a bad situation much worse. I urge my colleagues to work together in passing legislation as quickly as possible to reauthorize the program.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 185

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 "Federal-Aid Highway Act of 1987".

AUTHORIZATIONS

SEC. 102. The following sums are hereby authorized to be appropriated out of the Highway Trust Fund other than the Mass Transit Account—

(1) For the Federal-aid Interstate-Primary Program $8,150,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(2) For the Federal-aid urban system $750,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(3) For the Federal-aid secondary system in rural areas $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(4) For bridge replacement and rehabilitation under section 144 of title 23, United States Code, $1,500,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. All but $200,000,000 per fiscal year of each such authorization shall be apportioned as provided in 23 U.S.C. 144(e). Such $200,000,000 shall be obligated as provided in 23 U.S.C. 144(g)(2). The minimum percentage off-system bridge provisions of 23 U.S.C. 144(g)(2) shall continue effective in fiscal years 1987, 1988, 1989, and 1990;

(5) For carrying out the Federal lands highway program under section 204 of title 23, United States Code—

(A) For forest highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(B) For public lands highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(C) For Indian reservation roads, $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(D) For park roads and parkways $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, Sep-

tember 30, 1988, September 30, 1989, and September 30, 1990;

(6) For carrying out the territorial highway program under section 215(a) of title 23, United States Code—

(A) For the Virgin Islands, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(B) For Guam, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(C) For American Samoa, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(D) For the Commonwealth of the Northern Mariana Islands, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(7) For carrying out section 402 of title 23, United States Code (relating to highway safety construction programs), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(8) For carrying out sections 307(a) and 403 of title 23, United States Code (relating to highway construction safety research and development), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(9) For projects for the elimination of hazards under section 152 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(10) For projects for the elimination of hazards of railway-highway crossings on any public road under section 130 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(11) For highway assistance programs under section 103(e)(4) of title 23, United States Code, $650,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

INTERSTATE SUBSTITUTE PROGRAM

SEC. 103. *(a)* Section 103(e)(4) of title 23, United States Code, is amended to read as follows:

"(4) INTERSTATE SUBSTITUTE PROGRAM.—(A) Sums made available to the Secretary, under this paragraph, before October 1, 1986, in substitution for withdrawn Interstate routes or portions thereof, shall be available to the Secretary to incur obligations for the Federal share of either public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or highway construction projects on any public road or both, which will serve the area or areas from which the Interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the area or areas to be served, and which are selected by the Governor or the Governors of the State or States in which the withdrawn route was located if the withdrawn route was not within an urbanized area or did not pass through and connect urbanized areas, and which are submitted by the Governors of the States in which the withdrawn route was located. Federal-aid highway projects constructed under this paragraph shall be subject to provisions of this title applicable to the appropriate Federal-aid system. Off system highway projects constructed under this paragraph shall be subject to the provisions of this title applicable to Federal-aid secondary system projects.

"(B) PROJECT APPROVAL FEDERAL SHARE.—Approval by the Secretary of the plans, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government. The Federal share of each substitute project shall not exceed 85 per centum of the cost thereof.

"(C) AVAILABILITY OF FUNDS FOR SUBSTITUTE PROJECTS.—

"(i) TIME PERIOD.—The sums apportioned and the sums allocated under this paragraph for public mass transit projects or for projects under any highway assistance program shall remain available in the State of apportionment or allocation for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year.

"(ii) REAPPORTIONMENT OR REALLOCATION.—Any sums which are apportioned or allocated to a State and are unobligated (other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a substitute project which has been submitted by the State to the Secretary for approval) at the end of the period of availability shall be apportioned or allocated, as the case may be, among those States which have obligated all sums (other than such an amount) apportioned or allocated, as the case may be, to them. Such reapportionment shall be in accordance with the latest adjusted estimate of the cost of completing substitute projects, and such reallocations shall be at the discretion of the Secretary.

"(D) ADMINISTRATION OF TRANSIT FUNDS.—The sums obligated for mass transit projects under this paragraph shall become part of, and be administered through, the Urban Mass Transportation Fund.

"(E) DISTRIBUTION OF SUBSTITUTE FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Twenty-five per centum of the funds made available for substitute highway projects and fifty per centum of the funds appropriated for substitute transit projects shall be distributed at the discretion of the Secretary. The remainder of such highway and transit funds shall be apportioned in accordance with cost estimates.

"(ii) APPORTIONMENTS.—In September of 1986 or as soon as practicable thereafter and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised Table , Committee Print of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the State estimates in the division of funds between substitute highway and transit projects, (2) approval of substitute projects, and (3) the allocation and apportionment of substitute highway and transit funds in prior fiscal years and shall use the Federal share of such adjusted estimates in making apportionments for substitute highway and transit projects on October 1 or as soon as practicable thereafter for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(F) AUTHORIZATION OF APPROPRIATIONS FOR TRANSIT PROJECTS.—There are authorized to be appropriated for liquidation of obligations incurred for substitute transit projects under this paragraph the sums provided in section 4 (g) of the Urban Mass Transportation Act of 1964.

"(G) APPLICABILITY OF URBAN MASS TRANSPORTATION ACT.—

"(i) SUPPLEMENTARY FUNDS.—Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitute for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

"(ii) LABOR PROTECTION.—The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out this paragraph.

"(H) LIMITATION ON INTERSTATE DESIGNATIONS.—The Secretary may not designate any mileage as part of the Interstate System pursuant to this paragraph or under any other provision of law. The preceding sentence shall not apply to a designation made under section 139 of this title.

"(I) RIGHT-OF-WAY PAYBACK.—Of sums made available to the Secretary under this paragraph for a State, an amount equal to the amount expended in Federal funds to purchase right-of-way for the withdrawn route or portion thereof in every case where right-of-way has not been disposed of by the State as of the date of enactment of this sentence shall not be available for release by the Secretary until the right-of-way disposition decision has been made in accordance with 103 (e)(5)(B), (6)(B), or (e)(7) of this title. The amount apportioned to each eligible State pursuant to this paragraph shall be based on the full remaining value of the sums made available under this paragraph as determined by the Secretary but the total of such apportionments shall not exceed the remaining value of such sums less the amount unavailable for release by the Secretary. Sums retained by the Secretary shall be made available for apportionment upon partial or full repayment of funds in accordance with section 103(e)(7) of this title or upon determination by the Secretary that, under section 103 (e)(5)(B) or (6)(B), repayment is not required.".

RIGHT-OF-WAY PAYBACK

(b) Subsection 103(e) of title 23, United States Code, is amended by adding paragraph (10) as follows:

"(10)(A) Upon repayment by a State to the Treasurer of the United States of an amount as determined by the Secretary to be equal to the amount of Federal funds expended to acquire property for the Interstate System which was withdrawn from the Interstate System on or after September 1, 1985, in accordance with paragraph (4), such State shall be absolved of any further responsibility for repayment and will be deemed to have fully met all of the repayment requirements of paragraph (7) of this section.

"(B) The amount repaid to the United States under this paragraph shall be deposited to the credit of the appropriation for the Highway Trust Fund. Such repayment shall be credited to the unprogrammed balance of funds apportioned to such State in accordance with section 104(d)(1)(C) of this title. The amount so credited shall be in addition to all other funds then apportioned to the State and shall be available for expenditure in accordance with the provisions of this title."

APPORTIONMENT

SEC. 104. Section 104 of title 23, United States Code, is amended by (a) Striking in paragraph (f)(1) ", except that in the case of funds authorized for apportionment on the Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System." and inserting in lieu thereof a period and by relettering subsection (f) as subsection (b).

(b) Adding a new subsection (c) as follows:

"(c) On October 1 of each of the fiscal years, ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, or as soon thereafter as is practicable the Secretary, after making deductions authorized by subsections (a) and (b) of this section, shall deduct one-quarter per centum of the remaining funds authorized to be appropriated for that fiscal year for the Federal-aid Interstate-Primary Program, the urban system, the secondary system, bridge replacement and rehabilitation, Interstate substitution highway projects, projects for the elimination of hazards of railway-highway crossings, and for projects for the elimination of hazards under section 152 of this title for the purpose of carrying out the objectives of the Strategic Highway Research Project under section 133 of this title."

(c) Repealing existing subsections (c) and (d).

(d) Existing subsection (b) is amended to read as follows:

"(d) On October 1 of each fiscal year or as soon as is practicable the Secretary, after making the deductions authorized by subsections (a), (b), and (c) of this section, shall apportion the remainder of the sums authorized to be appropriated for expenditure upon the Federal-aid systems for the fiscal year, among the several States in the following manner:

"(1) FOR THE FEDERAL-AID INTERSTATE-PRIMARY PROGRAM.—

"(A) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $3,000,000,000 remaining after making the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned in the ratio which the estimated cost of completing the Interstate System in each State bears to the sum of the estimated cost of completing the Interstate System in all of the States as established in revised table —, Committee Print ——— of the Senate Committee on Environment and Public Works: *Provided*, That the Secretary shall on October 1, 1986, or as soon thereafter as is practicable before making the apportionment required by this paragraph, adjust such Interstate Cost Estimate to reflect (i) all previous credits, apportionments of Interstate construction funds and lapses of previous apportionments of Interstate construction funds, (ii) previous withdrawals of Interstate segments, (iii) previous allocations of Interstate discretionary funds, and (iv) transfers of Interstate construction funds and: *Provided*, That for each of the fiscal years 1987, 1988, 1989, and 1990, no State, including the State of Alaska, shall receive less than one-half per centum of the total apportionment under this paragraph (A). Amounts made available under this proviso shall be eligible for expenditure in the same manner as other Interstate-primary funds, for projects on the urban and secondary system, and for projects for the elimination of hazards under section 152 of this title.

"(B) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,800,000,000 remaining after making the deduction authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows 55 per centum in the ratio that lane miles on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(k) of this title) in each State bears to the total of all such lane miles in all States; and 45 per centum in the ratio that vehicle miles traveled on lanes on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(k) of this title) in each State bears to the total of all such vehicle miles in all States. Notwithstanding the preceding sentence, no State excluding any State that has no Interstate lane miles shall receive less than one-half of 1 per centum of the total apportionment made by this subparagraph for any fiscal year.

"(C) Before making the apportionment under this paragraph (C), the Secretary shall set aside such sums as are necessary to carry out the provisions of subparagraph (C)(iv). For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,350,000,000 remaining after such set aside and after the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows:

"(i) The Secretary shall determine for each State the higher of the amount which would be apportioned to such State under a formula where (I) two-thirds would be apportioned, one-third in the ratio which the area of each State bears to the total area of all the States, one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census, and one-third in the ratio which the mileage of rural delivery routes and intercity mail routes where service is performed by motor vehicles in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, as shown by a certificate of the Postmaster General, which shall be made and furnished annually to the Secretary; and one-third in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census with no State (other than the District of Columbia) to receive less than one-half per centum of each year's apportionment and the amount which would be apportioned to such State under a formula where (II) each State would be apportioned one-half in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census and one-half in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census.

"(ii) The Secretary shall total the amounts determined for each State under paragraph (i) and shall determine the ratio which the amounts apportioned under this paragraph (C) bears to such total.

"(iii) The amount which shall be apportioned to each State under this paragraph (C) shall be the amount determined for such State under paragraph (i) multiplied by the ratio determined under paragraph (ii).

"(iv) No State shall receive an apportionment under this paragraph (C) which is less than the lower of (I), the amount which the State would be apportioned under the formula in paragraph (i)(I), and (II), the amount which the State would be apportioned under the formula in paragraph (i)(II). No State shall receive less than one-half per centum of the total apportionment under this paragraph (C).

"(2) For the Federal-aid secondary system one-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all of the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, certified as above provided, in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles in all the States. No State (other than the District of Columbia) shall receive less than one-half of 1 per centum of each year's apportionment.

"(3) For the Federal-aid urban system in the ratio which the population in urban areas, or parts thereof, in each State bears to the total population in such urban areas, or parts thereof, in all the States as shown by the latest available Federal census. No State shall receive less than one-half of 1 per centum of each year's apportionment.".

(e) Subsection (e) is amended to read as follows:

"(e) On October 1 of each fiscal year the Secretary shall certify to each of the State highway departments the sums apportioned hereunder to each State for such fiscal year, and also the sums which have been deducted pursuant to subsections (a), (b), and (c) of this section. To permit the State to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized.".

(f) Existing subsection (g) is amended to read as follows:

"(f) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 130, 144, and 152 of this title, may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State highway department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment under any other of such sections if such transfer is requested by the State highway department, and is approved by the Secretary as being in the public interest, if the Secretary has received satisfactory assurances from such State highway department that the purposes of the program from which such funds are to be transferred have been met.".

(g) Existing subsection (h) is repealed.

(h) Subsection (g) is added as follows:

"(g)(1) The amount apportioned in any fiscal year to each State in accordance with paragraph (2) or (3) of subsection (d) of this section may be transferred from the appor-

tionment under one paragraph to the apportionment under the other paragraph if such transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. Funds apportioned in accordance with paragraph (3) of subsection (d) of this section shall not be transferred from their allocation to any urbanized area of two hundred thousand population or more under section 150 of this title without the approval of the local officials of such urbanized area.

"(2) In the case of transfers under paragraph (1), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of any apportionment for any fiscal year shall be transferred to other apportionments.".

"(f) LIMITATIONS CONCERNING SOUTH AFRICA ON AWARDS OF CONTRACTS.—A State or local governmental body that is a recipient of Federal funds under this title may prohibit or otherwise limit the award of contracts funded under this title by including in its contracts terms and conditions related to the contractor's business in South Africa in accordance with a State or local law if the State or local governmental body first enters into an aggreement with the Secretary that any costs incurred as a result of such prohibition or limitation which are in excess of the costs that would otherwise have been incurred with respect to such project under this title will not, for purposes of this title, be considered to be a cost of such project: *Provided,* That this subsection shall be null and void when apartheid law and policy is ended in South Africa.".

AVAILABILITY

SEC. 105. Section 118 of title 23, United States Code, is amended to read as follows:

"Sec. 118. Availability.

"(a) On and after the date that the Secretary has certified to each State the sums apportioned or allocated pursuant to an authorization under this title such sums shall be available for obligation under the provisions of this title.

"(b)(1) Sums apportioned for the Federal-aid Interstate-Primary Program, for the Federal-aid secondary system and for the Federal-aid urban system in a State shall continue available for obligation in that State for the appropriate program and system for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unobligated at the end of such period shall lapse.

"(2)(A) Sums apportioned for bridge replacement and rehabilitation in a State shall remain available for obligation in that State for a period of three years after the close of the fiscal year for which the sums are authorized and any amounts apportioned remaining unobligated at the end of the period shall be allocated by the Secretary pursuant to section 144(g)(2) of this title.

"(B) Sums allocated for bridge replacement and rehabilitation in a State shall remain available for obligation in that State until the close of the fiscal year of allocation and any amount allocated remaining unobligated at the end of the period shall be reallocated by the Secretary pursuant to section 144(g)(2) of this title.

"(3) Sums apportioned or allocated for a particular purpose for any fiscal year shall be deemed to be obligated if a sum equal to the total of the sums apportioned or allocated to the State for such purpose for such fiscal year and previous fiscal years is obligated. Any funds released by the payment of the final voucher or by the modification of the formal project agreement shall be credited to the same class of funds previously apportioned or allocated to the State and be immediately available for obligation.

"(c) Funds made available to the State of Alaska under this title may be expended for construction of access and development roads on a Federal-aid system that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.".

INTERSTATE SYSTEM RESURFACING

SEC. 106. (a) Section 119(a) of title 23, United States Code, is amended by (1) striking "section 105 of the Federal-Aid Highway Act of 1978" and inserting in lieu thereof "section 129(k) of this title" and by (2) striking the next to the last sentence.

(b) Section 119(b) of title 23, United States Code, is amended by striking "for the Interstate system shall" and inserting in lieu thereof "shall", by (2) striking "equal to 10 per centum" and inserting in lieu thereof "of not more than 10 per centum", and by (3) striking "104" and inserting in lieu thereof "104(d)(1)(A)".

(c) Section 119(d) is repealed.

FEDERAL SHARE PAYABLE

SEC. 107. (a) Subsection (a) of section 120, title 23, United States Code, is amended by striking "financed with primary" and inserting in lieu thereof "financed with Interstate-primary" and by inserting "(other than the Interstate System)" after "primary system".

(b) Subsection (b) of section 120, title 23, United States Code, is repealed.

(c) Subsection (c) of section 120, title 23, United States Code, is amended by striking "provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to" and inserting in lieu thereof ", as designated in section 103 of this title and as designated prior to March 9, 1984, in section 139 (a) and (b) of this title financed with Interstate-primary funds shall not exceed".

(d) Subsection (f) of section 120 of title 23, United States Code, is amended by striking "shall not exceed 100 per centum of the cost thereof: *Provided*" and inserting in lieu thereof "on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable of a project on a system as provided in subsections (a) and (c) of this section: *Provided,* That the Federal share payable for eligible emergency repairs to minimize damage, protect facilities or restore essential traffic accomplished within thirty days after the actual occurrence may amount to 100 per centum of the costs thereof: *And provided further".*

(e)(1) The second subsection (i), subsection (j), and subsection (k) of section 120 of title 23, United States Code, are relettered as subsection (j), (k), and (l) respectively.

(2) The second subsection (i) of section 120, title 23, United States Code, relettered as subsection (j), is amended by inserting "104(b) and" before "307(c)".

(f) Subsection (b) is added to section 120 of title 23, United States Code, as follows: "Notwithstanding other provisions of this title, a State may contribute an amount in excess of its normal share on a project under this title so as to decrease the Federal share payable on such project: *Provided,* That the use of this provision shall be subject to criteria established by the Secretary.".

(g) Section 120(f) of title 23, United States Code, as amended by this section is effective for all natural disasters or catastrophic failures which occur subsequent to enactment of this Act.

RELOCATION OF UTILITY FACILITIES

SEC. 108. Section 123(a) of title 23, United States Code, is amended to read as follows:

"(a) When a State pays for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary system including the Interstate System, or under a Federal-aid program, or under the State's safety improvement program for the elimination of hazards to the traveling public resulting from the utility facilities on or near the right-of-way of highways on the Federal-aid primary system including the Interstate system, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are used on the project.".

EMERGENCY RELIEF

SEC. 109. Section 125 of title 23, United States Code, is amended by adding subsection (d) as follows:

"(d) For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands shall be considered to be States and part of the United States, and the chief executive officer of each territory shall be considered to be a Governor of a State. The Secretary may expend funds from the sums authorized for this section for the repair or reconstruction of highways eligible for assistance under section 215 of this title: *Provided,* That obligations for projects under this subsection shall not exceed $5,000,000 in any fiscal year.".

VEHICLE WEIGHT LIMITATIONS—INTERSTATE SYSTEM

SEC. 110. Section 127(a) of title 23, United States Code, is amended by striking "authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned" and inserting in lieu thereof "shall be apportioned under section 104(d)(1)(A) of this title" and by (b) adding after the word "lapse" the following: "if not released and obligated within the availability period specified in section 118(b)(1) of this title".

TOLL FACILITIES

SEC. 111. (a) Section 129 of title 23, United States Code, is amended by adding the following new subsections:

"(j)(1) Each operator of toll roads, toll tunnels, toll ferries, and toll bridges, other than an international toll facility or toll facility subject to an agreement under this section or section 105 of the Surface Transportation Assistance Act of 1978, on a Federal-aid system in a State shall biennially certify to the Governor of the State that such facilities are adequately maintained and that the operator of such toll facility has the ability to fund the replacement or repair of any such facilities that are not adequately maintained without using Federal-aid highway funds. Failure to certify shall preclude Federal funding out of the Highway Trust Fund of any facilities owned or operated by the operator of such toll facility.

"(2) The Governor shall report biennially to the Secretary the toll facilities subject to paragraph (1) of this subsection, that have

so certified and those which have not certified in accordance with paragraph (1) of this subsection. If funds from the Highway Trust Fund are used to repair or replace such toll facilities, the State's apportionments for the following fiscal year under section 104 of this title shall be reduced by the amount of Highway Trust Fund moneys expended: *Provided,* That such reduction shall not be made if the State has executed an agreement covering such toll facilities under this section or section 105 of the Surface Transportation Assistance Act of 1978.

"(k) Sums apportioned to a State for the Federal-aid Interstate-Primary Program or for Interstate System resurfacing may be obligated for projects for resurfacing, restoring, and rehabilitating lanes on a toll road which has been designated as a part of the Interstate System if an agreement satisfactory to the Secretary of Transportation has been reached with the State highway department and any public authority with jurisdiction over such toll road prior to the approval of such project that the toll road will become free to the public upon the collection of tolls sufficient to liquidate the cost of the toll road or any bonds outstanding at the time constituting a valid lien against it, and the cost of maintenance and operation and debt service during the period of toll collections. The agreement referred to in the preceding sentence shall contain a provision requiring that if, for any reason, a toll road subject to an agreement does not become free to the public upon collection of sufficient tolls, as specified in the preceding sentence, Federal funds used for projects on such toll road pursuant to this subsection shall be repaid to the Federal Treasury and a provision requiring that if such repayment does not equal or exceed Federal funds apportioned to a State by reason of including toll road mileage in an apportionment formula, the State's apportionment shall be reduced by the amount needed to make the repayment equal such apportionment.".

(b) Section 105 of the Federal-Aid Highway Act of 1978 is amended by striking the last two sentences.

RAILWAY-HIGHWAY CROSSINGS

SEC. 112. (a) Section 130 of title 23, United States Code, is amended by adding subsections, (d), (e), (f), (g), and (h) as follows:

"(d) Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railroad-highway crossings.

"(e) At least half of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated for this section shall be available for obligation in the same manner as funds apportioned under section 104(d)(1) of title 23, United States Code.

"(f) 25 per centum of the funds authorized for this section shall be apportioned to the States in the same manner as sums apportioned under section 104(d)(2) of title 23, United States Code, 25 per centum of such funds shall be apportioned to the States in the same manner as apportioned under section 104(d)(3) of title 23, United States Code, and 50 per centum of such funds shall be apportioned to the States in the ratio that total rail-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized for this section shall be 90 per centum of the cost thereof.

"(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year on the progress being made to implement the railroad-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary of Transportation shall submit a report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress not later than April 1 of each year, on the progress being made by the State in implementing projects to improve railroad-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway crossings program.

"(h) Funds authorized for this section may be used to provide local government with funds to be used on a matching basis when State funds are available which may only be spent when local government produces matching funds for the improvement of railroad crossings.".

(b) Section 203 of the Highway Safety Act of 1973 is repealed.

STRATEGIC HIGHWAY RESEARCH PROGRAM

SEC. 113. Title 23, United States Code, is amended by adding section 133 as follows:

"§ 133. Strategic highway research program

"(a) The sums provided by section 104(c) of this title shall be available for obligation when deducted to implement the Strategic Highway Research Program (SHRP). The Secretary is authorized to carry out the SHRP in cooperation with the State highway departments, as represented by the American Association of State Highway and Transportation Officials (AASHTO). The Secretary shall set standards to use the funds under this paragraph to conduct research, development and technology transfer activities determined to be strategically important to the national highway transportation system. The Secretary may provide grants to, and enter into cooperative agreements with, AASHTO and/or the National Academy of Sciences to conduct appropriate portions of the SHRP. Advance payments may be made as necessary to facilitate this program. No State matching share is required for the sums made available under this section. The sums provided by this section shall be combined and administered by the Secretary as a single fund which shall be available for obligation for the same period as funds apportioned for the Federal-aid Interstate-Primary Program.

"(b) The Secretary shall transmit a report annually beginning on January 1, 1988, to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress which provides information on the progress and research findings of the Strategic Highway Research Program.

"(c)(1) The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for injury, loss of property, personal injury, or death shall apply to any civil action against the National Academy of Sciences for injury, loss of property, personal injury, or death for any act or omission arising from activities conducted under or in connection with the Strategic Highway Research Program authorized under subsection (a) of this section.

"(2) The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining liability arising from any such act or omission without regard to when the act or omission occurred. Employees of the National Academy of Sciences and other individuals appointed by the President of the National Academy of Sciences and acting on its behalf in connection with the Strategic Highway Research Program shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, United States Code, for the purposes of such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

"(3) Upon certification by the Attorney General that a suit is within the provisions of subsection (a), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceeding shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28, United States Code. For purposes of removal, the certification of the Attorney General under this subsection shall be conclusive.".

SECTION 139 ROUTES

SEC. 114. The last sentence of section 139(a), the fourth sentence of 139(b), and the last sentence of section 139(c) of title 23, United States Code, are each amended by striking "sections 104(b)(1) and 104(b)(5)(B)" and inserting in lieu thereof "section 104(d)(1)".

OFF-SYSTEM BRIDGE PROGRAM

SEC. 115. Section 144, title 23, United States Code, is amended by adding a new subsection as follows:

"(n) Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway system for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under section 144 of title 23, United States Code, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under section 144, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the effective date of this section, from such State and local sources for such project in excess of 20 per centum of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under section 144, in accordance with procedures established by the Secretary.".

MINIMUM ALLOCATION

SEC. 116. (a) Section 157(a) of title 23, United States Code, is amended to read as follows:

"(a) Beginning with fiscal year 1987, as soon as practicable after the date of enactment of the Federal-Aid Highway Act of 1987 and in each of the fiscal years thereafter, on October 1, or as soon as possible thereafter, the Secretary of Transportation shall allocate among the States, as defined in section 101 of this title, amounts sufficient to ensure that a State's percentage of the total apportionments in each such fiscal year and allocations for the prior fiscal year for Federal-aid highway programs, except allocations for forest highways, Indian reservation roads, and parkways and park roads in accordance with section 202 of this title, highway related safety grants authorized by section 402 of this title, nonconstruction safety grants authorized by sections 402, 406, and 408 of this title, and Bureau of Motor Carrier Safety Grants authorized by section 404 of the Surface Transportation Assistance Act of 1982, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data are available.".

(b) The amendment made by subsection (a) shall become effective on October 1, 1986.

(c) Title 23, United States Code, section 157(c) is amended by striking the "and" that precedes "September 30, 1986" and inserting after "1986" the following: ", September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

FEDERAL-AID INTERSTATE-PRIMARY PROGRAM

SEC. 117. Title 23, United States Code, is amended by adding section 159 as follows:

"§ 159. Federal-aid Interstate-primary program

"(a) It is the national policy to bring all elements of the primary system up to standards established pursuant to section 109 of this title. To accomplish this policy the Federal-aid Interstate-primary program shall consist of projects for the construction, reconstruction, rehabilitation, restoration, and resurfacing or improvement of the primary system as designated in section 103(a) of this title and the Interstate System as designated in section 103(c)(1) and section 139 of this title.

"(b) In approving projects under this section, the Secretary shall give consideration to projects to complete essential gaps on the Interstate System and for the reconstruction, rehabilitation, restoration, and resurfacing of existing highway facilities. Reconstruction may include, but is not limited to, the addition of travel lanes and the construction and reconstruction of interchanges and overcrossings along existing completed Interstate routes, including the acquisition of right-of-way where necessary.".

INCOME FROM RIGHTS-OF-WAY

SEC. 118. Title 23, United States Code, is amended by adding section 160 as follows:

"§ 160. Income from rights-of-way

"Net income that a State receives from the use, lease, or sale of right-of-way airspace acquired as a result of a project under this title shall be used by the State for projects eligible under this chapter.".

TERRITORIAL HIGHWAY PROGRAM

SEC. 119. Subsection (f) of section 215 of title 23, United States Code, is amended to read as follows:

"(f) The provisions of chapter 1 of this title that are applicable to Federal-aid Interstate-Primary Program funds and to projects on the Federal-aid primary system other than the Interstate System shall apply to funds authorized to be appropriated to carry out this section, to funds obligated under this section and to projects carried out under this section except as determined by the Secretary to be inconsistent with this section. There shall be designated in each territory, a territorial Federal-aid highway system which will include all highways eligible for funding under this section. The system shall be designated by the highway department of the territory and be subject to the approval of the Secretary. Funding provided under this section shall only be available for highway construction projects on the territorial Federal-aid system.".

BICYCLE PROJECTS ELIGIBILITY

SEC. 120. The second sentence of section 217(b)(1) of title 23, United States Code, is amended by inserting "and sums apportioned or allocated for highway substitute projects in accordance with section 103(e)(4) of this title" after the word "title".

HIGHWAY PLANNING AND RESEARCH

SEC. 121. Section 307(c)(1) of title 23, United States Code, is amended by inserting after "section 104 of this title", the following: "and for highway projects, section 103(e)(4)".

NATIONAL HIGHWAY INSTITUTE

SEC. 122. Subsections (b) and (c) of section 321 of title 23, United States Code, are amended to read as follows:

"(b) Not to exceed one-quarter per centum of all Federal-aid Interstate-Primary Program funds, apportioned to a State under section 104 of this title shall be available for expenditure by the State highway department, subject to approval by the Secretary, for payment of not to exceed 75 per centum of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

"(c) Education and training of Federal, State, and local highway employees authorized by this section shall be provided by the Secretary at no cost to the States and local governments for those subject areas which are a Federal program responsibility, or, in the case where such education and training are to be paid for under subsection (b) of this section, by the State, subject to the approval of the Secretary, through grants and contract with public and private agencies, institutions, individuals and the Institute.".

RIGHT-OF-WAY DONATION

SEC. 123. (a) Notwithstanding any other provision of title 23, United States Code, the State matching share for a project under title 23, United States Code, may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the effective date of this subsection. The fair market value of the donated land shall be established as determined by the Secretary. Fair market value shall not include increases and decreases in the value of donated property caused by the project. For purposes of this subsection the fair market value of donated land shall be established after the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier. This subsection shall not apply to donations made by an agency of a Federal, State or local government. The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project to which the donation is applied.

(b) Section 323 of title 23, United States Code, is amended by—

(1) inserting after "Donations." an "(a)"; and

(2) inserting the following new subsection:

"(b)(1) A gift or donation in accordance with subsection (a) may be made at any time during the development of a project: *Provided,* That any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act shall clearly indicate that—

"(i) all alternatives to a proposed alignment will be studied and considered pursuant to the National Environmental Policy Act;

"(ii) acquisition of property under this subsection shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

"(iii) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings and completion of the environmental document.".

(c) Section 4651 of title 42, United States Code, is amended as follows:

(1) Insert after "programs" in the first sentence the following "to promote joint projects between States and landowners and other entities in order to maximize Federal and State dollars".

(2) Insert new paragraph (10) as follows:

"(10) Promotion of joint projects wherein private citizens and other governmental entities participate in the cost through land donations and/or financial contributions is consistent with Federal policy and should be encouraged by all Federal agencies. To this end donations of right-of-way and/or financial contributions by a State or other political subdivision, or any person is permissible.".

(d) Notwithstanding any other provision of law, the fair market value of any lands which have been or in the future are donated or dedicated to the State of California necessary for the right-of-way for relocation and construction of California State Route 73 in Orange County, California, from its interchange with Interstate Route I-405 to its interchange with Interstate Route I-5 shall be included as a part of the cost of such relocation and construction project and shall be credited first toward payment of the non-Federal share of the cost of such relocation and construction project. If the fair market value of such lands exceeds the non-Federal share of such relocation and construction project, then the excess amount, upon the request of the State of California, shall be credited toward the non-Federal share of the cost of any other project on the Federal-aid system in the State of California. To further the purposes of this section and section 323 of title 23, United States Code, any recorded irrevocable offer of dedication or donation of property within the right-of-way shall be considered as part of the State right-of-way acquisition for purposes of this section if such offer is irrevocable and effective no later than such time as the State of California re-

quests final reimbursement for the Federal share. In no case shall the amount of Federal-aid reimbursement to the State of California on account of such relocation and construction project exceed the actual cost to the State for such project.

PROHIBITION AGAINST DISCLOSURE AND ADMISSION AS EVIDENCE OF STATE REPORTS AND SURVEYS

SEC. 124. Chapter 4 of title 23, United States Code, is amended by adding section 409 as follows:

"§ 409. Reports, surveys; disclosures; admission as evidence

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled with the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or rail-highway crossings, pursuant to sections 130, 144, and 152 of title 23, United States Code, or for the development of any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be admitted into evidence in Federal or State court, or considered for other purposes, in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists or data.".

BUY AMERICA

SEC. 125. Section 165(a) of the Surface Transportation Assistance Act of 1982 is amended to read as follows:

"Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act or, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this Act, title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Assistance Act of 1978 and administered by the Department of Transportation, for projects whose total cost exceed $500,000, unless steel and manufactured products used in such projects are produced in the United States.".

REGULATION OF TOLLS

SEC. 126. (a) Section 4 of the Bridge Act of 1906 (34 Stat. 85, 33 U.S.C. 494), as amended, is further amended by deleting the last sentence thereof.

(b) Section 17 of the Act of June 10, 1930 (46 Stat. 552, 33 U.S.C. 498a), as amended, is repealed.

(c) Section 1 of the Act of June 27, 1930 (46 Stat. 821, 33 U.S.C. 498b), as amended, is repealed.

(d) Sections 1-5 of the Act of August 21, 1935 (49 Stat. 670, 33 U.S.C. 503-507), as amended, are repealed.

(e) Sections 503 and 506 of the General Bridge Act of 1946 (60 Stat. 847, 848, 33 U.S.C. 526, 529), as amended, are repealed.

(f) Section 133 of Public Law 93-87 (87 Stat. 267, 33 U.S.C. 526a) is repealed.

(g) Section 6 of the International Bridge Act of 1972 (86 Stat. 732, 33 U.S.C. 535d) is repealed.

(h) Section 6(g)(4) of the Department of Transportation Act (80 Stat. 937, 49 U.S.C. 1655(g)(4)) is repealed.

(i) Tolls for passage or transit over any bridge constructed under the authority of the Bridge Act of 1906, as amended, the General Bridge Act of 1946, as amended, and the International Bridge Act of 1972, shall be just and reasonable.

INDIAN EMPLOYMENT AND CONTRACTING

SEC. 127. Section 140 of title 23, United States Code is amended by adding the following:

"(d) Consistent with section 703(i) of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, July 2, 1964, nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.".

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SEC. 128. (a) CONTRACTING GOAL.—Except as the Secretary determines otherwise, not less than 10 per centum of the amounts authorized to be appropriated under this title or obligated under title 1 of Public Law 97-424 after the effective date of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) DEFINITIONS.—For the purposes of this section:

(1) "disadvantaged business enterprise" means a small business concern owned and controlled by socially and economically disadvantaged individuals;

(2) "small business concern" is defined by section 3 of the Small Business Act (15 U.S.C. 632), except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $10 million, as adjusted by the Secretary for inflation; and

(3) "socially and economically disadvantaged individuals" is defined by section 8(d)(2)(C) of the Small Business Act (15 U.S.C. 637(d)(2)(C), except that women shall be presumed to be socially and economically disadvantaged individuals.

(c) TECHNICAL ASSISTANCE.—Amounts expended for technical assistance to benefit disadvantaged business enterprises may be used to meet up to 10 per centum of the amounts required to be expended on a contract or subcontract with a disadvantaged business enterprise under the provisions of this section.

(d) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern is a disadvantaged business enterprise for the purposes of this section. Such minimum uniform criteria shall include but not be limited to on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(e) LEVEL OF EFFORT BY SUBCONTRACTORS.—

(1) Amounts expended with a disadvantaged business enterprise for subcontracting work shall not be used to meet any part of the goal established by this section unless such enterprise performs with its own organization subcontract work amounting to not less than 30 per centum of the subcontract price not including materials and supplies.

(2) A State government may reduce the 30 per centum requirement of paragraph (1) for a particular contract if it determines that such a reduction would be in the public interest and that the level of effort by the disadvantaged business enterprise is consistent with industry practice by subcontractors for the type of work involved.

(3) Except for contracting arrangements approved in advance by the State government, any payments from a disadvantaged business enterprise to the prime contractor or any affiliate shall not be used to meet any part of the goal established by this section.

(f) PRIME CONTRACTS.—Except as the Secretary determines otherwise, amounts equal to not less than 5 per centum in 1988, not less than 7 per centum in 1989 and not less than 10 per centum in 1990, of the goal established by this section for a State shall be expended on contracts directly between a State government and a disadvantaged business enterprise.

(g) APPLICABILITY.—Section 105(f) of Public Law 97-424 shall not apply to amounts authorized under title 1 of such Act and obligated after the effective date of this Act.

RELEASE OF CONDITION RELATING TO CONVEYANCE OF A CERTAIN HIGHWAY

SEC. 129. Notwithstanding paragraph (1) of subsection (b) of section 146 of the Federal-Aid Highway Act of 1970 (84 Stat. 1739) and any agreement entered into under such subsection, no conveyance of any road or portion thereof shall be required to be made under such paragraph or agreement to the State of Maryland and the State of Maryland shall not be required to accept conveyance of any such road or portion. Funds authorized by such section may be obligated and expended without regard to any requirement of such paragraph or agreement that such conveyance be made.

WASTE ISOLATION PILOT PROJECT

SEC. 130. For the fiscal year ending September 30, 1986, and thereafter, there is authorized to be appropriated $58,000,000 to remain available until expended for the upgrading of certain highways in the State of New Mexico for the transportation of nuclear waste generated during defense-related activities.

OBLIGATION LIMITATION

SEC. 131. (a) Notwithstanding any other provisions of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) $12,350,000,000 for fiscal year 1987;

(2) $12,350,000,000 for fiscal year 1988;

(3) $12,350,000,000 for fiscal year 1989; and

(4) $12,350,000,000 for fiscal year 1990.

These limitations shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, and projects under section 157 of title 23, United States Code.

(b) For each of the fiscal years 1987, 1988, 1989 and 1990, the Secretary of Transportation shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

(c) Notwithstanding subsection (b), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which

have been apportioned or allocated to a State;

(2) after August 1 of each of the fiscal years 1987, 1988, 1989, and 1990 revise a distribution of the funds made available under subsection (b) for such fiscal year if a State will not obligate the amount distributed during such fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during such fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses, Federal lands highways, and the Strategic Highway Research Program.

HISTORIC BRIDGES

SEC. 132. (a) Congress hereby finds and declares it to be in the national interest to encourage the rehabilitation, reuse and preservation of bridges significant in American history, architecture, engineering and culture. Historic bridges are important links to our past, serve as safe and vital transportation routes in the present, and can represent significant resources for the future.

(b) The Secretary shall, in cooperation with the State, implement the programs described in section 144 of this title in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse and future study of historic bridges.

(c) The Secretary shall require each State to complete an inventory of all bridges on and off the Federal-aid system to determine their historic significance.

(d) Reasonable costs associated with actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which continue to be used for motorized vehicular traffic shall be eligible as reimburseable project costs, including projects authorized pursuant to section 144 of title 23, provided that the load capacity and safety features of the resulting bridge are adequate to serve the intended use for the life of the facility. Funding pursuant to section 144 of this title for actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which are no longer used for motorized vehicular traffic shall not exceed the estimated cost of demolition.

(e) Any State which proposes to demolish a historic bridge for a replacement project with funds made available pursuant to section 144 of title 23, shall make the bridge available for donation to a State, locality, or responsible private entity provided such State, locality, or responsible entity enters into an agreement to—

(1) maintain the bridge and the features that give it its historic significance and

(2) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State highway agency harmless in any liability action. Costs incurred by the State to preserve the historic bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible project costs under chapter 1 of title 23 up to an amount not to exceed the cost of demolition. Any bridge preserved pursuant to this subsection shall thereafter not be eligible for any other funds authorized pursuant to this title.

(f) For purposes of this section, "historic bridge" means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

(g) The Secretary of Transportation shall make appropriate arrangements with the Transportation Research Board of the National Research Council to carry out a study of the section 144 bridge program's effect on the preservation and rehabilitation of historic bridges. The Transportation Research Board shall also develop recommendations of specific standards which shall apply only to the rehabilitation of historic bridges, and shall provide an analysis of any other factors which would serve to enhance the rehabilitation of historic bridges.

FOREST HIGHWAYS

SEC. 133. Notwithstanding section 202(a) of title 23, United States Code, the Secretary of Transportation shall, after making the transfer provided by section 204(g) of title 23, United States Code, on October 1, or as soon thereafter as is practicable, of each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, allocate 66 per centum of the remainder of the authorization for forest highways provided for that fiscal year by this Act in the same percentage as the amounts allocated for expenditure in each State and the Commonwealth of Puerto Rico from funds authorized for forest highways for the fiscal year ending June 30, 1958, adjusted to (1) eliminate the 0.003,243,547 per centum for the State of Iowa to the State by deed executed May 26, 1964, and (2) redistribute the above percentage formerly apportioned to the State of Iowa for other participating States on a proportional basis. The remaining funds authorized to be appropriated for forest highways for such fiscal years shall be allocated pursuant to section 202(a) of title 23, United States Code.

WILDFLOWERS

SEC. 134. Section 319 of title 23, United States Code, is amended by inserting an "(a)" after section 319 and inserting the following new subsection:

"(b) The Secretary shall require the planting of native wildflower seeds and/or seedlings as part of any landscaping project under this section. At least one-quarter per centum of the funds expended for landscaping projects shall be used for such plantings. The requirements of this subsection may be waived by the Secretary if the State certifies that such native wildflowers or seedlings cannot be grown satisfactorily or planting areas are limited or otherwise used for agricultural purposes. Nothing in this subsection shall be construed to prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects.".

COMBINED ROAD PLAN DEMONSTRATION PROGRAM

SEC. 135. (a) The Secretary of Transportation, in cooperation with up to 10 States, shall conduct a Combined Road Plan Demonstration to test the feasibility of approaches for combining, streamlining and increasing the flexibility in the administration of the Federal-aid secondary, Federal-aid urban and off-system urban and secondary bridge programs. The demonstration shall place as much responsibility as feasible with State and local governments including, but not limited to, the granting of design exceptions and the conduct of final inspections.

(b) As soon as is practicable, upon completion of the demonstration project, the Secretary of Transportation shall submit a report to the Congress evaluating the effectiveness of the demonstration and making needed recommendations.

NEW JERSEY PENNSYLVANIA TOLL COMPACT

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION

SEC. 136. (a) OBLIGATION TO REPAY FEDERAL FUNDS INVESTED ON I-80.—

(1) The Delaware River Joint Toll Bridge Commission (hereinafter in this section referred to as the "Commission"), in conjunction with the State highway agencies of the Commonwealth of Pennsylvania and of the State of New Jersey, shall enter into an agreement with the Secretary of Transportation to repay to the Treasury of the United States any Federal funds which previously have been obligated or otherwise expended by the Federal Government with respect to the Delaware Water Gap Bridge on I-80. Such repayment shall be credited to the Highway Trust Fund.

(2) Upon such repayment, such States and the Commission shall be free of all restrictions contained in title 23, United States Code, and any regulation or agreement thereunder, with respect to the collection or imposition of tolls or other charges for such bridge or the use thereof.

(b) AGREEMENT TO CONSTRUCT I-78 BRIDGE AS A TOLL BRIDGE.—If the Commonwealth of Pennsylvania, the State of New Jersey, and the Commission determine to operate the uncompleted bridge under construction in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, on I-78 as a toll bridge, such States, the Commission, and the Secretary of Transportation shall enter into an agreement with respect to such I-78 bridge project as provided in section 129 of title 23, United States Code, notwithstanding the requirements of section 301 of such title or any existing agreement.

(c) COMMISSION'S AUTHORITY TO CHARGE TOLLS; RIGHT OF REVIEW BY FEDERAL AGENCIES PRESERVED.—The Commission's authority to fix, charge, or collect any fees, rentals, tolls, or other charges shall be as provided in its Compact, supplements thereto and the supplemental agreement described and consented to in subsection (f), but paragraph (c) of the supplemental agreement described and consented to in subsection (f) shall not be construed to eliminate the necessity for review and approval by any Federal agency, as may be required under applicable Federal law, to determine that the tolls charged by the Commission are reasonable and just consistent with the Commission's responsibilities under its Compact, supplements thereto and the supplemental agreement described and consented to in subsection (f).

(d) CONGRESSIONAL CONSENT NOT GRANTED TO TOLLS ON EXISTING NONTOLL BRIDGES.—Nothing in this section shall be construed to grant congressional consent to the imposition of tolls by the Commission on any existing and operating bridge under the Commission's jurisdiction on which tolls were not charged and collected on January 1, 1986.

(e) CONGRESSIONAL APPROVAL NOT APPLICABLE TO I-895 CORRIDOR.—Nothing in this section shall constitute congressional approval to construct any additional toll bridge in the previously designated I-895 corridor.

(f) CONSENT OF CONGRESS TO SUPPLEMENTAL AGREEMENT CONCERNING AUTHORITY OF COMMISSION.—

(1) The consent of the Congress is hereby given to the supplemental agreement, described in paragraph (2), concerning the Delaware River Joint Toll Bridge Commission, which agreement has been enacted by the Commonwealth of Pennsylvania on December 18, 1984, as Act 206, laws of 1984, and by the State of New Jersey on October 21, 1985, as Public Law 1985, chapter 342.

(2) The agreement referred to in paragraph (1) reads substantially as follows:

"SUPPLEMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

"Supplementing the Compact or Agreement Entitled Agreement between the Commonwealth of Pennsylvania and the State of New Jersey Creating the Delaware River Joint Toll Bridge Commission as a Body Corporate and Politic and Defining its Powers and Duties, as Heretofore Amended and Supplemented, to Establish the Purposes for Which the Commission May Fix, Charge, and Collect Tolls, Rates, Rents, and Other Charges for the use of Commission Facilities and Properties".

"The Commonwealth of Pennsylvania and the State of New Jersey do solemnly covenant and agree, each with the other, as follows:

"(a)(1) Notwithstanding any other provision of the compact hereby supplemented, or any provision of law, State or Federal to the contrary, as soon as the existing outstanding bonded indebtedness of the commission shall be refunded, defeased, retired, or otherwise satisfied and thereafter, the commission may fix, charge, and collect tolls, rates, rents, and other charges for the use of any commission facility or property and in addition to any purpose now or heretofore or hereafter authorized for which the revenues from such tolls, rates, rents, or other charges may be applied, the commission is authorized to apply or expend any such revenue for the management, operation, maintenance, betterment, reconstruction, or replacement (a) of the existing nontoll bridges, formerly toll or otherwise, over the Delaware River between the State of New Jersey and the Commonwealth of Pennsylvania heretofore acquired by the commission pursuant to the provisions of the act of the State of New Jersey approved April 1, 1912 (Chapter 297), and all supplements and amendments thereto, and the act of the Commonwealth of Pennsylvania approved May 8, 1919 (Pamphlet Laws 148), and all supplements and amendments thereto and (b) of all other bridges within the commission's jurisdiction and control. Betterment shall include but not be limited to parking areas for public transportation services and all facilities appurtenant to approved projects.

"(2) The commission may borrow money or otherwise incur indebtedness and provide from time to time for the issuance of its bonds or other obligations for one or more of the purposes authorized in this supplemental agreement. The commission is authorized to pledge its tolls, rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes, and as security for the satisfaction of any other obligation assumed by it in connection with such loan or advances.

"(3) The authority of the commission to fix, charge, and collect fees, rentals, tolls or any other charges on the bridges within its jurisdiction, including the bridge at the Delaware Water Gap, is confirmed.

"(4) The covenants of the State of New Jersey and the Commonwealth of Pennsylvania as set forth in Article VI of the compact to which this is a supplemental agreement shall be fully applicable to any bonds or other obligations issued or undertaken by the commission. Notwithstanding Article VI or any other provision of the compact, the State of New Jersey and the Commonwealth of Pennsylvania may construct a bridge across the Delaware River in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, within 10 miles of the existing toll bridge at that location. All the rest and remainder of the compact, as amended or supplemented, shall be in full force and effect except to the extent it is inconsistent with this supplemental agreement.

"(b) The commission is authorized to fix, charge, or collect fees, rentals, tolls, or any other charges on the proposed bridge to be constructed in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, in the same manner and to the same extent that it can do so for other toll bridges under its jurisdiction and control provided that the United States Government has approved the bridge to be a part of the National System of Interstate and Defense Highways with 90 percent of the cost of construction to be contributed by the United States Government, and provided further, that the non-Federal share of such bridge project is contributed by the commission. The commission is further authorized in the same manner and to the same extent that it can do so for all other toll bridges under its jurisdiction and control to fix, charge, and collect fees, rentals, tolls or any other charges on any other bridge within its jurisdiction and control if such bridge has been constructed in part with Federal funds.

"(c) The consent of Congress to this compact shall constitute Federal approval of the powers herein vested in the commission and shall also constitute authority to the United States Department of Transportation or any successor agency and the intent of Congress to grant any Federal approvals required hereunder to permit the commission to fix, charge, and collect fees, rentals, tolls, or any other charges on the bridges within its jurisdiction to the extent provided in subsections (a) and (b) and this subsection and the compact.

"(d) Notwithstanding the above provisions, the commission shall not fix, charge, or collect fees, rentals, tolls, or any other charges on any of the various bridges formerly toll or otherwise over the Delaware River between the State of New Jersey and the Commonwealth of Pennsylvania heretofore acquired by the commission pursuant to the provisions of the Act of the State of New Jersey approved April 1, 1912 (chapter 297), and all supplements and amendments thereto, and the Act of the Commonwealth of Pennsylvania approved May 8, 1919 (Pamphlet Laws 148), and all supplements and amendments thereto.

"(e) At any time that the commission shall be free of all outstanding indebtedness, the State of New Jersey and the Commonwealth of Pennsylvania may, by the enactment of substantially similar acts, require the elimination of all tolls, rates, rents, and other charges on all bridges within the commission's jurisdiction and control and, thereafter, all costs and charges in connection with the construction, management, operation, maintenance, and betterment of bridges within the jurisdiction and control of the commission shall be the financial responsibility of the States as provided by law.".

MOTOR VEHICLE STUDY

SEC. 137. (a) The Secretary shall enter into appropriate arrangements with the Transportation Research Board (TRB) of the National Academy of Sciences to conduct a study of those motor vehicle issues noted in subsection (b) of this section. The TRB shall consult with the Department of Transportation, the State highway administrations, the motor carrier industry, highway safety groups, and any other appropriate entities.

(b) The study shall include an analysis of the impacts of the various positions that have been put forth with respect to each issue. The final report shall include best estimates of the effects on pavement, bridges, and highway safety, and the changes in transportation costs and other measures of productivity for various segments of the trucking industry resulting from adoption of each of the positions identified and analyzed. Related issues of permitting, weight enforcement, and data availability and reliability shall be addressed as appropriate. The issues to be addressed shall include but not be limited to:

(1) Elimination of existing, grandfather provisions of section 127, title 23, United States Code, which allow higher axle loads and gross vehicle weights than the 20,000-pound single axle load limit, 34,000-pound tandem axle load limit, and 80,000-pound gross vehicle weight limit maximums authorized by the Federal-Aid Highway Amendments of 1974 (Public Law 93-643), including permits for divisible loads and statutory provisions providing higher weights by formula, tolerance or statutory specification.

(2) Analysis of alternative methods of determining a gross vehicle weight limit and axle loadings for all types of motor carrier vehicles.

(3) Analysis of the bridge formula contained in section 127 of title 23, United States Code, in view of current vehicle configurations, pavement and bridge stresses in accord with 1986 design and construction practices, and existing bridges on and off the Interstate System.

(4) Establishment of a nationwide policy regarding the provisions of "reasonable access" to the National Network for combination vehicles established pursuant to the Surface Transportation Assistance Act of 1982.

(5) Recommend appropriate treatment for specialized hauling vehicles which do not comply with the existing Federal bridge formula.

(c) The TRB shall submit a final report to the Secretary and the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress on the results of the study conducted under this section, not later than thirty months after appropriate arrangements are entered into under subsection (a). Appropriate arrangements shall be concluded within six months from the date of passage of this Act.

(d) There is authorized to be appropriated to carry out subsection (a) of this section, out of the Highway Trust Fund (other than the Mass Transit Account), $500,000 per fiscal year for each of the fiscal years ending September 30, 1987, and September

30, 1988. Funds authorized for this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended.

RAIL-HIGHWAY CROSSINGS STUDY

SEC. 138. (a) The Secretary shall conduct a study of national highway-railroad crossing improvement and maintenance needs. The Secretary shall consult with the State highway administrations, the Association of American Railroads, highway safety groups, and any other appropriate entities in carrying out this study.

(b) The issues to be addressed by this study shall include but not be limited to:

(1) Examine any correlation which may exist between existing conditions at crossings and accident data at crossings.

(2) Examine existing hazards to motorists and railroad personnel and community impacts resulting from mobility and capacity constraints including delays of police, fire, and emergency medical services.

(3) Analysis of most cost effective methods of protecting the public at crossings including a review of the impact of Federal funds expended at crossings; division of cost of improvements and maintenance between Federal, State, local governments and railroads; cost effectiveness of the Railroad Relocation Demonstration Program (section 163 of the Federal-Aid Highways Act of 1973) compared to the Railroad-Highway Crossings program (section 203 of the Highway Safety Act of 1973); and the cost of upgrading existing equipment at crossings to the latest technology.

(4) Examine driver behavior at railroad-highway crossings and what technologies are most effective in changing behavior and preventing accidents.

(5) Examine what effect the shift in rail traffic patterns, including abandonments, mergers, and increased demand in certain corridors) has on railroad-highway crossing needs.

(6) Review any other potential costs associated with railroad-highway crossings including accident liability, increased truck size and wieght, and maintenance responsibilities.

(c) The Secretary shall submit a final report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress on the results of the study conducted under this section along with recommendations of how these needs can be addressed in a cost effective manner, not later than twenty-four months after the date of enactment of this section.

(d) There is authorized to be appropriated to carry out subsection (a) of this section, out of the Highway Trust Fund (other than the Mass Transit Account), $600,000 for the fiscal year ending September 30, 1987, to remain available until expended. Funds authorized for this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended.

INTERIM AMENDMENTS

SEC. 139. (a) Unobligated balances of Interstate construction funds apportioned or allocated to a State and available to a State on enactment of the Federal-Aid Highway Act of 1987, shall be available for obligation for Interstate construction projects or to convert Advance Construction Interstate projects until October 1, 1990. Federal Interstate construction funds shall not be used to reimburse the State under section 123(a) of title 23, United States Code, when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Projects constructed under this subsection are eligible for the Federal share payable provided in section 120(b) of title 23, United States Code. Interstate discretionary funds unallocated on enactment of the Federal-Aid Highway Act of 1987, shall be available for allocation until October 1, 1990.

(b) Unobligated balances apportioned to a State under section 104(b)(1) of title 23, United States Code and section 104(b)(5)(B) of title 23, United States Code, shall be available for obligation for projects under section 159 of title 23, United States Code.

(c) Unobligated balances apportioned to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under the provisions of section 108 of the Highway Improvement Act of 1982 shall be considered to have been authorized to be appropriated to carry out the provisions of section 215 of title 23, United States Code.

(d) Unobligated balances apportioned to a State under section 203 of the Highway Safety Act of 1973 shall be available for projects under section 130 of title 23, United States Code.

TECHNICAL AMENDMENTS

SEC. 140. (a) Title 23, United States Code, is amended as follows:

(1) The tables of sections for chapters 1, 3, and 4 are amended by (A) striking:

"118. Availability of sums apportioned."
"127. Vehicle weight and width limitations—Interstate System."
"133. Repealed."
"146. Repealed."
"148. Development of a national scenic and recreational highway."
"151. Pavement marking demonstration program."
"155. Access highways to public recreation areas on certain lakes."
"156. Highways crossing Federal projects."
"213. Rama Road."

and

"219. Safer off-system roads.",

and by (B) inserting in lieu thereof, respectively,

"118. Availability."
"127. Vehicle weight limitations—Interstate System."
"133. Strategic highway research program."
"146. Carpool and vanpool projects."
"148. Repealed."
"151. Repealed."
"155. Repealed."
"156. Repealed."
"213. Repealed."

and

"219. Repealed."

and by (C) adding

"159. Federal-aid Interstate-primary program."
"160. Income from right-of-way."

and

"409. Reports, surveys; disclosures; admission as evidence.".

(2) Section 101(a) is amended by striking the definition of "park road" and inserting in lieu thereof "The term 'park road' means a public road that is located within, or provides access to, an area in the national park system, with title and maintenance responsibilities vested in the United States.".

(3) Section 106(c) is amended by striking "10" and inserting in lieu thereof "15" and by striking the second sentence.

(4) Section 107(b) is amended by striking "under section 108(b) of the Federal-Aid Highway Act of 1956" and inserting in lieu thereof "for Interstate construction or for the Interstate-primary program".

(5) Section 113 is amended by striking out "August 30, 1935" and inserting in lieu thereof "March 3, 1931" and by striking out "267a" and inserting in lieu thereof "276a".

(6) Section 115(a)(1) is amended by striking "interstate funds," and inserting in lieu thereof "Interstate-primary program funds," and by striking "funded under section 104(b)(5) of this title".

(7) Section 121(d) is amended by striking out "10" and inserting in lieu thereof "15", and by striking out the third sentence.

(8) The first sentence of section 122 is amended by inserting "or for substitute highway projects" before "and the retirement".

(9)(A) Section 125(b) is amended by striking out "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors," each place it appears and inserting in lieu thereof "the Federal-aid highway systems, including the Interstate System".

(B) Section 125(c) is amended by striking out "routes functionally classified as arterials or major collectors" and inserting in lieu thereof "on any of the Federal-aid highway systems".

(10) Section 137(f)(1) is amended by striking "104(b)(5)(B)" and inserting in lieu thereof "104(d)(1)".

(11) Section 141(d) is amended by striking "104(b)(5)" and inserting in lieu thereof "104(d)(1)" the two places "104(b)(5)" appears and by inserting "-primary" after the word "Interstate".

(12)(A) Section 142(a)(1) is amended by (iii) striking "104(b)" and inserting in lieu thereof "104(d)".

(B) Section 142(a)(2) is amended by striking "104(b)(6)" the three places it appears and inserting in lieu thereof "104(d)(3)" in each place.

(C) Section 142(b) is amended by striking "paragraph (5) of subsection (b) of section 104" and inserting in lieu thereof "section 104(d)(1)".

(D) Section 142(c) is amended by striking "104(b)(6)" the two places it appears and inserting in lieu thereof in each place "104(d)(3)".

(13) Section 144(i) is amended by striking out the period at the end and inserting in lieu thereof "to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation.".

(14) Section 146 is amended by striking "104(b)(1), 104(b)(2), and 104(b)(6)" and inserting in lieu thereof "104(d) (1), (2), and (3)".

(15) Sections 148, 151, 155, 156, 213, and 219 are repealed.

(16) Section 150 is amended by striking "(6) of subsection (b)" in two places and inserting in lieu thereof in each place "(3) of subsection (d)".

(17)(A) Section 152(e) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(B) Section 152(g) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

(18)(A) Section 154(e) is amended—

(i) by striking out "criteria which takes" and inserting in lieu thereof "criteria which take";

(ii) by inserting after "posted" the following: "on January 1, 1983,"; and

(iii) by inserting before "in accordance with" the following: ", and on highways built after such date with speed limits posted at fifty-five miles per hour,".

(B) Section 154(f) is amended by striking "each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the following fiscal years, in the case of fiscal years 1982 and 1983, and up to 10 percent, in the case of subsequent fiscal years." and inserting in lieu thereof "sections 104(d)(1)(C), (2), and (3) of this title in an amount of up to 10 percent of the amount to be apportioned for the following fiscal year.".

(19)(A) Section 158(a)(1) is amended by striking "each of the sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1986".

(B) Section 158(a)(2) is amended by striking "each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of this title on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1987."

(20)(A) The second sentence of section 204(b) is amended by inserting "the Secretary or" before the "Secretary of the Interior".

(B) Section 204(e) is amended by striking "88 Stat. 2205" and inserting in lieu thereof "88 Stat. 2203".

(21) Section 210(g) is amended by striking "Commerce" and inserting in lieu thereof "Transportation".

(22) Subsection (a) of section 215 of title 23, United States Code, is amended by striking from the first sentence the words "and American Samoa" and inserting in lieu thereof "American Samoa, and the Commonwealth of the Northern Mariana Islands".

(23) Section 217 is amended by striking "paragraphs (1), (2), and (6) of section 104(b)" the two places it appears and inserting in lieu thereof "sections 104(d) (1), (2), and (3)".

(24)(A) Section 307(c)(3) is amended by striking "(1), (2), and (3) of section 104(b)" and inserting in lieu thereof "(1) and (2) of 104(d)".

(B) Section 307(c)(5) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(C) Section 307(e) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Environment and Public Works Committee and the House Committee on Public Works and Transportation".

(25) Section 311 is amended by striking "(b)" and inserting in lieu thereof "(d)".

(26) Section 315 is amended by striking "204(d), 205(a), 207(b) and 208(c)" and inserting in lieu thereof "204(f) and 205(a)".

(27) Section 401 is amended by striking "and American Samoa." and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands.".

(28)(A) Section 402(c) is amended by (i) striking "For the fiscal years ending June 30, 1967, June 30, 1968, and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such" and inserting in lieu thereof "Such", by (ii), striking "After December 31, 1969, the" and inserting in lieu thereof "The", and by (iii) striking "and American Samoa" and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands".

(B) The last sentence of section 402(j) is amended by striking out "chapter" and inserting in lieu thereof "section".

(b)(1) Section 108(b) of the Federal-Aid Highway Act of 1956 is amended by (A) inserting "and" before "the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1987", by (B) inserting a period after "1987", and by (C) striking ", and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1988, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1989, and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1990.".

(2) Section 108(d) of the Surface Transportation Assistance Act of 1982 is amended by striking "this title," and inserting in lieu thereof "title 23, United States Code,".

(3) Section 163 of the Surface Transportation Assistance Act of 1982 is amended by striking "appropriated" and inserting in lieu thereof "apportioned".

(4) Section 163(o) of the Federal-Aid Highway Act of 1973 is amended to read as follows:

"(o) The Secretary of Transportation shall make biennial reports and a final report to the President, the Senate Committee on Environment and Public Works, and the House Committee on Public Works and Transportation with respect to activities pursuant to this section."

(5) Section 103(c) of the Federal-Aid Highway Act of 1978 is amended by striking "Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

Mr. MOYNIHAN. Mr. President, I ask for a minute and a half to associate myself with the distinguished chairman of the Committee on Environment and Public Works.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, as the distinguished chairman has said, this is urgent legislation. The Congress did not pass a highway bill last year and we now have no legislation indefinitely with respect to the Interstate System and all the other secondary systems.

The chairman is absolutely correct. We need to pass this bill within a matter of weeks. The committee will be able to do so. We hope the Senate will understand this urgency.

Mr. President, I am pleased to join Senators BURDICK, STAFFORD, SYMMS, and other members of the Environmental and Public Works Committee introducing the Federal-Aid Highway Act of 1987.

The bill would provide $52 billion from the Highway Trust Fund over 4 years for use by States on interstate highways, urban and secondary roads, bridge replacement and rehabilitation, as well as funds for forest highways, park roads, and Indian reservation roads. Also included in this legislation are funds for the Federal Highway Administration's safety research and construction programs.

The bill will provide $13 billion per year for the next 4 years. Overall, New York will receive approximately 5 percent of the entire authorization.

In key programs, New York will receive more: about 30 percent, or $147 million of the Interstate Substitution Program; 10 percent, or $15 million of the Bridge Repair Program, and 8.4 percent, or $63 million, of the Federal Aid Urban Systems Program.

The bill we are introducing today also includes a provision secured in the bill passed at the end of the last Congress that would save from lapsing approximately $90 million in Federal funds earmarked for Westway rights-of-way and easements so that they could be used for other highway projects in New York.

THE NEED FOR THE HIGHWAY REAUTHORIZATION BILL

The need for reauthorization of the highway programs is clear. The building season for many States, especially those in the Northeast, is short, and contract letting depends on swift passage of this legislation.

As the new chairman of the Subcommittee on Water Resources, Transportation and Infrastructure, I am looking forward to working closely with the chairman and other members of the committee to move the bill through markup in committee, to passage on the Senate floor, and through the eventual conference with the House of Representatives.

I urge my colleagues to support expeditious passage of this legislation.

● Mr. CHAFEE. Mr. President, I am pleased to join with Senator STAFFORD today in introducing legislation to reauthorize the Federal-Aid Highway Program.

The measure we are introducing is identical to the bill that was debated in the Senate last year and approved unanimously on September 24, 1986. Although conferees worked diligently to resolve differences in the bills passed by the Senate and House of Representatives, the legislation did not receive final action prior to the adjournment of the 99th Congress.

As a result, many States have nearly exhausted their Federal highway funds, and construction and repair projects on roads and bridges throughout the country have been halted. Many more will be delayed unless Congress acts promptly to reauthorize the program.

During the past 4 years, roads and bridges throughout the country have benefited from the increased funding made possible by the 1982 Highway Act. But much more remains to be done to improve the quality of our highways and bridges. The legislation

we are introducing today will extend the Federal Highway Program through 1990. It also contains several changes to increase the flexibility of the States in spending the Federal funds, in order for the program to respond better to State and local highway priorities.

The State of Rhode Island has embarked upon a vigorous road improvement program which has resulted in safer highways and thousands of jobs in the construction industry. The voters have shown strong support for this program by recently approving a $57 million State transportation bond issue to match the Federal funds. Jobs could be jeopardized and projects postponed if Congress does not act swiftly to approve highway reauthorization legislation.

It is my hope that the Senate will act on this legislation without delay in order for the conference discussions to resume and the measure to be enacted as soon as possible.●

● Mr. SYMMS. Mr. President, I am pleased to join Senator STAFFORD, the distinguished ranking Republican on the Environment and Public Works Committee, and others on the committee in introducing this important legislation to reauthorize the Federal-Aid Highway Program. The bill we are introducing today passed the Senate last September by a vote of 99 to 0, the first unanimous vote on a highway authorization bill in the history of the Federal-Aid Highway Program. We introduce this legislation to remind Senators of the important work already done in this area and to encourage the body to help us move quickly toward final passage of a highway bill.

I was disappointed that Senate and House conferees were unable to reach an agreement on highway legislation prior to final adjournment of the 99th Congress. Since authorization of the Federal-Aid Highway Program expired at the end of fiscal year 1986, the Federal Highway Administration has been unable to apportion highway funds to the States in this fiscal year.

As a result, many States have been forced to cancel bid-lettings for spring construction work, and many Northern-tier States may lose the entire 1987 construction season. If a highway bill is not enacted in the near future, we face the loss of thousands of jobs in construction and related industries. I urge all Senators to consider seriously the adverse economic consequences of any further delay in passage of a highway bill.

Mr. President, I also am cosponsoring the highway bill which the distinguished chairman of the Environment and Public Works Committee, Senator BURDICK, and other members of the committee are introducing today. That bill is similar to the highway legislation we introduced in May of last year. It includes very few of the amendments we adopted in committee or on the floor. I look forward to working with Senator BURDICK, Senator MOYNIHAN, the chairman of the Transportation Subcommittee, and others on the committee to move this bill as quickly as possible through markup and back to the Senate floor.●

● Mr. QUAYLE. Mr. President, as the 100th Congress convenes, it would seem prudent to consider the unfinished business of the 99th Congress. We were all disappointed when House and Senate conferees were unable to reconcile the differing versions of legislation to reauthorize Federal highway programs. We commend the efforts of Senate conferees who made numerous attempts to reach a fair compromise during the negotiations.

State and local governments across the United States have canceled or indefinitely delayed thousands of highway projects. The State of Indiana has postponed over 130 projects with a total cost of $114 million. Interstate 70, formerly scheduled for expansion, remains clogged with traffic as it moves through downtown Indianapolis. The Fort Wayne bypass, a project of vital importance to northeast Indiana, has been stalled. Near Evansville, completion of the Russell Lloyd Expressway and construction of Interstate 164 have been delayed. These developments have hindered commerce in Indiana and threaten the economic development of our towns and cities.

If Congress fails to approve highway reauthorizing legislation prior to the end of February, we could lose an entire construction season in Northern States and every State would face a loss of jobs. In Indiana alone, approximately 8,000 Hoosiers stand to lose their jobs. It would be nothing short of irresponsible if we allowed this to happen. This week I am circulating a letter to send to Senator BURDICK, the distinguished chairman of the Committee on the Environment and Public Works, requesting speedy consideration of a new highway bill. I urge my colleagues to join me in this request. It is my hope that such a bill would not become bogged down in the contentious issues that stalled its progress in the last Congress. Furthermore, I would encourage all of my colleagues to consider the potential crisis that might result from our inaction and weigh the consequences against the importance of their special interests.

If it becomes apparent that these issues will threaten the timely passage of the legislation, I am certain support will grow for either a "clean bill," or a 1-year extension of past authority. The writing is on the wall. This is a time for compromise and cooperation. The American people are relying on us.●

FAST ACTION NEEDED TO AUTHORIZE HIGHWAY PROGRAM

● Mr. LAUTENBERG. Mr. President, I am pleased to join in introducing the 1987 highway reauthorization bill.

I believe that it is critical for the Committee on Environment and Public Works to favorably report and for this Senate to pass this bill.

In order for the States' highway departments to address both immediate and long-term needs, this Senate must act quickly. The failure to enact legislation before the highway authorizations ran out on September 30, 1986, has meant delay and hardship for those States ready and willing to proceed with necessary infrastructure improvements.

We must act so that this year's construction season is not lost. Plans must be developed, projects advertised, bids received and contracts let. Time is of the essence.

It is also important that a long-term reauthorization bill be enacted. This is important so that the program may continue for some uninterrupted period of time.

The highway program has been and is one of the most successful of all Federal assistance programs and a multiyear bill is necessary to ensure that continuity and success.

I am concerned, however, about the obligation ceilings contained in the bill. I believe that it is incumbent upon us to make available for the purposes intended, user fees that are collected.

As chairman of the Transportation Subcommittee of Appropriations I intend to exercise annual review of the Federal Aid Highway Program and most especially the program's overall obligation ceiling.

I am also encouraged that the bill introduced today does not contain any provision that would amend the existing national speed limit of 55 miles-per-hour.

This issue proved to be a particularly contentious 1 last year. It might have been the reason why no conference agreement was reached. If we want the highway program to go forward and go forward quickly such an amendment has no place on this bill.

Though no provision regarding demonstration projects is included in the bill, I support and will continue to work for accommodating worthwhile projects like Route 21 in New Jersey.

I congratulate the full committee chairman, Senator BURDICK, and the subcommittee chairman, Senator MOYNIHAN, for moving quickly on this issue. I hope that the full Senate will move as quickly.●

By Mr. MELCHER:

S. 187. A bill to provide for the protection of Native American rights for the remains of their dead and sacred artifacts, and for the creation of

Native American cultural museums; to the Select Committee on Indian Affairs.

BURIAL OF NATIVE AMERICANS

Mr. MELCHER. Mr. President, I am going to introduce two bills today. I will briefly describe each bill. The first bill, for which I have asked the number 187 to be reserved, deals with a very special problem, a shameful problem that exists in this country. I asked for the number S. 187 because I hope that this is one of the first bills passed in 1987.

Mr. President, most of us know where our ancestors are buried, where their remains reside, where we have placed them with some respect and dignity. But there are a great number of native Americans and perhaps native Hawaiians who do not know where their ancestors' remains are placed.

Mr. President, there are scores of museums in the United States and abroad. There are several universities, Mr. President, that have the remains of native Americans in skeletal form on display or just their bones collected in boxes without the consent of the families or the tribes.

In addition to that, there are numerous artifacts of sacred nature to tribes of native Americans that are in museums without the consent of the tribes. There are religious artifacts of a sacred nature to various tribes. To correct that, Mr. President, I am introducing this bill, S. 187, which is the same bill that I introduced on the last day of the last Congress. I introduced it at that time in order to provide an opportunity for its consideration by various museums, various groups of people, various tribes and clans, and families of native Americans and native Hawaiians.

The response we have had to the bill during the past 2 or 3 months since adjournment has been very much on the positive side. The bill will set up a system of repatriation, and that means just as it sounds, the return of the remains of these people taken from their native grounds and returned now with some dignity to the tribes or the clans or the families of native Americans and native Hawaiians, where they properly can be given respect and be cared for by the people.

In addition, the same will be true of the sacred offerings. The bill sets up a system for figuring out whose bones are stored in the Smithsonian. Right now there are scores of boxes, literally hundreds of boxes of native Americans bones stored in the Smithsonian in its attics and nooks and crannies. The religious objects and the remains of these native Americans will be identified. Then a system is set up within the bill to return them and the respect will be paid.

I think the bill is absolutely essential. I think it is a shame on our country, on our people as a whole, that we have not corrected this problem. I believe respect is due, dignity is due and now is the time to do it. That is the purpose of the introduction of this bill.

EXPORT OF U.S. AGRICULTURAL PRODUCTS

Mr. MELCHER. Mr. President, the second bill deals with an entirely different subject. It is to be immediate assistance to the country in exporting of our agricultural products. The decline in agricultural exports has been very discouraging, very drastic, and very harmful to the economy of the country. It has caused the mounding of our surplus commodities to rise higher and higher. We need to have the determination and wherewithal to export more of these surplus commodities.

The bill, S. 125, will seek to correct a portion of the problems that exist in this decline in our agricultural exports by beefing up the foreign agricultural service; that is, putting more people to work in the foreign agricultural service, representing the Department of Agriculture here in our country, representing our producers, representing our entire nation in promoting and assuring that we do maximum in improving the agricultural exports.

It has two parts in the bill. We have a series of findings, making clear why this is necessary to beef up the foreign agricultural service; and, second, to permit the foreign agricultural service to contract for the assistance of individuals in the various countries that are expert and knowledgeable in those markets.

This, too, is a very needed bill.

Mr. President, I introduce both of these bills today and I hope we can have prompt consideration and action on both.

By Mr. WEICKER (for himself and Mr. DODD):

S. 188. A bill to amend title 28, United States Code, to provide for the appointment of one additional district judge for the District of Connecticut; to the Committee on the Judiciary.

DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Mr. WEICKER. Mr. President, I rise today to reintroduce legislation to create an additional Federal district judgeship for the District of Connecticut. This legislation was originally introduced by Senator DODD and myself on January 30, 1986; however due to a full committee agenda, the bill was not acted on by the Judiciary Committee prior to the adjournment of the 99th Congress.

Adoption of this legislation would increase the total number of district judges in Connecticut from six to seven; a number supported by the Administrative Office of the U.S. Court's most recent survey of judgeship needs. As was the case in the 99th Congress, Senator DODD and I are joined in this legislative endeavor by the entire Connecticut delegation, which has cosponsored similar legislation introduced today by Representative STEWART MCKINNEY.

Mr. President, Connecticut's citizens take great pride in the integrity and experience of the State's Federal judges. The men and women who fulfill the awesome responsibilities of the bench in Connecticut apply not only their substantial legal scholarship to the task, but also devote long hours of hard work to their jobs; hours that increase each and every year.

Despite their abilities and dedication, Connecticut judges are faced with an ever-increasing workload. The District of Connecticut's overall workload has increased by more than 40 percent since 1980. The mix of new filings, pending cases, weighted filings—those cases deemed to involve unusual complexity—and length of trials are factors the Administrative Office of the Courts considers before making recommendations for new judgeships. After considering the workload of the Connecticut judiciary, the Administrative Office of the Courts determined that Connecticut exceeded every criteria necessary to qualify for a new judgeship. Therefore, the Federal entity charged with reviewing judgeships and judicial caseloads concluded that Connecticut fully deserves an additional judgeship.

Mr. President, I urge the Senate Committee on the Judiciary to expeditiously consider this legislation. I am confident that the Committee and later the full Senate, will grant Connecticut's district judges and our fine courts the additional judgeship they need to sustain the outstanding record of administering justice that we have come to expect. I understand that other Federal judicial districts may also be eligible for additional judgeships. Therefore, I would welcome the inclusion of Connecticut's additional judgeship in an omnibus bill if the Judiciary Committee prefers that approach.

I ask unanimous consent that the text of this legislation be printed in the CONGRESSIONAL RECORD at this point.

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

S. 188

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there shall be appointed, pursuant to section 133 of title 28, United States Code, an additional district judge for the District of Connecticut.

(b) To reflect the change made by this section in the table of judges for each of the judicial districts, section 133 of title 28 United States Code, is amended by striking the following:

"Connecticut.....6"

and inserting in lieu thereof the following:

"Connecticut.....7"

By Mr. NICKLES (for himself, Mr. DOLE, Mr. GRAMM, Mr. DOMENICI, Mr. WALLOP, Mr. HECHT, Mr. BUMPERS, and Mr. SYMMS):

S. 200. A bill to amend the Internal Revenue Code of 1954 to repeal the windfall profit tax on crude oil; to the Committee on Finance.

WINDFALL PROFIT TAX REPEAL

● Mr. NICKLES. Mr. President, On behalf of Mr. DOLE, Mr. GRAMM, Mr. DOMENICI, Mr. WALLOP, Mr. HECHT, Mr. BUMPERS, Mr. SYMMS, and myself, I am pleased to introduce a bill to repeal the windfall profit tax.

The crude oil excise tax of 1980 is one of the few remaining legacies of the misguided Federal energy policies of the 1970's. The American consumer and our domestic energy industry have been substantially hurt by these policies, which included price controls, allocations of petroleum by Federal fiat, throwing billions of dollars at uneconomic synthetic fuels projects, and imposing punitive taxes on the U.S. crude oil production industry when prices were high.

Clearly, during this period when our domestic energy industry is in a severe economic crisis, the least the U.S. Congress should do is eliminate the final embarrasment of the Federal Government's 1970's energy policies and repeal the windfall profit tax.

Since 1980, the windfall profits tax has taken more than $77 billion from the domestic energy industry. No other single industry in the United States has a windfall profits tax. This tax is a tremendous disincentive for domestic producers, but a strong encouragement for importers of foreign oil on which there is no equivalent tax.

The windfall profit tax has hurt the American consumer by increasing our reliance on foreign oil. Because the tax discourages production from marginal wells and discourages exploration and development to replace our declining oil reserves, domestic production is reduced and imports go up.

Last July 31, I offered an amendment to repeal the windfall profit tax to the measure to increase the public debt. Recognizing that the tax is inappropriate, this distinguished body adopted that repeal amendment. In addition, President Reagan expressed his support for prompt repeal of the windfall profit tax. I ask unanimous consent that the text of President Reagan's letter of August 2 in support of the repeal and the text of my repeal amendment be inserted in the RECORD at the conclusion of my statement.

Today, I am introducing the same windfall profit tax repeal language that was included in S. 2857, the Gramm-Nickles Oil and Gas Production Revitalization Act. This language has been approved by the administration, and includes an effective date of January 1, 1987. President Reagan has included windfall profit tax repeal in the fiscal year 1988 budget request.

As a member of the Senate Budget Committee, I will move to include the repeal of the windfall profit tax in the Committee's fiscal year 1988 budget resolution.

Although the tax currently costs U.S. oil producers hundreds of millions of dollars in bookkeeping expenses, repealing the windfall profits tax today would likely cost the Federal Government absolutely nothing. According to the Independent Petroleum Association of America, when the price of oil per barrel drops below $18.93 for tier 1, $22.47 for tier 2, and $28.27 for tier 3, the windfall profits tax is no longer collected. With few exceptions, the price of oil has been below these figures for virtually all of the last year.

Repealing the windfall profits tax would, at minimum, send a positive signal to our domestic energy industry at a time when positive signals are few and far between. In the long run, repeal would help an industry that employs millions of Americans regain lost ground, and put domestic producers on even footing with foreign producers.

As my colleagues know, our domestic energy industry needs every bit of help and encouragement the Federal Government can provide. And the quickest way this body could act to aid that industry is by repealing current laws which are nothing but an impediment for both consumers and producers.

By Mr. KENNEDY (for himself and Mr. MELCHER):

S. 210. A bill to amend the Public Health Service Act to provide catastrophic health insurance coverage for elderly and disabled Americans; to the Committee on Labor and Human Resources.

CATASTROPHIC HEALTH INSURANCE FOR ELDERLY AND DISABLED AMERICANS

● Mr. KENNEDY. Mr. President, I send to the desk a bill to provide protection from catastrophic health care costs for senior citizens and disabled Americans. This legislation essentially embodies the Bowen plan announced by the Secretary of Health and Human Services on November 19, 1986.

In my judgment, there is no social problem more compelling than the need to protect our senior citizens against the high cost of essential health care.

When I came to the Senate in 1963, Congress was in the final stage of the long and successful battle to insure elderly Americans against the intolerable financial burden of serious illness. President Kennedy was proud of his role as the first President to propose Medicare. And Medicare did make a huge difference in the security and health of our senior citizens.

But because of gaps in Medicare coverage and the lack of a catastrophic "stop-loss" protection, our Nation's senior citizens are still far too often at risk for the loss of a lifetime of savings and the promise of a secure and dignified retirement when serious illness strikes. Indeed, Medicare today covers less than half of the elderly's health care costs. On average, our senior citizens must pay the same high proportion of their limited incomes—15-percent—to purchase the health care that they need as they did before Medicare was even created.

Let me review the key gaps in Medicare's acute care benefit package.

Medicare charges a high deductible for the first day of a hospital stay. This deductible is now a staggering $520, and would be even higher except for reforms that I introduced that were adopted in the 99th Congress. Approximately 8 million Medicare beneficiaries—more than one out of every four—must pay this deductible each year, and over a million pay it more than once.

Medicare enrollees are also vulnerable to the extraordinarily high costs of very long hospital stays. After 60 days of care in a spell of illness, Medicare beneficiaries are responsible for a copayment of $130 per day. After 90 days of care, Medicare coverage ends except for 60 lifetime reserve days which carry a copayment of $260 per day. Thus, a senior citizen with a 3-month hospital stay will have incurred costs of $4,420. An individual with a 4-month stay will have costs of over $12,000. If that same individual has previously used up his lifetime reserve days, the cost of a 4-month hospital stay would be a staggering $20,000. And this total is just for hospital costs; out-of-pocket expenditures for physician services associated with the hospital stay are additional.

Medicare's coverage for physician services has gaps as serious as its coverage of hospital costs. After an initial deductible of $75 is paid, Medicare covers 80 percent of recognized charges by physicians. This percentage is comparable to many excellent private insurance plans, but, unlike the better private plans, there is no limit on how high the beneficiary's 20 percent can mount. Moreover, many physicians charge more than Medicare's recognized charges, and these excess charges are the sole responsibility of the beneficiary.

Just as senior citizens are responsible for many costs for services that Medicare supposedly covers, there are some essential services that Medicare does not cover at all. Medicare pro-

vides no protection whatever against the potentially high cost of essential outpatient prescription drugs. Medicare's benefit for outpatient mental health and substance abuse treatment is so limited as to be essentially meaningless—despite a significant incidence of these problems among the elderly. And Medicare does not cover the cost-effective preventive health care that could avert unnecessary illness among enrollees.

Many senior citizens buy private medigap policies that fill many of the holes in Medicare coverage. Other senior citizens are covered by Medicaid. But 20 percent of all senior citizens cannot afford medigap and do not qualify for Medicaid. These senior citizens are not only extremely vulnerable to high health care costs, they also have much less access to needed medical care because of their inability to pay. Thus, as the Congressional Budget Office pointed out in a recent study, senior citizens without medigap coverage use significantly less health care services than those with medigap, even though seniors who have medigap coverage are younger and healthier than those without supplementary protection.

Even those senior citizens who are able to afford and purchase private medigap are not getting the economical health care insurance protection they deserve. Few medigap policies cover outpatient drugs or mental health care. Many policies do not fully cover the cost of very long hospital stays. And, depending on the policy the senior citizen purchases, between 10 and 40 percent of every premium dollar buys no additional protection whatever. Instead, it is invested in sales, marketing and administrative expenses, and profit. By contrast, only a few cents of each Medicare dollar must be used to pay for administration rather than health services.

Secretary Bowen's proposal is a major step toward providing adequate health insurance protection for our senior citizens. It provides that senior citizens will not be liable for more than two hospital deductibles a year and eliminates all co-payments and limits on coverage for long hospital stays. Most important, it caps beneficiary liabilities for all remaining covered services at a total of $2,000 per year. And it pays for these benefits without any increase in the deficit, allowing Medicare beneficiaries to voluntarily purchase this additional coverage for a modest monthly premium of less than $5.00.

I intend to hold prompt hearings on this proposal and work with Doc Bowen and my colleagues on both sides of the aisle to move it to prompt passage. In the course of our consideration of this proposal we will explore whether it will be possible to broaden the proposal to address some of the other important gaps in Medicare which I have noted above, at a reasonable cost and without adding to the deficit.

Doc Bowen is to be congratulated for proposing this policy initiative: We may be able to do better than he has proposed, but I am confident that the American people will not accept our doing less.

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

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

S. 210

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

SECTION 1. PURPOSES.

It is the purpose of this Act—

(1) to expand the availability of health care services to the elderly and disabled;

(2) to assure the continued financial solvency of hospitals, physicians, and other health care providers serving the elderly and disabled;

(3) to increase the willingness and ability of health care providers to serve the elderly and disabled and to expand the nation's supply of health resources dedicated to this purpose; and

(4) to protect the elderly and disabled against the consequenes of catastrophic illness.

SEC. 2. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Public Health Service Act is amended—

(1) by redesignating title XXIII as title XXIV and redesignating each section of that title as the corresponding section in title XXIV, and

(2) by inserting after title XXII the following new title:

"TITLE XXIII—HEALTH INSURANCE COVERAGE AGAINST CATASTROPHIC ILLNESSES.

"ESTABLISHMENT OF PROGRAM

"SEC. 2301. There is hereby established a voluntary insurance program to provide catastrophic health insurance benefits in accordance with the provisions of this title for aged and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees. The program established under this title shall be administered by the Secretary of Health and Human Services (in this title referred to as the 'Secretary').

"SCOPE OF BENEFITS

"SEC. 2302. The benefits provided to an individual enrolled in the program established under this title shall consist of entitlement to have payment made to or on behalf of the individual (in accordance with regulations prescribed by the Secretary) for—

"(1) the reasonable cost or charges for inpatient hospital care not paid for by any other government program for the first ten days of hospital care for hospitalizations after the second hospitalization in any calendar year;

"(2) the reasonable cost or charges for hospital care not paid for by any other government program provided after the sixtieth day of care in any hospitalization; and

"(3) the reasonable cost or charges in excess of $2,000 for a calendar year for medical care not paid for by any other government program (including care provided by physicians, hospital care, durable medical equipment, home health care, and not more than 100 days of nursing home care in a calendar year).

"PROCEDURES FOR PAYMENT OF CLAIMS

"SEC. 2303. (a) The Secretary shall, to the greatest extent practicable, coordinate payments made with respect to benefits under this title with payments made with respect to benefits under other government programs.

"(b) No deductible or coinsurance amount shall be applied to any amount payable with respect to inpatient hospital care under this title.

"ELIGIBILITY; ENROLLMENT

"SEC. 2304. (a) Any individual who is disabled or has attained 65 years of age shall be eligible to enroll in the insurance program under this title.

"(b) Any individual may enroll in the insurance program under this title only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed by the Secretary.

"(c) The Secretary shall by regulation prescribe—

"(1) coverage periods for individuals enrolled under the program, and

"(2) Procedures for collection of the premiums imposed under the program.

"PREMIUMS

"SEC. 2305. (a)(1) Except as provided in subsection (b), the amount of the monthly premium for any calendar year for individuals who choose to enroll in the program under this title shall be an amount equal to the monthly actuarial rate which the Secretary estimates to be necessary so that the aggregate of such premiums for such calendar year will be equal to the total of the benefits and administrative costs which will be payable from the general fund of the Treasury for services performed (and administrative costs incurred) in such calendar year for providing the catastrophic benefits under this title. In September of each year the Secretary shall promulgate the premium amount which shall be applicable for the following calendar year and shall adjust the amount of such premium to reflect differences between the projected costs and premium collections in the previous calendar year.

"(b) In the case of an individual whose coverage period began pursuant to an enrollment or reenrollment occurring after his or her initial opportunity to enroll (as determined in accordance with regulations of the Secretary), the monthly premium determined under subsection (a) shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which the individual could have been but was not enrolled.

"(c) Premiums collected under the insurance program established under this title shall be deposited in the general fund of the Treasury.

"FUNDING

"SEC. 2306. The Secretary of the Treasury shall pay from time to time from the general fund of the Treasury such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this title (including administrative expenses).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on October 1, 1987.

By Mr. HELMS:

S. 212. A bill to help prevent rape and other sexual violence by prohibiting dial-a-porn operations; to the Committee on Commerce, Science, and Transportation.

THE DIAL-A-PORN CONTROL ACT

Mr. HELMS. Mr. President, I am today introducing the Dial-a-Porn Control Act. The purpose of this bill is to eliminate completely so-called "dial-a-porn" operations by repealing a few words in section 223(b) of the Communications Act of 1934. This legislation adds no substantive language of any kind to current law; it—purely and simply—removes a gaping loophole in existing law.

The same proposal passed the Senate September 27, 1986 on a voice vote as part of the Anti-Drug Abuse Act of 1986, H.R. 5484. The House of Representatives, however, stripped my dial-a-porn amendment out of the bill before it reached the President's desk, and so the dial-a-porn provision was not enacted into law along with the 1986 drug bill.

Mr. President, American parents have enough to contend with in 1987 without having to worry about whether their children will be able to pick up the phone, dial a number, and then hear an obscene recorded message. Yet since Congress first addressed the problem of dial-a-porn in December 1983, the dial-a-porn industry has flourished, and our children in particular and American society in general have been the losers.

The loophole in existing law is that it affirmatively authorizes dial-a-porn for consenting adults. Thus, dial-a-porn operators are given a green light to go into business, and then the practical problem arises as to how to keep children from calling the dial-a-porn numbers. That practical problem, Mr. President, has proven to be totally insoluble. Moreover, there is no good reason for Congress to authorize our interstate telephone system to be used for the communication of pornographic messages—even to adults.

Mr. President, the prohibitions currently in place under section 223(b) of the Communications Act of 1934 are sufficient to shut down the dial-a-porn industry, if we simply eliminate the loophole. The loophole has two parts.

The first part of the loophole is that portion of section 223(b)(1)(A) which makes dial-a-porn criminal only if it goes to a person under 18 years of age or to a person who has not consented to receiving the message. My legislation eliminates this crippling qualification to the prohibition against dial-a-porn. Thus, the prohibition against dial-a-porn would apply to everyone—not just minors and nonconsenting adults as is currently the case.

The second part of the loophole is all of section 223(b)(2) which provides: "It is a defense to a prosecution under this section that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with procedures which the Commission—the FCC—shall prescribe by regulation." My legislation would remove this complete, affirmative defense to prosecution under section 223(b), and it would make the current penalties for dial-a-porn under section 223(b) meaningful for the first time.

Mr. President, many constituents have contacted me on this problem of dial-a-porn. Not long ago I received a letter from the father of a 9-year-old boy. The father sent me a copy of his telephone bill and underlined three long-distance calls to a "900" number. "While questioning my son about these calls," the father wrote, "I discovered that the long distance calls were placed to a service which provides sexually explicit messages. Apparently, some older children told my son that this number was the number of 'Teddy Ruxpin,' the talking teddy bear. The joke was not very funny when one considers the fact that the morals of young children are being corrupted in the process."

Mr. President, the need for this legislation, I believe, is completely evident in this father's letter. We in Congress owe the parents of America better than what they now have to contend with on this matter of dial-a-porn. I urge enactment of this bill.

Mr. President, I ask unanimous consent that the text of the Dial-a-Porn Control Act be printed in the RECORD.

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

S. 212

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 "Dial-a-Porn Control Act".

SEC. 2. Section 223(b) of the Communications Act of 1934 is amended—

(1) in paragraph (1)(A), by striking out "under eighteen years of age or to any other person with out that person's consent";

(2) by striking out paragraph (2);

(3) in paragraph (4), by striking out "paragraphs (1) and (3)" and inserting in lieu thereof "paragraphs (1) and (2)"; and

(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

By Mr. HELMS:

S. 213. A bill to restore the right of voluntary prayer in public schools and to promote the separation of powers; to the Committee on the Judiciary.

VOLUNTARY SCHOOL PRAYER ACT

Mr. HELMS. Mr. President, I thank the Chair for recognizing me.

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country."

Mr. President, what I have just recited is the prayer recommended by the New York State Board of Regents to local school districts which was struck down as unconstitutional by the U.S. Supreme Court in the infamous case of Engel against Vitale in 1962. The Court held that, even when recited by students on a voluntary basis, this simple prayer was unconstitutional in American public schools.

Mr. President, almost a quarter century has now passed since the Supreme Court first banned voluntary group prayer in the public schools. A generation of Americans has now grown up without the basic freedom to pray at school—a freedom enjoyed by every previous generation of Americans.

As we begin the 100th Congress, the time has come to end this gross deprivation of religious liberty and to restore the fundamental right to engage in voluntary school prayer. That is why I am today introducing the Voluntary School Prayer Act.

I emphasize, Mr. President, that what I am talking about is voluntary prayer and what my legislation addresses is voluntary prayer. Some school prayer opponents have accused me of advocating mandatory prayer. Such a charge is utterly untrue. The school prayer cases which came before the Supreme Court in the early 1960's involved voluntary group prayer, and accordingly it was voluntary group prayer which the Court banned. Mandatory prayer has never been an issue. So I repeat, I am not advocating—nor have I ever advocated—mandatory school prayer, and my legislation simply seeks to restore the freedom to engage in voluntary group prayer in the public schools.

Mr. President, the framers of the Constitution gave Congress explicit authority to provide a check on usurpations of power by the Supreme Court. My legislation uses this authority, contained in article III of the Constitution, to withdraw Federal court jurisdiction over voluntary school prayer cases, thereby returning the issue to the States, localities, and parents where it belongs and where it was before the Supreme Court rulings of the early 1960's.

Mr. President, religious liberty is too important to leave exclusively in the hands of judicial elites more intent on imposing their own political views on the Nation that in objectively interpreting the words of the Constitution. My legislation will in effect replace the nonsense of Federal judges on school prayer over the previous two and a half decades with the common sense and practical experience of the American people over the prior 170 years.

Mr. President, the legislation I am introducing today is substantially similar to proposals I have offered in several previous Congresses. This legisla-

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tion has never made it to the President's desk for signature, but it has met with some success.

In 1979, my voluntary school prayer legislation passed the Senate twice, but the Judiciary Committee of the House of Representatives prevented it from going to the House floor for a vote. In 1982, 53 Senators voted in favor of it on a tabling motion before it was set aside later on a procedural motion. In 1985, after a heavy lobbying campaign by a number of liberal groups, it was tabled in the Senate 62 to 36. I hope that in the 100th Congress a majority of the House and Senate will muster the courage to pass this legislation.

Mr. President, this bill restores freedom to the States to allow voluntary prayer, Bible reading, and religious meetings in public schools. The adjective "voluntary" applies to all three categories—prayer, Bible reading, and religious meetings. Through a series of Supreme Court decisions, this freedom—elementary to the drafters of the Constitution—has been taken away from the States.

My legislation uses the congressional authority—given explicitly in article III, sections 1 and 2 of the Constitution—to regulate the general jurisdiction of the inferior Federal courts and the appellate jurisdiction of the Supreme Court. It curtails such jurisdiction so that Federal courts no longer have the power to hear cases involving voluntary prayer, Bible reading, and religious meetings in the public schools.

The result is that such cases become exclusively a matter for the States to handle as they see fit. In effect, school prayer would be a local option. This result is fully consistent with the original purpose of the establishment clause of the first amendment, which was to prohibit the establishment of a national church and to leave the remaining issues of church-State relations strictly with the States.

Mr. President, some of my friends have advocated that we adopt a constitutional amendment to correct the courts and restore the freedom to pray in the schools. This is one approach among many which the Constitution allows, and it is an approach that I have supported in the past and still favor today.

But, Mr. President, it is not the only way for Congress to correct erroneous Federal court rulings, nor in my opinion is it the best. The Constitution provides several other more direct ways for Congress to check abuses of the judicial branch, including control of jurisdiction, Senate confirmation of judicial appointments, specific congressional enforcement of constitutional provisions, and impeachment.

As is well-known, the constitutional amendment process was intentionally set up to be difficult. The normal procedure is for a two-thirds vote in both Houses of Congress followed by ratification by three-quarters of the State legislatures. This procedure presents an extremely heavy burden to meet. The framers of the Constitution specifically wanted it this way to protect the constitutional text from constant change.

If, however, Congress relegates itself solely to the amendment process to correct judicial errors and usurpations, then the very difficulty of the amendment process will be used to protect, not the constitutional text, but distortions of it. Thus, in the face of usurping Federal judges, the amendment process would serve to subvert the Constitution rather than to protect it.

In this school prayer matter, Mr. President, the problem has arisen, not because of the text of the Constitution, but because of outright judicial distortions of that text. The text is fine, and the text never prohibited voluntary prayer in the public schools, as American history and experience before the Supreme Court's first prayer decision in 1962 so clearly attest. The text leaves the matter of school prayer, along with other matters of church-State relations, exclusively up to the States. Thus, although we could add a specific constitutional amendment on school prayer, we need not do so in order to restore this fundamental freedom.

The problem in the prayer matter, as in so many areas of constitutional law, is runaway Federal judges bent on imposing their own personal views of good public policy on the American public irrespective of the Constitution. More often than not in recent years, these views have been hostile to both the Constitution and longstanding American traditions. It is no understatement to say that American society has been radically altered in the recent past because of activist Federal judges.

Mr. President, there is at least one Federal judge in this country who has given the correct interpretation of the Constitution with respect to the first amendment and school prayer. Although his judicial brethren higher up overturned his ruling, his opinion will stand for years to come as the definitive statement of how the first amendment was actually intended to work in this area of the law.

I am referring, of course, to the decision of Judge Brevard Hand of Alabama in *Jaffree* v. *Board of School Commissioners of Mobile County*, 554 F. Supp. 1104 (S.D. Alabama 1983). It clearly demonstrates the errors of the Supreme Court in banning voluntary group prayer. I ask unanimous consent that the Hand opinion—including footnotes—and the text of the bill be printed in the RECORD.

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

S. 213

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 "Voluntary School Prayer Act".

SEC. 2. (a) Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1260. Appellate jurisdiction; limitations

"(a) Notwithstanding the provisions of sections 1253, 1254, and 1257 of this chapter, the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any State statute, ordinance, rule, regulation, practice, or any part thereof, or arising out of any act interpreting, applying, enforcing, or effecting any State statute, ordinance, rule, regulation, or practice, which relates to voluntary prayer, Bible reading, or religious meetings in public schools or public buildings.

"(b) As used herein, 'voluntary' means an activity in which a student is not required to participate by school authorities.".

(b) The section analysis of chapter 81 of title 28 is amended by adding at the end thereof the following new item:

"1260. Appellate jurisdiction; limitations.".

SEC. 3. (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1365. Limitations on jurisdiction

"Notwithstanding any other provision of law, the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1260 of this title.".

(b) The section analysis at the beginning of chapter 85 of title 28 is amended by adding at the end thereof the following new item:

"1365. Limitations on jurisdiction.".

SEC. 4. The amendments made by this Act shall take effect on the date of enactment, except that such amendments shall not apply to any case which, on such date of enactment, was pending in any court of the United States.

Ishmael Jaffree v. *The Board of School Commissioners of Mobile County*

Civ. A. No. 82-0554-H.

United States District Court, S.D. Alabama, S.D.

Jan. 14, 1983.

MEMORANDUM OPINION

HAND, Chief Judge.

Prelusion

If in the opinion of the People, the distribution for modification of the Constitutional Powers be in any particular wrong, let it be corrected by an amendment in the way in which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Farewell Address by George Washington reprinted in R. Berger, Government by Judiciary 299 (1977).

Ishmael Jaffree, on behalf of his three (3) minor children, seeks declaratory and injunctive relief. In the original complaint Mr. Jaffree sought a declaration from the Court that certain prayer activities initiated by his children's public school teachers violated the establishment clause of the first amendment to the United States Constitution. He sought to have these prayer activities enjoined.

A trial was held on the merits on November 15-18, 1982. After hearing the testimony of witnesses, considering the exhibits, discovery, stipulations, pleadings, briefs, and legal arguments of the parties, the Court enters the following findings of fact and conclusions of law.

I. Findings of Fact

Ishmael Jaffree is a citizen of the United States, a resident of Mobile County, Alabama, and has three (3) minor children attending public schools in Mobile County, Alabama: Jamael Aakki Jaffree, Makeba Green and Chioke Saleem Jaffree.

Defendants, Annie Bell Phillips (principal) and Julia Green (teacher) are employed at Morningside Elementary School, where Jamael Aakki Jaffree attended school during the 1981-82 school year. Defendants Betty Lee (principal) and Charlene Boyd (teacher) are employed at E.R. Dickson Elementary School where Chioke Saleem Jaffree attended during the 1981-82 school year. Defendants, Emma Reed (principal) and Pixie Alexander (teacher) are employed at Craighead Elementary School where Makeba Green attended school during the 1981-82 school year. Each of these defendants is sued individually and in their official capacity. Each of the schools is part of the system of public education in Mobile County, Alabama.

Dan Alexander, Dr. Norman Berger, Hiram Bosarge, Norman Cox, Ruth F. Drago and Dr. Robert Gilliard are members of the Board of School Commissioners of Mobile County, Alabama. As commissioners, each of these defendants collectively is charged by the laws of the State of Alabama with administering the system of public instruction for Mobile County, Alabama. These defendants are sued only in their official capacity.

Dr. Abe L. Hammons is the Superintendent of Education for Mobile County, Alabama. Defendant Hammons has direct supervisory responsibilities over all principals, teachers and other employees of the Mobile County Public School System. This defendant is sued only in his official capacity.

Defendant Boyd, as early as September 16, 1981, led her class at E.R. Dickson in singing the following phrase:

God is great, God is good,
Let us thank him for our food,
Bow our heads we all are fed,
Give us Lord our daily bread.
Amen!

The recitation of this phrase continued on a daily basis throughout the 1981-82 school year.

Defendant Boyd was made aware on September 16, 1981 that the minor plaintiff, Chioke Jaffree, did not want to participate in the singing of the phrase referenced above or be exposed to any other type of religious observances. On March 5, 1982, during a parent-teacher conference, Ms. Boyd was told by Chioke's father that he did not want his son exposed to religious activity in his classroom and that, in Mr. Jaffree's opinion, the activity was unlawful. Again, on March 11, 1982, Ms. Boyd received a handwritten letter from Mr. Jaffree which again advised her that leading her class in chanting the referenced phrase was unlawful. This letter further advised Ms. Boyd that if the practice was not discontinued that he would take further administrative and judicial steps to see that it was. Finally, Ms. Boyd was made aware of the contents of a letter drafted by Mr. Jaffree, dated May 10, 1982, which had been sent to Superintendent Hammons complaining about the prayer activity in Ms. Boyd's classroom. Notwithstanding Mr. Jaffree's protestations, the recitation of the prayer continued.

Defendant Lee learned on March 8, 1982, that Mr. Jaffree had complained about the prayer activities which were being conducted in defendant Boyd's classroom. Ms. Lee directly spoke with Mr. Jaffree on March 11, 1982, and learned from him that he was opposed to the prayer activities in Ms. Boyd's class and that he felt the same to be unconstitutional. On the same day, Ms. Lee called Mr. Larry Newton, Deputy Superintendent, who informed her that the prayer activity in Ms. Boyd's class could continue on a "strictly voluntary basis."

Defendant Pixie Alexander has led her class at Craighead in reciting the following phrase:

God is great, God is good,
Let us thank Him for our food.

Further, defendant Pixie Alexander had her class recite the following, which is known as the Lord's Prayer:

Our Father, which art in heaven, hallowed be Thy name. Thy kingdom come. Thy will be done on earth as it is in heaven. Give us this day our daily bread and forgive us our debts as we forgive our debtors. And lead us not into temptation but deliver us from evil for thine is the kingdom and the power and the glory forever. Amen.

The recitation of these phrases continued on a daily basis throughout the 1981-82 school year.

Defendant Pixie Alexander learned on May 24, 1982, that Mr. Jaffree had complained, through a letter dated May 10, 1982, to defendant Hammons, about her leading her class in the above-referenced prayer activity. After Ms. Alexander learned of Mr. Jaffree's May 10, 1982 letter, she continued to lead her class in reciting the referenced phrases.

Ms Green admitted that she frequently leads her class in singing the following song:

For health and strength and daily food,
we praise Thy name, Oh Lord.

This activity continued throughout the school year, despite the fact that Ms. Green had knowledge that plaintiff did not want his child exposed to the above-mentioned song. See defendant Green's response to plaintiffs' Interrogatories Nos. 21, 22, 50 and 51.

Upon learning of the plaintiffs' concern over prayer activity in their schools, defendants Reed and Phillips consulted with teachers involved, however, neither defendant advised or instructed the defendant teachers to discontinue the complained of activity.

Prior to the 1981-82 school year, defendants Reed, Phillips, Boyd, and to a lesser extent, Green, each knew the Board of School Commissioners of Mobile County had a policy regarding religious activity in public schools. However, not one of the teachers sought or received advice from the board or the superintendent prior to the plaintiffs' initial complaint regarding whether their classroom prayer activities were consistent with the policy.

The policy on religious instruction adopted by the Board of School Commissioners of Mobile County reads as follows:

RELIGIOUS INSTRUCTION

Schools shall comply with all existing state and federal laws as these laws pertain to religious practices and the teaching of religion. This policy shall not be interpreted to prohibit teaching about the various religions of the world, the influence of the Judeo-Christian faith on our society, and the values and ideals of the American way of life.

School attendance is compulsory in the State of Alabama. Alabama Code § 16-28-3 (1975).

The complaint in this case was later amended to include allegations against Governor Fob James and various state officials. The claims against the state officials were severed, Fed.R.Civ.P. 21, and they are the subject of a separate order which the Court entered today.

This recitation of the findings of fact is not intended to be an all-inclusive statement of the facts as they were produced in this case. Because of the following opinion the Court is of the impression that the facts above-recited constitute a sufficient recitation for deciding this case. However, in the event there is a disagreement with the conclusions reached by this Court, the Court does not desire to be precluded from a further recitation of appropriate fact as may be essential to further conclusions in the case. Examples of what the Court alludes to is the factual bases for consideration of the questions of freedom of speech, whether or not secular humanism is in fact a religion, and the propriety of the free exercise of religion.

II. Conclusions of Law

A. Subject-Matter Jurisdiction

[1, 2] This action is brought under 42 U.S.C. § 1983.[1] The complaint alleges that the subject-matter jurisdiction of the Court "is evoked pursuant to Title 28, Sections 1343(3) and (4), and Sections 2201 and 2202 of the United States Code." *See* Complaint at 2 (filed May 28, 1982). Neither of the two amended complaints add anything to this jurisdiction allegation.[2]

[3, 4] The complaint alleges that rights guaranteed to the plaintiffs under the first and fourteenth amendments have been violated.[3] The subject-matter jurisdiction of a federal court over a claim arising under 42 U.S.C. § 1983 rests upon 28 U.S.C. § 1343(3). While the complaint does not allege that subject-matter jurisdiction is vested in the court under the general, federal-question jurisdictional statute, 28 U.S.C. § 1331, certainly subject-matter jurisdiction is vested under that provision since a federal district court has "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, exclusive of the amount-in-controversy. Thus, the Court concludes that it has subject-matter jurisdiction over the claims alleged by the plaintiffs.[4]

B. *School-Prayer Precedent*

The United States Supreme Court has previously addressed itself in many cases to the practice of prayer and religious services in the public schools. As courts are wont to say, this court does not write upon a clean

Footnotes at end of article.

slate when it addresses the issue of school prayer.

Viewed historically, three decisions have lately provided general rules for school prayer. In *Engel* v. *Vitale,* 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962), *Abington* v. *Schempp,* 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963), and *Murray* v. *Curlett,* 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963), the Supreme Court established the basic considerations. As stated, the rule is that "[t]he First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach." *Everson* v. *Board of Education,* 330 U.S. 1, 18, 67 S.Ct. 504, 513, 91 L.Ed. 711 (1947) (per Black, J.)

In *Engel* v. *Vitale* parents of public school students filed suit to compel the board of education to discontinue the use of an official prayer in the public schools. The prayer was asserted to be contrary to the beliefs, religions, or religious practices of the complaining parents and their children. In *Engel* the board of education, acting in its official capacity under state law, directed the principals to cause the following prayer to be said aloud by each class at the beginning of the day in each homeroom: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers and our Country." 370 U.S. at 422, 82 S.Ct. at 1262. This prayer was adopted by the school board because it believed the prayer would help instill the proper moral and spiritual training needed by the students.

The parents argued that the school board violated the establishment clause of the first amendment when it directed that this prayer be recited in the public schools. The first amendment provides, in relevant part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." U.S. Const. amend. I. The Supreme Court found "that by using its public school system to encourage recitation of the Regent's prayer, the State of New York ha[d] adopted a practice wholly inconsistent with the Establishment Clause." *Id.* at 422, 82 S.Ct. at 1262. The Court found this prayer to be a religious activity. The prayer constituted "a solemn avowal of divine faith and supplication for the blessing of the Almighty. The nature of such prayer has always been religious . . ." *Id.* at 424-25, 82 S.Ct. at 1264-65. The Court noted that "[i]t [wa]s a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America." *Id.* at 425, 82 S.Ct. at 1264. Therefore, according to the Court, the prayer "breache[d] the constitutional wall of separation between Church and State." *Id.*

Citing historical documents, the Court observed that

[b]y the time of the adoption of the Constitution, our history shows that there was a widespread awareness among many Americans of the danger of a union of Church and State. These people knew, some of them from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services. . . . The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support, or influence the kinds of prayer the American people can say—that the people's religions must not be subjected to the pressures of government or change each time a new political administration is elected to office. Under the Amendment's prohibition against governmental establishment of religion, *as reinforced by the prohibitions of the Fourteenth Amendment, government in this country, be it state or federal,* is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.

Id. at 429-30, 82 S.Ct. at 1266 (emphasis added).

The assertion by the Court that the establishment clause of the first amendment applied to the states was unaccompanied by any citation to authority. This conclusion was reached supposedly upon its examination of historical documents.

In dissent, Mr. Justice Stewart argued that the majority in *Engel* misinterpreted the first amendment. As Mr. Justice Stewart saw it, an official religon was not established by letting those who wanted to say a prayer say it. To the contrary, Mr. Justice Stewart thought "that to deny the wish of those school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation." *Id.* at 445, 82 S.Ct. at 1274-75. As Mr. Justice Stewart saw the problem, our country is steeped in a history of religious tradition. That religious tradition is reflected in countless practices common in our institutions and governmental officials. For instance, the United States Supreme Court has always opened each day's session with the prayer "God save the United States and this Honorable Court." *Id.* at 446, 82 S.Ct. at 1275. Each President of the United States has, upon assuming office, sworn an oath to God to properly execute his presidential duties. Our national anthem, "The Star-Spangled Banner," contains these verses:

Blest with the victory and peace, may the heav'n rescued land
Praise the Pow'r that hath made and preserved us a nation!
Then conquer we must, when our cause it is just,
And this be our motto "In God is our Trust."

Id. at 449, 82 S.Ct. at 1277. The Pledge of Allegiance to the Flag contains the words "one Nation *under* God, indivisible, with liberty and justice for all." *Id.* (emphasis in original). Congress added this in 1954. Mr. Justice Stewart believed that the Regent's prayer in New York had done no more than "to recognize and to follow the deeply enriched and highly cherished spiritual traditions of our Nation—traditions which came down to us from those who almost two hundred years ago avowed their 'firm Reliance on the Protection of divine Providence' when they proclaimed the freedom and independence of this brave new world." *Id.* at 450, 82 S.Ct. at 1277.

Following the decision by the Supreme Court in *Engel,* the Court decided *Abington* v. *Schempp* and *Murray* v. *Curlett.* In *Abington,* a state law in Pennsylvania required that

[a]t least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.

374 U.S. 205, 83 S.Ct. 1562. The Schempp family, husband and wife and two of their three children, brought suit to enjoin enforcement of this statute. The Schempps contended that their rights under the fourteenth amendment of the United States Constitution were being violated.

Each morning at the Abington Senior High School between 8:15 a.m. and 8:30 a.m., while students were attending their homerooms, selected students would read ten verses from the Holy Bible. These Bible readings were broadcast to each room in the school building. Following the Bible readings the Lord's Prayer was recited. As with the Bible readings, the Lord's Prayer was broadcast throughout the building. Following the Bible readings and the Lord's Prayer, a flag salute was performed. Participation in the opening exercises, as directed by the Pennsylvania statute, was voluntary.

No prefatory statement, no questions, no comments, and no explanations were made at or during the exercises. Students and parents were advised that any student could absent himself from the classroom or, should he elect to remain, not participate in the exercises.

In *Murray* v. *Curlett,* the Board of School Commissioners of Baltimore City adopted a rule which "provided for the holding of opening exercises in the schools of the city, consisting primarily of 'reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer.'" 374 U.S. at 211, 83 S.Ct. at 1565. An athiest, Mrs. Madalyn Murray, objected to the Bible reading and the recitation of the Lord's Prayer. After receiving the objection the board specifically provided that the Bible reading and the use of the Lord's Prayer should be conducted without comment and that any child could be excused from participating in the opening exercises or from attending them upon the written request of his parent or guardian.

Because of the similarity of the issues in both the *Abington* case and the *Murray* case the Supreme Court consolidated both cases on appeal and decided them together. The Court recognized that "[i]t is true that religion has been closely identified with our history and government. . . . 'The history of man is inseparable from the history of religion. And . . . since the beginning of that history many people have devoutly believed that "More things are wrought by prayer than this world dreams of."'" *Abington School District* v. *Schempp,* 374 U.S. at 212-13, 83 S.Ct. at 1566 (quoting *Zorach* v. *Clauson,* 343 U.S. 306, 313, 72 Ct. 679, 683, 96 L.Ed. 954 (1952). Notwithstanding this recognition by the Court that the early history of this country, together with the history of man, was inseparable from religion the Court found the Bible reading and the recitation of the Lord's Prayer to be an unconstitutional abridgement of the first amendment prohibition that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof . . . " U.S. Const. amend. I.

The Court noted that the first amendment prohibited more than governmental preference of one religion over another. Rather, the first amendment was intended "'to create a complete and permanent separation of the spheres of religious activity in civil authority by comprehensively forbidding every form of public aid or support for religion.'" Id. 374 U.S. at 217, 83 S.Ct. at 1568 (quoting *Everson* v. *Board of Educa-*

tion, 330 U.S. 31-2, 67 S.Ct. 519 (1947)). The Court reviewed several of its precedents which touched on the establishment of religion, and concluded that "'[t]here cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the "free exercise" of religion and an "establishment" of religion are concerned the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute.'" *Id.* 374 U.S. at 219-20, 83 S.Ct. at 1569-70 (quoting *Zorach* v. *Clauson*, 343, U.S. 306, 312, 72 S.Ct. 679, 683, 96 L.Ed. 954 (1952)). The Court in *Abington* reasoned from its own precedent rather than independently reviewing the historical foundation of the first and the fourteenth amendments. The Court held that the Bible reading and the recitation of the Lord's Prayer in both cases were religious exercises. The "rights," *id.* at 224, 83 S.Ct. at 1572, of the plaintiffs were being violated. The religious character of the Bible reading and the recitation of the Lord's Prayer were not mitigated by the fact that students were allowed to absent themselves from their homerooms upon request of their parents. "The breach of neutrality that is today a trickling stream may all too soon become a raging torrent . . . ." *Id.* at 225, 83 S.Ct. at 1573.

The principles enunciated in *Engel* v. *Vitale*, *Abington* v. *Schempp*, and *Murray* v. *Curlett* have been distilled to this: "To pass muster under the Establishment Clause, the governmental activity must, first, reflect a clearly secular governmental purpose; second, have a primary effect that neither advances nor inhibits religion; and third, avoid excessive government entanglement with religion. *Committee for Public Education & Religious Liberty* v. *Nyquist*, 413 U.S. 756, 773, 93 S.Ct. 2955, 2965, 37 L.Ed.2d 948 (1973)." *Hall* v. *Board of School Commissioners*, 656 F.2d 999, 1002 (5th Cir.1981). "If a statute [or official administrative directive] violates *any* of these three principles, it must be struck down under the Establishment Clause." *Stone* v. *Graham*, 449 U.S. 39, 101 S.Ct. 192, 193, 66 L.Ed.2d 199 (1980) (holding that a Kentucky statute requiring posting of a copy of Ten Commandments on walls of each public school classroom in the state had pre-eminent purpose which was plainly religious in nature, and statute was thus violative of establishment clause and that avowed secular purpose was not sufficient to avoid conflict with first amendment; emphasis added).

Indeed, in this circuit, prayer in public schools is per se unconstitutional. "Prayer is an address of entreaty, supplication, praise, or thanksgiving directed to some sacred or divine spirit, being, or object. That it may contemplate some wholly secular objective cannot later the inherently religious character of the exercise." *Karen B.* v. *Treen*, 653 F.2d 897, 901 (5th Cir.1981).

In sum, under present rulings the use of officially-authorized prayers or Bible readings for motivational purposes consititutes a direct violation of the establishment clause. Through a series of decisions, the courts have held that the establishment clause was designed to avoid any official sponsorship or approval of religious beliefs. Even though a practice may not be coercive, active support of a particular belief raises the danger, under the rationale of the Court, that state-approved religious views may be eventually established.

Although a given prayer or practice may not favor any one sect, the principle of neutrality in religious matters is violated under these decisions by any program which places tacit government approval upon religious views or practices. While the purpose of the program might be neutral or secular, the effect of the program or practice is to give government aid in support of the advancement of religious beliefs. Thus the programs are held invalid without any consideration as whether they excessively entangle the state in religious affairs.

In contrast, the Supreme Court has permitted the use of the Bible in a literature course where the literary aspects of the Bible are emphasized over its religious contents. *Abington School District* v. *Schempp*, 364 U.S. 203, 225, 83 S.Ct. 1560, 1573, 10 L.Ed.2d 844 (1963). So long as the study does not amount to prayer or the advancement of religious beliefs, a teacher may discuss the literary aspects of the Bible in a secular course of study. Finally, the Supreme Court permits religious references in official ceremonies, including some school exercises, on the basis that these references are part of our secularized traditions and thus will not advance religion. *Engel* v. *Vitale*, 370 U.S. 421, 435 n. 21, 82 S.Ct. 1261, 1269 n. 21, 8 L.Ed.2d 601 (1962).

In the face of this precedent the defendants argue that school prayers as they are employed are constitutional. The historical argument which they advance takes two tacks. First, the defenants urge that the first amendment to the U.S. Constitution was intended only to prohibit the *federal government* from establishing a *national* religion. Read in its proper historical context, the defendants contend that the first amendment has no application to the states. The intent of the drafters and adoptors of the first amendment was to prevent the establishment of a national church or religion, and to prevent any single religious sect or denomination from obtaining a preferred position under the auspices of the federal government.

The corollary of this historical intent, according to the defendants, was to allow the states the freedom to address the establishment of religions as an individual prerogative of each state. Stated differently, the election by a state to establish a religion within its boundaries was intended by the framers of the Constitution to be a power reserved to the several states.

Second, the defendants argue that whatever prohibitions were initially placed upon the federal government by the first amendment that those prohibitions were not incorporated against the states when the fourteenth amendment became law on July 19, 1868. The defendants have introduced the Court to a mass of historical documentation which all point to the intent of the Thirty-ninth Congess to narrowly restrict the scope of the forteenth amendment. In particular, these historical documents, according to the defendants, clearly demonstate that the first amendment was never intended to be incorporated through the fourteenth amendment to apply against the states. The Court shall examine each historical argument in turn.

In the alternative, the defendant-intervenors argue that if the first amendment does bar the states from establishing a religion then the Mobile County schools have established or are permitting secular humanism, *see infra* note 41 (discussion of secular humanism), to be advanced in the curriculum and being a religion, it must be purged also. Such a purge, maintain the defendant-intevenors, is nigh impossible because such teachings have become so entwined in every phase of the curriculum that it is like a pervasive cancer. If this must continue, say the defendant-intervenors, the only tenable alternative is for the public schools to allow the alternative religious views to be presented so that the students might better make more meaningful choices.

C. First Amendment as Forbidding Absolute Separation [5]

"[T]he real object of the [F]irst amendment was not to countenance, much less to advance Mohammedanism, or Judaism, or infidelity, by prostrating Christianity, but to exclude all rivalry among *Christian* sects and to prevent any *national* ecclesiastical establishment which would give to an hierarchy the exclusive patronage of the *national* government.'" [6] The establishment clause was intended to apply only to the federal government. Indeed when the Constitution was being framed in Philadelphia in 1787 many thought a bill of rights was unnecessary. It was recognized by all that the federal government was the government of enumerated rights. Rights not specifically delegated to the federal government were assumed by all to be reserved to the states. Anti-Federalists, however, insisted upon a Bill of Rights as additional protection against federal encroachment upon the rights of the states and individual liberties. Excerpted testimony of James McClellan at 5—6 (trial testimony).

The federalists, who were the proponents of the Constitution, acceded to the demand of the Anti-Federalists for a Bill of Rights since, in the opinion of all, nothing in the Bill of Rights changed the terms of the original understanding of the federal convention. It was thought by all that the Bill of Rights simply made express what was already understood by the convention: namely, the federal government was a government of limited authority and that authority did not include matters of civil liberty such as freedom of speech, freedom of the press, and freedom of religion. *Id.* at 8—12.

The prohibition in the first amendment against the establishment of religion gave the states, by implication, full authority to determine church-state relations within their respective jurisdictions. "Thus the establishment clause actually had a dual purpose: to guarantee to each *individual* that Congress would not impose a national religion, and to each *state* that it was free to define the meaning of religious establishment under its own state constitution and laws. The federal government, in other words, simply had no authority over the states respecting the matter of church-state relations." [7]

At the beginning of the Revolution established churches existed in nine of the colonies. Maryland, Virginia, North Carolina, South Carolina, and Georgia all shared Anglicanism as the established religion common to those colonies. See McClellan, *supra* note 6, at 300. Congregationalism was the established religion in Massachusetts, New Hampshire and Connecticut. New York, on the other hand, allowed for the establishment of Protestant religions.[8] Three basic patterns of church-state relations dominated in the late eighteenth century. In most of New England there was the quasi-establishment of a specific Protestant sect. Only in Rhode Island and Virginia were all religious sects disestablished. "But all of the states still retained the Christian religion as the foundation stone of their

social, civil and political institutions. Not even Rhode Island and Virginia renounced Christianity, and both states continued to respect and acknowledge the Christian religion in their system of laws." [9] At the time the Constitution was adopted ten of the fourteen states refused to prefer one Protestant sect over another. Nonetheless, these states placed Protestants in a preferred status over Catholics, Jews, and Dissenters.[10]

The pattern of church-state relations in new states entering the Union after 1789 did not differ substantially from that in the original fourteen. By 1860—and the situation did not radically change for the next three quarters of a century—the quasi-establishment of a specific Protestant sect had everywhere been rejected; quasi-establishment of the Protestant religion was abandoned in most but not all of the states; and the quasi-establishment of the Christian religion still remained in some areas. A new pattern of church-state relations, the multiple or quasi-establishment of all religions in general, i.e., giving all religious sects a preferred status over disbelievers (the No Preference Doctrine) became widespread throughout most of the Union. Thus at the turn of the century, for example, no person who denied the existence of God could hold office in such states as Arkansas, Mississippi, Texas, North Carolina, or South Carolina.[11]

[5] The first amendment in large part was a guarantee to the states which insured that the states would be able to continue whatever church-state relationship existed in 1791. Excerpted testimony of James McClellan at 13 (from trial).

D. Washington, Madison, Adams, and Jefferson

The drafters of the first amendment understood the first amendment to prohibit the federal government only from establishing a national religion. Anything short of the outright establishment of a national religion was not seen as violative of the first amendment. For example, the federal government was free to promote various Christian religions and expand monies in an effort to see that those religions flourished. This was not seen as violating the establishment clause. R. Cord, *Separation of Church and State* 15 (1982).

The intent of the framers of the first amendment can be understood by examining the legislative proposals offered contemporaneously with the debate and adoption of the first amendment. For instance, one of the earliest acts of the first House of Representatives was to elect a chaplain. James Madison was a member of the congressional committee who recommended the chaplain system. On May 1, 1789 the House elected as chaplain, the Reverend William Linn. $500.00 was appropriated from the federal treasury to pay his salary. Even though the first amendment did not become part of the Constitution until 1791, had James Madison believed in the absolute separation of Church and State as some historians have attributed to him, James Madison would certainly have objected on this principle alone to the election of a chaplain.[12] At the Constitutional Convention on June 28, 1787 Dr. Benjamin Franklin suggested that a morning prayer might speed progress during the debates. Franklin told the Convention and its President, George Washington, that he had lived a long time. The longer he lived the more persuaded he was "that God Governs in the affairs of men." [13] Franklin "therefore beg[ged] leave to move—that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the clergy of this City be requested to officiate in that Service—" [14] Franklin's motion was not adopted for political reasons. Alexander Hamilton and others thought that the motion might have been proper at the beginning of the convention but that if the motion were adopted during the convention the public might believe that the convention was near failure. For this reason, which was wholly political, the issue was resolved by adjournment without any vote being taken.[15]

Presidential proclamations, endorsed by Congressman James Madison when Washington was President, dealing with Thanksgiving, fasting, and prayer are all important in understanding Madison's views on the proper role between church and state.[16] Congress proposed a joint resolution on September 24, 1789, which was intended to allow the people of the United States an opportunity to thank Almighty God for the many blessings which he had poured down upon them. The resolution requested that President George Washington recommend to the citizens of the United States a day of public thanksgiving and prayer. Congress intended that the people should thank Almighty God for affording them an opportunity to establish this country.[17] This proclamation was submitted to the President the very day after Congress had voted to recommend to the states the final text of what was to become the first amendment to the United States Constitution.[18] As President, Madison issued four prayer proclamations. Excerpted testimony of James McClellan at 19.

Thomas Jefferson is often cited along with James Madison as a person who was absolutely committed to the separation of church and state. The historical record, however, does not bear out this conclusion.

While Jefferson undoubtedly believed that the church and the state should be separate, his actions in public life demonstrate that he did not espouse the absolute separation evidenced in the modern decisions by the United States Supreme Court. For example, on October 31, 1803, President Jefferson proposed to the United States Senate a treaty with the Kaskaskia Indians which provided that federal money was to be used to support a Catholic priest and to build a church for the ministry of the Kaskaskia Indians. The treaty was ratified on December 23, 1803. As Professor Cord points out in his book,[19] President Jefferson could have avoided the explicit appropriation of funds to support a Catholic priest and a Catholic church by simply leaving a lump sum in the Kaskaskia treaty which could have been used for that purpose. However, President Jefferson was not at all reluctant—for ought that appears on the historical record—to specifically appropriate money for a Catholic mission.

Unlike Presidents Washington, Madison, and Adams, when Jefferson was President he broke with the tradition of issuing executive religious proclamations. In Jefferson's view the establishment clause and the federal division of power between the national government and the states foreclosed executive religious proclamations. While refusing to issue executive religious proclamations, President Jefferson recognized that "no power to prescribe any religious exercise, or to assume authority in religious discipline, has been delegated to the General Government. It must then rest with the States, as far as it can be in any human authority." [20] Thus, of the first four Presidents, all of whom were close to the adoption of the Federal Constitution and the first amendment, only President Jefferson did not issue executive religious proclamations, and only President Jefferson thought that executive religious proclamations were not constitutional.

But even President Jefferson signed into law bills which provided federal funds for the propagation of the gospel among the Indians.[21] Based upon this historical record Professor Cord concludes that Jefferson, even as President, did not interpret the establishment clause to require complete independence from religion in government.

In sum, while both Madison and Jefferson led the fight in Virginia for the separation of church and state, both believed that the first amendment only forbade the establishment of a state religion by the *national* government. "Jefferson was neither at the Constitutional Convention nor in the House of Representatives that framed the First Amendment. The two Presidents who were at the Convention, Washington and Madison, and the President who framed the initial draft of the First Amendment in the House of Representatives, James Madison, issued Thanksgiving Proclamations." [22] The Court agrees with the studied conclusions of Dr. Cord that "it should be clear that the traditional interpretation of Madison and Jefferson is historically faulty if not virtually unfounded. . . ." [22]

One thing which becomes abundantly clear after reviewing the historical record is that the founding fathers of this country and the framers of what became the first amendment never intended the establishment clause to erect an absolute wall of separation between the federal government and religion. Through the chaplin system, the money appropriated for the education of Indians, and the Thanksgiving proclamations, the federal government participated in secular Christian activities. From the beginning of our country, the high and impregnable wall which Mr. Justice Black referred to in *Emerson* v. *Board of Eduction*, 330 U.S. 1, 18 67 S.Ct. 504, 513, 91 L.Ed. 711 (1947), was not as high and impregnable as Justice Black's revisionary literary flourish would lead one to believe.

Yet, despite all of this historical evidence, only last month the Supreme Court wrote that the purpose of the first amendment is twofold: to foreclose state interference with the practice of religious faiths, and to foreclose the establishment of a state religion familiar in other Eighteenth Century systems. Religion and government, each insulated from the other, could then coexist, *Jefferson's idea of a "wall," see Reynolds* v. *United States*, 98 U.S. (8 Otto) 145, 164 [25 L.Ed. 244] (1878), *quoting* Reply from Thomas Jefferson to an address by a committee of the Danbury Baptist Association (January 1, 1802), *reprinted in* 8 Works of Thomas Jefferson 112 (Washington ed. 1861), *was a useful figurative illustration* to emphasize the concept of separateness. Some limited and incidental entanglement between church and state authority is inevitable in a complex modern society, *see, e.g., Lemon* v. *Kurtzman*, 403 U.S. 602, 614 [91 S. Ct. 2105, 29 L.Ed.2d 745] (1971); *Walz* v. *Tax Commission*, 397 U.S. 664, 670 [90 S.Ct. 1409, 1412, 25 L.Ed.2d 697] (1970), *but the concept of a "wall" of separation is a signpost.*

Larkin v. *Grendel's Den, Inc.*, —— U.S. ——, ——, 103 S.Ct. 505, 510, 74 L.Ed.2d 297 (1982) (emphasis added). Enough is enough. Figurative illustrations should not serve as a basis for deciding constitutional issues.

[6] For this Court, Professor Robert Cord, *see supra* note 5, irrefutably established that Thomas Jefferson's address to the Danbury Baptist Association cannot be relied upon to support the conclusion that Jefferson believed in a *wall* between church and state. "By this phrase Jefferson could only have meant that the 'wall of separation' was erected 'between Church and State' in regard to possible federal action such as a law establishing a national religion or prohibiting the free exercise of worship." *Id.* at 115. Overall the conduct of Thomas Jefferson was consistent with the conclusion that he believed, like all the other drafters of the Constitution and the Bill of Rights, that the states were free to establish religions as they saw fit.[24]

E. First Amendment as Applied to the States

[7, 8] As has been seen up to this point the establishment clause, as ratified in 1791, was intended only to prohibit the federal government from establishing a national religion. The function of the establishment was two-fold. First, it guaranteed to each individual that Congress would not impose a national religion. Second, the establishment clause guaranteed to each state that the states were free to define the meaning of religious establishment under their own constitutions and laws.

The historical record clearly establishes that when the fourteenth amendment was ratified in 1868 that its ratification did not incorporate the first amendment against the states. The debates in Congress at the time the fourteenth amendment was being drafted, the re-election speeches of the various members of Congress shortly after the passage by Congress of the fourteenth amendment, the contemporaneous newspaper stories reporting the effect and substance of the fourteenth amendment; and the legislative debates in the various state legislatures when they considered ratification of the fourteenth amendment indicate that the amendment was not intended to apply the establishment clause against the states because the fourteenth amendment was not intended to incorporate the federal Bill of Rights (the first eight amendments) against the states.

At the beginning the Court should acknowledge its indebtedeness to Professor Charles Fairman, then a professor of law in Political Science at Stanford University, for the scholarly article which he published in 1949.[25] Professor Fairman examined in detail the historical evidence which Mr. Justice Black relied upon in *Adamson* v. *California*, 332 U.S. 46, 47, 67 S.Ct. 1672, 1673, 91 L.Ed. 1903 (1947), where Mr. Justice Black concluded that the historical events that culminated in the adoption of the fourteenth amendment demonstrated persuasively that one of the chief objects of the fourteenth amendment was to make the Bill of Rights applicable to the states.[26]

1. Debates

The paramount consideration in defining the scope of any constitutional provision or legislative enactment is to ascertain the intent of the legislature. The intention of the legislature may be evidenced by statements of the leading proponents.[27] If statements of the leading proponents are found, those statements are to be regarded as good as if they were written into the enactment. "The intention of the lawmaker is the law." *Hawaii* v. *Mankichi*, 190 U.S. 197, 212, 23 S.Ct. 787, 788, 47 L.Ed. 1016 (1903).

Looking back, what evidence [i]s there . . . to sustain the view that Section 1 was intended to incorporate Amendments I to VIII? [C]ongressman Bingham . . . did a good deal of talking about "immortal bill of rights" and one spoke of "cruel and usual punishments." Senator Howard, explaining the new privileges and immunities clause, said that it included the privileges and immunities of Article IV, Section 2—"whatever they may be"—and also "the personal rights guarantied [*sic*] and secured by the first eight amendments . . ." That is all. The rest of the evidence bore in the opposite direction, or was indifferent. Yet one reads in Justice Black's footnotes that, [*Adamson* v. *California*, 332 U.S. 46, 72 n. 5 [67 S.Ct. 1672, 1686 n. 5, 91 L.Ed. 1903] (1947)],

A comprehensive analysis of the historical origins of the Fourteenth Amendment, Flack, The Adoption of the Fourteenth Amendment (1908), 94, concludes that "Congress, the House and the Senate, had the following objects and motives in view for submitting the first section of the Fourteenth Amendment to the States for ratification:

1. To make the Bill of Rights (the first eight Amendments) binding upon, or applicable to, the States.

2. To give validity to the Civil Rights Bill.

3. To declare who were citizens of the United States.

We have been examining the same materials as did Flack, and have quoted far more extensively than he. How can he on that record reach the conclusion that Congress proposed by Section 1 to incorporate Amendments I to VIII?

Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights*, 2 Stan.L. Rev. at 65-666 (1949). Professor Flack explained that the incorporation was based upon remarks of Congressman Bingham and Senator Howard at the time the Thirty-ninth Congress voted upon the fourteenth amendment. only those two said anything which could be construed as suggesting the result reached by Justice Black and the modern Supreme Court decisions.

Throughout the debates in the House over the meaning of the fourteenth amendment Professor Fairman shows convincingly that Congressman Bingham had no clear concept of what exactly would be accomplished by the passage of the fourteenth amendment. The explanations offered by Congressman Bingham to his colleagues were inconsistent and contradictory.[28]

Together with Congressman Bingham's statements which suggested incorporation were remarks by Senator Howard. Senator Howard spoke with more preciseness than Congressman Bingham. Thus, his interpretation carries much greater weight than that of Congressman Bingham. Yet, because of the circumstances under which he spoke, his statements are subject to question when held out as representative of the majority viewpoint. By sheer chance Senator Howard acted as spokesman for the joint committee when explaining the purpose of the fourteenth amendment to the Senate. The joint committee had been chaired by Senator Fessenden. Chairman Fessenden became sick suddenly and Senator Howard thus became the spokesman for the Joint Committee. "Up to this point [Senator Howard's] participation in the debates on the Civil Rights Bill and the several aspects of the Amendment had been negligible. Poles removed from Chairman Fessenden, who 'abhorred' extreme radicals, Howard . . . was 'one of the most . . . reckless of the radicals,' who had 'served consistently in the vanguard of the extreme Negrophiles.'"[29] Professor Raoul Berger notes with some sarcasm that it is odd that a radical such as Senator Howard should be taken as speaking authoritatively for a committee in which the conservatives outnumbered the radicals and where there was a strong difference of opinion between the radicals and the conservatives. R. Berger, *supra* note 26, at 147.

On May 23, 1866, Senator Howard rose in the Senate, referred to the illness of Fessenden, and stated that he would "present 'the views and the motives which influenced the committee, so far as I understand [them].' After reading the privileges and immunities listed in *Corfield* v. *Coryell*, [6 Fed. Cas. 546, No. 3230 (C.C.E.D.Pa. 1823),] he said, 'to these privileges and immunities . . . should be added the personal rights guaranteed and secured by the first eight amendments.' That is the sum and substance of Howard's contribution to the 'incorporation' issue."[30]

Raoul Berger notes in his analysis of the incorporation question that the remark of Senator Howard was tucked away in the middle of a long speech, that Howard was a last minute substitution for the majority chairman, that Howard was in the minority on the committee, and that after Howard was through speaking Senator Poland stated that the fourteenth amendment secured nothing beyond what was intended in the original privileges and immunities clause of Article IV Section 2. R. Berger, *supra* note 26, 148-49. Senator Doolittle followed Senator Poland with some additional remarks which were designed to reassure those whose votes had already been won in favor of passage of the fourteenth amendment that indeed the amendment was limited to known objectives, which objectives were not intended to encompass the federal Bill of Rights.

The scholarly analyses of Professors Fairman and Berger persuasively show that Mr. Justice Black misread the congressional debate surrounding the passage of the fourteenth amendment when he concluded that Congress intended to incorporate the federal Bill of Rights against the states. *See infra* p. 42-44 (discussion of Blaine Amendment). So far as Congress was concerned, after the passage of the fourteenth amendment the states were free to establish one Christian religion over another in the exercise of their prerogative to control the establishment of religions.

2. Popular Understanding

An examination of popular sentiment across the country reveals that the nation as a whole did not understand the adoption of the fourteenth amendment to incorporate the federal Bill of Rights against the states. Inferentially, that is to say that the people understood that each state was free to continue to support one Christian religion over another as the people of that state saw fit to do. The leading constitutional scholar upon whom Justice Black relied in *Adamson* v. *California*,

Mr. Flack[,] examined a considerable number of Northern newspapers and reported (an admission against the thesis he was defending) the following observation: "There does not seem to have been any statement at all as to whether the first eight Amendments were to be made applicable to the States or not . . . ." Presumably this excluded the press reports of May 24 on

Senator Howard's speech of the 23d: for the *New York Herald* and the *New York Times*, which Mr. Flack had before him, did quote in full the passage where it said that the personal rights guaranteed by the first eight amendments were among the "privileges and immunities."

Other newspaper files have been examined in preparing the [article of Professor Fairman] and no instance has been found to vary what has been set out above.

Fairman, *supra* note 25, at 68 (footnotes omitted).[31]

Charles Fairman quotes at length from the campaign speeches of five senators who, presumably, heard Senator Howard's speech of May 23, 1866. Not one of the senators mentioned anything about the Bill of Rights when commenting to the electorate about Section 1. Likewise, the five Republicans, including Congressman Bingham, never mentioned that the privileges and immunities clause would impose the federal Bill of Rights upon the states. Along with Professor Fairman, the Court takes the historical record to conclusively show that the general understanding of the nation at large, as illustrated by contemporaneous newspaper reports, demonstrates that the people of this country did not understand the fourteenth amendment to incorporate the establishment clause of the first amendment against the states.

3. Campaign Speeches

After the submission of the fourteenth amendment to the states of June 16, 1866 the members of the Thirty-ninth Congress began to busy themselves with the prospect of re-election in the fall. The statements which the members of Congress made during their campaign speeches are certainly relevant in ascertaining the intent of the Thirty-ninth Congress with regard to the scope and effect of the fourteenth amendment. All of these speeches were contemporaneous expressions of the intent of Congress. Professor Fairman provides many instances of speeches made on the campaign hustings. *See generally*, Fairman, *supra* note 25, at 68-78. None of the members of Congress indicated in their campaign speeches that the fourteenth amendment was intended to incorporate the federal Bill of Rights against the states. The general consensus with regard to the effect of the fourteenth amendment was that it covered the same ground as the Civil Rights Act of 1866. *Id.* at 72 (remarks of Senator Lyman Trumbull, the sponsor of the Civil Rights Bill).

4. State-Legislative Debates

The fourteenth amendment was submitted to the states for their ratification on June 16, 1866. By June, 1867, twelve legislatures had ratified the amendment. By July 28, 1868 the fourteenth amendment had been promulgated.

Professor Fairman combed the relevant legislative materials to see exactly what each state legislature thought the effect of the fourteenth amendment would be. Along with Fairman, the Court finds it important to note not only what was said but what was not said. Had the fourteenth amendment been understood to incorporate the federal Bill of Rights against the states in many instances states would have been required to make radical changes. For instance, it was frequent in many states for people to be prosecuted for felonies without an indictment from a grand jury. It was equally common for a jury of less than twelve people to sit in judgment in a felony prosecution. Some states failed to preserve the right to a jury trial and suits at common law where the amount in controversy exceeded $20.00.

The Court will not repeat Professor Fairman's analysis in each state. Only a few states need to be highlighted to convey the popular understanding of the effect of the fourteenth amendment upon the right of states to establish a religion. In New Hampshire, only five months after the promulgation of the fourteenth amendment—in December, 1868—the Supreme Court of New Hampshire had occasion to interpret a provision of the state constitution which provided that the legislature could "authorize towns, parishes, and religious societies 'to make adequate provision . . . for the support and maintenance of public Protestant teachers of piety, religion, and morality.'" [32] Moreover, Article VI of the Bill of Rights from the New Hampshire Constitution encouraged "the public worship of the diety . . . ." The question before the Supreme Court of New Hampshire was whether certain parishioners of the First Unitarian Society of Christians in Dover could fire the preacher. The preacher had begun using text from Emerson interchangeably with text from the Bible. While Wardens of the church supported the preacher, certain pew owners were outraged. The pew owners sought an injunction restraining the preacher from occupying the meeting house. The trial court granted relief.

On appeal, in a 276-page report neither the opinion of the court nor the dissent made a single reference to the fourteenth amendment. Both opinions, however, had much to say about New Hampshire's policy in ecclesiastical matters. The opinion of the court referred to the first amendment and quoted Story's *Commentaries:*

[T]he whole power over the subject of religion is left exclusively to the State governments, to be acted upon according to their own sense of justice and the State constitutions . . . .

Probably at the time of the adoption of the amendment now under consideration, the general if not the universal sentiment in America was, that Christianity ought to receive encouragement from the state, so far as not incompatible with the private rights of conscience and the freedom of religious worship.

Fairman, supra note 25, 87 (citations omitted).

As Professor Fairman notes: "[I]n December 1868—five months after the promulgation of the Fourteenth Amendment—the New Hampshire court regarded the matter of an establishment of religion as being still 'left exclusively to the State governments.'" *Id.*

[9] The historical record shows without equivocation that none of the states envisioned the fourteenth amendment as applying the federal Bill of Rights against them through the fourteenth amendment. It is sufficient for purposes of this case for the Court to recognize, and the Court does so recognize, that the fourteenth amendment did not incorporate the establishment clause of the first amendment against the states.[33]

5. Supreme Court Decisions

Decisions by the United States Supreme Court rendered contemporaneously with the ratification of the fourteenth amendment indicate that the Court did not perceive the fourteenth amendment to incorporate the federal Bill of Rights against the states. In *Twitchell* v. *Pennsylvania*, 74 U.S. (7 Wall.) 321, 19 L.Ed. 223 (U.S. 1869), the Supreme Court held that the fifth and sixth amendments of the Constitution do not apply to the states. This holding was consistent with the earlier, well-known holding in *Barron* v. *Baltimore*, 32 U.S. (7 Peters) 243, 8 L.Ed. 672 (1833).

In *Barron* v. *Baltimore* the question presented to the court was whether the City of Baltimore was required to compensate Barron under the fifth amendment for the taking of his property for public purposes. When the City of Baltimore paved some streets, streams of water had been diverted in the vicinity of Barron's wharf. The water had deposited large amounts of sand around the wharf. The sand deposits made these waters too shallow for ocean-going ships to load and unload cargo at the wharf. Chief Justice John Marshall held that Barron's claim raised no appropriate federal question because the fifth amendment was a constitutional limitation applied only against the federal government.[34]

Another decision of the United States Supreme Court, decided in 1870, recognized that the federal Bill of Rights did not control the states.[35] After much deliberation over the question whether jury findings made in state court were reviewable in federal court, the Supreme Court noted that it was "admitted" that the limitations of the seventh amendment[36] did not apply to the states.

F. Blaine Amendment

The discussion up to this point has focused upon the incorporation of the federal Bill of Rights generally through the fourteenth amendment. Events which postdated the adoption of the fourteenth amendment show that the lawmakers of the Thirty-ninth Congress did not intend that the establishment clause would become binding upon the states with the ratification of the fourteenth amendment. "'[A] conclusive argument against the incorporation theory, at least as respects the religious provisions of the First Amendment, is the "Blaine Amendment" proposed in 1875.'" McClellan, *Christianity and the Common Law*, in Joseph Story and the American Constitution 118, 154 (1971) (quoting O'Brien, *Justice Reed and the First Amendment*, 116 (n.d.)). At the behest of President Grant, James Blaine of Maine introduced a resolution in the Senate in 1885 which read: "No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof." *Id.* at 154. (emphasis in original). Importantly, the Congress which considered the Blaine Amendment included twenty-three members of the Thirty-ninth Congress, the Congress which passed the fourteenth amendment.

Not one of the several Representatives and Senators who spoke on the proposal even suggested that its provisions were implicit in the amendment ratified just seven years earlier. Congressman Banks, a member of the Thirty-ninth Congress, observed: "If the Constitution is amended so as to secure the object embraced in the principle part of this proposed amendment, it prohibits the States from exercising a power they now exercise." Senator Frelinghuysen of New Jersey urged the passage of the "House article," which "prohibits the States for the first time, from the establishment of religion, from prohibiting its free exercise." Senator Stevenson, in opposing the proposed amendment, referred to *Thomas Jefferson: "Friend as he* [Jefferson] *was of religious freedom, he would never have consented that the States . . . should be degraded*

and that the Government of the United States, a government of limited authority, a mere agent of the States with prescribed powers, should undertake to take possession of their schools and of their religion." Remarks of Randolph, Christiancy, Kernan, Whyte, Bogy, Easton, and Morton give confirmation to the belief that none of the legislators in 1875 thought the Fourteenth Amendment incorporated the religious provisions of the First.

Id. (quoting O'Brien, Justice Reed and the First Amendment 116-17 (emphasis added)).

The Blaine Amendment, which failed in passage, is stark testimony to the fact that the adoptors of the fourteenth amendment never intended to incorporate the establishment clause of the first amendment against the states, a fact which Black ignored. This was understood by nearly all involved with the Thirty-ninth Congress to be the effect of the fourteenth amendment.

G. Proper Interpretative Perspective

[10, 11] The interpretation of the Constitution can be approached from two vantages. First, the Court can attempt to ascertain the intent of the adoptors, and after ascertaining that attempt apply the Constitution as the adoptors, intended it to be applied. Second, the Court can treat the Constitution as a living document, chameleon-like in its complexion, which changes to suit the needs of the times and the whims of the interpreters. In the opinion of this Court, the only proper approach is to interpret the Constitution as its drafters and adoptors intended. The Constitution is, after all, the supreme law of the land. It contains provisions for amending it; if the country as a whole decided that the present text of the Constitution no longer satisfied contemporary needs then the only constitutional course is to amend the Constitution by following its formal, mandated procedures. Amendment through judicial fiat is both unconstitutional and illegal. Amendment through judicial fiat breeds disrespect for the law, and it undermines the very basic notion that this country is governed by laws and not by men. *See generally* Breast, *The Misconceived Quest for the Original Understanding*, 60 B.U.L.Rev. 204 (1980) (discussion various approaches to constitutional interpretation).

Let us have faith in the rightness of our charter and the patience of persevere in adhering to its principles. If we do so then all will have input into change and not just a few.

H. Stare Decisis

[12] What is a court to do when faced with a direct challenge to settle precedent?[37] In most types of cases "it is more important that the applicable rule of law be settled than that it be settled right." *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393, 406, 52 S.Ct. 443, 447, 76 L.Ed. 815 (1932) (Brandeis, J., dissenting). This general rule holds even where the court is persuaded that it has made a serious error of interpretation in cases involving a statute.[38] However, in cases involving the federal constitution, where correction through legislative action is practically impossible, a court should be willing to examine earlier precedent and to overrule it if the court is persuaded that the earlier precedent was wrongly decided. *Id.* at 407, 52 S.Ct. at 447. "A judge looking at a constitutional decision may have compulsions to reverse past history and accept what was once written. But he remembers above all else that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put on it." Douglas, *Stare Decisis*, 49 Colum.L.Rev. 735, 736 (1949).

Certainty in the law is important. Yet, a rigid adherence to stare decisis "would leave the resolution of every issue in constitutional law permanently at the mercy of the first Court to face the issue, without regard to the possibility that the relevant case was poorly prepared or that the judgment of the Court was simply ill-considered. The danger is particularly great where the court has moved too far in an activist direction; in such a situation, legislative correction of the error is liable to be virtually impossible." Maltz, *Commentary: Some Thoughts on the Death of Stare Decisis in Constitutional Law*, 1980 Wis.L.Rev. 476, 492 (1980).

[T]he "wall of separation between Church and State" that Mr. Jefferson built at the University [of Virginia] which he founded did not exclude religious education from the school. The difference between the generality of his statements on the separation of Church and State and the specificity of his conclusions on education are considerable. A rule of law should not be drawn from a figure of speech.

McCollum v. *Board of Education*, 333 U.S. 203, 247, 68 S.Ct. 461, 482, 92 L.Ed. 649 (1948) (per Reed, J., dissenting).

"[T]he ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it." *Graves* v. *O'Keefe*, 306 U.S. 466, 491-92, 59 S.Ct. 595, 603-04, 83 L.Ed. 927 (1939) (Frankfurter, J., concurring). "By placing a premium on 'recent cases' rather than the language of the Constitution, the Court makes it dangerously simple for future Courts using the technique of interpretation to operate as a 'continuing Constitutional Convention.'" *Coleman* v. *Alabama*, 399 U.S. 1, 22-23, 90 S.Ct. 1999, 2010-11, 26 L.Ed.2d 387 (1970) (Burger, C.J.). "Too much discussion of constitutional law is centered on the Court's decisions, with not enough regard for the text and history of the Constitution itself." R. Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* 296 (1977.[39]

This Court's review of the relevant legislative history surrounding the adoption of both the first amendment and of the fourteenth amendment, together with the plain language of those amendments, leaves no doubt that those amendments were not intended to forbid religious prayers in the schools which the states and their political subdivisions mandate.

I. Summary

"Th[e] mountain of evidence has become so high, one may have lost sight of the few stones and pebbles that made up the theory that the Fourteenth Amendment incorporated Amendments I to VIII." Fairman, *supra* note 25, at 134. Suffice it to say that the few stones and pebbles provide precious little historical support for the view that the states were prohibited by the establishment clause of the first amendment from establishing a region.[40]

More than any other provision of the Constitution, the interpretation by the United States Supreme Court of the establishment clause has been steeped in history. This Court's independent review of the relevant historical documents and its reading of the scholarly analysis convinces it that the United States Supreme Court has erred in its reading of history. Perhaps this opinion will be no more than a voice crying in the wilderness and this attempt to right that which this Court is persuaded is a misreading of history will come to nothing more than blowing in the hurricane, but be that as it may, this Court is persuaded as was Hamilton that "[e]very breach of the fundamental laws, though dictated by necessity impairs the sacred reverence which ought to be maintained in the breast of the rulers towards the constitution." R. Berger, *supra* note 26, at 299 (quoting Federalist No. 25 at 158).

[13] Because the establishment clause of the first amendment to the United States Constitution does not prohibit the state from establishing a religion, the prayers offered by the teachers in this case are not unconstitutional. Therefore, the Court holds that the complaint fails to state a claim for which relief could be granted.

J. Conclusion

There are pebbles on the beach of history from which scholars and judges might attempt to support the conclusions that they are wont to reach. That is what Professors Flack, Crosskey and the more modern scholars have done in attempting to establish a beachhead, as did Justice Black, that there is a basis for their conclusions that Congress and the people intended to alter the direction of the country by incorporating the first eight amendments to the Constitution. However, in arriving at this conclusion, they, and each of them, have had to revise established principles of constitutional interpretation by the judiciary. Whether the judiciary, inadvertently or eagerly, walked into this trap is not for discussion. The result is that the judiciary has, in fact, amended the Constitution to the consternation of the republic. As Washington pointed out in his Farewell Address, *see* p. i *supra*, this clearly is the avenue by which our government, can and ultimately, will be destroyed. We think we move in the right direction today, but in so doing we are denying to the people their right to express themselves. It is not what we, the judiciary want, it is what the people want translated into law pursuant to the plan established in the Constitution as the framers intended. This is the bedrock and genius of our republic. The mantle of office gives us no power to fix the moral direction that this nation will take. When we undertake such course we trample upon the law. In such instances the people have a right to complain. The Court loses its respect and our institution is brought low. This misdirection should be cured now before it is too late. We must give no future generation an excuse to use this same tactic to further their ends which they think proper under the then political climate as for instance did Adolph Hitler when he used the court system to further his goals.

What is past is prologue. The framers of our Constitution, fresh with recent history's teachings, knew full well the propriety of their decision to leave to the peoples of the several states the determination of matters religious. The wisdom of this decision becomes increasingly apparent as the courts wind their way through the maze they have created for themselves by amending the Constitution by judicial fiat to make the first amendment applicable to the states. Consistency no longer exists. Where you cannot recite the Lord's Prayer, you may sing his praises in God Bless America. Where you cannot post the Ten Commandments on the wall for those to read if they do choose, you can require the Pledge of Allegiance. Where you cannot acknowledge the authority of the Almighty in the Re-

gent's prayer, you can acknowledge the existence of the Almighty in singing the verses of America and Battle Hymn of the Republic. It is no wonder that the people perceive that justice is myoptic, obtuse, and janus-like.

If the appellate courts disagree with this Court in its examination of history and conclusion of constitutional interpretation thereof, then this Court will look again at the record in this case and reach conclusions which it is not now forced to reach.[41]

III. Order

It is therefore ordered that the complaint in this case be dismissed with prejudice. Costs are taxed against the plaintiffs. Fed. R.Civ.P. 54(d).

FOOTNOTES

[1] 42 U.S.C. § 1983 provides: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, and shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[2] Initially, it should be noted that neither 28 U.S.C. §§ 2201 nor 2202 afford any subject-matter jurisdiction to a federal court as the complaint alleges. These sections provide only a remedy.

The operation of the Declaratory Judgment Act is procedural only. By passage of the Act, Congress enlarged the range of remedies available in the federal courts but it did not extent their subject-matter jurisdiction. Thus there must be an independent basis of jurisdiction, under statutes equally applicable to actions for coercive relief, before a federal court may entertain a declaratory judgment action.

10 C. Wright and A. Miller, Federal Practice and Procedure § 2766, 841 (1973) (footnotes omitted).

Likewise, 28 U.S.C. § 1343(4) does not afford subject-matter jurisdiction to a federal court over claims brought under 42 U.S.C. § 1983. Section 1343(4) affords subject-matter jurisdiction to the federal court only over those claims which are brought under "any Act of Congress providing for the protection of civil rights. . . ." "Standing alone, § 1983 clearly provides no protection for civil rights since . . . § 1983 does not provide any substantive rights at all." *Chapman* v. *Houston Welfare Rights Organization*, 441 U.S. 600, 618, 99 S.Ct. 1905, 1916, 60 L.Ed.2d 508 (1979).

[3] In fact, the complaint alleges that "[t]his cause of action arises under the First and Fourteenth Amendments to the United States Constitution . . . ." *See* Complaint at 2. This Court has previously explained that no implied cause of action exists under either the first or fourteenth amendments, at least when the first amendment is applied to persons acting under color of state law. The very purpose for enacting 42 U.S.C. § 1983 was to provide a remedy to vindicate the rights afforded by the federal Bill of Rights when persons acting under color of state law violated those rights. It would be incongruous to imply a remedy where Congress has expressly afforded a remedy. *See Strong* v. *Demopolis City Board of Education*, 515 F.Supp. 730, 732 n. 1 (S.D.Ala.1981) (per Hand, J.).

[4] "[T]he existence of a claim for relief under § 1983 is 'jurisdictional' for purposes for invoking 28 U.S.C. § 1343, even though the existence of a meritorious constitutional claim is not similarily required in order to invoke jurisdiction under 28 U.S.C. § 1331. *See Bell* v. *Hood*, 327 U.S. 678, 682 [66 S.Ct. 773, 776, 90 L.Ed. 939] (1946); *Mt. Healthy [City School District* v. *Doyle]*, 429 U.S. 274, 278-79 [97 S.Ct. 568, 571-72 (1977).]" *Monell* v. *Department of School Services*, 436 U.S. 658, 716, 98 S.Ct. 2018, 2048, 56 L.Ed.2d 611 (1978).

[5] At the start the Court should acknowledge its indebtedness to several constitutional scholars. If this opinion will accomplish its intent, which is to take us back to our original historical roots, then much of the credit for the vision lies with Professor James McClellan and Professor Robert L. Cord. Their work and the historical sources cited in their work have proven invaluable to the Court in this opinion. *See* R. Cord, *Separation of Church and State: Historical Fact and Current Fiction* (1982); P. McGuigan & R. Rader, *A Blueprint for Judicial Reform* (eds. n.d.); J. McClellan, *Joseph Story and the American Constitution*, 118-159 (1971) (Christianity and the Common Law).

[6] McClellan, The *Making and the Unmaking of the Establishment Clause*, in *Blueprint for a Judicial Reform* 295 (P. McGuigan & R. Rader eds. n.d.) (quoting J. Story, III, *Commentaries on the Constitution* § 1871 (1833) (emphasis added)).

[7] *Id.*

[8] *Id.* at 300. Professor McClellan documents in great detail the political struggle which raged through the various colonies during the Revolution and afterwards to disestablish certain religions throughout the colonies. The establishment of one religion over another in the respective colonies was purely a political matter. The political strength of the various followers determined which religion was established. Like any other political decision, when the political strength of the minorities reached that of the majority, the state disestablished what had formerly been the majority religion. *See e.g., id.* at 301-308.

[9] *Id.* at 307.

[10] *Id.*

[11] *Id.* at 311. Professor McClellan cites numerous examples in which the states required adherence to a Christian religion. For instance, witnesses were considered competent to testify only if they affirmed a belief in the existence of a Christian God. *Id.*

[12] R. Cord, *supra* note 5, at 23.

[13] R. Cord, *supra* note 5, at 24 (quoting *Debates in the Federal Convention of 1787* as reported by James Madison, *Documents Illustrative of the Formation of the Union of the American States* (Washington, D.C.: Government Printing Office, (1927) 295-96 (emphasis in original)).

[14] *Id.* at 24-25.

[15] *Id.*

[16] The views of James Madison are often cited by those who insist upon absolute separation between church and state. Madison was one of the drafters of the first amendment. An uncritical, cursory examination of some of Madison's writings would lead one to the conclusion that Madison favored absolute separation between church and state. However, to reach this conclusion is to misunderstand the views of Mr. Madison.

As Professor Cord explains in his book, Madison was concerned only that the federal government should not establish a national religion. Nondiscriminatory aid to religion and support for various Christian religions was not viewed by Madison as unlawful. *See* R. Cord, *supra* note 5, at 25-26 (examining drafts of the establishment clause submitted by Madison).

[17] Professor Cord explains in great detail the circumstances surrounding this presidential proclamation. *See* R. Cord, *supra* note 5, at 27-29.

[18] Professor Cord discusses in detail a document which Madison wrote late in his life known as the *Detached Memoranda*. Some historians have taken the *Detached Memoranda* as a blanket condemnation of religious proclamation issued by Presidents Jefferson, Madison, and Jackson. From this, some historians argue that James Madison believed that absolute separation was mandated by the establishment clause. The Supreme Court has relied upon the *Detached Memoranda* to justify its position of absolute separation in *Abington School District* v. *Schempp*, 374 U.S. 203, 225 (1963) ("[I]n the words of Madison, 'it is proper to take alarm at the first experiment on our liberties.' ").

Professor Cord suggests that the *Detached Memoranda* reflected nothing more than a shift in Madison's views as he grew older. The *Detached Memoranda* was written long after Madison had left office and long after the first amendment had been drafted. R. Cord, *supra* note 5, 29-36.

The explanation of Professor Cord that Madison is an old man, no longer in office, who regretted some of his past actions, is, to the Court, reasonable. Not all historical facts can easily be squared. Professor Cord emphasizes his point by analogizing to something which former President Nixon might write upon reflecting on his tenure as president. It would be odd, bypothesizes Professor Cord, if Mr. Nixon were to publish a book in his later years which concluded that taping conversations, without all parties being aware of the recording, is morally wrong and clearly a flagrant violation of the constitutional right to privacy. It would be nonsense, in the view of Professor Cord, for a Nixon biographer to conclude that Richard Nixon believed that the surrepitious tapings of conservations in the Oval Office were immoral and unconstitutional. R. Cord, *supra* note 5, at 36. Similarly, it is faulty to judge what Madison believed to be the scope of the establishment clause at the time he drafted the clause by looking to views expressed late in his life when there are numerous expressions of his intent contemporaneous with the period in which the established clause was drafted.

[19] R. Cord, *supra* note 5, at 37-39.

[20] R. Cord, *supra* note 5, at 40 (quoting Letter to a Presbyterian Clergyman (1808)).

[21] Professor Cord chronicles the federal support provided to the Moravian Brethren at Bethlehem in Pennsylvania. The function of the Brethren was to civilize the Indians and to promote Christianity. First passed on July 27, 1787, the resolution supporting the Brethren was supported by every President, including Thomas Jefferson. The legislation supporting the Brethren was sectarian in character. Professor Cord reads this history to conclude that had this sort of interaction between church and state been thought to be unconstitutional then certainly the early Congresses and Presidents would not have authorized expenditure of federal money. R. Cord, *supra* note 5, at 39-46.

[22] R. Cord, *supra* note 5, at 47.

[23] *Id.*

[24] Since the states were historically free to establish a religion it follows that some irritation by non-believers or those in the religious minority was a necessary consequence of establishment. The complaint alleges that "[a]ll of the minor Plaintiffs are exposed to ostracism from their peer group class members if they do not participate in these daily devotional activities." Complaint at 5. The children "all have suffered and continue to suffer sever emotional distress from being forced to participate, via peer group pressure, in devotional observances orchestrated by the defendants." *Id.* at 7. This psychological pressure natually flows anytime a state takes an official position on an issue. It does make an establishment unconstitutional. For example, laissez-faire industrialists feel coerced when a state adopts tough environmental laws. Unemployed workers feel pressure from peer groups when the unemployed worker takes advantage of a state labor law which allows him to cross a union picket line to break a strike. Someone, somewhere, feels coerced or pressured anytime the state takes a position. The Constitution, however, does not protect people from feeling uncomfortable. A member of a religious minority will have to develop a thicker skin if a state establishment offends him. Tender years are no exemption.

[25] Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights?* 2 Stan.L.Rev. 5 (1949).

[26] Mr. Justice Black spent nearly twenty years mulling over the criticisms leveled by Professor Charles Fairman. Finally, he had this to say:

> What I wrote [in *Adamson* v. *California*, 332 U.S. 46, 47 [67 S.Ct. 1672, 1673, 91 L.Ed. 1903] (1947),] in 1947 was the product of years of study and research. My appraisal of the legislative history [which surrounded the adoption of the fourteenth amendment and upon which Mr. Fairman relied so heavily] followed 10 years of legislative experience as a Senator of the United States, not a bad way, I suspect, to learn the value of what is said in legislative debates, committee discussions, committee reports, and various other steps taken in the course of passage of bills, resolutions, and proposed constitutional amendments. My Brother Harlan's objections to my *Adamson* dissent history, like that of most other objectors, relies most heavily on a criticism written by Professor Charles Fairman and published in the Stanford Law Review. 2 Stan.L.Rev. 5 (1949). I have read and studied this article extensively, including the historical references, and am compelled to add that in my view it has completely failed to refute the inferences and arguments that I suggested in my *Adamson* dissent. Professor Fairman's "history" relied very heavily on what was "not" said in the state legislatures that passed on the Fourteenth Amendment. Instead of relying on this kind of negative pregnant, my legislative experience has convinced me that it is far wiser to rely on what "was" said, and most importantly, said by the men who actually sponsored the Amendment in the Congress. I know from my years in the United States Senate that it is to men like Congressman Bingham, who steered the amendment through the House, and Senator Howard, who introduced it in the Senate, that members of Congress look when they seek the real meaning of what is being offered. And they vote for or against a bill based on what the sponsors of that bill and those who oppose it tell them it means.

The historical appendix to my "Adamson" dissent leaves no doubt in my mind that both its sponsors and those who opposed it believed the Fourteenth Amendment made the first eight amendments of the Constitution (the Bill of Rights) applicable to the states.

Duncan v. *Louisiana*, 391 US. 145, 165-66, 88 S.Ct. 1444, 1455-56, 20 L.Ed.2d 491 (1968) (Black, J., dissenting).

Charles Fairman "conclusively disproved Black's contention, at least, such as the weight of the opinion among disinterested observers." A. Bickel, *The Least Dangerous Branch* 102 (1962). Along with Alexander Bickel, Professor Raoul Berger agrees that Charles Fairman's analysis was right on the mark. R. Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment*, 137 n. 11 (1977).

[27] For example, Professor Raoul Berger cites several cases which recite this common principle of construction. *See e.g., Wright* v. *Vinton Branch*, 300 U.S. 440, 463, S.Ct. 556, 562, 81 L.Ed. 736 (1937); *Wisconsin Railroad Commission* v. *C.B. & Q. RR. Co.*, 257 U.S. 563, 589, 42 S.Ct. 232, 238, 66 L.Ed. 371 (1922). *See* R. Berger, *supra* note 26, at 136-37 & 137 n. 13.

[28] Professor Fairman has quoted exhaustively from the Congressional Globe. The various speeches of Congressman Bingham made in support of the fourteenth Amendment are quoted in detail. See Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights?* 2 Stan.L.Rev. 5, 24-25 (1949).

The analysis of Professor Fairman is attacked vigorously by William Crosskey, then a professor of law at the University of Chicago Law School. Crosskey, *Charles Fairman, "Legislative History," and the Constitutional Limitations on State Authority* 22 U.Chi.L.Rev. 1 (1954). Crosskey quotes at length from the Bingham article and from the *Congressional Globe* in an effort to discredit the explanation offered the historical facts by Professor Bingham.

The debate between the two scholars was pitched. Much of Crosskey's analysis consisted of little more than *ad homineum* attacks on Professor Fairman. The attacks were answered in a reply article written by Professor Fairman. Fairman, *A Reply to Professor Crosskey*, 222 U.Chi.L.Rev. 144 (1954). After reading the original articles of both Fairman and Crosskey, the rebuttal of Fairman, and many other articles on the question, the Court is persuaded that the weight of the disinterested scholars supports the analysis of Professor Fairman. The work of Professor Crosskey impresses the Court as being designed to reach a result. Namely, Crosskey was interested in providing a constitutional basis to support the desegregation decision of the United States Supreme Court in *Brown* v. *Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). For instance, in an effort to explain a serious ambiguity in a Bingham speech. Professor Crosskey explains that the speech would make perfect sense if one assumes that Bingham had been reading directly from a text of the Constitution, that he had a copy of the document in his hand and that he was waving the copy while he spoke in Congress. "You're fudging, Professor Crosskey! You don't know that Bingham had been *reading* from the Constitution." Fairman, *A Reply to Professor Crosskey*, 22 U.Chi.L.Rev. 144, 152 (1949).

One scholar, Michael Kent Curtis, argues that Professor Raoul Berger has improperly analyzed the incorporation question by blindly following the lead of Charles Fairman and ignoring the work of William Crosskey. Curtis, *The Bill of Rights as a Limitation on State Authority; A Reply to Professor Berger*, 16 Wake Forest L.Rev. 45 (1980). No lesser a light than Henry M. Hart, Jr., then a professor of law at Harvard Law School, remarked that "[t]he Don Quixote of Chicago breaks far too many lances in his on-slaughts upon the windmills of constitutional history to permit detailed review of each adventure." Hart, Book Review, 67 Harv.L.Rev. 1456 (1954). While the comment was, strictly speaking, directed to a recently released book by Professor Crosskey, the thrust of the comment holds true for the scholarship of Professor Crosskey. Professor Henry Hart had little use for the typical analytical method employed by Professor Crosskey: slanderous, *ad homineum* attacks on those historical actors who supported views contrary to those which Professor Crosskey expected to find in a histocial record. Professor Hart compared Professor Crosskey to Senator Joseph McCarthy from Wisconsin. *Id.* at 1475 ("In the true hit-and-run style popularized by the Senator from the adjacent state to the north, [Wisconsin being north of Illinois] Professor Crosskey, having made th[e] ugly charge [that James Madison deliberately, not inadvertently, falsified some of his notes in 1836 to suit his own purposes at that time], promises to consider in a later volume whether it is true.") Professor Hart is of the general opinion that the scholarship of Professor Crosskey amounted to little more than "a confident tone, nice printing, and an abundance of notes and appendices referring to obscure documents and esoteric word meanings." *Id.* at 1486.

[29] R. Berger, *supra* note 26, at 147 (footnotes omitted).

[30] R. Berger, *supra* note 26, at 147-48 (quoting *Congressional Globe* 2764-65)

[31] Crosskey, *Charles Fairman, "'Legislative History'" and the Constitutional Limitations on State Authority*, 22 U.Chi.L.Rev. 1 (1954). In particular, Professor Crosskey is critical of the newspaper examination conducted by Professor Fairman. By Crosskey's count, Fairman and Flack together examined ten newspapers. *Id.* at 100-101. Crosskey points out that there were nearly 5,000 newspapers in circulation in 1870. Thus, if Flack and Fairman examined only ten of these newspapers then, concludes Crosskey, the two ignored a substantial source of evidence in their inquiry. Certainly, at the least, according to Crosskey, neither Flack nor Fairman are entitled to make any conclusions about what the newspapers of the day reflected as the popular understanding of the effect of the fourteenth amendment.

The Court has studied the Crosskey criticism of Professor Fairman and rejects it. The work of the two scholars serves as the cornerstone for both camps in the debate vel non whether the fourteenth amendment was intended to incorporate the federal Bill of Rights. *Compare* R. Berger, *supra* note 26, 134-156 (rejecting incorporation of the federal Bill of Rights) *with* Curtis, *The Bill of Rights as a Limitation on State Authority: A Reply to Professor Berger*, 16 Wake Forest L.Rev. 45 (1980) (following Crosskey).

[32] C. Fairman, *supra* note 25 at 86 (quoting N.H. Const. art. 6 (1793)).

[33] It is always difficult to wade through the mass of historical research which has been done on both sides of the issue. For instance, while the defendant-intervenors introduced Professor Robert L. Cord's book, *Separation of Church and State: Historical Fact and Current Fiction* in support of the historical record upon which they are relying, Professor Cord concludes, in part, that a) the fourteenth amendment did incorporate the establishment clause against the states, *id.* at 101, and b) the Lord's Prayer, being distinctly Christian in character, or any other prayer which is readily identified with one religion rather than another is impermissible under the establishment clause, *id.* at 162-65.

The Court rejects the conclusion of Professor Cord that the fourteenth amendment incorporated the establishment clause against the states. Professor Cord uncritically adopted the analysis of the United States Supreme Court in reaching his conclusion. In only a footnote does Professor Cord refer to the scholarship of Professor Charles Fairman; then only does Professor Cord note that there has been some "controversy" surrounding the incorporation issue.

Assuming arguendo that the establishment clause had been incorporated against the states then Professor Cord would be correct in his conclusion that any activity which is religiously identifiable would be barred. See *infra* note 41 for the Court's discussion regarding secular humanism.

[34] *In Barron* v.*City of Baltimore*, the Court noted:

> But it is universally understood, it is a part of the history of the day, that the great revolution which established the Constitution of the United States was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen who then watched over the interests of our country, deemed essential to union, and to the attainment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments.
>
> In compliance with a sentiment thus generally expressed, the quiet fears were thus extensively entertained, amendments were proposed by the required majority in congress, and adopted by the States. *These amendments contained no expression indicating an intention to apply them to the state governments.* This court cannot so apply them. *Barron* v. *City of Baltimore*, 32 U.S. (7 Pet.) 243, 250, 8 L.Ed. 672 (1883) (emphasis added).

[35] *Justices of the Supreme Court of New York* v. *United States*, 65 U.S. (9 Wall.) 274, 19 L.Ed. 658 (1870).

[36] In part the seventh amendment provides that "no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." U.S. Const. amend. VII.

[37] Abraham Lincoln once said, "'Stand with anybody that stands *right*, Stand with him while he is right and *part* with him when he does wrong.'" Jaffa, *In Defense of Political Philosophy*, 34 National Review 36 (1982) (emphasis in original).

[38] While stare decisis has more force in cases which determine the meaning of statutes as opposed to interpreting the Constitution, the Supreme Court has frequently reversed itself where it thinks an earlier decision involving the construction of a statute is in error. In *Monell* v. *Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), the Supreme Court identified four factors which it considers when faced with the question whether to overrule a prior decision which involves a statute. The factors are: 1) whether the decisions in question misconstrued the meaning of the statute as revealed in its legislative history; 2) whether overruling the decisions would be inconsistent with more recent expressions of congressional intent; 3) whether the decisions in question constituted a departure from prior decisions; and 4) whether overruling these decisions would frustrate legislative reliance on their holdings. *Id.* at 695-701, 98 S.Ct. at 2038-2041.

[39] Mr. Justice Stevens recently addressed the problem whether a court should follow authority which it believes to have been incorrectly decided. In a case which involved the construction of a statute, parents of Negro school children sued under the Civil Rights Act of 1866 (now 42 U.S.C. § 1982) for alleged discriminatory admission to private schools, which discrimination was based solely upon race. *Runyon* v. *McCrary*, 427 U.S. 160, 96 S.Ct. 2586, 49 L.Ed.2d 415 (1976). The statute upon which the suit was based, 42 U.S.C. § 1981, was passed prior to the adoption of the fourteenth amendment. It provides in part that "[a]ll persons within the jurisdiction of the United States shall have the same right in every State . . . to make and enforce contracts . . . as enjoyed by white citizens. . . ." In *Runyon* two children were denied admission to private schools in Virginia solely because they were Negro. The Supreme Court held that section 1981 prohibits private, commercially-operated, nonsectarian schools from denying admission to prospective students solely because of race. Mr. Justice Stevens concurred in the opinion of the Court, but his thoughts on stare decisis are noteworthy.

Mr. Justice Stevens felt compelled to join the opinion of the Court based upon a prior decision of the Court, *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189 (1968). However, the language of the Civil Rights Act of 1866 and its historical setting left "no doubt in [Mr. Justice Stevens'] mind that the construction of [42 U.S.C. § 1982] would have amazed the legislators who voted for it." *Runyon* v. *McCrary*, 427 U.S. at 189, 96 S.Ct. at 2603. Given a clean slate Mr. Justice Stevens would have allowed private, commercially-operated, nonsectarian schools the right to deny admission to prospective students solely because of race. He would have reached this result not because he thought that it was socially preferable to the result reached by the Supreme Court, but simply because the intent of Congress and the legislative history surrounding the adoption of 42 U.S.C. § 1981 mandated such a result.

Where Mr. Justice Stevens was unwilling to dissent from his brethren in a case involving statutory construction, this Court feels a stronger tug from the Constitution which it has sworn to support and to defend.

[40] Professor Fairman has summarized concisely in several pages all of the stones and pebbles which could conceivably be relied upon to support the conclusion that the fourteenth amendment intended to incorporate the federal Bill of Rights against the states. See Fairman, *supra* note 25, 134-35.

[41] One of the first of these considerations is whether the teachers and those students who

desire to express the simple prayers have any rights to freedom of speech. Compare what the Court observed in the order which granted the preliminary injunction in the companion case, 82-0792-H, against the state on the first amendment right of students to pray at school. 544 F.Supp. 727 at 732-33. The evidence in the case demonstrates that the school board took no active part in any decision made by the teachers to utilize the simple prayer that they have. The school board nor any of the official body of the school administration encouraged or discouraged these teachers from exercising their own will in the matter. Nor does the evidence indicate that those students who opted for this type of exercise were coerced into participating or not participating.

In dealing with matters religious the exercise of first amendment rights are highly circumscribed. The same does not appear to be true in dealing with first amendment rights in expressing one's opinions in all other matters whether they be expressions of moral concern or immoral concern.

The second major area that this Court must concern itself with should this judgment be reversed is that raised by the evidence produced by the intervenors dealing with other religious teachings now conducted in the public schools to which no attention has apparently been directed and to which objection has been lodged by the intervenors.

There are many religious efforts abounding in this country. Those who came to these shores to establish this present nation were principally governed by the Christian ethic. Other religions followed as the population grew and the ethnic backgrounds were diffused. By and large, however, the Christian ethic is the predominant ethic in this nation today unless it has been supplanted by secular humanism. Delos McKown, witness for the plaintiff, expressed himself as believing that secular humanism has been more predominant through the years than we have imagined and indeed was more akin to the beliefs of George Washington, Thomas Jefferson, Benjamin Franklin, and others of that era. Delos McKown also testified that secular humanism is not a religion, though he ultimately waffled on this point. The reason that this can be important to the decision of this Court is that case law deals generally with removing the teachings of the Christian ethic from the scholastic effort but totally ignores the teaching of the secular humanist ethic. It was pointed out in the testimony that the curriculum in the public schools of Mobile County is rife with efforts at teaching or encouraging secular humanism—all without opposition from any other ethic—to such an extent that it becomes a brainwashing effort. If this Court is compelled to purge "God is great, God is good, we thank Him for our daily food" from the classroom, then this Court must also purge from the classroom those things that serve to teach that salvation is through one's self rather than through a diety. Indeed, the Supreme Court in *Abington School District* v. *Schempp*, 374 U.S. 203, 225, 83 S.Ct. 1560, 1573, 10 L.Ed.2d 844 (1963) (quoting *Zorach* v. *Clauson*, 343 U.S. 306, 314, 72 S.Ct. 679, 684, 96 L.Ed. 954) (1952), noted that "the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to a religion, thus preferring those who believe in no religion over those who do believe."

That secular humanism is a religion within the definition of that term which the "high wall" must exclude is supported by the finding in *Torcaso* v. *Watkins*, 367 U.S. 488, 495 n. 11, 81 S.Ct. 1680, 1684 n. 11, 6 L.Ed.2d 982 (1961), which recognized that secular humanism is a religion in the traditional sense of the word and also in the statement of the 276 intellectuals who advocate the doctrine of secular religion as delineated in the *Humanist Manifesto I and II.* (Defendant-intervenors exhibit # 10).

Textbooks which were admitted into evidence demonstrated many examples in the way this theory of religion is advanced. The intervenors maintain that their children are being so taught and that this Court must preclude the Mobile County School Board from continuing to advance such a religion or in the alternative to allow instruction in the schools that would give a child an opportunity to compare the ethics of each religion so as to make their own credibility or value choices. To this extent, this Court is impressed that the advocacy of the intervenors on the point of necessity makes them parties plaintiff and to this extent they should be realigned as such inasmuch as both object to the teaching of certain religions.

This Court is confronted with these two additional problems that must be resolved if the appellate courts adhere to their present course of interpreting history as did Mr. Justice Black. Should this happen then this Court will hunker down to the task required by the appellate decisions. A blind adherence to Justice Black's absolutism will result in an engulfing flood of other cases addressed to the same point raised by intervenors. The Court will be called upon to determine whether each book or any statement therein advances secular humanism in a religious sense, a never-ending task. Already the involvement of this Court with determining state activities in such things as prison cases, occupies one-third of its docket. This Court can anticipate no less of a burgeoning docket brought about by this incursion into what is legitimately a state concern.

The founding fathers were far wiser than we. They were content to allow the peoples of the various states to handle these matters as they saw fit and were patient in permitting the processes of change to develop orderly by established procedure. They were not impatient to bring about a change because we think today that it is the proper course or to set about to justify by misinterpretation the original intent of the framers of the Constitution. We must remember that "He, who reigns within Himself, and rules passions, desires, and fears, is more a king" Milton, *Paradise Regained.* If we, who today rule, do not follow the teachings of history then surely the very weight of what we are about will bring down the house upon our head, and the public having rightly lost respect in the integrity of the institution, will ultimately bring about its change or even its demise.

By Mr. SYMMS (for himself and Mr. McCLURE):

S. 214. A bill to direct the Federal Energy Regulatory Commission to issue an order with respect to Docket No. EL-85-38-000; to the Committee on Energy and Natural Resources.

SWAN FALLS AGREEMENT BILL

● Mr. SYMMS. Mr. President, on behalf of myself and Senator McCLURE, I am introducing legislation which directs the Federal Energy Regulatory Commission to issue an order with respect to Docket No. EL-85-38-000. My colleagues may remember this matter as the "Swan Falls Agreement" amendment which passed the Senate and the other body as part of the National Applicance Energy Conservation Act of 1986. Unfortunately, however, the President did not sign that measure for reasons unrelated to the Swan Falls amendment. The President, in fact, indicated his support for the amendment and urged that its purpose be carried out administratively if possible.

While I thank the President for his support and also the cooperation of Chairman Hess at the Federal Energy Regulatory Commission [FERC], I believe a legislative solution provides greater certainty than an administrative one in this instance. The bill I am introducing today will provide that solution and that certainty. It simply directs FERC to issue an appropriate order, within 90 days, which insulates the agreement between the State of Idaho and Idaho Power Co. from two specified causes for challenge. It is identical to the amendment which passed both Houses of Congress last year, and to the legislation being introduced in the other body by Congressmen STALLINGS and CRAIG.

It is my hope that this bill can be acted upon quickly and sent to the President. It is an important piece of legislation for Idaho, and has the support of the State, its congressional delegation, and the administration.●

By Mr. SASSER:

S. 215. A bill to amend chapter 13 of title 18 of the United States Code; to the Committee on the Judiciary.

DESTRUCTION OR THEFT OF PROPERTY USED FOR RELIGIOUS PURPOSES

● Mr. SASSER. Mr. President, I rise today to introduce legislation that would make the willful damaging of a cemetery, a building used for religious purposes, or any religious article contained therein a Federal crime.

There is no right that we Americans cherish more dearly than our right to freedom of religion. The right to freely exercise our religious beliefs is one of the fundamental tenets of our national foundation and this right is explictly guaranteed in our Constitution.

America has a long and proud history of religious tolerance. However, incidences of violence—vandalism, destruction, and theft—directed against certain religious groups do occur. For example, in 1980, the small gold box containing the remains of St. Herman of Alaska, the only American saint of the Orthodox Church of America, was stolen from St. Tikhon's Orthodox Monastery in South Canaan, PA. The theft of those remains which are so significant to the Orthodox Church in this country constitutes an act of violence against the Orthodox Church.

Reports from New York document the theft of Torahs from synagogues in Brooklyn. Those most sacred scrolls of the Jewish faith are virtually priceless. The production of a Torah requires years of painstaking work. But, more importantly, the theft itself is an act of violence against the Jewish faith. In addition to such thefts are the far too frequent cases of arson and fire bombings or attempted fire bombings of Jewish religious institutions. It is no wonder that many Americans are feeling compelled to spend increasing sums of money on security devices to protect their places of worship.

The Federal Government is charged with the responsibility of protecting the constitutional right of all Americans to freely exercise their religion, and yet the Federal Government lacks adequate power to investigate these and other incidences of violence against religious institutions.

Mr. President, this is a matter of concern to all Americans. No religious institution is safe if all religious institutions are not fully protected and the rights of all Americans to practice their religion freely is threatened if any American's right is so threatened. Who can forget the violence against religious minorities in Germany which preceded the wave of violence against

Jews, Catholics, and Protestants during World War II? We must take every measure to insure that all Americans can worship freely and without fear of violations of the sanctity of their religious institutions.

The bill I am introducing today would help the Federal Government to meet its responsibility of guaranteeing this basic freedom by adding a new section to title 18 of the United States Code. That section would make it a Federal crime for any person to willfully damage a cemetery, a building used for religious purposes or religious articles contained in those places. It would also make the attempt to commit such destruction a crime punishable by Federal law. The penalties are graded on the basis of the seriousness of such offenses. First, there is a general penalty of $10,000 and/or 5 years imprisonment. Second, $15,000 in fines and/or 15 years imprisonment where bodily injury results. Finally, a maximum of life imprisonment is to be imposed where death results.

Mr. President, this is a strong bill with stiff penalties aimed at curbing these heinous crimes. The time has come to put those who would destroy or dishonor sacred places on notice that they will be subject to justice by the Government of the United States.

Mr. President, I ask unanimous consent that the text of S. 215 be printed in the RECORD at this point.

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

S. 215

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 13 of title 18 of the United States Code is amended by adding at the end the following new section:

"§ 247. Destruction or theft of property used for religious purposes

"Whoever, whether or not acting under the color of law, with the intent to injure, intimidate, or interfere with any person or any class of persons in the free exercise of religion secured by the Constitution or laws of the United States, or because of having so exercised the same, willfully vandalizes, sets fire to, tampers with, or in any other way damages or destroys any cemetery, any building or other real property used for religious purposes, or any religious article contained therein, or takes and carries away, with intent to steal, any religious article contained in any cemetery, or any building or other real property used for religious purposes, or attempts to do any of the same, shall be fined not more than $10,000, or imprisoned not more than five years, or both; and if bodily injury results shall be fined not more than $15,000, or imprisoned not more than fifteen years, or both; and if death results, shall be subject to imprisonment for any term of years or for life.".

SEC. 2. The table of sections for chapter 13 of title 18 of the United States Code is amended by adding at the end the following new item:

"247. Destruction or theft of property used for religious purposes".●

By Mr. PRESSLER:

S. 217. A bill to reform the tort law doctrine of joint and several liability; to the Committee on the Judiciary.

JOINT AND SEVERAL LIABILITY TORT REFORM

● Mr. PRESSLER. Mr. President, I rise today to introduce legislation which I believe is essential to any tort reform effort. My bill focuses on an issue I have been involved in for many years—joint and several liability reform.

Tort reform is one of the most important consumer issues of this decade. The present law in this area has led to increased product, service, and insurance costs, and has substantially hampered innovation in the United States. Current joint and several liability laws around the United States have been chief among the culprits in causing our current liability crisis. No country in the world is subjected to this confused state of affairs, and it has put us at a substantial competitive disadvantage in the area of world trade. Prompt, effective reform is essential.

We have been struggling for years in an attempt to devise a formula which is strong enough to provide meaningful relief to American consumers, yet sensitive enough to protect plaintiffs' rights. Much work remains, but this legislation is a step in the right direction.

Throughout the Commerce Committee debates on product liability reform during the last Congress, I placed special emphasis on the problem relating to joint and several liability.

Joint and several liability works to hold one person responsible for the conduct of another. It leads to substantial injustice to largely innocent defendants, consumers, and taxpayers. It works to increase the costs of products and services, and puts substantial pressure on local governments to either increase taxes or eliminate public facilities and services. It fails to punish the true wrongdoers. And it creates a great deal of uncertainty in assessing tort liability.

As presently applied in many States, the doctrine of joint and several liability has gone far beyond its original common law purpose. Originally, the doctrine was applied when two or more defendants had conspired together in a manner that resulted in an injury to the plaintiff. They were, in effect, equally at fault and equally to blame for the harm inflicted. There was no practical way to allocate the relative fault of each party's actions. The doctrine was later expanded to hold responsible all parties involved in causing the harm, regardless of whether they acted "in concert" or independently of each other.

This expansion seems to be the result of the old common law courts' reluctance to allocate fault. A party was responsible either for all the harm inflicted—regardless if there was 1 or 20 actors—or none of it. In order to avoid the admittedly unfair result of this all-or-nothing rule, the courts allowed the injured plaintiff to collect from anyone who could pay. Logically, the plaintiffs would always go to the defendant with the deepest pocket.

But today the notion that courts are unable to allocate fault is universally rejected. Courts in virtually every State apportion fault in some manner. Although we have the ability to determine and apportion the relative degree of fault, we continue to apply this artifical doctrine of joint and several liability. A party who is determined only 1 percent at fault can be and often is held liable for 100 percent of the damage award. Under the present system, the parties causing the harm get off scot-free. We no longer punish the wrongdoers. We punish parties for having the deepest pockets.

Although most people would agree that this makes little logical sense, I am afraid that in the past many of them thought this was not such a bad system because it affected only the rich corporations. Unfortunately, that is not what happens. Let me explain the real effects of the current joint and several liability doctrine:

First, it is not only the big corporations that pay the bill. Cities, counties, States and other local governments are becoming the most popular candidates for joining into a lawsuit. Small businesses that are responsible enough to carry insurance are equally threatened. It is the average citizen who ultimately pays the claim, either through increased taxes, loss of service, higher product prices, increased insurance premiums, community business failures, or in some other way. The point is, as any economist will tell you, that the "big corporation" theory rarely reflects the real world.

Second, the current system discourages safety. Not only does it allow the real culprits to escape liability, it encourages them to act irresponsibly. Why buy insurance? Why worry about delivering a safe product? Just set up a fly-by-night operation or create a phony corporate subsidiary; make all the money you can until somebody sues; pass the buck or declare bankruptcy; and start all over again, making the same unsafe product and endangering the same innocent people.

Third, the present joint and several liability doctrine has been identified as one of the leading causes of skyrocketing insurance premiums—not only in the context of product liability but across the board. This is why companies and cities with even the most glowing safety records must pay insurance rates as though they were "high-risk" customers. They not only have to insure against their own actions, but

those of everyone with whom they come in contact or who happen to cross their border.

Fourth, those who, for all practical purposes, the ordinary person would consider free of any true fault are being sued for the sole reason that they have money—or more accurately, because they have access to money or the ability to extract it from others. Cities are being sued in automobile accidents because their street lights are not bright enough. Balloon manufacturers are being sued because they did not prevent a pilot from flying into a telephone line on a windy day years after he had purchased the aircraft. Motorcycle seat manufacturers are being sued because they did not manufacture a seat that would make the passenger stick to it when the motorcycle collided with a car. And the list goes on and on. No reasonable person would call this justice.

I could go on and on with a litany of the problems associated with this doctrine. But I think the point has been made. The innocent are being punished while the wrongdoers are rewarded. Safety incentives are being tossed out the window. The lawyers are getting rich, and the man on the street is paying the tab.

But I am encouraged by the fact that more and more people are catching on to the game. They understand what is happening and they do not like it. They are demanding change and this is one area in particular that they have stressed. I held two hearings last year in South Dakota on the issue of liability insurance. The need to change the inequities and injustices resulting from the present application—or perversion if you will—of the doctrine of joint and several liability was the one reform most often and most emphatically urged. This call was not coming from the captains of industry or the deep-pocket corporations some would like to have us believe. It was coming from the small businessmen, the county and city officials, and the ordinary citizen who a few years ago had never heard of the doctrine.

But with all of its inadequacies today, it is clear that the original intent and application of the doctrine was just. It would be a serious blunder to return to the days when a plaintiff was denied deserving relief simply because he or she could not identify which of the negligent actors committed the wrong or that any one party was responsible for the harm inflicted. Under the widely accepted doctrine of comparative negligence, that result is not necessary today and it would not be the result under my bill.

The legislation I am proposing eliminates the joint and several liability doctrine as applied today but continues to hold all parties severally liable to the full extent of their own actions. In effect, parties continue to be fully liable for all their actions.

The only thing it changes is that parties would no longer be liable for what the court determines is the fault of others. If the court finds a party's actions to cause 10 percent of the harm, that party is liable for 10 percent of the damages awarded. If it causes 100 percent of the harm, it is liable for 100 percent of the damages. It is that simple.

I do not mean to imply this legislation is inconsequential. I am well aware of the significance and magnitude of the impact this change would have on present case law. Indeed, I would be disappointed if it did not have a major impact on the mess created under the present system.

There remains one very important question which needs to be addressed. What happens to the plaintiff when the party who is largely at fault has no means to pay and does not carry adequate insurance coverage? It is very true that under my bill not all plaintiffs would be compensated to the extent they are today in some cases. The answer, to be very blunt about it, is that they will not always be fully compensated when the party at fault cannot pay. The sad fact of life is that there will always be those kinds of cases. But to use the present joint and several liability doctrine in an attempt to compensate the plaintiff makes little more sense than to send the witness of a robbery to jail because we cannot find the robber.

I realize there are those who would say that there should be social policy that allows the injured party to be compensated to the full extent of his or her injury. I am not here to argue against that today. But what I would argue is that if we do make such a policy decision, we should also accept the responsibility to compensate the injured party rather than artificially passing it along to a substantially innocent third party. To say that because someone was 1-percent responsible for the harm justifies holding that party 100-percent responsible for the damages ducks the issue, particularly in the context of civil cases.

We have got to return some sense of responsibility to the system. I think we all realize our tort system has gotten out of hand. We need to address it in a thorough manner.

During last year's Commerce Committee proceedings, we made substantial progress in reforming this inequitable doctrine. Let me explain a little of the background on that issue, and outline my intentions. The committee adopted a joint and several liability amendments which essentially abrogated joint and several liability with two important qualifications: The reform was limited to (1) noneconomic damages, and (2) it applies only in cases involving a product liability action. This was a political compromise. But as a practical matter, it has not gone far enough. I am introducing a bill today which would extend the reform to all damages—economic and noneconomic—and it would apply to all cases involving a claim of personal injury, property damages, and wrongful death.

Let me say that although I am introducing this bill today, I remain open to further suggestions and refinement. I am not inextricably wed to this approach. I know there are strong feelings on the part of some that we should not venture beyond the realm of product liability actions in Federal tort reform proposals. Additionally, there may be some who do not want to extend the reform beyond the noneconomic damages compromise. I am sensitive to both of those concerns and continue to welcome suggestions in those and other areas.

Mr. President, I ask unanimous consent that that full text of my bill be reproduced in the RECORD at this point.

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

S. 217

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 "Joint and Several Liability Reform Act of 1987".

SEVERAL LIABILITY FOR DAMAGES

SEC. 2. (a)(1) Except as provided in paragraph (2) of this subsection, in any civil action alleging injury to a person, damage to property, or death of a person, the liability of each defendant for damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (b) of this section. A separate judgment shall be rendered against such defendant for that amount.

(2) In any case where the parties are found to have engaged in concerted action, the liability of each defendant shall be joint and several.

(b) For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(c)(1) If a claimant has released any defendant or potential defendant from liability for the claimant's harm, or if a defendant is unable (despite exercising all practicable means) to join any other person as a defendant in such action, the trier of fact shall, in determining the proportion of responsibility under subsection (b) of this section, consider the liability of any person not a party to the action if the defendant is able to prove that any such person caused the claimant's harm.

(2) If a claimant has released any defendant or potential defendant from liability for the claimant's harm, the total amount of responsibility for the claimant's harm shall be reduced by the proportion of responsibility of any such released defendant or potential defendant.

(d) As used in this section, the term "concerted action" means any action consciously and intentionally taken by two or more defendants which resulted in the harm alleged in such civil action. It does not mean consciously parallel action.●

By Mr. HEINZ:

S. 218. A bill to amend the Federal Financing Bank Act of 1973 to establish a Federal Credit Program Revolving Fund under the direction of the Secretary of the Treasury with overall authority for Federal credit activity, including borrowing and credit management; to the Committee on Banking, Housing, and Urban Affairs.

FEDERAL FINANCING BANK ACT

● Mr. HEINZ. Mr. President, today I am reintroducing legislation I proposed in the last Congress to correct deficiencies in Federal credit management that originate, in part, in the budget accounting for credit programs. As we all know, current budget accounting distorts the cost of credit to the Government by scoring direct loans the same as direct spending programs that yield no reflows and treating guarantees as free goods until defaults occur. The confusion of revolving funds and Government corporations that are used to manage Federal credit both mask its cost and often remove programs from the discipline of the annual budget process. With federally assisted lending accounting for one-seventh of all lending in U.S. credit markets last year, it is imperative that these problems be resolved.

I believe that the only way to correct these problems and distortions is through fundamental and comprehensive reform of the mechanisms by which the Federal Government accounts for and manages credit. My efforts to rationalize the budget treatment of the Export-Import Bank in the charter extension passed last Congress convinced me that, while there is significant interest in credit reform, it can only work if implemented for all credit programs. This bill, identical to the language of S. 2428, the Federal Credit Program Revolving Fund Act, would implement such a reform.

I am pleased to note that the Administration has embraced this concept in the 1988 budget. In his budget statement, the President highlights the "grave inefficiencies in our credit programs" and calls upon Congress "to enact legislation whereby the true cost to the economy of Federal credit programs would be counted in the budget." I believe that passage of the legislation I am introducing would both remove existing distortions in Federal credit decisions and improve the management of Federal credit programs.

My bill amends the Federal Financing Bank Act to establish a central loan fund within the Treasury Department to fund all Federal credit programs. This fund will serve as Federal credit manager, accepting subsidy payments and fees from agencies and raising funds for loan disbursements and claim payments under their programs. As an arm of the Treasury, the fund will have access to efficient Treasury borrowing and will be able to tap, and further develop, the agency's expertise about the credit markets. This type of expertise will be essential to the fund's ability both to assess accurately the subsidy costs agencies must pay for the fund's services and to sell or reinsure agency loans and guarantees in the market where this is deemed appropriate.

In addition to its role in managing financial aspects of Federal credit, the fund will be responsible for improved data collection on Federal credit, more effective debt collection efforts, and otherwise implementing improvements in Federal credit management practices as appropriate.

Each credit program would continue to service its loans or guarantees and to set credit program policies and eligibility guidelines according to its respective legislative mandate. The level of credit activity which could be undertaken by any program would be as provided in annual appropriations. Each program would seek budget authority to cover the subsidy cost of its planned level of credit activity, as well as a credit limitation on the total amount of new loan, guarantee or insurance activity to be undertaken for the fiscal year. The subsidy appropriation would be paid to the central loan fund as loan disbursements were made or guarantees issued, in return for the fund taking on the credit obligation. All disbursements, claims, repayments, assets, and liabilities arising from the credit activity would be the responsibility of the fund. New credit activity could be undertaken by an agency only to the extent possible within the smaller of the limits set by the subsidy appropriation or the credit limitation provided by the Congress.

Through this mechanism, the full economic cost—the subsidy—of credit programs would be considered by the Congress when deciding on new credit activity levels. Congress would also be able to compare accurately the economic cost of spending and credit programs, permitting informed and accurate tradeoffs between these two types of government activity.

Furthermore, making subsidy payments up front would ensure full advance funding of the credit programs, including provision for adequate reserves to cover loan or guarantee defaults without further recourse to appropriations. This pay-as-you-go approach for credit programs would ensure that Congress and the taxpayers are fully aware of the cost of Federal credit, with no costs hidden from view.

Principles for the operation of the central loan fund would be established so as to avoid abuses such as occurred with the original Federal Financing Bank. First, the fund would be counted within the budget totals. Second, payment of the appropriate subsidy would have to be made to the fund up front. Third, subsidy calculations would be updated regularly and, where appropriate, set through market loan sales or reinsurance so that underpricing to hide costs would be extremely unlikely. Overall, these principles would ensure that the fund could impose no additional cost on U.S. taxpayers as a result of its operations that were not already reflected in appropriated subsidies for individual credit programs.

I believe that this plan represents the type of workable, sensible credit reform that is long overdue. It would make sense under any circumstances, but is especially critical at a time when we must make major reductions in Federal programs to meet budget deficit targets. We cannot permit programs to enjoy an advantage or suffer a disadvantage in the budget wars simply on the basis that their costs are hidden or they are inaccurately priced. A dollar cut from a loan program appears to save as much as a grant dollar cut, but it really saves only a fraction of a dollar net of fees and repayments. This overstatement of cost creates a bias against credit that could result in reductions in vital Federal activity in return for illusory budget savings.

We must have effective control of Federal credit. We must also ensure that our efforts to exercise control over Federal spending results in sensible budget choices and the intended deficit reductions. My bill would achieve these objectives. Now that the President has embraced the objectives of my proposed legislation in his 1988 budget, I look forward to the support of the administration for my bill and to working with them to win the support of the Congress as well.

One area where caution must be exercised is asset sales. The administration appears enthusiastic about asset sales as a credit management and budget reduction technique, and the Congress has now embraced the concept as well. My bill recognizes that some asset sales and reinsurance of guarantees may be appropriate, in particular to establish subsidy levels. However, the administration notes that there may be "policy or programmatic constraints to asset sales" that may make them impossible and we all recognize the danger of a "fire sale" or Federal assets at deep discounts that would create unnecessary losses to the taxpayer. Great care must be exercised to ensure that meaningful reform is implemented that does not mask budget gimmickry to artificially

reduce deficits or waste taxpayer dollars.

I believe that we can achieve such a reform through passage of my bill during the 100th Congress. I urge your support for this legislation.●

By Mr. SASSER:

S. 219. A bill to amend the Trade Act of 1974 to reform the procedures for relief from injury caused by import competition and unfair trade practices; to the Committee on Finance.

TRADE PROCEDURES REFORM ACT

● Mr. SASSER. Mr. President, today I am introducing legislation to streamline our trade relief procedures. This legislation is part of an overall effort to restore America's position in world markets.

This year we are facing a trade deficit of $170 million—up from a record $148 million last year. Many of our most basic industries are under siege from foreign competition. Whole communities are being rocketed as plants close or lay off large numbers of workers. If left unabated, this trend threatens to undermine our industrial base and our future economic stability.

We must attack our trade deficit on several fronts. We must pursue both short- and long-term solutions to the trade deficit. In the short term, we must recognize that certain industries need relief in order to become competitive. In the long term we must act in several areas. We must reduce the budget deficit and reduce interest rates. We must amend laws which inhibit exports. We must improve our standing in the world marketplace through enhanced scientific and technical research and education.

However, first things first. The bill I am introducing today is designed to make our trade laws effective and usable. We need to redefine subsidies for the purpose of trade actions. Many current practices simply aren't included in current law. We need to limit import surges by importers just before duties are assessed in subsidy or dumping cases.

We also need to improve the procedures for deciding section 201 cases. Specifically, we need to look at adjustments to the injury causation standard and limiting Presidental alternatives to granting relief. Current options, such as unfair trade filings and multinational negotiations, leave the President too much room to do nothing—no matter how flagrant the trade violation.

The plain fact is that right now our trade laws are not working. You can prove your case at each step of the way. You can even convince the International Trade Commission to recommend relief. But still the administration won't act. Even when you win, you can't win.

We have seen trade agreements that are ignored—or the quotas simply given away in trade negotiations. We have seen airtight dumping and market disruption cases stymied because the Government finds one pretext or another not to act.

When Congress wrote the current trade laws it intended they be used. We did not intend them as a rhetorical statement whose practical application was to be avoided at all costs. But that's what's happening.

Some economists have estimated that over the past several years, because of the trade deficit, perhaps 2 to 3 million American jobs have been exported overseas.

For those of us who are elected officials, however, these figures are more than mere statistics. They represent real people and real jobs. The closing of a factory can be devastating to a local community. Many such facilities are located in rural areas. They are often the major employer in the area—areas which have few alternative employment opportunities.

As I travel around Tennessee, I continually see the effects of imports on our citizens. I talk to individuals who have lost their jobs in the communities where they have lived and worked for years. So, for me, the import issue is a very personal one.

There is a flip side to imports, of course, and that is exports. I am convinced that the engine for U.S economic growth in the future is going to be the export market. For that reason, I have joined with my colleagues in establishing the congressional competitiveness caucus. The caucus will provide a framework to develop bipartisan legislation that will address competitiveness problems. We simply must find ways to get more U.S. goods into the world marketplace.

Many markets for goods and services are already global in scope and more are becoming so every day. Competition is no longer limited to companies within a given domestic market. Participants from every corner of the world now jockey for position in virtually all markets.

Evidence of that new fact of economic life is a more than twelvefold increase in world trade in the past 20 years. Moreover, nearly half of all trade flows are now accounted for by internal transfers of multinational corporations. It is a fact that markets, production, and innovation are interconnected by worldwide transactions.

We must do more to create the kind of environment that will encourage U.S. competitiveness in this global marketplace. It is not a simplistic matter of unleashing our corporate and technological genius on the world. As a member of the International Finance and Monetary Policy Subcommittee of the Banking Committee, I have heard chapter and verse about the competitive environment facing U.S. companies. And while I believe we need to continue our support for such measures as the Export-Import Bank to counter foreign-government export subsidies, I realize that is not enough.

We must strengthen our national competitive performance in the creation, application and, protection of technology. We must increase the cooperation among companies, governments, and universities. We must train our young people to function in a global economy.

So, Mr. President, the legislation I am introducing today to streamline trade relief procedures is a first step in developing a coherent trade policy. I am confident that that the 100th Congress will move swiftly on trade legislation and I welcome this much needed debate.

I ask unanimous consent that the text of my bill be printed in the RECORD at this point.

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

S. 219

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 "Trade Procedures Reform Act of 1987".

TITLE I—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

SEC. 101. INVESTIGATIONS UNDER SECTION 201 OF TRADE ACT OF 1974.

Subsection (b) of section 201 of the Trade Act of 1974 (19 U.S.C. 2251(b)) is amended—

(1) by inserting "domestic production facilities" after "operate" in paragraph (2)(A);

(2) by striking out subparagraph (B) of paragraph (2) and inserting in lieu thereof the following:

"(B) with respect to the threat of serious injury—

"(i) a decline in sales or market share in the domestic industry concerned;

"(ii) a higher and growing inventory in the domestic industry concerned (whether maintained by domestic producers, wholesalers, or retailers);

"(iii) a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned;

"(iv) any combination of coordinated foreign government actions, whether carried out severally or jointly, that—

"(I) are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist the beneficiary to become more competitive in the export of any class or kind of merchandise, and

"(II) causes, or threatens to cause, serious injury to the domestic industry concerned;

"(v) the existence of preliminary or final affirmative antidumping or countervailing duty determinations under section 303 or title VII of the Tariff Act of 1930 with respect to any merchandise that is produced by the domestic industry concerned;

"(vi) the extent to which firms in the domestic industry concerned are unable to maintain existing levels of expenditures on research and development; and

"(vii) the extent to which the United States market is the focal point for diversion of exports of the article that is the sub-

ject of the investigation by reason of restraints on exports of such article to, or on imports of such article into, the markets of any foreign country;";

(3) by striking out "may" in paragraph (3)(A) and inserting in lieu thereof "shall"; and

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

"(8) For purposes of this section, imports of like or directly competitive articles by domestic producers in an industry shall not be considered a factor indicating the absence of serious injury, or threat thereof, to such industry.".

SEC. 102. ACCELERATED PROCEDURES FOR PERISHABLE PRODUCTS.

Section 201 of the Trade Act of 1974 (19 U.S.C. 2251) is amended by striking out subsection (f) and inserting in lieu thereof the following new subsection:

"(f)(1) If a petition is filed with the Commission under subsection (a) regarding a perishable product and alleges injury from imports of that product, the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under paragraph (3) with respect to such article.

"(2) Within 14 days after the filing of a petition with the Secretary of Agriculture under paragraph (1)—

"(A) if the Secretary of Agriculture has reason to believe that—

"(i) a perishable product is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product, and

"(ii) emergency action is warranted,

the Secretary of Agriculture shall advise the President and recommend that the President take emergency action, or

"(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and advise the petitioner.

"(3) Within 7 days after the President receives a recommendation submitted by the Secretary of Agriculture under paragraph (2) to take emergency action, the President shall—

"(A) issue a proclamation that—

"(i) proclaims an increase in, or imposition of, any duty on the article causing serious injury, or threat of serious injury, to such industry,

"(ii) proclaims a tariff-rate quota on such article,

"(iii) proclaims a modification of, or imposition of, any quantitative restriction on the imports into the United States of such article, or

"(iv) takes any combination of the actions described in clauses (i), (ii), or (iii), or

"(B) publish a notice of his determinations not to take emergency action.

"(4) Any emergency relief proclaimed under paragraph (3) shall cease to apply—

"(A) upon the proclamation of import relief under section 203(a);

"(B) on the day on which the President makes a determination under section 202(b)(1) not to impose import relief;

"(C) in the event of a report of the Commission containing a negative finding under subsection (b), on the day the Commission's report is submitted to the President; or

"(D) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

SEC. 103. PRESIDENT REQUIRED TO IMPLEMENT RECOMMENDED RELIEF.

(a) IN GENERAL.—Subsection (c) of section 203 of the Trade Act of 1974 (19 U.S.C. 2253(c)) is amended to read as follows:

"(c)(1)(A) If the President determines under section 202(b)—

"(i) to provide import relief which is not the import relief found to be necessary by the Commission under section 201(d)(1)(A), or

"(ii) not to provide any import relief,

the President shall submit to the Congress on the same day the document required under paragraph (1) or (2) of subsection (b) is submitted a draft of a bill described in subparagraph (B).

"(B) Any bill submitted by the President under subparagraph (A) shall—

"(i) contain—

"(I) a provision waiving the application of paragraph (2) with respect to the findings of the Commission contained in a specific report submitted under section 201(d)(1), and

"(II) provisions implementing the import relief, if any, that the President has determined under section 202(b) to take with respect to such report.

"(ii) be introduced by the majority leader of each House of the Congress (by request) on the first day on which such House is in session after the date such draft is submitted to the Congress, and

"(iii) be treated as an implementing bill for purposes of subsections (d), (e), (f), and (g) of section 151.

"(2) If the President determines under section 202(b)—

"(A) to provide import relief which is not the import relief found by the Commission under section 201(d)(1)(A) to be necessary to prevent or remedy the injury caused by imports, or

"(B) not to provide any import relief,

the President shall, on the date that is 90 days after the date on which a draft bill is required to be submitted to the Congress under paragraph (1), proclaim the increase in, or imposition of, any duty or other import restriction on the imported article which was found to be necessary by the Commission under section 201(d)(1)(A).".

(b) ELIMINATION OF PRESIDENTIAL DISCRETION TO TERMINATE.—Subsection (h) of section 203 of the Trade Act of 1974 (19 U.S.C. 2253(h)) is amended—

(1) by striking out paragraph (4), and

(2) by redesignating paragraph (5) as paragraph (4).

TITLE II—ELIMINATION OF UNFAIR TRADE PRACTICES

SEC. 201. MISCELLANEOUS AMENDMENTS TO SECTION 301 OF THE TRADE ACT OF 1974.

(a) BURDEN ON COMMERCE.—Section 301 of the Trade Act of 1974 (19 U.S.C. 2411) is amended—

(1) by inserting "(or threatens to burden or restrict)" after "restricts" in subsection (a)(1)(B)(ii),

(2) by striking out "or instrumentality" each place it appears, and

(3) by striking out "purpose of this section" in subsection (e) and inserting in lieu thereof "purpose of this chapter".

(4) by adding at the end of subsection (e) the following new paragraphs:

"(7) BURDEN ON UNITED STATES COMMERCE.—Acts, policies, and practices of a foreign country which burden United States commerce include, but are not limited to—

"(A) acts, policies, and practices which have an adverse effect on trade between the United States and another foreign country,

"(B) the subsidization of exports of such foreign country that results in the displacement of United States exports to another foreign country,

"(C) the imposition of import restrictions or export performance requirements that result in the diversion of the exports of another foreign country to United States markets, and

"(D) the enforcement of trade restraining agreements that result in the diversion of the exports of another foreign country to United States markets.

"(8) FOREIGN COUNTRY.—Any foreign instrumentality, or any territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

(b) NEGOTIATED SETTLEMENTS; DENIALS OF GENERALIZED SYSTEM OF PREFERENCES.—Subsection (b) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411(b)) is amended—

(1) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or", and

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

"(3) enter into binding agreements with such foreign country that fully offset or eliminate any burden or restriction on United States commerce resulting from the acts, policies, or practices of such foreign country described in subsection (a)(1)(B); or

"(4) withdraw, or refrain from proclaiming under title V—

"(A) the designation of such foreign country as a beneficiary developing country, or

"(B) the designation of any product of such foreign country as an eligible article.".

(c) UNREASONABLE PRACTICES.—Paragraph (3) of section 301(e) of the Trade Act of 1974 (19 U.S.C. 2411(e)(3)) is amended—

(1) by inserting "(or any combination thereof)" after "or practice" in the second sentence, and

(2) by inserting "(including protection of any industry in its formative stages)" after "opportunities" in subparagraph (A).

SEC. 202. ACTIONS IN RESPONSE TO INVESTIGATIONS UNDER TITLE III OF THE TRADE ACT OF 1974.

(a) IN GENERAL.—Section 304 of the Trade Act of 1974 (19 U.S.C. 2414) is amended to read as follows:

"SEC. 304. ACTIONS IN RESPONSE TO INVESTIGATIONS.

"(a) DETERMINATION OF UNFAIR PRACTICES.—

"(1) IN GENERAL.—By no later than 90 days after the date on which an investigation is initiated under section 302, the Trade Representative shall determine on the basis of such investigation whether—

"(A) the United States is being denied any rights to which the United States is entitled under any trade agreement, or

"(B) any act, policy, or practice of a foreign country is described in section 301(a)(1)(B).

"(2) NOTICE OF DETERMINATIONS.—By no later than 90 days after the date on which an investigation is initiated under section 302, the Trade Representative shall submit to the President and publish in the Federal Register—

"(A) the determination made under paragraph (1) with respect to such investigation, and

"(B) if such determination is affirmative, a list of foreign goods and services (and their aggregate value) that could be subject to actions under subsection (b) or (c) of section 301 to enforce the rights and to offset

or eliminate the acts, policies, and practices which were the subject of such affirmative determination.

"(b) ACTION REQUIRED TO BE TAKEN.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the President shall, by no later than the date that is 15 months after the date any investigation is initiated under section 302, take whatever actions under subsections (b) and (c) of section 301 that are necessary to—

"(A) enforce all rights, and

"(B) offset or eliminate all acts, policies, and practices,

which were the subject of an affirmative determination made under subsection (a)(1) with respect to such investigation.

"(2) DELAY IN TAKING ACTIONS.—The President may delay taking action under paragraph (1) for a period not to exceed 90 days if—

"(A) either—

"(i) in the case of an investigation initiated under section 302(b), the petitioner requests such delay, or

"(ii) in the case of an investigation initiated under section 302(c), such delay is requested by the domestic industry that would benefit from enforcement of the rights, or elimination of the acts, policies, and practices, that were the subject of the affirmative determination under subsection (a)(1), and

"(B) such request is based on a determination made by the person making such request that adequate progress is being made to enforce such rights or to eliminate or reduce such acts, policies, and practices.

"(3) EXCEPTIONS.—The President shall not be required to take action under subsection (b) or (c) of section 301 by reason of paragraph (1)—

"(A) after the affirmative determination has been made under subsection (a)(1), the President subsequently determines such affirmative determination was incorrect or is no longer valid, or

"(B) an agreement is entered into with the foreign country involved and—

"(i) representatives of the domestic industry described in paragraph (2)(A)(ii) and the petitioner, if any, agree that such agreement adequately offsets or eliminates the acts, policies, and practices and enforces the rights which were the subject of such affirmative determination, or

"(ii) the President and either—

"(I) the representatives of such industry, or

"(II) the petitioner,

agree that such agreement adequately offsets or eliminates the acts, policies, and practices and enforces the rights which were the subject of such affirmative determination.

"(4) CONSIDERATION OF GATT DETERMINATIONS.—If any determination made by the Contracting Parties under the dispute settlement procedures of the General Agreement on Tariffs and Trade conflicts with, or differs from, a determination made by the Trade Representative under subsection (a)(1), the Trade Representative shall review the determination made under subsection (a)(1) for purposes of advising the President with regard to a determination under paragraph (3)(A).

"(c) REVIEW OF NECESSITY.—

"(1) IN GENERAL.—If—

"(A) a particular action has been taken under subsection (b) or (c) of section 301 by reason of subsection (b)(1) continuously during any 7-year period, and

"(B) neither the petitioner nor any representative of the domestic industry described in subsection (b)(2)(A)(ii) has submitted to the Trade Representative during the last 60 days of such 7-year period a written request for the continuation of such action, such action shall terminate at the close of such 7-year period.

"(2) NOTICE OF POTENTIAL TERMINATION.—The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in subsection (b)(3)(B) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.

"(3) FORMAL REVIEW.—If a request is submitted under paragraph (1)(B) to continue taking a particular action under subsection (b) or (c) of section 301, the Trade Representative shall conduct a review of—

"(A) the effectiveness of—

"(i) such action, and

"(ii) other actions that could be taken (including actions agaist other products or services),

in achieving the objectives described in subsection (b)(1), and

"(B) the effects of such actions on the United States economy, including consumers.

The Trade Representative shall submit a report on such review to the President and to the Congress and shall include in such report any modifications the Trade Representative suggests in the actions taken under subsections (b) and (c) of section 301 as a result of such review.".

(b) CONFORMING AMENDMENTS.—

(1) The table of contents for the Trade Act of 1974 is amended by striking out the item relating to section 304 and inserting in lieu thereof the following:

"Sec. 304. Actions in response to investigations.".

(2) Subsection (b) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411(b)) is amended—

(A) by inserting ", or upon the application of section 304(b)(1)" after "subsection (a)", and

(B) by striking out "in such subsection" and inserting in lieu thereof "in subsection (a)".

SEC. 203. COMPENSATION AUTHORITY.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133) is amended—

(1) by striking out "section 203" and inserting in lieu thereof "chapter 1 of title II or chapter 1 of title III", and

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

"(e) The provisions of this section shall apply by reason of action taken under chapter 1 of title III only if the President determines that action authorized under this section is necessary to meet the international obligations of the United States.".

By Mr. SYMMS (for himself, Mr. NICKLES and Mr. MCCLURE):

S. 220. A bill to require the voice and vote of the United States in opposition to assistance by international financial institutions for the production of commodities or minerals in surplus, and for other purposes; to the Committee on Foreign Relations.

THE FOREIGN AGRICULTURAL INVESTMENT REFORM ACT

Mr. SYMMS. Mr. President, today I am introducing in behalf of myelf, my colleague from Oklahoma, Mr. NICKLES, and the other Senator from Idaho, Mr. MCCLURE, a bill entitled the "Foreign Agricultural Investment Reform Act," commonly known as the FAIR bill.

This legislation addresses counterproductive and destructive use of American tax dollars by international financial institutions such as the World Bank, the International Monetary Fund, et cetera. Let me give you an example of what I mean.

The Asian Development Bank recently proposed a $35 million loan to Burma for the production of edible oil from groundnuts. That oil is expected to be sold for $1.80 per kilogram. Because soybean and palm oils are in huge oversupply on world markets, selling near 65 cents per kilogram, strong tariffs and import controls will be needed in order to get the Burmese to buy the groundnut oil. The project will be carried out under the direction of the Socialist Program Party in Burma. The result of this loan will be loss of United States soybean oil exports, creation of a Socialist industry with no hope of profitability in the free market, and all at the expense of American taxpayers and Burmese consumers who must pay triple the world price for edible oil.

These loans do not "develop" underdeveloped countries. Hearings of the Joint Economic Committee on the FAIR bill confirmed this last year. Note, for example, that in the last 5 years, Brazil increased its export volume 56 percent, and yet, at the same time, its revenues increased only 25 percent while external debt rose 33 percent. Chile is an even better example. While its export volume, fueled by billions of tax dollars, increased 21 percent, its export revenue actually fell 23 percent. In the meantime, Chilean debt rose 43 percent.

A recent Congressional Research Service report cites debt service as the major motivation behind Argentina's current agricultural export initiatives. The fact is that many countries are now engaged in agricultural and mineral production just so they can pay the interest on their debts. The cost to the people and the environment is tremendous. I'd like to quote from an article in the latest edition of Sierra magazine, entitled, "All in the Name of AID."

In Botswana, an $18 million World Bank project aims to increase beef production for export by almost 50 percent, despite the country's severe overgrazing problems. In Zimbabwe and Zambia, 56,000 people were displaced . . . by the World Bank's Kariba Dam, because the lands they moved to could not support the additional population, many became dependent on food relief. In Bangladesh, the Chittagong hill tribes were displaced . . . In one five-year period at the beginning of the decade, more than 400,000 people were forcibly displaced by World Bank water projects.

The bill I am introducing today takes these problems head on. It gives the U.S. Executive Directors to these international financial institutions new guidelines by which to approve loans. It discourages loans for production of commodities and minerals already in surplus, and encourages the banks to find private investors who are willing to invest in the future of the country. It imposes strong sanctions against the banks that ignore these guidelines. It also requires that our own U.S. foreign aid take the form of U.S.-produced commodities in lieu of cash wherever possible. It is certainly a piece of legislation long overdue, and I urge my colleagues to cosponsor it, and move quickly on its consideration.

Mr. NICKLES. Mr. President, today Congress reconvenes to forge a legislative schedule that needs to address the continuing crisis experienced throughout the agriculture community. Changes in farm programs and agriculture credit are in order. But even with the best of changes in these areas, until we stop our tax dollars from subsidizing our foreign competition, the future of our Nation's most basic industries remains bleak at best.

Today Senator STEVE SYMMS and I reintroduce our legislation, the Foreign Agricultural Investment Reform Act, known as the FAIR Act for short. The goal is simple. The FAIR Act aims to stop a foreign policy fiasco funneling U.S. tax dollars through international lenders which subsidize the foreign competition of American agricultural and mineral producers.

We have passed the FAIR Act three times in the Senate but it has been blocked from consideration by the full House. The only RECORD vote on the measure occurred October 25, 1985, when the Senate passed the FAIR Act 65 to 13 as an amendment to the Food Security Act of 1985.

On July 22, 1986, the Senate unanimously adopted the FAIR Act as an amendment to legislation reauthorizing the Export-Import Bank. When that legislation died in the House, the Senate passed the FAIR Act's provisions for the third time on September 26, 1986, as an amendment to a revived Exim reauthorization bill. In conference language simply restated existing policy was adopted, providing no reform of the foreign investment practices which have plagued American agriculture and mining industries.

We have seen the reports of low-interest million dollar loans to our foreign agriculture competitors. One such instance my colleagues may recall involved a $350 million World Bank loan to Argentina. This loan, made in April 1985, carried an interest rate of 8.5 percent for 15 years with a 3-year grace period. According to the World Bank's own press release, the loan was structured to boost Argentina's exports of soybeans, corn, wheat, sorghum, and sunflowers. This is just one example of how billions of dollars, many our own, are being used unfairly against American agriculture.

Clearly, it is appalling that foreign farmers are being subsidized with our tax dollars while Oklahoma farmers are in the most dire straits since the Great Depression. The loan subsidies can give the foreign competition a substantial advantage in allowing them to sell more of their goods on the world market, further reducing U.S. exports.

Because we contribute about 20 percent of the funding to the World Bank and other international lenders we do have a say in how our money is spent. But, our influence over individual loans hinges on taking a tough stance and obtaining a general change in lender philosophy. Under the FAIR Act, if a bank wants to subsidize the competition of U.S. agriculture or mineral producers with cheap loans, they won't do it with our money. As the loan moves through the approval process, our U.S. delegates to the Bank's board would be required to vote against objectionable loans. If the loan is approved despite our opposition, U.S. assistance is withheld until commitments to eliminate such objectionable foreign investments are obtained.

The bill we are introducing attacks a related problem involving foreign aid giveaways. Presently, U.S. tax dollars are being granted to foreign nations with little or no strings attached, allowing them to buy from others when the goods and services are readily available from American industry.

Counter to domestic agriculture policy goals, this process increases surpluses and decreases sales. The FAIR Act would amend the Foreign Assistance Act of 1961 with the commonsense approach of providing economic assistance with commodities rather than cash. Any country that receives a cash transfer would be monitored to determine that the funds are used to purchase goods produced or grown in the United States.

In summary, we have an opportunity to correct a serious problem. For far too long the agriculture producers of our Nation have been the object of our own Government's bad policies involving foreign aid. This legislation will certainly not erase the dilemma faced by the American farmer. It will, however, cause substantive reforms in the current foreign aid system and will return some equity to the U.S. farmers, miners and taxpayers in the world market.

Only through persistence can we win this fight for American taxpayers, agriculture producers and mineral producers. With this in mind, I urge my colleagues to join Senator SYMMS and I in support of this needed legislation.

By Mr. RIEGLE:

S. 221. A bill to establish within the Department of Agriculture an Office of Emergency Aid for Farm Families to provide grants to States for emergency services to farm families, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FARM FAMILY EMERGENCY PROTECTION ACT

● Mr. RIEGLE. Mr. President, today I am introducing the Farm Family Emergency Protection Act of 1987. This legislation will help meet a need which exists in farm communities throughout the Nation.

There is a crisis in agriculture which shows few signs of ending in the near future. Commodity prices remain at historic low levels, bankruptcies, farm failures and economic stress is found in all States and in all commodities. Exports no longer provide the markets for our crops as they did in the last decade; the value of exports has dropped more than 45 percent since 1981.

While accurate data is difficult to obtain, estimates show that more than 125,000 farms are in danger of foreclosure, with credit difficult if not impossible to obtain for many more families. It is clear that hundreds of thousands of people may no longer be farming in the coming years, and we must address that fact in much the same fashion that we have faced readjustments in other industries.

Farmers do not generally have the same spectrum of services and support available to them, which is available to industrial employees. There is no unemployment compensation; Aid to Families with Dependent Children is difficult to obtain due to eligibility requirements tailored to urban dwellers rather than bankrupt farmers; and perhaps most importantly medical insurance is either canceled or lapses putting entire families at risk of illness or even death. Even critical emergency care must be weighed against the potential cost of treatment or upon the chances of receiving charity.

The legislation that I am introducing would authorize $15 million to provide eligibility to farm families for Medicaid, cash grants under the AFDC Program, moving and relocation assistance and job counseling, training and search.

Mr. President, we cannot ignore the fact that behind the statistics are thousands of hard-working families who having lost their entire livelihood have no assistance to ease their transition to new careers. The legislation that I am introducing is a small but critical element in providing this assistance, and I ask unanimous consent that the legislation be printed in the RECORD at this point.

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

S. 221

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 "Farm Family Emergency Protection Act of 1986".

SEC. 2. DEFINITIONS.

As used in this Act, unless the context requires otherwise:

(1) DIRECTOR.—The term "Director" means the Director of the Office appointed under section 4(b)(1).

(2) OFFICE.—The term "Office" means the Office of Emergency Aid for Farm Families established under section 4(a).

(3) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(4) STATE.—The term "State" means each of the 50 States.

(5) STATE AGENCY.—The term "State agency" means the agency of the government of a State that has the responsibility for the administration of the State plan submitted under section 9 in the State.

SEC. 3. ELIGIBILITY.

(a) CRITERIA.—To be eligible to receive emergency services under this Act, a person must—

(1) be a farmer or rancher who is—

(A) engaged primarily and directly in farming or ranching in a State;

(B) a citizen of the United States;

(C) an owner or operator of not larger than a family farm or ranch; and

(D) in a state of economic crisis because the farmer or rancher has—

(i) declared bankruptcy; or

(ii) been forced to liquidate property as the result of foreclosure on a loan, mortgage, or lien; or

(2) a member of the family of a farmer or rancher described in paragraph (1) who is related by blood or marriage to the farmer or rancher and who resides with the farmer or rancher.

(d) DURATION.—A person described in subsection (a) shall be eligible to continue to receive emergency services under this Act until the date that is 36 months after the date the farmer or rancher, or a member of the family of the farmer or borrower, first received services under the Act.

SEC. 4. OFFICE OF EMERGENCY AID TO FARM FAMILIES.

(a) ESTABLISHMENT.—There is established within the Department of Agriculture the Office of Emergency Aid for Farm Families.

(b) DIRECTOR.—

(1) APPOINTMENT.—The Office shall be headed by a Director of the Office of Emergency Aid for Farm Families, who shall be appointed by, and under the direction and supervision of, the Secretary.

(2) LEVEL V CLASSIFICATION.—Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"Director of the Office of Emergency Aid for Farm Families, Department of Agriculture".

(c) FUNCTIONS.—It shall be the function of the Office to—

(1) evaluate and approve or disapprove plans of operations submitted by States under section 9 for providing emergency services to eligible farm families;

(2) allocate funds and make payments to State agencies for emergency services to eligible farm families in accordance with this Act;

(3) coordinate emergency services provided to eligible farm families under this Act with other assistance provided to the families to avoid duplication;

(4) maintain records, and provide an annual report to Congress, on the demand for emergency services under this Act and the administration of this Act; and

(5) perform such other functions as are necessary to carry out this Act.

SEC. 5. AUTHORIZATION FOR APPROPRIATIONS.

Subject to section 11, for the purpose of making allotments to States to carry out the activities described in sections 8 and 9, there are authorized to be appropriated $15,000,000 for each fiscal year.

SEC. 6. ALLOTMENTS.

From the amounts appropriated under section 5 for each fiscal year, the Director shall allot to each State that demonstrates to the Director a need for such allotment an amount that bears the same ratio to the total amount appropriated under such section for such fiscal year as the number of farms in the State (as measured by the latest census of agriculture published by the Secretary of Commerce) bears to the number of farms in all States that demonstrate to the Director a need for such allotments.

SEC. 7. PAYMENTS UNDER ALLOTMENTS TO STATES.

The Director shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotments under section 6 from funds appropriated under section 5.

SEC. 8. USE OF ALLOTMENTS.

(a) IN GENERAL.—Amounts paid to a State under section 7 from its allotments shall be used to provide emergency services to eligible farm families in accordance with this section.

(b) MEDICAL ASSISTANCE.—

(1) IN GENERAL.—Subject to paragraph (2), a State agency shall provide to an eligible farm family medical assistance of the type described in section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) for medical expenses incurred by the family for which the family does not otherwise receive reimbursement.

(2) FULL FEDERAL FUNDING.—Notwithstanding section 1905(b) of such Act, the Federal medical assistance percentage for medical assistance provided under paragraph (1) shall be 100 percent.

(c) SOCIAL SERVICES.—

(1) CASH ASSISTANCE.—If an eligible farm family is headed by a farmer or rancher who is not otherwise employed, a State agency shall provide to the family cash assistance in an amount that is equivalent to the amount of aid provided under the State plan approved under the aid to families with dependent children program established under part A of title IV of the Social Security Act (42 U.S.C 601 et seq.).

(2) HOME ENERGY ASSISTANCE.—A State agency shall provide to an eligible farm family home energy assistance that is similar to assistance provided under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8601 et seq.).

(3) HOUSING ASSISTANCE.—

(A) MOVING EXPENSES.—If an eligible farm family is required to sell or liquidate the primary residence of the family as the result of an economic crisis referred to in section 3(a)(1)(D), a State agency shall reimburse the family in an amount not to exceed $1,000 for any moving or relocation expenses incurred by the family as the result of the crisis.

(B) RENTAL EXPENSES.—A State agency may provide a family described in subparagraph (A) with an additional subsidy for rental expenses incurred by the family as the result of the crisis.

(4) FAMILY SERVICES.—A State agency may establish centers to provide to eligible farm families professional, self-help, or other forms of—

(A) stress management assistance;

(B) family financial planning assistance; and

(C) educational counseling.

(d) EMPLOYMENT ASSISTANCE.—

(1) IN GENERAL.—A State agency shall offer to an eligible farm family—

(A) employment counseling;

(B) job search assistance;

(C) day care for a preschool child; and

(D) before and after school care for a child below the age of 13.

(2) JOB SKILLS TRAINING.—A State agency may establish a program to provide job skills training to eligible farm families.

(e) NUTRITION ASSISTANCE.—A State agency shall conduct outreach activities to inform eligible farm families of the availability of nutritional assistance under Federal, State, and local nutritional programs such as—

(1) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) (including the availability of expedited coupon issuance to eligible households described in section 11(e)(9) of such Act (7 U.S.C. 2020(e)(9));

(2) the school lunch and school breakfast programs established under the National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) respectively;

(3) the summer food service program for children established under section 13 of the National School Lunch Act (42 U.S.C. 1761);

(4) the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); and

(5) the temporary emergency food assistance program established under the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note).

SEC. 9. STATE PLANS.

(a) REQUIREMENT.—To be eligible to receive an allotment under section 6, a State must submit for approval by the Director an annual plan of operation specifying the manner in which the grant will be used to provide emergency services to eligible farm families in accordance with this Act.

(b) COMPONENTS.—A State plan of operation required under subsection (a) shall—

(1) designate an agency of State government as the State agency responsible for the administration of the plan in the State;

(2) provide emergency services to eligible farm families in accordance with section 8;

(3) establish an outreach program for providing emergency services to eligible farm families; and

(4) contain such other provisions as are determined appropriate by the Director.

SEC. 10. REGULATIONS.

The Secretary shall issue such regulations as are necessary to carry out this Act.

SEC. 11. TERMINATION DATE.

The authority provided under this Act shall terminate 5 years after the date of enactment of this Act.

By Mr. RIEGLE:

S. 222. A bill to strengthen the program for grants to States for dependent care programs, and for other pur-

poses; to the Committee on Labor and Human Resources.

STATE DEPENDENT CARE GRANTS AMENDMENTS ACTS

● Mr. RIEGLE. Mr. President, today I am introducing legislation to enhance the Dependent Care State Grant Program which I first proposed in the 97th Congress. The bill I am introducing today would remove the prohibition, in certain circumstances, against using funds under this grant program for operating expenses. This will aid communities in their efforts to provide before and after school child care and assistance to parents and guardians who are searching for quality dependent care services. The first type of child care program that is funded by the Dependent Care State Grant Program is before the after school care for children in schools or community facilities for all children who are by State law provided free public education. A second type of program is a resource and referral service to assist parents and guardians in finding quality care for children and dependents of all ages, including elderly and disabled persons. S. 222 would permit States to use grant funds to cover the operating costs of both types of programs that were established or improved with dependent care State grants.

S. 222 permits the use of funds for the operating costs of before and after school programs for the purpose of enabling children whose families are unable to meet the expense of program fees to participate in the program. A recent survey revealed that before or after school programs have not been established in many communities due to a concern that ongoing operating costs could not be covered by parents' payment of program fees. Both predominantly low-income communities and ones that have a mix of low and middle income families are likely to encounter difficulties in maintaining before and after school child care programs. In the absence of operating funds for programs in such communities, the provision of "start-up" funds fails to meet the need for school age child care.

The availability of affordable, high quality school age child care is of vital importance to all children, and especially important to low-income children. Research suggests that low-income children are more likely to suffer negative effects of caring for themselves on a regular basis without adult supervision. These negative consequences include serious behavior and academic problems that can severely jeopardize a child's health development. For all children, even a relatively low risk of serious problems associated with self-care is unacceptable. It has been estimated that at least 5 million school age children are in self-care: if only 1 percent experience physical harm in fires, accidents, or assaults, the net effect would be at least 50,000 physical casualties. If only 10 percent of these children experience serious fear, that means potential psychological harm to 500,00 children.

Mr. President, S. 222 would help ensure that more children whose parents have limited resources for child care would be able to benefit from before and after school child care programs. This legislation would also permit the use of dependent care State grants to fund the operation of resource and referral systems. Like direct service child care programs, resource and referral systems require funds for ongoing operating expenses. The services these systems provide are extremely valuable to parents and guardians who are seeking high quality care for dependent persons. Resource and referral services educate consumers about the characteristics of quality care, increasing the likelihood that all forms of dependent care in a community will adhere to high standards in meeting the needs of different age groups and individuals with special needs. Resource and referral services may also provide technical assistance to providers of dependent care and offer other means of enhancing the quality of care. For most families in need of dependent care, a resource and referral service means the difference between guessing at what might be an adequate care arrangement and making an informed choice about a dependent care service that best meets the needs of the individual in care and the family.

The use of dependent care State grants to fund the operation of before and after school child care programs and resource and referral systems will extend both the availability and quality of dependent care for children, elderly, and disabled persons. In order to carefully assess the use of dependent care State grants for future planning, S. 222 also specifies important information that States will provide to the Secretary of Health and Human Services about the children and other dependents that are served by the program. This legislation is an important step encouraging the planning of future efforts to ensure that excellent dependent care is available to families.

Mr. President, I ask unanimous consent that this bill be printed in full in the RECORD.

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

S. 222

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

SHORT TITLE

SECTION 1. This Act may be cited as the "State Dependent Care Grants Amendments Act of 1987".

OPERATION COSTS OF AFTER SCHOOL CARE PROGRAMS AUTHORIZED.

SEC. 2. (a)(1) Section 670D(b)(1) of the State Dependent Care Development Grants Act (hereafter in this Act referred to as the "Act") is amended by inserting after "establishment" a comma and the following: "operation".

(2) Section 670D(b)(1) of the Act is further amended by adding at the end thereof the following new sentence:

"Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs.".

(3) Section 670D(f) of the Act is amended by inserting after "expand" a comma and the following: "operate".

(b) Section 670D(d) of the Act is amended—

(1) by striking out clause (1);

(2) redesignating clause (2) of such section as clause (1);

(3) striking out clause (3);

(4) redesignating clause (4) as clause (2); and

(5) redesignating clause (5) as clause (3).

REPORT BY GRANT RECIPIENTS

SEC. 3. (a) Section 670E(c) of the Act is amended—

(1) by inserting "(1)" after the subsection designation;

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

"(2) The chief executive officer of each State shall include in such report—

"(A) the number of children served in before and after school child care programs assisted under the subchapter;

"(B) the characteristics of the children so served including age levels, handicapped condition, income level of families in such programs;

"(C) the salary level and benefits paid to employees in such child care programs;

"(D) the number of clients served in resource and referral systems assisted under this subchapter;

"(E) the characteristics of clients served in resource and referral systems assisted under this subchapter, including age categories (including children and the elderly) and disability categories; and

"(F) the income level of families served by the resource and referral systems assisted under this subchapter.".

(b) Section 370E(c)(1) of the Act (as redesignated by subsection (a) of this section) is amended by striking out "September 30, 1987" and inserting in lieu thereof "September 30, 1991".

By Mr. GORE:

S. 223. A bill to establish the Food and Drug Administration by law, and for other purposes; to the Committee on Labor and Human Resources.

FOOD AND DRUG ADMINISTRATION ACT

● Mr. GORE. Mr. President, for more than a century, the Food and Drug Administration has stood for solid protection of our food supply and medicines. But in recent years, outside meddling and bureaucratic infighting have paralyzed the agency. Last year I introduced legislation to save the FDA and it passed the Senate twice but failed to reach the President's desk.

Today I am reintroducing that legislation and I hope we can act on it quickly before the health of the American people is needlessly endangered.

From the Pure Food and Drugs Act of 1906 to the Infant Formula Act of 1980, Congress has always turned to the FDA to ensure and enhance the public health. The agency developed a worldwide reputation for professionalism and expertise.

Now that hard-earned reputation is in jeopardy. The current administration has launched a quiet assault on one of the finest health protection organizations in the world. High ranking bureaucrats in other agencies have reversed prudent decisions made by FDA scientists. At the same time, the Office of Management and Budget wants to cripple the FDA by cutting funds for enforcement and research.

Morale among FDA professionals is at an all-time low. Worse still, special interests and partisan politics have replaced sound scientific policy. The administration has hampered the FDA's ability to safeguard the public health.

Consider the case of Reyes' Syndrome, a rare but deadly childhood disease that has long been linked to aspirin. In 1982, the FDA proposed a label for aspirin bottles to warn parents to consult a doctor before administering the drug to children with chicken pox or flu. But the Office of Management and Budget blocked that proposal until just last month. In the meantime, several drug companies began to print the label voluntarily, and the number of deaths from Reyes' Syndrome dropped dramatically. Yet we will never know how many children's lives were lost in the bureaucratic shuffle.

Federal approval of over-the-counter drugs has also become bogged down in the bureaucracy. One of the FDA's principal responsibilities is to provide a prompt review of new drugs to make sure they are safe and effective. In an unsuccessful effort to accelerate approval, the current administration has included the Office of Management and Budget and the Department of Human Services in the process—even though those agencies lack the expertise to make sound scientific judgments. Instead of getting drugs onto the market more quickly, the administration has actually slowed things down. Drug manufacturers and the American people both suffer when the Administration plays politics instead of sticking to science.

In an effort to break this logjam, the legislation I am introducing will protect the FDA from the taint of bureaucratic infighting.

The legislation would give the FDA an independent Commissioner, appointed by the President. An independent Commissioner will answer to Congress and the American people, not to several other agencies in the administration. While the FDA would remain part of the Department of Health and Human Services, its head would no longer be subject to the political pressure now exerted by HHS and OMB.

The bill would also clarify the FDA's place in the executive process, by restoring most authority over FDA matters to the Commissioner. The Secretary of HHS would maintain the right to be notified on significant issues.

We cannot afford to let redtape stand in the way of public safety. It's time to protect the FDA from petty politics, so that it can get back to the business of protecting the health of the American people.

I urge all of my colleagues to support this legislation. It is identical to the bill we passed on the last day of the 99th Congress.

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

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

S. 223

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 "Food and Drug Administration Act of 1987".

FINDINGS

SEC. 2. The Congress finds that—

(1) the public health has been effectively protected by the presence of the Food and Drug Administration during the last eighty years;

(2) the presence and importance of the Food and Drug Administration must be guaranteed; and

(3) the independence and integrity of the Food and Drug Administration need to be enhanced in order to ensure the continuing protection of the public health.

ESTABLISHMENT OF ADMINISTRATION BY LAW

SEC. 3. (a) There is established in the Department of Health and Human Services the Food and Drug Administration (hereinafter in this section referred to as the "Administration"). The Administration shall be headed by a Commissioner of Food and Drug (hereinafter in this section referred to as the "Commissioner"). The Commissioner shall be appointed by the President by and with the advice and consent of the Senate and shall serve at the pleasure of the President. The Administration shall be administered under the supervision and direction of the Commissioner. The Commissioner shall, in consultation with the Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") appoint a Deputy Commissioner and such Associate Commissioners and Directors of functional centers, bureaus, and other administrative units as shall be needed for the effective and efficient discharge of the authorities and functions administered by the Commissioner.

(b)(1) Except as otherwise provided in this subsection, there are transferred to, and vested in, the Commissioner all of the authorities and functions delegated to the Commissioner or to the Assistant General Counsel of the Food and Drug Division by section 5.10 of title 21, Code of Federal Regulations, as of the date of enactment of this section, without regard to any reservation prescribed by section 5.11 of title 21, Code of Federal Regulations. The office of the Assistant General Counsel of the Food and Drug Division of the Office of General Counsel within the Office of the Secretary is transferred to the Food and Drug Administration and redesignated the Office of Chief Counsel. The Secretary may delegate to the Commissioner such additional authorities and functions as the Secretary deems appropriate.

(2) The Secretary may require the Commissioner to notify the Secretary of any decisions of the Commissioner which—

(A) establish procedural rules applicable to a general class of foods, drugs, cosmetics, medical devices, or other subjects of regulation; or

(B) present highly significant public issues involving the quality, availability, marketability, or cost of one or more foods, drugs, cosmetics, medical devices, or other subjects of regulations.

(c) The provisions of the third sentence of subsection (a) shall apply to any individual appointed to the position of Commissioner of Food and Drugs after the date of enactment of this section.

(d) The Commissioner of Food and Drugs may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific review groups as are needed to carry out the functions of the Administration, including functions under the Federal Food, Drug, and Cosmetic Act, and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups.

(e)(1) Section 5316 of title 5, United States Code, is amended by striking out the item relating to the Commissioner of Food and Drugs, Department of Health and Human Services.

(2) Section 5315 of such title is amended by adding at the end thereof the following new item:

"Commissioner of Food and Drugs, Department of Health and Human Services".●

By Mr. D'AMATO:

S. 224. A bill to amend and extend programs under the Urban Mass Transportation Act of 1964; to the Committee on Banking, Housing, and Urban Affairs.

FEDERAL MASS TRANSIT IMPROVEMENT ACT

● Mr. D'AMATO. Mr. President, I rise to introduce legislation to reauthorize the Federal Mass Transit Program. My bill, the Federal Mass Transit Improvement Act of 1987, will provide the framework and vital funding for the continuation of this valuable program.

At the end of fiscal year 1986, the Federal Mass Transit Program administered by the Urban Mass Transportation Administration [UMTA] expired. A modest proposal to extend the program for another 4 years was successfully added to S. 2405, the Federal-Aid Highway Act of 1986. However, that

bill died in conference at the close of the 99th Congress.

The legislation that I am introducing today, would extend the Federal Public Transit Program for another 4 years—through the end of fiscal year 1990.

This legislation would reauthorize the funding levels for the mass transit account, section 3, at $1.75 billion per year for the life of the bill, an annual increase of $650 million. The Formula Grant Program, section 9, would be reauthorized through 1990 at the following levels: $2.15 billion for fiscal year 1987; $2.201 billion for fiscal year 1988; $2.255 billion for fiscal year 1989; and $2.312 billion for fiscal year 1990. The basic structure of the Federal Transit Program would not be disturbed; however, congressional intent regarding UMTA's implementation of the program would be clarified, and various program elements would be improved.

One of the most important features of the bill is the creation of the "balanced investment fund" within the section 3 program. This $200 million fund would be available to small urban—population 1 million or under—and rural grantees for discretionary capital projects. None of the funds provided under this program would be available to urbanized areas which receive funds for rail modernization or for construction of new rail systems or extensions.

The balanced investment fund would enable the Federal Government to distribute the moneys more equitably in the user fee-funded section 3 program to smaller transit grantees. As under the existing program, section 3 funds may not be used for operating expenses. Recipients of grants under the balanced investment fund would be able to finance projects for the acquisition, construction, reconstruction, and improvement of buses and vans, and for bus and van-related facilities. This innovative approach will help unify transit advocates by giving grantees of all sizes more of a stake in the total Federal program.

Some of the other provisions in the legislation were a part of predecessor legislation, S. 352—the Public Transit Improvement Act. These provisions include:

MULTIYEAR CONTRACTS

UMTA could make agreements for advance construction under the section 3 program. This is similar to letters of intent and full-funding contracts which historically have been used in conjunction with new start projects. Existing letters of intent and full-funding contracts would not be affected by this section. The purpose of this new funding mechanism is to enable grantees to better plan their construction budgets and to maximize the value of the Federal dollars they receive;

ASSOCIATED CAPITAL ITEMS

This section would reduce the measure of current fair market value of rolling stock and expand the definition of items to be considered as associated capital costs in order to provide adequate funding to protect the Federal investment in rolling stock;

LEASED PROPERTY

Grants for construction projects also would be made available to finance cost-effective leasing projects. This section would permit transit grantees to capitalize the practice of leasing major capital cost items such as heavy equipment, computers, and telephone systems; and

CRIME PREVENTION AND SECURITY

In order to underscore the importance of crime prevention and security programs undertaken by transit operators, this section would explicitly authorize UMTA to make grants for such programs. Funding is to be provided as necessary, but no funds may be used for operating expenses. In addition, funds may be applied for by mass transit operators which have internal security personnel, as well as by operators which have formal agreements with local law enforcement units to provide security within the mass transit system.

The Federal Mass Transit Improvment Act also incorporates a section on project management oversight of major capital projects. This section was based on S. 1931, which was the subject of an April 9, 1986, hearing by the full Committee on Banking. This section would require transit grantees to submit project management plans as a precondition to receiving Federal aid. Such plans must, at a minimum, include well-planned budgets, documentation of personnel qualifications, procedures for quality control and quality assurance, and an orderly system for recordkeeping. The language included in this bill incorporates revisions that arose from the committee hearing.

Other provisions of particular interest are the sections dealing with privatization. Language has been included to assure, that receipt of Federal transit aid does not interfere with a transit grantee's basic ability to make local choices regarding the participation of private mass transportation companies in the provision of mass transit services. We agree that the goal of cost-effective involvement of private sector transit services is desirable where it leads to better or enhanced service for the riding public. However, Federal transit grants should not be conditioned on the extent or amount of service or functions to be carried out by various private providers. These are issues which localities are best able to decide and to implement in a workable fashion.

In order to provide an opportunity for private sector participation in the Federal Transit Program, a special demonstration program is contained in the bill. This program sets aside up to $25 million to finance transit projects to develop, implement, and evaluate innovative techniques for private sector involvement in all aspects of public mass transit operations. Transit operators will be able to apply for these funds to carry out local initiatives that promise to enhance and improve transit services. This program will benefit transit grantees, private mass transit service providers, and, most importantly, the riding public without disrupting the continued provision of vital transit services.

There are many other items of interest in this legislation that will lead to a better Federal Transit Program. Many of them are fine tunings of existing law, such as provisions to assist smaller transit systems with respect to operating assistance, limitations regarding State use of section 9 funds, and equitable treatment or rural transit grantees concerning items that qualify for local matching funds.

This legislation builds upon the firm foundation established by the Surface Transportation Assistance Act of 1982, and will lead to a better transit program for all Americans. I urge our colleagues to support this bill and to press for its speedy consideration.

Mr. President, I ask that the text of this bill be printed in its entirety in the RECORD

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

S. 224

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Mass Transit Improvement Act of 1986".

AGREEMENTS FOR ADVANCE CONSTRUCTION

SEC. 2. Section 3(a)(4) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(4)(A) Notwithstanding any other provision of law, the Secretary is authorized, in connection with the initial funding of a project under this section, to establish a basis for multi-year financing of such project through the issuance of a multi-year project obligation to the recipient. At least 30 days prior to the issuance or amendment of any such obligation under this paragraph, the Secretary shall notify, in writing, the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, of the proposed issuance of such an obligation.

"(B) An obligation issued under this paragraph shall stipulate the Secretary's maximum future participation in the financing of a defined project, including an estimated annual rate of participation, and the total amount so stipulated shall, when issued for a new fixed guideway project, be sufficient to complete an operable segment. The total amount of future Federal expenditures con-

tained within all such multi-year obligations shall not exceed 75 per centum of the aggregate contract authority amounts authorized in section 21(a)(2)(B), nor shall the amounts estimated for use in any fiscal year exceed 75 per centum of the amounts authorized for that fiscal year. Amounts necessary to finance continued commitments to projects defined in subparagraph (C) shall be subtracted from such percentage. The total amount covered by such multi-year obligations shall not exceed any limitation that may be specified in an appropriations Act. Nothing in this paragraph affects the validity of Letters of Intent or Full Funding Contracts issued prior to the date of enactment of the Federal Mass Transit Improvement Act of 1986.

"(C) Funding for projects covered by letters of intent or letters of commitment issued, and full funding contracts executed prior to the date of enactment of the Federal Public Transportation Act of 1982 may be funded under this section while not precluding the funding of a portion of such projects using section 9 capital funds unless such funding would impair the recipient's ability to fund routine capital projects under this section. The Secretary shall, as part of the approval of the use of such funds, determine that sufficient funds exist for the recipient to complete and place into revenue service an operable segment. Notwithstanding the provisions of section 4(a), the Federal share of any project under this section covered by a full funding contract, Letter of Intent, or Letter of Commitment in effect on the date of enactment of the Federal Public Transportation Act of 1982, or those projects within the federally agreed upon scope for the Washington, District of Columbia, metropolitan area transit system (as of such date) shall not be altered.

"(D) Ninety days prior to the commencement of each fiscal year, the Secretary shall publish in the Federal Register a table indicating the aggregate and annual estimated amounts contained in all outstanding multi-year obligations entered into as of that date. Based on this table, the Secretary shall prepare and publish, prior to the commencement of the fiscal year, an apportionment of funds necessary to sustain projects approved under subparagraph (A) for the coming year. Such funds shall be released to the recipients on the first day of the fiscal year and may be obligated by the recipients to meet project costs or to be applied to the payment of principal and interest on bonds, notes, or other obligations issued by the recipients to finance project costs. Federal obligations under this paragraph shall be charged to the budget year in which funds are released to recipients.".

BALANCED INVESTMENT FUND

SEC. 3. Section 3(a) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following:

"(7)(A) The Secretary is authorized to make grants to States and local public bodies, in the amount of $200,000,000 in each of fiscal years 1987, 1988, 1989, and 1990, for the purposes of financing the acquisition, construction, reconstruction, and improvement of buses and vans and bus and van-related facilities.

"(B) Not less than 50 per centum of such funds shall be made available to urbanized areas of 200,000 to 1,000,000 population; not less than 37.5 per centum to urbanized areas of 50,000 to 200,000 population; and not less than 12.5 per centum for non-urbanized areas as authorized for capital purposes only under section 18 of this Act.

"(C) None of the funds provided for in this paragraph shall be made available to urbanized areas receiving grants for rail modernization or construction of new rail systems or extensions.".

NEW START PROJECTS

SEC. 4. Section 3 of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new subsection:

"(i) No grant or loan for construction of a new fixed guideway system or extension of any fixed guideway system may be made under this section unless the Secretary has first ensured that the applicant has prepared an evaluation of the proposed project. The evaluation shall include at least the following information:

"(1) The results of complete alternatives analysis and preliminary engineering studies.

"(2) A cost-effectiveness evaluation.

"(3) The anticipated local economic development resulting from the construction and operation of the proposed project, including local provisions to capture the benefits of such development for the long-term benefit of mass transit services through the use of special assessment districts or other value capture mechanisms.

"(4) Documentation of the local financial commitment to participate in the construction, maintenance, and operation of the system or extension.

In identifying the data to be assembled for the evaluation required under this section, the Secretary shall also consider such other factors as the Secretary deems appropriate. The Secretary shall, not later than 180 days after the date of enactment of this subsection, issue guidelines for the preparation of information necessary to assist in evaluating projects. Such guidelines shall be developed in full consultation with public mass transportation interests, and shall be submitted at least 60 days before implementation to the Committee on Public Works and Transportation of the House of Representatives, and to the Committee on Banking, Housing, and Urban Affairs of the Senate. None of the provisions of this section shall apply to projects to enhance a fixed guideway system unless the contemplated project will result in an extension of the fixed guideway of more than one mile for revenue service purposes. Nothing in this subsection shall be interpreted to provide for a numerical ranking of proposed projects or for comparing one project with another in any report assembled with data prepared pursuant to this subsection.".

SUBSTITUTE PROJECTS

SEC. 5. Section 4(g) of the Urban Mass Transportation Act of 1964 is amended—

(1) by striking out "and" after "1985,"; and

(2) by inserting "and such sums as may be necessary for fiscal years 1987, 1988, 1989, and 1990," after "1986,".

4(h)(1) REPORTS

SEC. 6. Section 4(h)(1) of the Urban Mass Transportation Act of 1964 is amended—

(1) by striking out "On or before the twentieth day of each calendar quarter" and inserting in lieu thereof "Not later than 30 days after the close of each quarter of each fiscal year";

(2) by striking out "Congress" and inserting in lieu thereof "the Committee on Public Works and Transportation and the Committee on Appropriations in the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations in the Senate";

(3) by redesignating clauses (1) through (5) as clauses (A) through (E), respectively;

(4) by striking out "and" before "(E)";

(5) by striking out the period and inserting in lieu thereof "; and"; and

(6) by adding at the end thereof the following:

"(F) a status report on the execution of grant contracts and the establishment of Letter of Credit or other reimbursement authority for sums already obligated for each State, designated recipient and applicant.".

LIMITATION OF APPROPRIATIONS

SEC. 7. Section 4(i) of the Urban Mass Transportation Act of 1964 is amended by striking out "using sums available pursuant to section 4(c)(3)(A) of this section" and inserting in lieu thereof "using sums not to exceed $9,000,000 in each of fiscal years 1987, 1988, 1989, and 1990".

USE OF LAPSED SECTION 5 FUNDS

SEC. 8. Section 5(o) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new sentence: "Sums apportioned under this section after October 1, 1982, and remaining unobligated at the end of fiscal year 1986 shall be added to the amount available for apportionment under section 9 of this Act for fiscal year 1987, and made available as provided by section 9(p).".

FUNDING OF PARTIAL PROGRAM OF PROJECTS

SEC. 9. Section 9(e)(2) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new sentence: "A grant may be made under this section to carry out, in whole or in part, a program of projects.".

LEASED PROPERTY

SEC. 10. Section 9(j) of the Urban Mass Transportation Act of 1964 is amended by inserting after the first sentence the following: "Grants for construction projects under this section shall also be available to finance the leasing of facilities and equipment for use in mass transportation service, subject to such regulations limiting such grants to leasing arrangements which are more cost effective than acquisition or construction as the Secretary shall prescribe not later than 90 days after the date of enactment of the Federal Mass Transit Improvement Act of 1986.".

DEFINITION OF ASSOCIATED CAPITAL ITEM

SEC. 11. The last sentence of section 9(j) of the Urban Mass Transportation Act of 1964 is amended—

(1) by striking out "and materials" and inserting in lieu thereof ", tires, tubes, materials, and supplies"; and

(2) by striking out "1 per centum" and inserting in lieu thereof "one-half of 1 per centum".

REVENUE RETENTION

SEC. 12. Section 9(j) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following: "Net income received from the use, lease, or sale of airspace or adjacent property acquired as a result of a project funded under this section or section 3(a)(1) or such income derived from the disposal of fungible items such as gravel, rail ties, or rail and excluding rolling stock, which have been fully depreciated over their useful lives shall be totally retained by the recipient for projects eligible under this section or section 3(a)(1) of this Act. The Secretary may not award any grant or make any loan

under this Act on the condition that such net income must be used to finance a part of any project for which funding is sought under this Act, or to reimburse the United States for grants or loans made pursuant to this Act. Nor shall the Secretary use such net income in any calculation of net project cost under section 4(a).".

OPERATING ASSISTANCE FOR SMALL URBANIZED AREAS

SEC. 13. The first sentence of section 9(k)(2) of the Urban Mass Transportation Act of 1964 is amended by striking out "95 per centum" and inserting in lieu thereof "100 per centum".

NEWLY URBANIZED AREAS

SEC. 14. The last sentence of section 9(k)(2) of the Urban Mass Transportation Act of 1964 is amended by inserting "authorized" after "its".

FUND LIMITATION

SEC. 15. Section 9(m) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new subparagraph:

"(3) No funds apportioned to urbanized areas with populations of less than 200,000 may be used to pay the expenses of any State's management or administration of grant programs for such urbanized areas, except in the case in which a statewide or regional agency or instrumentality is responsible under state laws for the financing, construction, and operation, directly by lease, contract, or otherwise, of public transportation services.

TRANSFER OF FUNDS

SEC. 16. Section 9(n)(1) of the Urban Mass Transportation Act of 1964 is amended—

(1) by inserting "other" before "urbanized",

(2) by inserting "within the State" after "urbanized areas",

(3) by striking out "with populations of 300,000 or less under this section",

(4) by inserting "approval by" after "may make such transfers only after",

(5) by striking out "consultation with" after "may make such transfers only after approval by",

(6) by inserting "elected" after "local", and

(7) by inserting "or if funding is within 90 days of lapsing and no approvable grant applications are pending" after "(d)" in the second sentence.

USE OF LAPSED SECTION 9A AND SECTION 9 FUNDS

SEC. 17. Section 9(o) of the Urban Mass Transportation Act of 1964 is amended by striking out the period at the end of the second sentence and inserting "not later than 30 days after the end of the third fiscal year following the initial year of apportionment.".

APPORTIONMENT OF FORMULA FUNDS

SEC. 18. Section 9 of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new subsection:

"(p) Funds appropriated to carry out this section for any fiscal year shall be fully apportioned for the purposes of, and in accordance with, the provisions of this section not later than the tenth day following the date on which such funds are appropriated. The Secretary shall publish apportionments of such appropriated funds, including individual apportionments for each urbanized area above 50,000 population as well as the amount attributable to each State of a multi-state urbanized area, on the apportionment date established in the preceding sentence.".

RULEMAKING

SEC. 19. (a) Section 12(a) of the Urban Mass Transportation Act of 1964 is amended—

(1) by inserting "(1)" after "SEC. 12. (a)"; and

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

"(2) The Secretary shall prepare an agenda listing all areas in which he intends to propose rules governing activities under this Act within the following 12 month period. The Secretary shall transmit such agenda to the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate within one hundred and twenty days after the effective date of this subsection and annually thereafter. Except for emergency rules, the Secretary shall give interested persons not less than 60 days to participate in the rulemaking through submission of written data, views, or arguments with or without the opportunity for oral presentation, except when the Secretary for good cause finds that public notice and comment are unnecessary due to the routine nature or matter of insignificant impact of the rule, or that an emergency rule should be promulgated. The Secretary may extend the 60-day period if he determines that such period is insufficient to permit diligent persons to prepare comments or that other circumstances justify an extension of such period. An emergency rule shall terminate 120 days after the date on which it is promulgated.".

(b) Section 12(c) of such Act is amended—

(1) by striking out "and" at the end of paragraph 10;

(2) by striking out the period at the end of paragraph (11) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(12) the term 'rule' means the whole or part of the Secretary's statement of general or particular applicability designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Secretary in carrying out provisions of this Act; and

"(13) the term 'emergency rule' means a rule which is temporarily effective prior to the expiration of the otherwise specified periods of time for public notice and comment under this section and which was duly promulgated by the Secretary pursuant to a finding that a delay in the effective date thereof would (A) seriously injure an important public interest, (B) substantially frustrate legislative policy and intent, or (C) seriously damage a person or class of persons without serving any important public interest.".

OVERHAUL-RECONSTRUCTION

SEC. 20. (a) Section 12(c)(1) of the Urban Mass Transportation Act of 1964 is amended by inserting "(A)" after "such term also means" and by inserting before the semicolon at the end thereof the following: ", (B) any bus remanufacturing project which extends the economic life of a bus eight years or more, and (C) any project for the overhaul of rolling stock (whether or not such overhaul increases the useful life of the rolling stock)".

(b) Section 9(j) of such Act is amended—

(1) by inserting "(1)" before "Grants"; and

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

"(2) A project for the reconstruction (whether by employees of the grant recipient or by contract), of any equipment and materials each of which, after reconstruction, will have a fair market value no less than one half of 1 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and materials are to be used shall be considered a project for construction of an associated capital maintenance item under this section.".

(c) The first sentence of section 9(k)(1) of such Act is amended by striking out "shall not exceed" the first place it appears and inserting in lieu thereof "shall be".

(d) Section 3(a)(2)(A)(iii) of such Act is amended by inserting before the period the following: ", and will maintain such facilities and equipment".

CERTIFICATION

SEC. 21. Section 15 of the Urban Mass Transportation Act of 1964 is amended by adding the following new subsection:

"(d) The Secretary shall certify the sampling techniques used by applicants or persons seeking grants under section 5 or 9 of this Act within 120 days of enactment of this subsection. The Secretary shall certify the sampling techniques of newly urbanized areas within 120 days of submission to the Secretary of such sampling documentation.".

RURAL TRANSPORTATION EQUITY

SEC. 22. Section 18(e) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following: "For the purpose of this subsection, the term 'Federal funds or revenues' does not include funds received by a recipient of funds under this section pursuant to a service agreement with a State or local social service agency or a private social service organization.".

USE OF FUNDS

SEC. 23. Section 18(e) of the Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following: "No restrictions may be placed on the use of the Federal share for the payment of operating expenses except as provided herein.".

APPLICABILITY OF PRIVATIZATION REQUIREMENTS

SEC. 24. (a) Section 3(e)(2) of the Urban Mass Transportation Act of 1964 is amended by inserting after "to the maximum extent feasible," the following: "consistent with State and local laws and policies,".

(b) The first sentence of section 8(e) of such Act is amended to read as follows: "The plans and programs required by this section shall encourage, to the maximum extent feasible, consistent with State and local laws and policies, the participation of private enterprise, giving consideration to issues of quality, reliability, safety, capability of private entities, cost, and other factors as may be determined locally.".

(c) Section 8 of such Act is further amended—

(1) by inserting "(1)" after "(e)"; and

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

"(2) Guidance or regulations issued under this section of the Act shall be provided for review to the Committee on Appropriations of both the House and the Senate, and to the House Committee on Public Works and Transportation and the Senate Committee on Banking, Housing, and Urban Affairs at

least 120 days before implementation. Such guidance or regulations shall be made available to recipients of funds under this Act, in final form, no later than 6 months prior to the beginning of the fiscal year for which they are to be applied.".

(d) Section 9(f) of such Act is amended by inserting before the last sentence thereof the following: "Nothing in this section shall require the conduct of a separate process of notification and comment for private providers or other interested parties, beyond the requirements contained in this subsection or subsection (f).".

(e) Section 12(d) of such Act is amended—

(1) by inserting "or prescribe" after "to regulate";

(2) by inserting ", the choice of mass transportation service provider, or the level of service," after "mode of operation"; and

(3) by striking out "section 3" and inserting in lieu thereof "this Act, to condition the approval of a grant under this Act on the methods or means by which providers of mass transit services or functions are selected, or on the extent or amount of service or functions to be carried out by various private mass transportation service providers,".

(f) Section 12 of such Act is amended by adding at the end thereof the following new subsection:

"(h) None of the provisions of this Act shall be construed to limit the ability of recipients of Federal financial assistance under this Act to determine the extent and amount of mass transit service or functions to be carried out by private enterprise.".

PRIVATIZATION DEMONSTRATION

SEC. 25. The Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new section:

"PRIVATIZATION DEMONSTRATION

"SEC. 23. (a) The Secretary may use not to exceed $25,000,000 of funds made available by section 21(b) for each fiscal year to totally finance grants to States, persons, or designated recipients of funding under this Act, for the purposes of developing, implementing, and evaluating innovative techniques for private sector involvement in all aspects of public mass transit operations. Projects to be financed under this section shall, at minimum, analyze the public-private relationships in terms of cost comparison techniques, contract relationships, specification and performance standards, and the long-range impacts on transit service cost and service quality resulting from the involvement of the private sector. Not less than 90 per centum of funds made available pursuant to this subsection may be awarded by the Secretary to designated recipients of programs funded by this Act.

"(b) The Secretary shall make an annual report to the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, to document the results of projects financed by this subsection. The Secretary shall, within 120 days of enactment of the subsection, issue guidelines on the implementation of this subsection. Such guidance shall include a mechanism to establish a clearinghouse function for the collection and dissemination of information developed by projects funded by this subsection.".

AUTHORIZATION FOR APPROPRIATIONS

SEC. 26. (a) Section 21(a)(1) of the Urban Mass Transportation Act of 1964 is amended—

(1) by striking out "and" after "1985"; and

(2) by inserting ", $2,150,000,000 for fiscal year 1987, $2,201,000,000 for fiscal year 1988, $2,255,000,000 for fiscal year 1989, and $2,312,000,000 for fiscal year 1990" after "1986".

(b) Section 21(a)(2)(B) of such Act is amended by striking out the period and inserting in lieu thereof ", and $1,750,000,000 in each of fiscal years 1987, 1988, 1989, and 1990. Funding authorized under this subparagraph, excluding amounts made available in accordance with sections 3(a)(7), 4(i), 8, 16(b)(2), and 11(b) shall, in each fiscal year, be allocated as follows:

"(i) Not less than 10 per centum shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities.

"(ii) Not less than 40 per centum shall be available to finance grants and loans for rail modernization.

"(iii) Not less than 40 per centum shall be available to finance grants and loans for construction of new fixed guideway systems and extensions to fixed guideway systems.

"(iv) Not less than 10 per centum shall be available to finance grants and loans for any purpose under section 3 of this Act.".

(c) Section 21(a)(4) of such Act is amended by inserting "1987, 1988, 1989, and 1990" after "1986,".

(d) Section 21(a)(5) of such Act is amended—

(1) by striking out "and" after "1985,";

(2) by inserting ", and $63,750,000 shall be used in each of the fiscal years 1987, 1988, 1989, and 1990" after "1986"; and

(3) by adding at the end thereof the following new sentence: "Not less than 85 per centum of funds available under this paragraph shall be directly apportioned to, and made available to, all urban areas of more than 50,000 population.".

(e) Section 21(b) of such Act is amended—

(1) by striking out "and" after "1985,"; and

(2) by striking out the period after "1986" and inserting in lieu thereof ", $50,000,000 in each of fiscal years 1987, 1988, 1989, and 1990.".

(f) Section 21(a)(2) of such Act is amended by adding at the end thereof the following new subparagraph:

"(D) Appropriations made available pursuant to subparagraph (B) of this paragraph shall be obligated in a manner so that the amount of the total budget authority which remains available to the Secretary at the beginning of the last quarter of any fiscal year does not exceed 30 per centum of the total amount available. Not more than 15 per centum of the total amount available pursuant to subparagraph (B) shall be obligated during any month in the last quarter of each fiscal year. The Secretary may waive the requirements of the preceding sentences if the Secretary determines that such action is necessary to avoid a serious disruption in carrying out programs or activities financed by subparagraph (B) of this paragraph.".

(g) Section 21 of such Act is amended by adding at the end thereof the following new subsection:

"(c) UNIVERSITY TRANSPORTATION CENTERS.—

"(1) AMOUNT OF FUNDS.—There shall be available to the Secretary to carry out section 11(b) of this Act for each of fiscal years 1987, 1988, 1989, and 1990 $1,000,000 out of the Mass Transit Account of the Highway Trust Fund.

"(2) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, approval by the Secretary of a grant with funds made available by paragraph (1) shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project.

"(3) EXEMPTION FROM OBLIGATION CEILING.—Funds made available out of the Mass Transit Account of the Highway Trust Fund by this subsection shall not be subject to any obligation limitation.

"(4) PERIOD OF AVAILABILITY.—Funds made available by this subsection shall remain available until expended.".

PROJECT MANAGEMENT OVERSIGHT

SEC. 27. The Urban Mass Transportation Act of 1964 is amended by inserting at the end thereof the following new section:

"PROJECT MANAGEMENT OVERSIGHT

"SEC. 24. (a)(1) The Secretary may use as much as is necessary of the funds made available for each fiscal year by sections 21(a)(1), 21(a)(2)(B), and 4(g) of this Act, and section 14(b) of the National Capital Transportation Act of 1969 to contract with any person for the performance of project management oversight. Any contract entered into under this subsection shall provide for the payment by the Secretary of 100 percent of the cost of carrying out the contract.

"(2) Each recipient of assistance under this Act or section 14(b) of the National Capital Transportation Act of 1969 shall provide a contractor chosen by the Secretary in accordance with paragraph (1) such access to its construction sites and records as may be reasonably required.

"(b) As a condition of Federal financial assistance for a major capital project under this Act or the National Capital Transportation Act of 1969, the Secretary shall require the recipient to prepare and, after approval by the Secretary, implement a project management plan which meets the requirements of subsection (c).

"(c) At a minimum, a project management plan shall provide for—

"(1) adequate recipient staff organization complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

"(2) a preliminary budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;

"(3) a target construction schedule;

"(4) a document control procedure and recordkeeping system;

"(5) a change order procedure which includes a documented, systematic approach to the handling of construction change orders;

"(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

"(7) quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;

"(8) materials testing policies and procedures;

"(9) internal plan implementation and reporting requirements;

"(10) criteria and procedures to be used for testing the operational system or its major components; or

"(11) periodic updates of the plan, especially with respect to such items as project budget and project schedule, financing, patronage estimates, and where applicable,

the status of local efforts to enhance patronage in cases where patronage estimates are contingent, in part, upon the success of such efforts; and

"(12) the recipient's commitment to make monthly submissions of project budget and project schedule to the Secretary.

"(d) Not later than 120 days after the date of enactment of the Federal Mass Transit Improvement Act of 1986, the Secretary shall promulgate such rules as may be necessary to implement the provisions of this section, and shall submit such rules at least 120 days before implementation to the Committee on Public Works and Transportation of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate for review. Such rules shall, at a minimum, include the following:

"(1) A definition of the term 'major capital project' for the purpose of subsection (b). Such definition shall exclude projects for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

"(2) A requirement that, in order to maximize the transportation benefits and cost savings associated with project management oversight, such oversight shall begin during the preliminary engineering stage of a project. The requirement of this paragraph shall not apply if the Secretary finds that it is more appropriate to initiate such oversight during another stage of the project.

"(e) The Secretary shall approve a plan submitted pursuant to subsection (b) within 60 days following its submittal. In the event that approval cannot be completed within 60 days, the Secretary shall inform the recipient of the reasons therefor and as to how much more time is needed for review to be completed. If a plan is disapproved, the Secretary shall inform the recipient of the reasons therefor.".

CRIME PREVENTION AND SECURITY

SEC. 28. The Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new section:

"CRIME PREVENTION AND SECURITY

"SEC. 25. From funds made available pursuant to section 21 of this Act, the Secretary is authorized to make grants to public mass transit systems for crime prevention and security. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant. Such grants may not be used for payment of operating expenses.".

UNIVERSITY TRANSPORTATION CENTERS

SEC. 29. (a) Section 11(b) of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"(b) UNIVERSITY TRANSPORTATION CENTERS.—

"(1) GRANTS FOR ESTABLISHMENT AND OPERATION.—In addition to grants authorized by subsection (a) of this section, the Secretary shall make grants to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions which comprise the Standard Federal Regional Boundary System.

"(2) RESPONSIBILITIES.—The responsibilities of each transportation center established under this subsection shall include, but not be limited to, the conduct of infrastructure research concerning transportation and research and training concerning transportation of passengers and property and the interpretation, publication, and dissemination of the results of such research.

"(3) APPLICATION.—Any nonprofit institution of higher learning interested in receiving a grant under this subsection shall submit to the Secretary an application in such form and containing such information as the Secretary may require by regulation.

"(4) SELECTION CRITERIA.—The Secretary shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The regional transportation center shall be located in a State which is representative of the needs of the Federal region for improved transportation services and facilities.

"(B) The demonstrated research and extension resources available to the grant recipient for carrying out this subsection.

"(C) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate transportation problems.

"(D) The grant recipient shall have an established transportation program or programs encompassing several modes of transportation.

"(E) The grant recipient shall have a demonstrated commitment to supporting ongoing transportation research programs with regularly budgeted institutional funds of at least $200,000 per year.

"(F) The grant recipient shall have a demonstrated ability to disseminate results of transportation research and educational programs through a statewide or regionwide continuing education program.

"(G) The projects which the grant recipient proposes to carry out under the grant.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this section in any fiscal year unless the recipient of such grant enters into such agreements with the Secretary as the Secretary may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional transportation center and related research activities at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall be 50 percent of the costs of establishing and operating the regional transportation center and related research activities carried out by the grant recipient.

"(7) NATIONAL ADVISORY COUNCIL.—

"(A) ESTABLISHMENT; FUNCTIONS.—The Secretary shall establish in the Department of Transportation a national advisory council to coordinate the research and training to be carried out by the grant recipients, to disseminate the results of such research, to act as a clearinghouse between such centers and the transportation industry, and to review and evaluate programs carried out by such centers.

"(B) MEMBERS.—The council shall be composed of the directors of the regional transportation centers and 19 other members appointed by the Secretary as follows:

"(i) Six officers of the Department of Transportation one of whom represents the Office of the Secretary, one of whom represents the Federal Highway Administration, one of whom represents the Urban Mass Transportation Administration, one of whom represents the National Highway Traffic Safety Administration, one of whom represents the Research and Special Programs Administration, and one of whom represents the Federal Railroad Administration.

"(ii) Five representatives of State and local governments.

"(iii) Eight representatives of the transportation industry and organizations of employees in such industry.

A vacancy in the membership of the council shall be filled in the manner in which the original appointment was made.

"(C) TERM OF OFFICE; PAY; CHAIRMAN.—Each of the members appointed by the Secretary shall serve for a term of five years. Members of the council shall serve without pay. The chairman of the council shall be designated by the Secretary.

"(D) MEETINGS.—The council shall meet at least annually and at such other times as the chairman may designate.

"(E) AGENCY INFORMATION.—Subject to subchapter II of chapter 5 of title 5, United States Code, the council may secure directly from any department or agency of the United States information necessary to enable it to carry out this subsection. Upon request of the Chairman of the council, the head of such department or agency shall furnish such information to the council.

"(F) TERMINATION DATE INAPPLICABLE.—Section 14 of the Federal Advisory Committee Act shall not apply to the council.

"(8) ADMINISTRATION THROUGH OFFICE OF SECRETARY.—Administrative responsibility for carrying out this subsection shall be in the Office of the Secretary.

"(9) ALLOCATION OF FUNDS.—The Secretary shall allocate funds made available to carry out this subsection equitably among the Federal regions.

"(10) TECHNOLOGY TRANSFER SET-ASIDE.—Not less than 5 percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.".

(b)(1) Section 4(d) of such Act is amended by striking out "per fiscal year for each of the fiscal years ending September 30, 1985, and September 30, 1986," and inserting in lieu thereof "for the fiscal year ending September 30, 1985,".

(2) Section 11(a) of such Act is amended by inserting "GRANT PROGRAM.—" before "The Secretary".

By Mr. D'AMATO:

S. 225. A bill to amend title II of the Social Security Act to protect the benefit levels of individuals becoming eligible for benefits in or after 1979 by eliminating the disparity (resulting from changes made in 1977 in the benefit computation formula) (between those levels and the benefit levels of persons who become eligible for benefits before 1979; to the Committee on Finance.

SOCIAL SECURITY ACT

● Mr. D'AMATO. Mr. President, I rise today in an attempt to rectify an enormous injustice in our Social Security Program. I appeal to my colleagues' sense of fairness and compassion to undo a serious inequity in payments to a select group of our senior citizens.

In the 99th Congress, I introduced S. 1060, a bill designed to provide equitable Social Security payments for those individuals born between 1917 and 1921. To my dismay, the promise of security to our Nation's senior citizens

did not receive the priority attention it deserved. The needs of our parents and grandparents did not, cannot, and will not fade silently away. Thus, I am again introducing legislation that will give hope to those members of our society born in the "notch" years.

The notch was an ill-conceived solution to what was an already poorly designed Social Security formula. In 1973, the Board of Trustees of the Social Security Trust Funds revealed that recent computations of forthcoming benefits were grossly incorrect. In the simplest of terms, future adjustments for benefits had been doubly indexed for inflation. This double indexing was largely responsible for a 1977 projection of a long-range deficit equal to approximately 40 percent of the projected cost of the program. Obviously, something had to be done. The result, however, was cruel and unfair.

In 1977, Social Security legislation was passed that would deny future security to thousands of senior citizens. After realizing that the previously incorrect formula would both bankrupt the system and pay disproportionately high benefits to some recipients, there was a tremendous movement backward. A new formula was calculated for the payment of benefits to individuals becoming eligible after 1978. Less than 2 full years after this change there was a further downward adjustment of benefits. This was not a great deal of time for those who were about to retire to change plans. The effect was devastating.

When the dust had settled, it was clear that if you reached 62 years of age after Janaury 1, 1979, your hopes of a secure retirement had been dashed. Although attempts were made to lessen the impact for those immediately facing retirement—those born between 1917 and 1921—the ball had already started to roll downhill. If you were born January 1, 1917, and your neighbor was born December 31, 1916, you could be certain that even if all other factors were the same, you would receive lower benefits based on your date of birth alone.

This arbitrary inequity sealed the fate of many unsuspecting senior citizens who would now spend their so-called years of leisure short of good housing, proper medical attention, and even decent meals. A society certainly falters when, for the sole purpose of balancing budgets, it neglects the need of those who have given of themselves in times of war and times of peace. This type of action is not the mark of a great nation.

As great a damage as has been done, however, it is not too late to rectify this situation and to send the message that we still care. My legislation would compensate for some of this lost income by incorporating 3 more years of employment after age 62 for computation in Social Security benefits. This would be made available for those who reached 62 in 1979 or later. It also would establish an income ceiling of $29,700 for those 3 years after eligibility starts, and allow for a lump-sum retroactive payment for those who have forgone their rightful benefits since 1979. The $29,700 income ceiling allows for a justifiable benefit increase now. Moreover, since this figure remains constant, it prevents mammoth escalations in the future with ample time for these future retirees to plan for their retirement years.

Every day we delay in our efforts to correct the notch we risk missing the chance to return these benefits to those who deserve them. Will this Government abandon those who fought so hard to survive the Great Depression and to save our country in World War II? Does a free and strong nation respond to its elderly with inequitable rewards? I urge my colleagues to join me in this struggle, and I ask unanimous consent that my bill be printed in the RECORD in its entirety.

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

S. 225

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 215(a)(4) of the Social Security Act is amended—

(1) by striking out "who had wages or self-employment income credited for one or more years prior to 1979" in subparagraph (B) and inserting in lieu thereof "who has 27 or more quarters of coverage based on wages and self-employment income credited for years prior to 1979".

(2) by striking out "prior to 1984" in clause (i) of subparagraph (B) and inserting in lieu thereof "after December 1978";

(3) by inserting "as in effect in December 1984" after "section 215(d)" in clause (ii) of subparagraph (B); and

(4) by striking out the last sentence.

(b) The first sentence of section 215(a)(5) of such Act is amended—

(1) by striking out "(other than an individual described in paragraph (4)(B))";

(2) by striking out "except that," and inserting in lieu thereof "except that (A)"; and

(3) by inserting before the period at the end thereof the following: ", and (B) in the case of an individual described in paragraph (4)(B), such individual's average monthly wage shall be computed as provided by subsection (b)(4)".

SEC. 2. The first sentence of section 215(b)(4) of the Social Security Act is amended by striking out "except that" and all that follows and inserting in lieu thereof the following: "except that—

"(A) paragraph (2)(A) (as then in effect) shall be deemed to provide that the number of an individual's 'benefit computation years' may not exceed 25;

"(B) paragraph (2)(C) (as then in effect) shall be deemed to provide that an individual's 'computation base years' may include only calendar years in the period after 1950 (or 1936 if applicable) and prior to 1979, plus the 3 calendar years after 1978 for which the total of such individual's wages and self-employment income is the largest; and

"(C) the 'contribution and benefit base' (under section 230) with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1981 shall be deemed to be $29,700.".

SEC. 3. Section 215(f)(7) of the Social Security Act is amended by striking out "For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B)" and inserting in lieu thereof the following: "For purposes of recomputing a primary insurance amount determined under subsection (a) (as so in effect) in the case of an individual to whom that subsection applies by reason of subsection (a)(4)(B)(i) as in effect after December 1978, the average monthly wage shall be determined as provided by subsection (b)(4). For purposes of recomputing a primary insurance amount determined under subsection (d) (as so in effect) in the case of an individual to whom that subsection applies by reason of subsection (a)(4)(B)(ii)".

SEC. 4. Section 215(i)(4) of the Social Security Act is amended by striking out "(but the application" and all that follows down through "paragraph (4) of that subsection)".

SEC. 5. (a) Section 215(a)(7)(A) of the Social Security Act is amended by inserting "or (by reason of paragraph (4)(B)(i)) under section 215(a) as in effect in December 1978" after "under paragraph (1) of this subsection" in the matter preceding clause (i).

(b)(1) Section 215(a)(7)(B)(i) of such Act is amended by striking out the first sentence and inserting in lieu thereof the following: "In applying subparagraph (A) in the determination of an individual's primary insurance amount, there shall first be computed (I) in the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, an amount which is equal to the individual's primary insurance amount under that paragraph, reduced by substituting (for purposes of this computation) the applicable percent specified in clause (ii) of this subparagraph for the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1), or (II) in the case of an individual whose primary insurance amount would be computed under section 215(a) as in effect in December 1978 by reason of paragraph (4)(B)(i) of this subsection, an amount which is equal to the individual's primary insurance amount under that section, reduced by a percentage equivalent to the percentage reduction which (as determined under regulations prescribed by the Secretary) would occur under subclause (I) if such primary insurance amount were a primary insurance amount under paragraph (1) of this subsection.".

(2) The second sentence of section 215(a)(7)(B)(i) of such Act is amended by inserting "or (by reason of paragraph (4)(B)(i)) under section 215(a) as in effect in December 1978" after "under paragraph (1) of this subsection".

(3) The third sentence of section 215(a)(7)(B)(i) of such Act is amended by inserting ", or (by reason of paragraph (4)(B)(i) under section 215(a) as in effect in December 1978," after "under paragraph (1) of this subsection".

SEC. 6. (a) The amendments made by this Act shall be effective as though they had been included or reflected in section 201 of the Social Security Amendments of 1977.

(b) In any case where an individual is entitled on the date of the enactment of this Act to old-age insurance benefits under title II of the Social Security Act which were computed—

(1) under section 215 of that Act as in effect (by reason of the Social Security Amendments of 1977) after December 1978, or

(2) under section 215 of that Act as in effect prior to January 1979 by reason of subsection (a)(4)(B) of such section (as amended by the Social Security Amendments of 1977),

the Secretary of Health and Human Services (notwithstanding section 215(f)(1) of the Social Security Act) shall recompute such individual's primary insurance amount so as to take into account the amendments made by this Act, and shall pay to such individual in a lump sum any additional amount to which such individual is entitled (for the period beginning with the first month for which such individual was entitled to such benefits and ending with the month preceding the first month with respect to which such recomputation is effective) by reason of such amendments. No recomputation of an individual's primary insurance amount under the preceding sentence shall have the effect of reducing or otherwise affecting any monthly insurance benefit which is payable under title II of the Social Security Act to any other person on the basis of such individual's wages and self-employment income for any month before January 1985.

By Mr. D'AMATO:

S. 226. A bill to promote the safety of children receiving day care services by establishing a national program for the licensing of child day care providers, establishing a clearinghouse for information with respect to criminal records of employees of day care centers, and establishing a hotline for reporting of abuse of children receiving day care services, and for other purposes; to the Committee on Finance.

NATIONAL CHILD PROTECTION ACT

● Mr. D'AMATO. Mr. President, I rise to reintroduce the National Child Protection Act. The National Child Protection Act will assure the safety and healthy development of our children. It helps to identify abusers and prevents this serious crime confronting our children and families.

During the 99th Congress, I introduced the National Child Protection Act to promote national guidelines for the safe and healthy development of our children. The Secretary of the U.S. Department of Health and Human Services would work with a panel of 12 experts and representatives in developing guidelines for day care centers. The National Child Protection Act promotes uniform data gathering on the incidence and reports of child sexual abuse.

We can no longer wait, nor can we take the chance that these incidents will not occur again. We need to have a national reporting system of cases of sexual abuse, this national listing of abusers would be available to day care centers and to law enforcement agencies, not to the general public.

Mr. President, this reporting mechanism will decrease the incidence of sexual abuse. A child molester would not be able to transfer from center to center or from State to State and continue to abuse children. The reporting system would be uniform at all centers and in each State. There would be no disparity in the data collected. Nationwide, there would be a uniform reporting system on sexual abusers.

To assure a comparable reporting system in each State, the U.S. Department of Health and Human Services would provide guidelines for all States to follow. The States would be responsible for making certain that every day care center follows the same procedures. A toll free (800) phone number would be available 24 hours a day, 7 days a week, for anyone to report the abuse of a child. It is a national priority that we have this nationwide system.

Some States have taken it upon themselves to assure the safety and welfare of our children. For example, bills have been passed in State legislatures that allow the conviction of a child molester solely on the basis of the victim's testimony. Other States have taken additional steps. However, many day care facilities are monitored loosely. Many only require minimal health standards. Some do not have licensing requirements. Licensing regulations vary widely from State to State and are often subject to change. The U.S. Department of Health and Human Services, along with the panel set up by this legislation, would set uniform guidelines.

Moreover, the National Child Protection Act is designed to combat child sexual abuse. It is a part of our continuing effort to encourage States to send a message to child molesters. These criminals must know that we do not, and will not, condone, nor will we tolerate, the molestation of our children in day care centers or anywhere else.

To make certain that these criminals get the message and the punishment that they deserve, I believe we need stricter penalties for those convicted of child sexual abuse. Stricter penalties are the only way to make certain that these criminals are discouraged from destroying the lives of our children. Judges should have the ability to provide stiff sentences for this horrible crime. Clearly, this would help eliminate child sexual abuse.

I commend the Northeast Conference on the Judiciary on Child Sexual Abuse for taking a leadership role on behalf of our children. The increased attention that this group has brought to the atrocity of child sexual abuse is vital to the general well-being of American children and families.

If one child is molested or sexually abused, that is one too many. However, with the National Child Protection Act and the participation of groups like the Northeast Conference on the Judiciary on Child Sexual Abuse, we can make progress toward ending the exploitation and abuse of children. Together we can educate parents and children about the shocking crime of child sexual abuse. Together, we fight not only for our children and their protection, but for the protection of all children. Therefore, I hope my colleagues will join me in supporting the speedy passage of the National Child Protection Act.

Mr. President, we are a nation whose children are at risk. Working together we can, and will, stop this American tragedy.

Finally, Mr. President, I ask unanimous consent that the full text of this legislation be printed in the RECORD at this point.

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

S. 226

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

SHORT TITLE

SECTION 1. This Act may be cited as the "National Child Protection Act".

AMENDMENT TO TITLE XX

SEC. 2. Title XX of the Social Security Act is amended by adding at the end thereof the following new section:

"LICENSING AND INFORMATION WITH RESPECT TO PROVIDERS OF CHILD DAY CARE SERVICES

"SEC. 2008. (a) As a condition for receiving any funds under this title, a State must have in effect a program under which—

"(1) the State will require the licensing and monitoring of all providers of child day care services in accordance with the standards established by the Secretary pursuant to subsection (b);

"(2) the State will provide information to the Secretary with respect to all individuals providing child day care services or employed by providers of child day care services, and with respect to all individuals convicted of child abuse, child molesting, or similar crimes, in accordance with subsection (e); and

"(3) the State will have in effect a toll-free telephone hotline for the reporting of any allegations of child abuse, child molestation, or similar acts committed by any individual providing child day care services or by any employee of a provider of child day care services, in accordance with subsection (d).

"(b)(1) The Secretary shall by regulation establish standards and guidelines for State licensing and monitoring of providers of child day care services. Such standards and guidelines shall assure the safety, health, and developmental potential of children while receiving child day care services, and shall promote the social, emotional, physical, and cognitive growth of such children while receiving such services. The Standards and guidelines shall include provisions for

assuring that only adequately trained individuals provide such services.

"(2) The Secretary shall determine a uniform definition of 'child day care services', and of a 'provider of child day care services', which shall apply for purposes of this section, and which will assure that the maximum feasible number of children shall be protected under the provisions of this section.

"(c)(1) The Secretary shall establish a national file of the names, addresses, and social security numbers of all individuals convicted of crimes involving child abuse, child molestation, or such similar acts which the Secretary determines ought to be included in such file for the purpose of protecting children receiving child day care services.

"(2) Each State shall report to the Secretary the name, address, and social security number of any individual convicted in such State of child abuse, child molestation, or a similar act which the Secretary has determined under paragraph (1) ought to be included in the national file. For purposes of this paragraph the Secretary shall establish a uniform reporting system which shall apply to all the States.

"(3) Each State shall require that no individual or provider may be licensed to provide child day care services in such State if such individual, or any employee of such provider, has been convicted of a crime which has been reported (by any State) to the Secretary and is contained in the national file. Each State must, for purposes of ensuring compliance with this subsection, request the Secretary to check the names of each individual seeking a license to provide child day care services, and each employee of a provider seeking such a license, against the list of names contained in the national file, prior to granting such license.

"(d) Each State shall establish a toll-free telephone hotline for the reporting of any allegations of child abuse, child molestation, or any similar act designated by the Secretary for inclusion in the national file, committed by an individual providing child day care services, or by an employee of a provider of such services. The State must provide follow-up investigation of each such allegation in accordance with standards established by the Secretary under regulations.

"(e)(1) There is established an 'Advisory Panel on Child Protection', hereafter in this section referred to as the 'Panel'. The Panel shall consist of 13 members as follows:

"(A) four members appointed by the President, one of whom shall be designated as the Chairman;

"(B) four members appointed by the Speaker of the House of Representatives;

"(C) four members appointed by the President pro tempore of the Senate (upon recommendation of the Majority Leader and the Minority Leader); and

"(D) the Secretary of Health and Human Services, ex officio.

"(2) It shall be the duty of the Panel to advise the Secretary with respect to the standards and guidelines issued under this section, and to propose any recommendations for changes in such standards and guidelines which may be appropriate.

"(3) Members of the Panel who are not employees of the United States shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be compensated at a per diem rate established by the Secretary for each day (including traveltime) during which they are engaged in the actual business of the Panel. Any member of the Panel engaging in the actual business of the Panel away from his home or place of business may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(4) The Secretary shall make available to the Panel such clerical and other assistance, and any pertinent data prepared by the Secretary, as the Panel may require to carry out its functions.".

EFFECTIVE DATE

SEC. 3. (a) The Secretary of Health and Human Services shall promulgate all regulations required under section 2008 of the Social Security Act within 90 days after the date of the enactment of this Act.

(b) The requirements of section 2008 of the Social Security Act shall apply to States beginning 180 days after the date of the enactment of this Act.●

By Mr. D'AMATO:

S. 227. A bill to amend the Securities Exchange Act of 1934 to impose additional restraints on corporate tender offers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

INTRODUCING THE TENDER OFFER REFORM ACT OF 1987

● Mr. D'AMATO. Mr. President, in the weeks subsequent to the revelation of the Ivan Boesky insider trading scandal, many of my colleagues have been advocating reforms of the laws governing corporate takeover activity. I applaud my colleagues for their interest in this area of the law because I have also been advocating amendments to the Williams Act. In fact, I have been advocating for reform of the Federal securities laws governing corporate takeovers for several years. I regret that it took an event as tragic as the Boesky scandal to bring to the attention of many of my colleagues the need for amendments to the Williams Act.

Today I am introducing three proposals that will amend the Securities Exchange Act of 1934 ("Exchange Act"). The proposals could have easily been combined into one legislative package. The first legislative proposal addresses the issues attendant to the laws governing corporate takeovers. The second and third proposals address issues attendant to insider trading. I have chosen to introduce them separately to emphasize the differences between reform of the laws governing corporate takeovers and reform of the laws prohibiting insider trading.

Such a distinction is required because many commentators have cited the Boesky scandal as the justification for drastic reform of the laws governing corporate takeovers. In drafting responsible legislation addressing the abuses of insider trading and certain abusive practices employed in contests for corporate control takeovers—especially hostile takeovers, I think that a distinction must be made between those who trade on inside information in the context of takeovers and those who engage in conduct which contravenes the Williams Act. Therefore, I have introduced separate legislative proposals which are designed to remedy separate deficiencies in the securities laws.

Students of tender offer reform should recognize the legislation which I introduce today because it is almost identical to the legislation (S. 1907, The Tender Offer Reform Act of 1985) which I introduced on December 6, 1985. Although this legislation received little notice from my colleagues (except those colleagues who have subsequently introduced proposals similar to those contained in S. 1907) at the time of its introduction, it received much favorable comment from members of the securities bar advocating amendments to the Williams Act. It was also the only piece of comprehensive tender offer reform legislation introduced in either body during the 99th Congress. Furthermore, it addresses many, if not all, of the concerns recently expressed by my colleagues regarding the regulation of corporate takeover activity. For example, it limits the practice of greenmail and the payment of golden parachutes; it makes it more difficult for corporate raiders to engage in two-tier and partial takeovers; it requires those acquiring 5 percent or more of a companies' stock to announce almost immediately their position in a particular security; it provides for simplified disclosure of the terms and conditions of a takeover to shareholders; and it restricts the usage of unconventional tender offers which have been undertaken in a deliberate attempt to avoid the requirements of the Williams Act. The purpose of this legislation is to further the original goals of the Williams Act by increasing shareholder protection while maintaining the balance between bidders and targets which the authors of the Williams Act desired to create.

The one substantive change to this bill as introduced last year is the deletion of the provision which prohibited the use of discriminatory tender offers such as that employed by Unocal Corp. This provision has not been included because the SEC has promulgated a rule, commonly referred to as the all-holders rule, that accomplishes the purposes of that provision of my previous legislative proposal.

This bill does not include provisions previously contained in section 4(a)(7)(i) of S. 1907. That section would have required that tender offers be made to all shareholders equally; all shareholders would have to be included in a tender offer, and all shareholders would receive compensation at the same level. This section is no

longer necessary because the Securities and Exchange Commission apparently recognized the wisdom of adopting a provision similar to section 4(a)(7)(i) and utilized its rulemaking power under the Securities Exchange Act of 1934 to adopt rules providing for these same protections; amended rule 13e-4(f) now provides "all holders" and "best price" safeguards for tender offers by issuers, and new Rule 14d-10 provides such requirements for third party tender offers.

The Exchange Act provides authority for the Commission to adopt these safeguards. For example, under section 23(a), the Commission is authorized to adopt rules necessary or appropriate to implement the provisions of that act. The new all holders and best price provisions are in furtherance of the purposes of the Williams Act amendments to the Exchange Act, adopted in part to eliminate discriminatory treatment among security holders who may desire to tender their shares. With clear agency rulemaking, there no longer is any need for legislative action on these points.

The Tender Offer Reform Act of 1987 provides a comprehensive legislative response to the issues raised in the public debate on corporate takeover activity. This debate has been waged in earnest in Congress, the courts, corporate boardrooms, and the SEC in recent years. The legislation addresses the many issues that have arisen from the increase in corporate takeover activity in the last 4 years. I would hope that my colleagues will take a keen interest in tender offer reform during the committee's examination of the issue of tender offer reform, this bill and other legislative proposals which undoubtedly will be introduced.

Within the last few years, contests for corporate control have become a more frequent phenomena on the American business scene. Once the private domain of a handful of investment bankers, lawyers, and corporate executives, takeover contests have become an increasingly popular spectator sport. The publicity surrounding several recent multibillion dollar acquisitions has familiarized the public with a glossary of new terms including, among others, golden parachutes, greenmail, bear hugs, shark repellent, poison pills, pac man defense, scorched earth defense, lock ups, leg ups, silver wheel chairs, crown jewels, and white knights. These terms have been used to describe the various offensive and defensive tactics which may be employed to effectuate or prevent a change in corporate control.

Contests for corporate control have been conducted with the intensity of military campaigns, with the futures of large and small companies and the economies of affected communities hanging in the balance. Elaborate strategies and ingenious tactics have been developed to facilitate takeover attempts and to defend against them. Skirmishes are fought in company boardrooms, in shareholders' meetings and, with increasing regularity, in the courts.

The "problems" attendant to takeovers are in the forefront of corporate law and have spawned much congressional inquiry. As chairman of the Securities Subcommittee of the Senate Banking Committee, I conducted hearings on the long-term effects of takeover activity on the credit and capital markets. The adequacy of the existing Federal regulation of the takeover process, the Williams Act, in maintaining a balance between acquiring and target companies was also examined. Although the hearings were held on April 3 and 4, and June 6 and 12, 1985, (See, S. Hrg. 99-187), I have continued to expend considerable effort to develop an appropriate legislative response to the issues raised during those hearings and to the issues presented by recent court decisions affecting the application of the Williams Act.

During the subcommittee's hearings and throughout its subsequent inquiry, the complexities attendant to the regulation of battles for corporate control have become apparent. For example, a tremendous divergence of opinion exists with regard to the threshold question: Is the Williams Act working? Some contend that Congress is compelled to act because the abusive tactics employed by raiders and defenders demonstrate a breakdown in the rules that govern corporate takeover activity. Others contend that the Williams Act is functioning properly and that few, if any, changes are needed.

In devising an appropriate legislative response, several issues must be addressed. Foremost among them is determining the causes of the current increase in takeover activity and whether the causes are amendable to legislative solutions. In testimony received by the subcommittee, the increase in takeover activity has been attributed to the depressed value of a target's stock price caused by international competition, a relatively strong dollar, fluctuating interest rates, and declining rates of inflation; economic forces that have driven the restructuring of many U.S. industries rendering them susceptible to takeover; the availability of credit to finance these transactions; the prevailing legal and business climate that permits combinations to take place with little risk of Government interference; and the advantages in the Tax Code that subsidizes debt over equity, thus encouraging the use of debt financing for acquisitions. If these are the causes of the recent increase in takeover activity, then amending the securities laws will not necessarily provide an appropriate legislative response.

Another possible solution would be to regulate the various offensive and defensive tactics employed in struggles for corporate control. There are numerous reasons why Congress should not attempt to ban specific tactics. Congressional prohibitions which preclude management from engaging in certain activities interject the Federal Government into the corporate decisionmaking process. Congress should be wary of needless intrusions into corporate boardrooms where it neither should feel comfortable, nor welcome. This is an area of regulation that traditionally has been left to State legislatures and to the application of the business judgment rule by State and Federal courts. Further, legislation which discourages takeover attempts necessarily interjects Congress into decisionmaking regarding the proper allocation of credit and capital. These decisions are best left to the efficiencies of the financial markets.

By addressing individual tactics, Congress also risks unbalancing the present legislative framework to favor either bidders or targets. Any action which favors one group over another is at the very best an implicit judgment that tender offers are either good or bad—a judgment which we, like the authors of the Williams Act, should refrain from making. Moreover, congressional activity in such a rapidly evolving area of the law may be either premature, tardy, or totally unnecessary. Court decisions, shareholder actions, amendments to corporate charters and by-laws subject to shareholder approval, and stock exchange rules may provide adequate solutions to many of the concerns raised by those urging Congress to ban certain offensive and defensive tactics.

The testimony of the numerous witnesses was distinguished by the considerable expertise they provided to the subcommittee and by their failure to agree on an appropriate regulatory or legislative response to the various offensive and defensive tactics employed in takeover battles. Despite this general disagreement, a consensus did emerge that the imperative objective of any amendments to the Williams Act must be to increase shareholder protections. The protections to shareholders intended by the act have been eroded by recent developments and legal interpretations of the rules governing the takeover process. Shareholder protection can be enhanced by making what may be considered procedural, rather than substantive change to the Federal securities laws governing takeovers. Procedural changes to the regulation of takeover activity are entirely consistent with the legal framework of the Federal securities laws.

The determination of an appropriate legislative response to the issues addressed at the hearings of the Securities Subcommittee has been greatly influenced by the legislative history of the Williams Act. In 1968, Congress enacted the Williams Act to provide a framework for the regulation of corporate takeovers in the national marketplace. The Williams Act was designed to fill a gap in the securities statutes to ensure that investors and target companies had adequate information and opportunity to make investment decisions in transactions designed to cause, or resist, a substantial shift of ownership away from the existing securities holders. The Williams Act was not intended to discourage or encourage takeover activity or to provide management or any other group with special privileges or advantages over another. The act was not designed to regulate the conduct of management or bidders or the tactics they employed to thwart or effectuate a takeover. The Williams Act sought to avoid tipping the scales either in favor of management or in favor of the bidder; to require full and fair disclosure to shareholders; to provide the bidder and management equal opportunity to participate in a tender offer. We should not stray too far from these principles unless Congress is willing to make normative judgments concerning the appropriateness of corporate decisions.

This legislation contains amendments to the Williams Act consistent with the original intent of that act's authors. The proposed legislation modifies the act to ensure that it continues to protect investors and the public interest without placing undue impediments that thwart honest and lawfully conducted takeover transactions. Legitimate corporate takeover activity will not suffer by the enactment of this legislation. The modification of the disclosure requirements of section 13 and 14 of the Exchange Act combined with the procedural modifications contained in the legislation will benefit investors and discourage pure financial plays.

Prudence dictated the development of a balanced legislative response unless we are determined to impede the tender offer process. Legitimate tender offers, as distinguished from greenmail or pure financial plays, have a disciplining effect on incumbent management. Tender offers also provide economic benefits to the shareholders of a target who wish to participate in the offer. However, it is a difficult task to draft legislation which discerns between offers that may be considered pure financial plays and restrict these without simultaneously impeding legitimate takeover activity. Moreover, restrictions on legitimate takeovers imposed by the Congress designed to reduce or eliminate takeover activity could deprive shareholders of potential opportunities to participate in an offer. The imposition of across-the-board restrictions on specific offensive and defensive tactics which would inhibit or promote such transactions involves Government interference in the free market's determination of credit and capital allocation.

Finally, it is not clear that substantive changes in the Federal securities laws governing tender offers would have any clear benefits for stockholders or for the economy in general. Contrary to claims that takeovers force corporate managers to sacrifice long-term investment planning for short-term profits, there has been no conclusive demonstration that tender offers are detrimental to the economy. Further, little conclusive evidence exists that demonstrates that tender offers have a disruptive effect on domestic credit and capital markets. There is evidence, however, which suggests that economic factors such as interest rates, inflation, the present structure of Federal corporate taxation, and consumer demands influence corporate planning to a far greater extent than the fear of corporate raiders. Therefore, it is preferable to allow individual companies to decide whether and how they want to acquire other companies or to protect themselves than to have the Federal Government impose rigid restrictions which govern corporate conduct during takeover battles.

Ideally, the legislation described below satisfies the objectives that the subcommittee intended to accomplish when it began its inquiry. Some critics will attack it as unresponsive to the needs of the beleaguered incumbent managements threatened by the spectre of a hostile raider looming just beyond the horizon. Others will contend that the legislation represents an unwarranted Federal intrusion into the marketplace. They see no merit in any regulation that diminishes a shareholder's ability to reap the rewards to be gained from corporate raiders who claim that they are compelled to act out of concern for the shareholders best interest and to promote economic efficiencies, rather than a desire for personal profit.

To these critics I would respond that neither this legislation, nor the Williams Act is designed to protect the jobs of incumbent managements or to ensure the success of a hostile offer by removing every impediment management may place in a raider's path. This legislation is not intended to benefit either target managements of bidders. The intended beneficiaries of this legislation are the shareholders affected by contests for corporate control. Shareholder protections will be enhanced by this legislation because it creates a more orderly process through which substantial portions or entire corporations are bought and sold in the trading market.

This legislation is needed to ensure that shareholders will be able to make well informed investment decisions on the disposition of their holdings in a corporation subject to a takeover. The legislation is not intended to promote or impede takeover activity because, frankly, the Federal securities laws were not designed and should not be employed to affect the economic policy of this country. Such public policy decisions which limit corporate takeover activity may ultimately prove justified, however, such changes should not be implemented through the "backdoor" by amending the Federal securities laws. Thus I strongly urge prompt and favorable consideration of this legislation by my colleagues. I ask unanimous consent that the explanation and analysis of the bill and the bill be printed in the RECORD.

EXPLANATION AND ANALYSIS

Section 1 of the bill states that the bill may be cited as the "Tender Offer Reform Act of 1987."

Section 2(a) amends the reporting requirements of section 13(d) of the Securities Exchange Act of 1934—Exchange Act. Currently, under section 13(d) of the Exchange Act, any person who acquires more than 5 percent of a class of equity securities of an issuer must, within 10 days after acquiring more than 5 percent, notify the issuer and file with the Securities and Exchange Commission [SEC] a statement containing certain information about the acquiror's background, the source and amount of funds used to make the acquisition, any intentions to acquire control of the issuer, and other information prescribed by statute or Commission rules.

Section 13(d) in its present form permits the notification and filing to occur as many as 10 days after the 5-percent threshold is exceeded. The 10-day threshold has frequently failed to supply stockholders, the trading markets, and the public with timely information about the identity and intentions of the purchaser. The 10-day interim filing period between the purchase of more than 5 percent and the reporting of the acquisition has been used to the unfair advantage by acquirors who continue to buy large amounts of securities before notifying the issuer, the SEC and the trading markets. Recent acquisitions demonstrate that the 10-day filing period allows an acquiror to gain controlling interest in a company before the company and the trading markets were notified of the acquisitions.

Section 2(a) eliminates the 10-day interim filing period by requiring that a person, who acquires more than 5 percent of a class of equity securities,

publicly announce that acquisition and file the materials presently required by the Exchange Act with the SEC, the issuer and to each exchange upon which the security is traded within 24 hours of the acquisition. The acquiror is then precluded from acquiring additional securities of the same class for 2 business days after the acquisition that caused the acquiror's obligation to file the report, or such shorter period as the SEC may prescribe.

Section 2(a)(2) specifies the information that must be contained in the public announcement required by section 2(a)(1).

Section 2(b) permits the SEC to exempt by rule, regulation or order certain acquirors from the terms and conditions of section 2(a) if the SEC determines that such an exemption is in the public interest.

Section 3(a) and 3(b) are technical and amend sections 13(d)(3) and 13(g)(3) of the Exchange Act. Sections 3(a) and 3(b) apply the provisions of sections 13(d)(3) and 13(g)(3) of the Exchange Act to groups acting in concert for the purpose of voting securities. Although the statute currently applies to groups acting in concert for certain purposes, this section clarifies the application of the statute to groups acting in concert for the purpose of voting securities.

Section 4 amends section 14 of the Exchange Act, section 14 of the Exchange Act is commonly referred to as the Williams Act. Sections 4(a)(1) and 4(a)(2) are technical in nature.

Section 4(a)(3) adds a new provision to the Williams Act. This section is designed to effectuate the original purpose of the Williams Act by requiring that the shareholders of a company subject to a takeover receive adequate information of the offer in a comprehensible form. Under section 14(d) of the Exchange Act, a person making a tender offer for, or a request or invitation for tenders of any class of any equity security registered pursuant to section 12 of the Exchange Act must file certain information with the Commission and publish information for shareholders of the securities sought by the acquiror.

An examination of the materials that shareholders received pursuant to a tender offer demonstrated that, while these tender offer materials provided adequate disclosure in accordance with the technical requirements of the Williams Act and SEC regulations, the materials were often of little use to shareholders. The information contained in the tender offer materials received by shareholders is not easily comprehended by the average investor or in some cases by sophisticated investors and market professionals. In the absence of any clear explanation of the offer, investors must reply on information about the offer as provided by the media.

Although such reliance may not be misplaced, the intent of the Williams Act was to ensure that shareholders received an explanation of the terms and conditions of an offer from the offeror. Although shareholders are literally bombarded with information about the offer, well informed investment decisions are difficult where these tender offer materials prove incomprehensible.

Section 4(a)(3) resolves the shareholders' dilemma by requiring that an executive summary of the material terms and conditions of a tender offer be provided in addition to or included in the other tender offer materials received by shareholders. The information to be provided in this summary is described in the subsections of section 4(a)(3). The acquiror must publicly announce any change of the information contained in these subsections. These provisions require that shareholders receive a brief explanation of the information similar to the information presently provided to the Commission pursuant to the requirement of schedule 14D.

Subsection 4(a)(3)(ii) is specifically designed to address the issue of valuing the price of two-tier tender offers. The subcommittee has received testimony citing the potential confusion and the pressures experienced by shareholders and confronted by a two-tier offer. This subsection is intended to require the bidder to provide information concerning its valuation of the second step of a two-tier offer and an explanation or accounting of the determination of the value ascribed to the second step payment where that payment is not an all cash offer.

Subsection 4(a)(3)(vi) is designed to address issues related to an acquiror's intentions to liquidate or merge the issuer or make any other change in its business or corporate structure. The acquiror would also be required to disclose its intentions to relocate material portions of the issuer's business activities, including its principal executive office and other major restructurings that would affect the issuer's management or employees. This provision does not require a statement of the effects of a change in corporate control upon the relevant community or communities. Therefore, it should be viewed as a corporate impact statement rather than as a community statement.

Subsection 4(a)(3) is not designed to create a new legal cause of action in addition to those that presently exist under the disclosure provisions of the Exchange Act. It is designed to ensure that shareholders receive more adequate and useful disclosure of the terms and conditions of a tender offer and its effects on the target corporation.

Section 4(a)(4) amends section 14(d) by adding a new paragraph that extends the minimum offering period for tender offers. The minimum offering periods required by section 4(a)(4) distinguish between tender offers for any and all outstanding shares of a company's stock and two-tier tender offers and an offer for less than all of the outstanding shares of a company's stock, partial offers. The minimum offering period for tender offers for any and all of a company's outstanding share will be 30 calendar days. The minimum offering period for two tier tender offers and partial offers will be 40 calendar days. Under current SEC regulations, the minimum offering period for all tender offers is 20 business days. Section 4(a)(4) shall not apply to an issuer tender offer, if it is not made in anticipation of or in response to another person's offer.

The extension of the minimum offering period is designed to benefit shareholders by providing them more time to consider and to assimilate information regarding a takeover attempt. The extension of the minimum offering period will also provide the SEC a greater opportunity to examine a tender offer prior to the termination of an offer and to determine whether the offer was made in compliance with the Williams Act. Hopefully, the extension of the minimum offering period will discourage the use of abusive defensive tactics by a target's management who often feel compelled to employ these tactics in an effort to buy time. The extension of the minimum offering period provides a target's management with a greater opportunity to solicit higher alternative bids. These higher bids and the higher premiums provide another benefit to shareholders.

The distinction between the 30-day minimum offering period provided for any and all offers and the 40-day minimum offering provided for two-tier and partial offers is justified due to the more complex nature of latter two types of bids. Given the terms and conditions of an any/all offer, 30 calendar days should provide shareholders sufficient time to receive and consider tender offer materials and to make an informed investment decision. Given the notice to the market and target shareholders by the initial any and all bid, shareholders should have sufficient time to receive and consider these materials and to make an informed investment decision if the minimum offering period for a subsequent competing bid is 20 calendar days. The minimum offering period in section 4(a)(4) also contains a provision that prevents the termination of a subsequent competing bid prior to the expiration of the initial offer.

By comparison, the terms and conditions of two-tier and partial offers

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present shareholders with more complex investment decisions. Current regulations under the Williams Act make little regulatory distinction between full, partial and two-tier offers. Witnesses appearing before the committee argued that the use of two-tier and partial offers should be restricted or banned.

Opponents of two-tier and partial offers argued that these offers coerced shareholders into making investment decisions against their will. Others argued that partial offers provided positive economic effects and that two-tier offers provided shareholders of a target company higher premiums than offers with no second steps. Moreover, empirical evidence provided to the subcommittee demonstrated that the blended value of the premiums received in a two-tier offer were higher than premiums paid for cash offers. However, the reasons advanced by those advocating the equal treatment of any and all, partial and two-tier offers did not outweigh concerns with respect to the potentially coercive elements of partial and two-tier bids.

Rather than prohibit the use of partial and two-tier offers, prohibitions inconsistent with the underlying legal philosophy of the Williams Act, the minimum offering period is extended to 40 calendar days. This extension should eliminate the more coercive elements of these offers by providing shareholders more time to evaluate the value of partial and two-tier offers and the consequences that participation in or a failure to participate in such offers would have on the value of their holdings. The distinction in the minimum offering periods between any all and partial and two-tier offers operates as a regulatory disincentive against use of partial and two-tier offers in contests for corporate control.

When a subsequent bid is made pursuant to an initial partical or two-tier offer, section 4(a)(4) requires that the subsequent offer remain open for a minimum of 30 calendar days. Given the notice to the market and target shareholders by the initial bid, shareholders should have sufficient time to make an informed investment decision if the minimum offering period for a subsequent competing bid is 30 calendar days. The subsequent bid will not be allowed to terminate prior to the expiration date of the initial bid.

Section 4(a)(7) adds a new subsection (f) to section 14(d) of the Exchange Act to prohibit the award of golden parachute agreements. Present subsections (f) and (g) have been redesignated as subsections (l) and (m) respectively. This provision prohibits an issuer, during a tender offer, from entering for amending agreements that increase directly or indirectly, the current or future compensation of any officer or director. The practice of awarding golden parachutes during the pendency of a tender offer presents the appearance of self-dealing by the management of a target company at the expense of its shareholders. The prohibition extends to provisions "whether or not independent on any event or contingency." Thus, the prohibition affects termination agreements, large salary increases or stock options if they are precipitated by a tender offer.

This section neither prevents the hiring of new officers or directors, nor increases in compensation, if such actions resulted from an agreement predating a tender offer. The prohibition does not apply to routine compensation agreements undertaken in the normal course of business. Golden parachute agreements adopted in the normal course of business that are disclosed to shareholders are not prohibited. Such agreements do not exemplify the type of abusive self-dealing the legislation would curb. Although recent amendments to the Tax Code discourage golden parachute payments by increasing the tax imposed upon them, additional legislation is required to prohibit golden parachute agreements adopted during a contest for corporate control.

Section 4(a)(7)(g) adds a new section (g) to section 14 of the Exchange Act. This section limits a corporation's ability to make greenmail payments. Greenmail constitutes a repurchase, at a significant premium, of a block of an issuer's stock held by a person threatening a takeover. The payment of greenmail is unfair to a company's shareholders because it unjustly rewards the recipient of the greenmail payment at the expense of the remaining shareholders. Such payments are in effect discriminatory offers that exclude a substantial majority of a company's shareholders. This section prohibits a company from purchasing its securities at a price above the average market price of the securities during the 30 preceding trading days from any person who has held more than 5 percent of its outstanding shares for less than 6 months. The payment of greenmail to a person covered by this section would be permitted upon the approval of a majority of the shareholders or the company's making an equal offer to its other shareholders.

Section 4(a)(7)(h) provides a new subsection (h) to section 14 of the Exchange Act. This subsection authorizes the Commission to grant exemptions from new sections 14(f) and 14(g) of the Exchange Act. This section enables the SEC to use its exemptive authority to: First, prevent unintended or inequitable results: second, avoid the application of these sections to transactions which do not present the abuses or consequences that this legislation is designed to address; and third, provide for flexible administration in a rapidly evolving area of the law, consistent with the SEC's investor protection mandate.

Section 4(a)(7)(i) adds a new section 14(i) to the Williams Act that addresses the issues raised by large open market purchases that affect corporate control. The takeover contests between the Limited and Carter Hawley Hale Stores and Hanson Trust PLC and SCM Corp. are examples of large purchases that were determined not to constitute conventional or unconventional takeovers. In both cases, large percentages of a target's share and the corresponding ownership interests were transferred in transactions that were not considered as conventional or unconventional tender offers and were therefore considered to be outside of the coverage of the Williams Act.

The SEC challenged the legality of the purchase program of Carter Hawley Hale and argued that the company's purchases constituted an unconventional tender offer. In SEC versus Carter Hawley Hale Stores Inc., the court allowed the purchase of a large percentage of a target company's shares in a short time without requiring compliance with the Williams Act even where the purchase program was undertaken to defeat an offer conducted in accordance with that statute. The decision in Hanson Trust PLC versus SCM Corp., suggests that a bidder can begin a tender offer therby calling into play market forces that facilitate large accumulations of a target's stock, and then terminate the offer to take advantage of the market forces to purchase quickly an amount of stock in the open market that affects corporate control. This decision also suggests that an equal opportunity for shareholders to participate in tender offer transactions is not a goal of the Williams Act and that sophisticated investors do not need the protections of the act. The decision demonstrates a fundamental failure of the court to comprehend the purpose of the investor protections provided by the Williams Act. This section should clarify any judicial misconstructions of the Williams Act. The act is designed to treat all shareholders equally regardless of their level of sophistication and to ensure that all shareholders accorded the opportunity to participate in an offer at the same terms and for the same price.

Open market purchases that constitute unconventional tender offers merit regulation because a purchaser can effectively acquire control of a corporation without paying the premium that usually accompanies such acquisitions. The shareholders are thereby denied the opportunity to realize a control premium. Further, some shareholders are either entirely excluded from participating in the purchase or prevented from having their shares

taken up on a pro rata basis as would be the case in a tender offer conducted in compliance with the Williams Act.

Section 4(a)(7)(i) limits the inequities suffered by shareholders in open market purchase programs that result in changes in corporate control by placing limitations on an acquiror's ability to acquire control by huge open market purchases that are not subject to the Williams Act. This section prohibits the acquisition of more than 2 percent in open market purchases of a company's outstanding securities in the calendar year after a person acquires beneficial ownership of 20 percent of a company's outstanding shares. The acquiror can continue to acquire 2 percent through open market purchases in each subsequent calendar year. Any acquisition above the 2-percent level in a calendar year once the 20-percent threshold has been reached can only be accomplished through a tender offer.

The 2-percent acquisition level is designed to permit acquisitions that are not substantial. Therefore, the requirements of this subsection do not apply to any acquisition or proposed acquisition when combined with all other acquisitions effected during the preceding 12 calendar months does not exceed 2 percent of the outstanding shares.

This section also contains exemptions that apply to: First, acquisitions by gift, inheritance, bequest or other involuntary; second, acquisitions by a statutory merger or combination consummated under the laws of the issuer's state of incorporation; or third, any acquisition that the SEC by rule or regulation exempts in the public interest and consistent with the protection of investors. The exemptive language in this section and the other sections of the legislation grant the SEC the authority to exempt any transaction if the particular transaction will not change or influence control of the issuer or otherwise is not comprehended with the purposes of the Williams Act or the amendments to that act contained in this legislation.

Section (4)(b)(k)(l) amends section 14 of the Exchange Act by defining persons for purposes of subsections (d), (e), (f), (g), and (i) of section 4(a) to include a group of persons, utilizing language similar to current section 14(d)(2). The statute thus makes explicit that the definition, which the Commission has interpreted as applying to current section 14(e), governs all tender offer provisions.

Section 4(b)(k)(2) provides that in determining for purposes of subsections (d), (g), and (j) of section 4(a), what constitutes a specified percentage of a class of any security, of the class shall be determined to consist of the outstanding securities of the class, exclusive of securities held for the issuer or any subsidiary of the issuer.

Section 5 states that none of the provisions of the legislation limit the SEC's authority to supplement proration, withdrawal or minimum offering periods. The SEC has, and has exercised this authority under existing law.

The effective date of the legislation will be the date of enactment. The legislation does not apply to any tender offer that commences prior to the date of enactment.

Section 6 is intended to address the issues generated by the increased usage of high yield, noninvestment grade bonds as a corporate finance technique. A great deal of publicity about the use of high yield, noninvestment grade bonds has been generated by the use of these bonds to finance hostile corporate takeovers. Critics of the issuance of these bonds contend that they may not be suitable investments for the depository institutions, pension funds and other financial institutions that invest their assets through the purchase of these bonds. Supporters of high yield, noninvestment grade bonds counter such criticisms by contending that: First, the overwhelming majority of these bonds are used to finance corporate activity other than hostile takeovers; second, these bonds have a significantly lower default rate than commercial bonds and other direct investments of the affected depository institutions; and third, relatively few depository institutions are permitted to purchase these bonds and that these bonds have not eroded the safety and soundness of these institutions.

At present, several legislative proposals have been introduced that would curb investment in high yield, noninvestment grade securities. Legislation that requires the imposition of these restrictions may ultimately prove necessary. However, attempts to develop an adequate legislative solution to curb investment in these bonds proved difficult due to a lack of information regarding the performance of investments in these bonds. Before restrictions are imposed that affect the issuance of and the investment in these bonds, further information is required to help us determine the nature of such restrictions or limitations.

The suitability of investments in high yield, investment grade securities addressed is a topic that should be addressed in the Banking Committee's continued deliberations on tender offer reform.

The ability of Federal regulators to limit or restrict investment by federally insured depository institutions in such bonds should also be reviewed. These Federal agencies are empowered to restrict or prohibit any unsafe or unsound practices that would contribute to a weakness in an insured institution's financial condition. Prudence dictates that, before such investments are limited or prohibited and issuers suffer the unintended consequences of such restrictions, the breadth and depth of the market in high yield, noninvestment grade bonds be determined. Further, before legislation is enacted, Congress should consider expanding the scope of the supervision and enforcement powers of the regulatory agencies. Such an expansion of powers provides a more flexible approach to the regulation of investments in these securities. The information required in the study mandated by section 6 should provide Congress with timely and adequate data upon which to base its legislative deliberations.

Section 6 requires the Comptroller General, in coordination and consultation with the Securities and Exchange Commission, the Federal Home Loan Bank Board, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation, the Secretary of the Treasury and the Secretary of Labor to study the issuance and investment in high yield, noninvestment grade bonds for the 5 years prior to the enactment of this act, including:

First, the identity and rating—as determined by Moody's, Standard and Poor's or other nationally recognized bond rating house—of the issuers of these bonds;

Second, the identity of the major purchasers of these bonds including, but not limited, to federally insured depository institutions;

Third, the percentage of the total amount of high yield, noninvestment grade bonds that are issued as a method of financing corporate takeovers;

Fourth, the identity of the purchasers including, but not limited to, federally insured depository institutions, that invest in high yield, noninvestment grade bonds that are issued as a method of financing corporate takeovers;

Fifth, the purposes of which high yield, noninvestment grade bonds are issued other than for financing corporate takeovers;

Sixth, a summary and analysis of the adequacy of current State and Federal laws that regulate investment in high yield, noninvestment grade bonds, by investors including, but not limited to, federally insured depository institutions and pension funds and;

Seventh, a review of the impact of the issuance of and investment in high yield, noninvestment grade bonds upon corporate debt as it relates to Federal monetary policy.

The study will be submitted to Congress within 120 days after the date of enactment of this legislation.

By Mr. D'AMATO:

S. 228. A bill to amend title 10, United States Code, to permit members of the Armed Forces, under certain circumstances, to wear items of religious apparel while in uniform; to the Committee on Armed Services.

RELIGIOUS APPAREL IN THE ARMED FORCES

● Mr. D'AMATO. Mr. President, I rise today to introduce legislation to allow military personnel to wear certain religious apparel. In the last Congress, I sponsored S. 2269, cosponsored by my good friend, the junior Senator from New Jersey. An amendment to the defense authorization bill which encompassed S. 2269 was narrowly defeated on the Senate floor. Although this legislation was incorporated into the House version of the defense authorization bill, the provision, unfortunatley, was dropped from a House-Senate conference.

This bill corrects an injustice affirmed last year by the Supreme Court. On March 25, the Supreme Court ruled 5 to 4 in favor of a lower court ruling that the Department of Defense was within its rights in not allowing the wearing of a yarmulke indoors by military personnel.

The case, Goldman versus Weinberger, involved an Air Force officer who, though serving as a psychologist, was an ordained Rabbi. As an Orthodox Jew, Capt. S. Simcha Goldman wore his yarmulke at all times. The Air Force insisted that this was not within regulations. The case eventually reached the Supreme Court.

Mr. President, the bill I am introducing today offers a reasonable solution to this problem. This bill would amend chapter 45 of title 10 of the United States Code to allow the wearing of all neat, unobtrusive, and conservative religious apparel. Specifically, the bill allows members of the Armed Forces to wear any neat, conservative, and unobtrusive item of apparel if the wearing of such apparel is part of the religious observance of the member, unless the wearing of such apparel interferes with the performance of the member's military duties.

This legislation would not only resolve cases involving the wearing of the yarmulke, but also allow military personnel of any religion to wear, within reason, appropriate religious apparel. I believe the Air Force and the Department of Defense interpreted too strictly regulations that prevented Captain Goldman from wearing his yarmulke indoors. Indeed, the Supreme Court's less than unanimous decision on this specific case left much room for debate. It is uncertain whether the Supreme Court would have affirmed the lower courts decision if Goldman had not joined the Air Force of his own choice. I question whether we can afford to preclude a certain group within our society from voluntary military service because of their centuries-old legitimate religious beliefs concerning the wearing of certain types of religious apparel.

For this reason, Mr. President, I feel it is necessary for a legislative solution. Obtrusive and possibly interfering apparel should not be allowed, especially if such apparel would hinder the effectiveness of the service man or woman. In addition, religious apparel should not hinder the effectiveness of other military personnel. This is straightforward legislation that further strengthens the right of freedom of religion in this country. I have discussed this legislation with many groups, including the Anti-Defamation League. Our Armed Forces should not be in the position of completely dictating what religious behavior is acceptable.

Mr. President, I urge my colleagues to join with me on this important piece of legislation, and I urge its quick passage into law. I also ask unanimous consent that the full text of this legislation be printed in the RECORD at this point.

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

S. 228

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

SECTION 1. AUTHORIZATION FOR MEMBERS OF THE ARMED FORCES TO WEAR ITEMS OF RELIGIOUS APPAREL WHILE IN UNIFORM

(a) IN GENERAL.—Chapter 45 of title 10, United States Code, is amended—

(1) by redesignating section 774 as section 775; and

(2) inserting after section 773 the following new section:

"§ 774. Wearing religious apparel

"(a) Except as provided in subsection (b), a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force if—

"(1) the wearing of the item of apparel is part of the religious observance of the religious faith practiced by the member; and

"(2) the item of apparel is neat, conservative, and unobtrusive.

"(b) The Secretary concerned may prohibit a member from wearing an item of religious apparel while wearing the uniform of the member's armed force if the Secretary determines that the wearing of such item significantly interfers with the performance of the member's military duties.".

(b) CLERICAL AMENDMENTS.—The table of chapters at the beginning of such chapter is amended—

(1) by redesignating the item relating to section 774 as 775; and

(2) by inserting below the item relating to section 773 the following new item:

"774. Wearing religious apparel.".

By Mr. D'AMATO:

S. 229. A bill to provide for adherence with the MacBride principles by United States 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. I first offered this legislation, cosponsored by my good friend the senior Senator from Arizona, in October of last year.

Last year, 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.

Today, we have the same opportunity to fight discrimination in Northern Ireland. The Northern Ireland Fair Employment Practices Act incorporates the MacBride principles, which are modeled after the famous Sullivan principles, the incipient effort to apply United States pressure to change the system of apartheid in South Africa. The MacBride principles are named in honor of Sean MacBride, winner of the Noble Peace Prize and cofounder of 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 group;

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 individuals with potential for further advancement, including managerial programs;

Fifth, establishing layoff, recall, and termination 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, adminstrative, 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 means of perpetrating acts of discrimination is through employment. Therefore, it is at the workplace in Northern Ireland, which can be used to either foster or eliminate discrimination, where we should focus our efforts to break the back of this awful practice. 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, and only 5 of them operate 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 not only will enlist these companies in the effort to wipe out discrimination at the workplace in Northern Ireland, but it also will help enlighten other nations which do business in Northern Ireland.

Mr. President, I truly believe that this body must address this important issue in the near future. I plan to fight to have this bill passed during this session of Congress, and I look to my colleagues to join me in this worthy effort.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD in its entirety.

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

S. 229

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 per centum.

(2) Unemployment in some neighborhoods of Northern Ireland comprised of religious minorities has exceeded 50 per centum.

(3) In the past ten years 27 per centum 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 seven thousand people each year.

(5) The Industrial Development Organization for Northern Ireland lists twenty-five firms in Northern Ireland which are controlled by United States persons.

(6) Many of these firms have become de facto partners in discriminating against religious minorities in employment practices and conditions.

(7) A comprehensive study of the discriminatory practices of United States businesses in Northern Ireland by the Reverend Brian 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 per centum of the employees are Catholic and 73.2 per centum 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 per centum Catholic and 62 per centum 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 twenty 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 educational facilties.

(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 ninety days after the date on which the justification is submitted to the Congress unless the Congress, within that ninety-day period, adopts a joint resolution disapproving the waiver. In the computation of such ninety-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 RESOLUTION—

(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 in 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—

(2) the United States person beneficially owns or controls (whether directly or indirectly) 25 per centum 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. D'AMATO:

S. 230. A bill to amend the Securities Exchange Act of 1934 with request to the use of nonpublic information; to the Committee on Banking, Housing, and Urban Affairs.

S. 231. A bill to amend the Securities Exchange Act of 1934 with respect to the use of nonpublic information; to the Committee on Banking, Housing, and Urban Affairs.

SECURITY EXCHANGE ACT

● Mr. D'AMATO. Mr. President, one of my proudest achievements as the chairman of the Securities Subcommittee of the Senate Banking Committee in the previous two Congresses was the passage of the Insider Trading Sanctions Act of 1984 [ITSA]. This act enabled Federal prosecutors to impose substantial civil and criminal fines upon those who trade in our securities markets while in possession of material, nonpublic information.

Although the act became law in 1984, one provision that I advocated was not included in the final legislation. This provision would have provided a definition of insider trading. I still maintain the belief that such a definition is required to clarify the law governing insider trading. A broad definition of insider trading will enable market professionals and individual investors to discern what activities are proscribed by law and which are permitted. Further, such a definition will provide the Securities and Exchange Commission to prosecute a variety of insider trading cases without relying on contested legal theories which must be used to satisfy the Supreme Court's standards enounced in *Chiarella* v. *U.S.* 445 U.S. 222 (1980) and *Dirks* v. *SEC*, 463 U.S. 646 (1983).

After the Supreme Court's decisions in Chiarella and Dirks, cases in which the Court rejected SEC arguments based upon section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), significant gaps exist in the SEC's regulation of, and in civil liability for, trading on the basis of material, nonpublic information. The guidelines developed by lower courts since Dirks for insider trading liability are not always consistent and do not set a uniform standard to provide both the enforcers and market participants with sufficient guidance regarding the application of sections 10(b) and 14(e)—in the context of tender offers—of the Exchange Act to insider trading violations. Given the spate of criminal prosecutions, the enactment of the ITSA, and the Supreme Court's recent decision holding that garden-variety securities fraud may be subject to private treble damage actions under RICO, more guidance seems justified.

In fact, the Supreme Court has implicitly, if not explicitly, invited the Securities and Exchange Commission (Commission) to define more precisely what activities constitute insider trading rather than rely on its current practice of defining insider trading on a case-by-case basis. In Dirks versus SEC, the Court criticized the Commission for propounding insider trading theories on a case-by-case basis as a practice which it views as "inherently imprecise." 463 U.S. at 658 n. 17. The Court reasoned that this situation is in need of remedy because such "imprecision prevents parties from ordering their actions in accord with legal requirements. Unless the parties have some guidance as to where the line is between permissible and impermissible disclosures and uses, neither corporate insiders nor analysts can be sure when the line is crossed." Id. Noting the need for greater clarity in the meaning of insider trading, the Court also observed that "without legal limitations, the market participants are forced to rely on the reasonableness of the SEC's litigation strategy, but that can be dangerous * * *." Id. at 664, n. 24.

I do not cite this decision to criticize the SEC. The SEC's recent settlements with Dennis Levine and Ivan Boesky are perhaps the most publicized examples of the excellent work that the Commission has been doing to prosecute illegal insider trading. There is no question that the activities engaged in by Levine and Boesky fall within the scope of the accepted meanings of insider trading. Rather, I cite this case for three reasons. First, I, like the Court, believe that some clarity regarding the meaning of insider trading is required. Second, I am afraid that the Court, in its recent grant of certiorari in the case of Winans versus United States, may once again, as it did in Chiarella and Dirks, reject the Commission's arguments as to what activities constitute illegal insider trading because the law fails to define more precisely actions that constitute violations of the Federal securities laws. Finally, the Dirks decision suggests that the appropriate legislative response in this area of the law is to enact a definition of what activities constitute illegal insider trading. Since the revelation of the SEC's case against Boesky, many of my colleagues on Capitol Hill have clamored for legislative reform in this area. The two legislative proposals that I introduce today which define insider trading provide an appropriate and adequate legislative response.

Congress has already responded to the problem of insider trading by increasing the severity of the penalties that can be imposed upon those guilty of insider trading in the Insider Trading Sanctions Act. Perhaps we could increase the severity of the penalty and therefore the level of deterrence if insider trading is made a capital offense. However, this is not a reasonable legislative response, nor does it satisfy the concerns expressed by the Supreme Court in Dirks. What is needed is a means by which the Commission can more effectively and expeditiously prosecute insider traders. The proposals that I introduce today will hopefully provide such a means.

The need for a definition, in short, can satisfy the Court's need for clarity and relieve the Commission of the task of straining to prosecute inside traders on a case-by-case basis. A definition of illegal insider trading would resolve the dilemma confronting the SEC's prosecution of insider trading cases—a dilemma which ironically is created by the law which is used as the basis for insider trading prosecutions.

Thus, trading on the basis of material, nonpublic information per se does not constitute fraud in violation of section 10(b) and rule 10b-5. Under rule 10b-5, the gravamen of the violation is not the trading but the failure to fulfill a duty to disclose when there is such a duty in connection with the trading. Where there is a duty to dis-

close, silence may be fraudulent and thus actionable under section 10(b). It is this application that limits indirectly the ability of insiders and certain others to trade on the basis of material, nonpublic information. The principal difficulty that the Commission has confronted in prosecuting certain "insiders" is that a duty to disclose does not necessarily exist whenever the underlying policy justification for an insider trading prohibition dictates that it should.

Since section 10(b) of the Exchange Act is a broad antifraud provision not directed specifically to insider trading, confusion and uncertainty exist as to how the elements of section 10(b) are to be applied in insider trading cases. For example, after Chiarella and Dirks, does an insider's duty to disclose or abstain still apply to all contemporaneous market traders in the security or only to the person with whom the insider trades? What must a tippee know, or be reckless in not knowing, to be liable under section 10(b) cases, or is it more appropriate to apply a "facts of special significance" test? Exactly how does a plaintiff prove reliance or causation in insider trading and tipping cases?

The Commission's task in prosecuting insiders has also been complicated by the fact that the term insider trading is somewhat misleading. After the Supreme Court decisions in Dirks and Chiarella, the Commission has been required to develop several legal theories to prosecute individuals who are not typically considered insiders. The cases in which the Commission and private litigants have sought to impose liability under existing law have not been limited to insiders, at least as that term is commonly understood, and not all defendants have been traders—those who "tip" others who then trade, for example. Indeed, as in cases of misuse of advance knowledge of tender offers, now covered by rule 14(e)-3, and market manipulation cases like Zweig versus Hearst Corp., the information in questions has not come from insider the issuer at all, but rather has been external "market" information not yet generally known. That the phrase "insider trading" describes so imperfectly the conduct to be proscribed is a clear signal at the outset that this area of the law is not well defined.

With this in mind, it is no small challenge to describe concisely and analyze the state of the law under section 10(b) and rule 10(b)-5 as it relates to trading on the basis of nonpublic information. It is not an overstatement that the Supreme Court's decisions in Chiarella and Dirks undercut the theoretical foundations of prior decisional law in this area. Those two decisions plainly rejected the notion that anyone possessing material, nonpublic information had a duty, arising from that possession alone, to abstain from trading unless and until the information was disclosed or became immaterial. The transformation of the law has not, however, ended with those two decisions. Since then, many lower courts have with remarkable tenacity, if not intellectual consistency, found or developed alternative theoretical bases for imposing liability that are only plausibly in step with the Supreme Court's two recent rulings.

The Commission has been compelled to argue and the lower courts have accepted these theories because the Dirks and Chiarella requirement that a fiduciary or similar relationship exist between the individual trading and shareholders has left significant gaps in the regulation of trading by nearly all persons who are not insiders of the corporation in whose securities they are trading. For example, the Commission has argued and the lower courts have accepted several legal theories developed in response to the Supreme Court's decisions in Chiarella and Dirks. Legal theories of insider trading that the Commission has successfully argued in the lower courts can be briefly described as the: First, fiduciary duty to shareholders theory; second, misappropriation theory; and third, tipper-tippee theory. The Commission's innovative use of these legal theories is justified to remedy those specific instances of abuse to reach results that seem fair in individual cases. However, I fear that the Supreme Court, in its consideration of the Winans appeal, may again reject the arguments of the Commission. Therefore, I am compelled to initiate a legislative response to avoid a similar result in the future simply because the Court requires more guidance on the meaning of illegal insider trading.

I believe that in the wake of the Boesky-Levine scandal that Congress can and should confront the basic policy question of what uses of informational advantage are to be forbidden, rather than leaving the law primarily to case-by-case development under present section 10(b) and rule 10b-5. Such a legislative proposal may be required because, while further regulations through the SEC's rulemaking process would be useful, such regulations may have an uncertain statutory basis to the extent that it departs from the fraud bases of section 10(b) and 14(e) of the 1934 act.

The first legislative proposal that I introduce today, the Insider Trading Definition Act of 1987, specifies with considerable particularity what conduct by insiders misapproriators, tippers, and tippees is prohibited. It builds on existing case law, provides a clear statutory predicate for liability now imposed under the judge-made misappropriation theory, and resolves several important uncertainties in the present case law. The second proposal, the Insider Trading Reform Act of 1987, is a less specific approach that sets forth a clear legislative policy, provide a sound basis for further development of the law and for such clarifying regulations as the SEC may adopt. Both proposals contain provisions which would, for the first time, hold firms liable for civil money penalties if they knew or should have known that their employees were engaging in illegal insider trading.

These proposals, which are drawn largely from the Report on Insider Trading of the American Bar Association's Committee on Federal Regulation of Securities, are intended to be a starting point. The adoption of either proposal in their present form or as modified would represent a marked improvement over existing law. The proposal of two statutes addressing the same issue is in itself, a recognition that, like all statutes, neither will satisfy everyone or remove every ambiguity. However, these two alternatives demonstrate that it is possible to bring greater order and predictability to the law.

I urge my colleagues to consider and lend their support to enacting this legislation or similar proposals. The time to express shock about the abuses of insider trading has come and gone. The time to act to provide the Commission with the tools to expedite the prosecution of miscreants is at hand. The passage of this legislation will send a clear message to the courts and hopefully to those considering trading on inside information who hope to escape prosecution on the basis of a legal technicality.●

By Mr. WILSON:

S. 232. A bill to permit placement of a privately funded statue of Haym Salomon in the Capitol Building or on the Capitol Grounds and to erect a privately funded monument to Haym Salomon on Federal land in the District of Columbia; to the Committee on Rules and Administration.

HAYM SALOMON MEMORIAL ACT

Mr. WILSON. Mr. President, I am introducing legislation today to recognize the contributions of Haym Salomon, an American patriot regarded as the symbol of American Jewish participation in the struggle for American independence.

This legislation will permit both the placement in the Capitol of a statue honoring Haym Salomon and the erection of a national monument to Haym Salomon on Federal land in the District of Columbia.

Haym Salomon was an American patriot in the true sense of the word. He was born into a Jewish family in Poland and emigrated to America in search of the political and economic freedoms that have become the hallmark of our Nation. Upon arriving in

America, Salomon quickly joined the independence effort as a member of the "Sons of Liberty." He was instrumental in raising the money necessary to finance the American War of Independence by contributing both his personal resources and his skills as a financier and broker to the cause.

As a result of his commitment to the American Revolution, Haym Salomon was arrested, as a spy, by the British Government in 1776 and again in 1778. Although he was able to escape, Salomon died of an illness contracted during his imprisonment.

While Haym Salomon has long been honored as a financial statesman, we can recognize him today as representing not only himself but all American Jewish patriots who contributed their resources and committed themselves to the cause of freedom. To this end, my bill allows the placement of a statue in consultation with the Architect of the Capitol and a monument in conjunction with the National Commission on Fine Arts and the National Capitol Planning Commission.

Mr. President, it is important to note that the funds for both the statue and the monument will be raised privately and at no expense to the Federal Government. The "American Jewish Patriots and Friends of Haym Salomon" is a new organization which is organizing a nationwide drive to raise the funds for the statue and monument.

Mr. President, this legislation is a much deserved tribute to our Nation's greatest Jewish patriot from the Revolutionary War. I invite my colleagues to join in honoring Haym Salomon.

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

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

S. 232

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 "Haym Salomon Memorial Act of 1985".

SEC. 2. STATEMENT OF FINDINGS.

The Congress finds that—

(1) Haym Salomon was an American patriot of Polish and Jewish background and a member of the Sons of Liberty;

(2) Haym Salomon was a revolutionary patriot who was instrumental in raising the money needed to finance the American War of Independence;

(3) Haym Salomon contributed his own resources and skill as a financier and broker to the cause of liberty during the American War of Independence and the early years of the United States;

(4) after the American War of Independence was over, Haym Salomon died insolvent from an illness he contracted during the conflict while imprisoned by the British for his patriotic activities;

(5) Haym Salomon contributed much of his own resources to the United States, an amount which will never be precisely known due to the loss and destruction of records during the war of 1812;

(6) Haym Salomon has long been recognized as the symbol of American Jewish participation in, and contribution to, the American War of Independence;

(7) despite Haym Salomon's great and selfless service to the cause of liberty, no national monument or statue has ever been erected in his honor; and

(8) it is only fitting and proper to honor Haym Salomon through the placement of a statue of him in the Capitol Building or on the Capitol Grounds and the erection of a monument to him on Federal land within the District of Columbia.

SEC. 3. PLACEMENT OF STATUE.

(a) AUTHORITY TO PLACE STATUE AT CAPITOL.—The American Jewish Patriots and Friends of Haym Salomon may place in the Capitol Building or on the Capitol Grounds a suitably designed statue of Haym Salomon acquired by such organization. The Architect of the Capitol shall make any arrangements necessary for the placement of such statue and supervise such placement.

(b) APPROVAL OF SITE SELECTION.—Selection of a site for such statue shall be subject to the approval of the Architect of the Capitol.

SEC. 4. ERECTION OF MONUMENT.

(a) AUTHORITY TO ERECT MONUMENT.—The American Jewish Patriots and Friends of Haym Salomon may erect a monument to honor Haym Salomon on Federal land in the District of Columbia.

(b) APPROVAL OF SITE SELECTION, DESIGN, AND CONSTRUCTION PLANS.—Selection of a site for, design of, and plans for the construction of, such memorial shall be subject to the approval of the National Commission of Fine Arts and the National Capital Planning Commission.

SEC. 5. EFFECTIVE DATE.

This Act shall take effect on the date of the enactment of this Act.

By Mr. BOREN (for himself and Mr. BINGAMAN):

S. 233. A bill to amend the Internal Revenue Code of 1986 to encourage increased production of domestic crude oil, and for other purposes; to the Committee on Finance.

INTERNAL REVENUE CODE

● Mr. BOREN. Mr. President, during the 99th Congress I spoke many times, often at some length, about the developing problems in our domestic energy industries. In July 1985, I spoke about the problems we would face if the price of crude oil were to drop sharply. In fact I introduced legislation to establish an oil import fee to protect against those very problems. In July 1985, the price of oil was around $31 per barrel and we had over 2,000 rigs looking for oil and natural gas in the United States. As a nation in July 1985, we were importing approximately 24 percent of our energy needs from foreign sources, with only 45,000 barrels per day from Saudi Arabia.

Now, Mr. President, in January 1987, at the beginning of the 100th Congress, the very problems I spoke of have occurred. The United States is importing almost 40 percent of our energy needs from foreign sources, including over 685,000 barrels per day from Saudi Arabia—over a 1,500-percent increase. The price of crude oil fell to a low of $9.75 and is now struggling to maintain some stability in the midteens. We have seen unemployment jump into the double digits in Oklahoma, Texas, and Louisiana. These, however, are not the most important indicators. The most ominous figure I can imagine for the U.S. energy future is our domestic rig count. From a high of over 4,500 just a short 6 years ago, the U.S. rig count fell to an all time low of 663 on July 14, 1986. Today the rig count is barely over 950.

What then does the future hold? Our ability to produce over the next 3 or 4 years has already been determined. If we could barely replace reserves with 4,500 rigs operating, it should be obvious what will happen to our production with only 950 rigs actively looking for oil and natural gas. Our ability to produce beyond the short term must be questioned. Four years ago there were over 7,000 students pursuing degrees in geology, petroleum engineering, and geophysics. Last fall that number had dropped to 3,000. Where will the next generation of technicians come from? Are we even willing to spend the money necessary to develop the next generation of technology? If we are not careful, as a nation we will soon find ourselves in the very same trap that was laid for us during the Arab oil embargo in 1973.

And so, Mr. President where does that leave us? In my opinion we have but one option for the short term. We must preserve existing domestic production. I am not proposing today that we establish new incentives to drill for more oil. Rather, I am only suggesting ways that might keep the stripper well in Kansas, the heavy oil well in California, or even the natural gas well in Michigan operational and flowing. We must not allow our existing production to suffer at the hands of a foreign leader who, I might add, does not play by the same economic rules as an independent producer in Seminole County, OK.

My specific proposals include: First, an emergency energy package of tax items designed to encourage the continued production of existing domestic wells; second, the repeal of the windfall profit tax; and third, the imposition of an excise tax on foreign oil priced under $18 per barrel.

I have asked my distinguished colleague from Texas, the chairman of the Finance Committee, Senator BENTSEN to allow my subcommittee to hold hearings on these important issues at the earliest possible date. I remain hopeful that with prompt action by the 100th Congress we can begin to mitigate some of the damage visited upon our domestic energy industry over the past 18 months.●

● Mr. BINGAMAN. Mr. President, I am pleased today to join my distinguished colleague from Oklahoma, Senator BOREN, in introducing a bill to assist the domestic oil and gas industry.

CURRENT SITUATION

The Nation and our domestic oil and gas industry face an uncertain future—uncertain because of lower prices, over-supply, and increased competition from lower priced imports of crude and petroleum products. The industry has been forced to cut back its activity—signaling a loss of employment and a weakening of the industry's infrastructure. Capital expenditure programs have dropped by 50 percent since 1981. Drilling activity reached a 46-year low in August. Deputy Secretary of Energy William Martin testified before the Senate Energy and Natural Resources Committee in September that of the 8 to 10 million barrels per day of surplus capacity available in the free world, only 5 percent comes from non-OPEC nations. More disturbing was a statement by former National Security Director John Poindexter that by the early 1990's we are likely to see imports rise to over 50 percent of domestic consumption.

THE FACTS

Oil and natural gas make up two-thirds of the energy used in the United States, and efforts to develop alternative energy sources have fallen short of expectations. This country uses more oil and gas than any other nation. In 12 of the past 15 years, Americans have used up their proved oil and natural gas reserves faster than new supplies were discovered. That resulted in a new loss of $10.6 billion barrels of oil and more than 97 trillion cubic feet of gas—the equivalent of wiping out all of the current oil reserves in Texas and Louisiana and all of the current gas reserves in Louisiana, Texas, and California. At 1985 rates of production, our country's proved oil reserves will be exhausted in 10 years and U.S. natural gas reserves will be gone in a dozen years. This means that most of the oil and gas we will need in the late 1990's and beyond still must be found and developed.

As our country's proved reserves dwindle, oil production is decreasing, oil consumption is increasing, and U.S. dependence on foreign oil has risen to about 40 percent of deliveries in recent months. Oil imports in September were about 2.1 million barrels a day higher than a year earlier, with the largest part of the increase coming from OPEC sources.

NEW MEXICO

In my home State of New Mexico, the picture is very bleak. New Mexico is the fifth largest oil and gas producing State in the Nation in terms of total quantity and has suffered from the decline of oil and gas prices. Oil prices have declined from $26 a barrel last January to $11 in July, with a gradual increase since then to $15. Natural gas prices fell from $2.47 a barrel in January to $1.64 in September with the current price at about $1. Revenues generated by the industry showed a 25-percent drop in 1986. The total value of New Mexico's oil and gas activity has dropped 46 percent in the past year. Employment by the industry dropped from a low of 13,200 in 1985 to 9,000 in October 1986. The number of drilling rigs are down to an average of 29 compared with 71 last year. And of the States' bankruptcies, estimated to be 2,500 for 1986, one-fourth occurred in those counties where most of the States' oil and gas is produced. Clearly, effective action is needed to correct the decline of the industry.

LEGISLATION

The legislation we introduce today will help restore life to this important domestic industry. Let me review the provisions of this legislation. The bill includes repeal of the transfer rule, repeal of the 50 percent of net income limitations, and a change in the rate of percentage depletion. It also calls for permits expensing of geological and geophysical costs, and calls for repeal of the IDC recapture rule. Each of these provisions will help restore some vitality to the struggling oil and gas industry.

REPEAL TRANSFER RULE

Current law provides that when an independent producer buys proven producing property from an integrated major, that property is not eligible for windfall profit tax exemption or percentage depletion. Repeal of the transfer rule would allow independents to benefit from percentage depletion and any WPT exemption that may exist. This would benefit both the integrated companies by encouraging them to sell uneconomic properties, rather than abandoning them, and provide additional incentives to independents to purchase and to continue to produce these properties.

REPEAL OF THE 50 PERCENT OF NET INCOME LIMITATION

Current law provides that the percentage depletion deduction is limited to not more than 50 percent of the net income of an eligible producing property. Repeal of this section would stimulate additional cash-flow to those producers who still have income-producing properties.

CHANGE THE RATE OF PERCENTAGE DEPLETION

Current law provides for a 15-percent rate for percentage depletion. Increasing the rate would serve to increase cash-flow for eligible independent producers, again assuming that the property is producing a net income. To spread the benefit of such a change, the definition of eligible producer should be expanded to include all producers and mineral owners of marginal properties—that is stripper and tertiary. This change would encourage the integrated producers to maintain their stripper production and not abandon those marginal wells.

PERMIT EXPENSING OF GEOLOGICAL AND GEOPHYSICAL COSTS

These costs of searching and testing for oil are capitalized under present law. However, they are ordinary and necessary costs of doing business, which arguably should be deducted when incurred. If these costs were deductible, the cost of exploration would be reduced and paperwork would be reduced.

REPEAL THE IDC RECAPTURE RULE

Under current law, the gain on the sale of a producing property is characterized as ordinary income to the extent of any intangible drilling cost previously taken. By repealing this provision, the basis used to calculate gain on a sale of property will not be reduced and consequently the gain will be smaller, as will taxes paid on that gain.

CONCLUSION

Our energy security depends on the revitalization of the domestic oil and gas industry. I ask my colleagues to consider this legislation carefully, to help this industry recover.●

By Mr. CRANSTON:

S. 234. A bill to increase the amount of capital available to financial institutions and other agricultural lenders for loans to farmers by providing a secondary market for farm mortgages through the establishment of a federally chartered corporation, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FARM MORTGAGE MARKETING CORPORATION ACT

Mr. CRANSTON. Mr. President, today I am reintroducing a bill to set up a secondary market for agriculture real estate loans. The bill embodies recommendations of the joint task force of the American Bankers Association and the Independent Bankers Association of America. A companion bill will be introduced by my distinguished colleague in the House, Congressman RICHARD LEHMAN.

The purpose of the legislation is the stabilization and enhancement of the flow of capital for long-term financing of agricultural real estate loans. This new corporation, as proposed in the bill, would be similar to other existing secondary market intermediaries such as the Federal Home Loan Mortgage Corporation [FHLMC], the Federal National Mortgage Association [FNMA], and the Student Loan Marketing Association [Sallie Mae]. All of these entities enhance access to credit by the pooling of loans from cash scarce areas of the country and selling

securities represented by the pools to cash surplus areas of the country. I believe this bill will help significantly in making more affordable long-term financing available to farmers.

Under the bill, secondary market entities will purchase mortgage loans from qualified agricultural lenders, repackage them as securities and sell them in the capital market to institutional investors such as pension funds, insurance companies and other large investors. The bulk of agriculture real estate loans are farmers guaranteed home loans. Today there is no liquidity in the agricultural loan market—when times get tough, bank lenders stop lending. This proposal could be used to shift the emphasis from costly direct lending by the Farmers Home Administration to lending through the guaranteed loan process via commercial banks. Many more commercial banks would become interested in long-term agricultural lending if they knew there was a viable secondary market for those loans. One of the biggest benefits of a secondary market for farm loans is liquidity for commercial banks that may want to make local loans but do not have adequate funding to hold on to the loans. A secondary market will benefit farmers by bringing new money into the agricultural land lending business, increasing competition and driving down interest rates. A number of entities, including insurance companies and commercial banks, have loanable funds available, but restrict their volume of farm mortgages to avoid tieing up large portions of their available loan funds for the 20 to 30 years it takes an individual farmer to pay off his mortgage. By being able to sell farm loans immediately into the secondary market, a farm bank can improve its capital, roll its funds over for new farm lending and increase fees from origination and servicing of the loans.

The secondary market is basically a private sector operation, but the Federal Government needs to be involved to structure its guarantee so such a market can work. My bill would provide $200 million in stock as seed capital to get the corporation started. The Treasury capital would be repaid by the mortgage sellers who would be required to buy equity in the corporation. Ultimately the debt would be retired and the corporation would be privately owned by its share holders. This bill embodies a very simple concept that has already proven successful in providing a stable source of capital to meet the needs of the Nation in areas of housing and education.

There are, of course, as with any new idea a great number of concerns which need to be addressed before a final bill is passed. I hope that the introduction of this proposal can be the focal point for more in-depth discussions on what further steps need to be taken to make this idea workable. I consider this bill a first step in that process. We have seen that the creation of a secondary market facility for mortgages has been the single most important development in expanding the flow of credit to the U.S. mortgage market. I think it is time to move forward and explore the suitability of the concept to the Farm Credit System. While the enactment of this proposal will not solve the existing problems in our Farm Credit System, I believe that its enactment will help us avoid, in the future, the credit crunch faced today by the farm segment of our economy.

I ask unanimous consent that the following be printed in the RECORD. The bill and section-by-section analysis and a statement by Robert Eberhardt, chairman of the California Bankers Association Agricultural Task Force.

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

S. 234

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 "Farm Mortgage Marketing Corporation Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that—

(1) economic stability would be enhanced and the availability of long-term credit for agricultural borrowers would be ensured if a mechanism to access secondary markets was created; and

(2) economic stability would be enhanced and the liquidity of investment funds available to lend to agricultural borrowers by financial institutions and other agricultural lenders would be ensured by providing a secondary market for the purchase of sound agricultural real estate mortgages.

(b) PURPOSE.—It is the purpose of this Act to establish a quasi-private corporation chartered by the Federal Government which will purchase and insure agricultural mortgages and sell pools of such agricultural mortgages in order to—

(1) facilitate the availability of long-term credit for agricultural borrowers;

(2) provide liquidity for financial institutions and other agricultural lenders; and

(3) provide an institutional mechanism to allow capital markets to invest in and provide funding for agricultural loans.

SEC. 3. ESTABLISHMENT OF CORPORATION.

There is hereby established a corporation to be known as the Farm Mortgage Marketing Corporation.

SEC. 4. BOARD OF DIRECTORS.

(a) NUMBER AND APPOINTMENT.—

(1) 5 MEMBERS.—The powers of the Corporation shall be vested in the Board of Directors which shall consist of 5 members.

(2) INTERIM APPOINTED BOARD.—Until a determination is made by the President under paragraph (3), the Board of Directors shall be composed of the following members:

(A) The Comptroller of the Currency.

(B) The Chairman of the Federal Deposit Insurance Corporation.

(C) 3 members appointed by the President, by and with the advice and consent of the Senate, from among individuals who have substantial experience and expertise in the fields of agricultural lending and mortgage investments and are representative of agricultural lending institutions.

(3) REGULAR ELECTED BOARD.—When in the judgment of the President, sufficient common stock of the Corporation has been sold to qualified agricultural lenders, the interim Board shall turn over the affairs of the Corporation to regular Board members elected from holders of common stock.

(b) TERMS.—

(1) APPOINTED MEMBERS.—Directors appointed by the President shall serve at the pleasure of the President until their successors have been elected pursuant to subsection (a)(3).

(2) ELECTED MEMBERS.—Directors shall be elected for a term ending on the date of the next annual meeting of the common stockholders of the Corporation.

(3) VACANCY.—

(A) ELECTED MEMBER.—Any elective seat on the Board shall be filled by the Board, but only for the unexpired portion of the term.

(B) APPOINTED MEMBER.—Any appointive seat which becomes vacant shall be filled by the President in the manner provided in subsection (a)(2).

(c) CHAIRPERSON.—The Chairperson of the Board shall be designated by and from among the members of the Board.

(d) MEETINGS.—The Board shall meet semiannually at the call of its Chairperson to determine the general policies which shall govern the operations of the Corporation. A majority of members of the Board shall constitute a quorum.

(e) EMPLOYMENT OF STAFF.—

(1) APPOINTMENT.—The Board may appoint and fix the pay of such personnel as the Board considers appropriate.

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Board may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the maximum annual rate of basic pay in effect for the Senior Executive Service pursuant to section 5382 of such title.

SEC. 5. PURCHASE AND SALE OF MORTGAGES.

(a) IN GENERAL.—

(1) AUTHORITY TO PURCHASE.—Except as provided in subsection (c), the Corporation may purchase, and make commitments to purchase, farm mortgage loans from any qualified agricultural lender.

(2) AUTHORITY TO SELL.—The Corporation may sell or otherwise dispose of, any farm mortgage or interest in a mortgage purchased under paragraph (1).

(3) CERTIFICATION OF APPLICATIONS.—The Corporation shall receive applications for the certification of qualified agricultural lenders for the purpose of this Act and establish criteria for determining the eligibility of an agricultural lender for certification.

(b) AGREEMENTS FOR SERVICING MORTGAGES.—The Corporation may enter into agreements with the seller of any farm mortgage which the Corporation purchases, or with any qualified agricultural lender, to further provide for the servicing of such mortgage.

(c) LIMITATIONS.—No farm mortgage may be purchased by the Corporation under this section unless—

(1) the seller of the mortgage agrees—

(A) to retain a participation of not less than 10 percent in the mortgage; or

(B) to repurchase or replace the mortgage upon demand of the Corporation during such period and under such circumstances as the Association may require when the borrower is in default with respect to such mortgage only if there are no reserves established to cover losses on such mortgages.

(2) at the time of purchase—

(A) the outstanding principal balance of the mortgage is less than 80 percent of the value of the property securing the mortgage; or

(B) the portion of the unpaid balance of the mortgage is in excess of 80 percent of the value securing the mortgage is guaranteed or insured by a qualified insurer, as determined by the Association.

(d) MORTGAGE-BACKED SECURITIES.—

(1) ISSUANCE AUTHORIZED.—To provide a greater degree of liquidity to the farm mortgage investment market and as an additional means of financing the operations of the Corporation, the Corporation may issue and sell securities which provide for the payment of principal and interest in relation to payments of principal and interest on farm mortgages purchased and held by the Corporation under this section.

(2) TERMS AND CONDITIONS.—Securities issued under this subsection shall have such term to maturity and bear such rate of interest as the Corporation may prescribe with the approval of the Secretary of the Treasury.

(3) PRIVATE ISSUANCE OF PAYMENTS.—The Corporation shall issue or purchase from private sources commitments to insure the timely payment of principal and interest to purchasers of the securities backed by farm mortgages held by the Corporation.

(4) NOT EXEMPT SECURITIES.—No security issued by the Corporation under this subsection shall be—

(A) an exempted security under section 3 of the Securities Act of 1933; or

(B) an exempted security within the meaning given to such terms of section 3(a)(12) of the Securities Exchange Act of 1934.

(5) MINIMUM AMOUNT ESTABLISHED FOR FARM MORTGAGES BACKING SECURITIES.—The Corporation shall at all times hold such number of farm mortgages as may be necessary to enable the Corporation to make timely principal and interest payments on securities issued under this subsection from the principal and interest payments received by the Association with respect to such mortgages.

(6) NOTICE THAT SECURITIES ARE NOT FEDERALLY GUARANTEED.—The Corporation shall insert such language in each security issued under this subsection as the Corporation determines to be appropriate to clearly indicate that—

(A) the payment of principal and interest with respect to such security is not guaranteed by the United States; and

(B) the security does not constitute a debt or obligation of the United States or any agency or instrumentality of the United States other than the Association; and

(C) the securities issued under this section shall be deemed non-bank eligible for the purposes of underwriting, selling and distribution.

(7) REPURCHASE AUTHORIZED.—The Corporation may repurchase in the open market any security issued under this subsection at any time and at any price.

(e) CLASSIFICATION OF SELLERS FOR CERTAIN PURPOSES.—

(1) CLASSIFICATION AUTHORIZED.—The Corporation may establish a system for classifying sellers of farm mortgages, or qualified agricultural lenders which services such mortgages, according to type, size, location, assets, or on such other basis the Corporation may consider appropriate.

(2) PURPOSES OF CLASSIFICATION.—The Corporation may take any classification system established under paragraph (1) into account and may distinguish between classes established under such system in prescribing regulations and imposing charges or fees.

SEC. 6. CAPITALIZATION.

(a) INITIAL CAPITALIZATION; GENERAL PROVISIONS.—

(1) INITIAL CAPITALIZATION.—The Corporation shall have capital stock of $200,000,000 subscribed by the Secretary of the Treasury from funds appropriated for such purchase.

(2) SHAREHOLDER VOTING RIGHTS.—Owners of common stock shall be vested with all voting rights, each share being entitled to one vote with rights of cumulative voting at all elections of directors.

(3) UNRESTRICTED TRANSFERABILITY.—The free transferability of the common stock at all times to any person shall not be restricted except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

(b) CONTRIBUTIONS TO CAPITAL; FEES.—

(1) REQUIRED CONTRIBUTIONS ALLOWED.—The Corporation may accumulate funds for its capital surplus account by requiring each mortgage seller to make nonrefundable capital contributions equal to not more than 2 percent of the unpaid principal amounts or mortgages purchased by the Corporation from such seller.

(2) FEES.—The Corporation may impose charges or fees in such amounts as may be necessary to meet all costs and expenses incurred in connection with the administration of this Act.

(c) MANAGEMENT OF CAPITAL AND EARNINGS.—

(1) TRANSFER TO GENERAL SURPLUS ACCOUNT.—All earnings from the operations of the Corporation shall be transferred annually to its general surplus account.

(2) TRANSFER TO RESERVES.—At any time, funds of the general surplus account may, at the discretion of the Board, be transferred to reserves.

(3) DIVIDENDS.—Any dividends paid by the Corporation on stock issued under this section shall be charged against the general surplus account.

(d) STOCK FOR CONTRIBUTIONS TO CAPITAL.—

(1) CONTRIBUTIONS BY MORTGAGE SELLERS.—The Corporation shall issue, from time to time to each mortgage seller, its common stock evidencing any capital contributions made by such seller pursuant to subsection (b).

(2) OTHER CONTRIBUTIONS.—In addition to the shares of common stock issued under paragraph (1), the Corporation may issue additional shares of common stock in return for any other contributions to capital or capital and surplus.

(e) RETIREMENT OF STOCK.—The Corporation may at any time retire any stock of the Corporation which was purchased by the Secretary of the Treasury.

SEC. 7. POWERS OF THE CORPORATION.

(a) IN GENERAL.—The Corporation shall have the following powers:

(1) To adopt, alter, and use a corporate seal.

(2) To have succession until dissolved by an Act of Congress.

(3) To prescribe such regulations as may be necessary to carry out the provisions of this Act.

(4) To make and perform contracts, agreements, and commitments.

(5) To borrow, give security, pay interest or dividends, and issue notes, debentures, bonds, preferred stock, or other obligations or securities under terms and conditions which the Corporation may prescribe.

(6) To settle, adjust, compromise, and release any claim, demand, or right of, by, or against the Corporation, whether in whole or in part and with or without consideration or benefit to the Corporation.

(7) To sue and be sued in its corporate capacity, against to prosecute or defend any action brought by or against the Corporation in any State or Federal court of competent jurisdiction.

(8) To acquire, hold, and dispose of any property.

(9) To determine the Corporation's expenditures and the manner in which such expenditures shall be incurred and paid.

(10) To exercise such incidental powers which are not inconsistent with the provisions of this Act and are necessary to carry out the purposes of this Act.

SEC. 8. DEFINITIONS.

For purposes of this Act—

(1) CORPORATION.—The term "Corporation" means the Farm Mortgage Marketing Corporation established under section 3.

(2) BOARD.—The term "Board" means the Board of Directors of the Corporation.

(3) FARM MORTGAGE.—The term "farm mortgage" means any loan to an agricultural producer which—

(A) is secured by fee-simple or leasehold mortgage with status as a first lien on agricultural real estate located in the United States;

(B) is originated after the date of enactment of this Act; and

(C) is an obligation of—

(i) an individual who is a citizen of the United States; or

(ii) any person other than an individual a majority interest in which is held by individuals who are citizens of the United States,

whose training or farming experience is sufficient, under criteria established by the Corporation, to assure a reasonable likelihood that such loan will be repaid according to its terms.

(4) AGRICULTURAL REAL ESTATE.—The term "agricultural real estate" means a parcel or parcels of land used for the production of one or more agricultural commodities or products and consisting of a minimum acreage or producing minimum annual receipts as determined by the Corporation;

(5) QUALIFIED AGRICULTURAL LENDER.—The term "qualified agricultural lender" means any bank, business and industrial development company, savings and loan institution, commercial finance company, trust company, credit union, insurance company, or other person approved by the Corporation.

(6) SECURITY.—The term "security" has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934.

SEC. 9. DESIGNATION OF ASSOCIATION AS MIXED-OWNERSHIP GOVERNMENT CORPORATION.

Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) The Farm Mortgage Marketing Corporation."

SEC. 10. AUTHORIZATION.

There is authorized to be appropriated to the Secretary of the Treasury for any fiscal year beginning after September 30, 1986, not to exceed $200,000,000 for the purchase of stock of the Corporation to carry out the provisions of this Act.

"FARM MORTGAGE MARKETING CORPORATION ACT OF 1987"

It is the intent of this Act to establish a secondary market entity similar to those which already serve the needs of the nation's housing and education sectors. This secondary market mechanism will serve as a means of enhancing and stabilizing the flow of capital for long-term financing of agricultural real estate credit needs by serving as a conduit between primary commercial agricultural lenders and the capital markets.

SECTION BY SECTION SUMMARY

SECTION 1. TITLE.—"Farm Mortgage Marketing Corporation Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.—The purpose of this Act is to establish a quasi-private organization chartered by the Federal Government to purchase and insure agricultural mortgages from commercial agricultural lenders and to sell pools of agricultural mortgages to the capital market. Such a secondary market entity will facilitate the availability of long-term credit for agricultural borrowers and provide liquidity for financial institutions and other agricultural lenders.

SEC. 3. ESTABLISHMENT OF CORPORATION.—There is hereby established a corporation to be known as the Farm Mortgage Marketing Corporation.

SEC. 4. BOARD OF DIRECTORS.—The Act establishes a five-member Board of Directors. An initial interim Board will be appointed by the President, with the advice and consent of the Senate, and be comprised of the following: the Comptroller of the Currency, the Chairman of the Federal Deposit Insurance Corporation (FDIC), and three appointees with expertise and training in agricultural lending and mortgage investments. When sufficient common stock of the Corporation has been sold to qualified lenders, the interim Board shall turn over the affairs of the Corporation to a regular Board elected from among the holders of the stock.

SEC. 5. PURCHASE AND SALE OF MORTAGES.—The Corporation, with certain limitations, may purchase farm mortgages from any qualified agricultural lender and dispose of those mortgages through the issuing of securities.

The Corporation may purchase farm mortgages if the mortgage seller agrees to retain a 10 percent participation in the mortgage, or to repurchase or replace the mortgage upon demand by the Corporation if the borrower defaults on the loan. In addition, at the time of the purchase of the mortgage, the outstanding principal balance of the mortgage must be less than 80 percent of the value of the property securing the mortgage, or the portion of the unpaid balance of the mortgage in excess of 80 percent is guaranteed by or insured by a qualified insurer. No repurchase shall be required on defaulted loans if there are sufficient reserves established to cover such losses.

The Corporation shall issue securities which provide for the payment of principal and interest on farm mortgages purchased and held by Corporation.

SEC. 6. CAPITALIZATION.—The Corporation shall be initially capitalized by the purchase of $200,000,000 in stock by the U.S. Treasury. In addition the Corporation shall have the authority to require that each mortgage seller make a nonrefundable capital contribution equal to not more than two percent of the unpaid principal amounts of the mortgages purchased from the seller, charge appropriate fees to meet all costs and expenses, and issue stock in return for any contribution to capital and capital surplus accounts.

The Corporation may at any time retire any stock of the Corporation which was purchased by the Treasury.

SEC. 7. POWERS OF THE CORPORATION.—The Corporation will have the authority to prescribe such regulations to carry out the provisions of the Act and meet the normal obligations of the Corporation.

SEC. 8. DEFINITIONS.—Defines the terms of the Act.

"Farm mortgage" is defined as any loan to an agricultural producer which is secured by a fee-simple or leasehold mortgage with status as a first lien on agricultural real estate originated after the date of enactment of this Act and which is an obligation of a person who is a citizen or business entity whose majority interest are citizens of the United States.

"Qualified agricultural lender" is defined as meaning any bank, business and industrial development company, savings and loan institution, commercial finance company, trust company, credit union, insurance company, or other person approved by the Corporation.

SEC. 9. Designation of Corporation as mixed-ownership Government Corporation.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.—$200,000,000 shall be appropriated beginning after September 30, 1987.

STATEMENT OF ROBERT M. EVERHARDT

Mr. Chairman and members of the Subcommittee, the California Bankers Association welcomes this opportunity to join in a united front with other banking organizations in commenting upon the agricultural credit crisis. We are pleased to outline the concerns of the California banking industry regarding the credit crisis facing the farm community in California and to provide you and your colleagues with our views on action needed to assist the farm community in our state.

The California Bankers Association established a task force in late 1985 to address the agricultural credit crisis in California. The problems of agriculture in the Midwest had been well publicized. Less was known, however, about the financial condition of California agriculture. For this reason, the CBA sponsored a survey of the agricultural portfolio statistics of the commercial banks in our state. Attached to this testimony are the results of our survey, which was released in April of this year. In summary, the results of the survey show that the percentage of loans made to California farmers which are under stress is similar to the stress on loans made to farmers in other parts of the country. The results of this survey reaffirm the need to address issues which we see as barriers to commercial bank lending to agriculture in California. Since the recommendations attached to our survey refer only to general criteria which should be followed in agricultural policy, I would like to outline several specific problems which should be addressed by Congress.

First, I would like to dispel a myth about the corporate farm in California. Of the corporate farms in California, 97 percent are family owned and operated. Many families have lived on their land for several generations, but since they are "corporations", Washington tends to view them as undeserving of the benefits of federal agricultural policy. Another myth that is prevalent is that the small farmer has it tough and the large or corporate farmer has it easy. If you are losing money on every bale of cotton you sell, you cannot make it up in volume! Because of this myth about the family farmer, federal programs such as Farmers Home Administration loan programs have not been as helpful to California borrowers as they could be because the program restrictions fail to recognize the realities of California agriculture. The definition of family farmers must be changed in order to allow farmers in California to have access to FmHA loan programs. The current restrictions could, for example, be replaced with programs which allow for size limitations based on census data for geographical areas or for particular crops. Such programs, which could be patterned after programs used by HUD for FHA loan guarantees and by SBA for small business loans, would appear to make more sense than the current restrictions.

Another misnomer I would like to dispel is that a bank must be an Ag bank to be heavily involved in agricultural lending. My own bank, The Bank of Stockton, which is the largest "independent bank" ag lender in California, is not a Ag bank by OCC, FDIC or Federal Reserve Board definition. Our bank has 11.5 percent of our $500 million loan portfolio in agriculture, but we do not meet the Ag bank standard. Of the 161 California banks who were lenders to agriculture in 1985, only three are classified as Ag banks and their loans accounted for less than $30 million of the nearly $5 billion in ag lending in California last year. Despite this, we still see efforts to restrict access to federal credit programs to farmers who borrow from Ag banks. For example, the banking regulators' recent decisions to establish a capital forebearance program for Ag and Energy banks discriminates against California farmers and their lenders. At this time, no California banks—to my knowledge—have taken advantage of the capital forebearance program and, in view of the restrictions, it is doubtful that any banks here in our state will.

Congress must play a role in encouraging all lenders to continue lending to agriculture. Unfortunately, Congress is in the process of taking a step in the other direction at this time. Legislation to establish a special category of bankruptcy for family farmers has passed both the House and Senate. H.R. 2211 and S. 2249, the Family Farmer Bankruptcy Act will: (1) increase the cost of credit; (2) be hailed as a solution to the ag credit crisis and will give false hope to many farmers; and (3) ignores the fact that if reorganization is possible, it is usually achieved through workouts prior to the filing of bankruptcy.

Congress can take a giant step forward to encourage commercial banks, insurance companies and others to continue lending to agriculture. Through an institutional sec-

ondary market for farm real estate loans, farmers will have other options than the Federal Land Bank. During recent years, the Federal Land Bank has dominated the market for mortgage loans because it has access to the secondary market through bond sales. If commercial banks and other lenders are able to compete in the farm mortgage market through a government sponsored market, all entities will be better served. We believe that the limited federal dollars needed to establish a secondary market, which will have the confidence of investors, will be wisely spent. Such an investment now could significantly lower costs which the federal government might incur if commercial banks and other lenders fail to offer farmers options to the current system of financing farmland. Our Association considers a secondary market for farm real estate loans a high priority. We applaud Congressman Lehman's initiative in this regard and look forward to working with him and the Congress in the establishment of a secondary market.

In conclusion, we would like to thank the Subcommittee for holding hearings on this important issue. Our Association is pleased to join with the American Bankers Association and the Bank of America in presenting our views to you.

By Mr. WILSON (for himself and Mr. CRANSTON):

S. 235. A bill to amend the Clean Air Act to provide that the Administrator of the Environmental Protection Agency shall have authority to regulate air pollution on and over the Outer Continental Shelf; to the Committee on Environment and Public Works.

CLEAN AIR ACT

● Mr. WILSON. Mr. President, I am joined today by my colleague from California in introducing legislation designed to strengthen the mandate to the Environmental Protection Agency to ensure that the air we breathe is clean air.

EPA's ability to meet Clean Air Act standards has been thwarted for the last 9 years because of its lack of jurisdiction over air emissions emanating from oil and gas production operations on the U.S. Outer Continental Shelf—or what is known as the OCS. Ever since 1978, these emissions have been loosely regulated by the Department of the Interior.

What this bill does is simple. It amends the Clean Air Act to transfer jurisdiction of OCS air quality from the Department of the Interior to the EPA where it belongs. This transfer of authority makes good sense for three important reasons.

First, this bill removes the inherent conflict of interest that the Interior Department has in being charged with exploiting our OCS oil and gas resources on the one hand and protecting our environment on the other. This existing situation is analogous to asking the automobile industry to engage in a program of self-regulation to reduce carbon monoxide emissions. EPA has justifiably been given the responsibility to regulate automobile emissions, and so should it have the responsibility to regulate oil production emissions on the Federal OCS.

Second, and as a corollary to the first reason for this bill, the Interior Department is not set up to give OCS air quality issues the serious attention that they deserve. Having dealt extensively with the Interior Department for the last 4 years on the general subject of OCS oil and gas development, I can assure my colleagues that the Department's expertise is heavily weighted toward geologists, engineers, and planners.

EPA, on the other hand, has a single and sole mission—the protection of our environment. It is staffed with some of the country's finest air quality control scientists and has been working in this field for over 15 years now.

Third, and most important, the existing regulatory framework is not adequately protecting air quality. Under the Outer Continental Shelf Lands Act Amendments of 1978 [OCSLA], the Interior Department is required to regulate offshore oil and gas industry emissions only to the extent that they "significantly affect" onshore air quality. The effect of this mandate is to provide a double standard for the oil industry. Instead of subjecting oil and gas operations in Federal OCS waters to the same stringent air quality control requirements as those under which onshore industry labors, the offshore industry is allowed to operate under a weaker set of emission standards.

A perfect example of this double standard is a pending case offshore Santa Barbara where Exxon seeks to expand its offshore operations by constructing several new platforms to supplement its existing production. Initially, Exxon sought to expand its operations in such a way as to pipe its offshore oil ashore for initial processing and preparation for transport. When confronted, however, with strict air quality control requirements proposed by Santa Barbara County for its offshore platforms, Exxon decided to alter its expansion plans and now proposes to expand its offshore operations completely offshore in Federal waters where the county has no air quality jurisdiction.

Exxon openly admits that its reason for altering its expansion plans is to avoid the more stringent onshore air quality controls that Santa Barbara is required to propose in its duty to meet Clean Air Act requirements. By keeping its production operations completely offshore, Exxon need only meet the less burdensome and less expensive Interior Department air standards.

It has never been clear to me why the offshore industry should be effectively exempted from making the effort required to achieve the attainment of clean air onshore. In California, the problem of dirty air is especially acute. The prevailing onshore winds bring OCS emissions ashore and aggravate an already bad air quality situation where the entire southern coast of California is in nonattainment under the Clean Air Act for ozone and other ambient air quality standards.

A recent EPA study has concluded that existing offshore operations in the Santa Barbara Channel appears to account for approximately 10 percent of the ozone formation in the area. This particular study was conducted on one of the few days that Santa Barbara County was in attainment for the ozone standard, and additional work is being completed to determine the offshore industry's contribution to ozone formation on nonattainment days.

A 10 percent contribution to a bad air quality situation is by no means insignificant. If the offshore industry were subject to the same air quality standards as the onshore industry, we could expect better air quality.

But as it stands now, the offshore industry is free from the more stringent onshore air quality standards, and perhaps more importantly, is free from the sanctions that apply to onshore sources that are located in nonattainment areas. Existing law may require a construction ban for large areas of southern California by the end of this year for failure to meet ambient air quality standards, yet the offshore industry won't be covered by these sanctions even though oil and gas platform operations contribute to the degradation of the southern California air.

In short, when new onshore construction may effectively be shut down in furtherance of Clean Air Act standards, the offshore industry will still be allowed to construct new production platforms and thereby aggravate the air pollution problem that we are trying to clean up.

What this bill does is extend the Clean Air Act out over the OCS and subjects air emissions of the Federal OCS to the same kind of regulation that onshore emissions are subjected to under the Clean Air Act. It strikes the ambiguous "significantly affect" language from the OCSLA and squarely places the administrative responsibility to assure clean air in the hands of the EPA rather than splitting that responsibility with the Interior Department. This legislation recognizes that air basins know no boundaries, and that it makes sense to incorporate meteorological and topographical considerations into an integrated plan to achieve clean air rather than pretending that some kind of invisible wall separates Federal OCS air from onshore air quality.

As Congress turns to the reauthorization of the Clean Air Act, I think this legislation especially timely and hope that I will be able to look for-

ward to early hearings before the Environment Committee.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 235

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) title III of the Clean Air Act is amended by adding at the end thereof the following new section:

"OUTER CONTINENTAL SHELF

"SEC. 327. (a) For purposes of protection of ambient air quality of any state, the Administrator by regulation shall provide that any source of an air pollutant or pollutants resulting from an activity regulated under authority of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C.A. 1334 et seq.) being performed on the Outer Continental Shelf (OCS), in the waters above the OCS, or on the waters above the OCS meets all the requirements of the Clean Air Act that would be applicable to such source if it was carried out in the State or local jurisdiction adjacent to such source. For purposes of this subsection, the OCS shall have the same meaning as that given at section 201(a) of the OCSLA.

"(b) For purposes of subsection (a), the adjacent State or adjacent local jurisdiction is that State or local jurisdiction that is closest to the OCS source. The Administrator shall decide which State or local jurisdiction shall be considered the adjacent State or local jurisdiction.

"(c) In carrying out the provisions of subsection (a), the Administrator shall ensure that such sources do not prevent or interfere with the attainment or maintenance of any ambient air quality standards established by any State or local government to the extent that such standards are contained in its State implementation plan.

"(d) In carrying out the responsibilities under subsection (a), the Administrator shall require to the extent practicable and feasible comparable regulation of OCS and similar non-OCS sources."

(b) Section 204(a)(8) of the Outer Continental Shelf Lands Act is amended by inserting ", until such time as the Administrator of the Environmental Protection Agency has promulgated regulations under section 327 of the Clean Air Act" immediately after "of the State".

By Mr. DOLE (for himself, Mr. COCHRAN, Mr. HELMS, Mr. BOSCHWITZ, Mr. LUGAR, Mr. WILSON, and Mr. MCCONNELL):

S. 236. A bill to amend the National School Lunch Act to improve the administration for the commodity distribution program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

COMMODITY DISTRIBUTION PROGRAM REFORM ACT

Mr. DOLE. Mr. President, today, along with several of my colleagues on the Agricultural Committee, I am introducing legislation to provide the authority to improve the current commodity distribution system, as it relates to the school lunch and other child nutrition programs. I am pleased to have Senators COCHRAN, BOSCHWITZ, HELMS, and LUGAR join me as cosponsors.

BACKGROUND

For some time now, this commodity distribution system has been criticized as being unwieldy, inefficient, and too cumbersome to administer. For many months, various concerned groups, including the National School Food Service Association [NSFSA], and many traditional commodity groups, have met with officials from the U.S. Department of Agriculture in an attempt to come up with recommendations for improvement. These groups are to be commended for their constructive approach to the problems involved.

CRITICISM OF EXISTING PROGRAM

Opponents of the Commodity Distribution Program claim that USDA commodities are inconsistent in quality, not packaged in useable sizes and forms, and are delivered on a schedule that is inconsistent with the needs of recipient agencies. These elements make the program administratively inefficient. When commodities are distributed in damaged or poor condition, they are not easily replaced. Further, these commodities are often not consistent with the dietary guidelines for Americans, published by USDA.

NEED FOR CLARIFICATION OF STATUTORY AUTHORITY

Mr. President, one of the observations that has emerged as a result of these meetings with the Department of Agriculture is that the commodity distribution program does not have the statutory base that applies to the other food and nutrition programs. Without the necessary statutory authority, it would be difficult for USDA to implement many of the recommendations for improvement that have been made. In short, the Department needs additional authority to correct the deficiencies that have been identified in the current system.

The distribution of various foods and commodities by the Secretary of Agriculture is authorized by a variety of laws, including section 32 of the Agricultural Adjustment Act, section 416 of the Agricultural Act of 1949, section 4(a) of the Agriculture and Consumer Protection Act of 1973, sections 6 and 17(b) of the National School Lunch Act, section 311 of the Older Americans Act of 1965, and section 409 of the Disaster Relief Act of 1965.

This legislation will provide the language to assure proper administration of the program, and clarify the USDA's authority to make changes that will improve the distribution of commodities to nutrition programs utilizing these commodities. The Senator from Kansas is pleased to introduce this bill, because it is something that the administration believes will be helpful in its efforts to address the existing problems. I ask that a copy of a letter from Agriculture Secretary Richard Lyng be included in the RECORD at this point.

CONCLUDING REMARKS

Mr. President, it is my hope that this legislation, which is not the least bit controversial, will be given speedy consideration by the Agriculture Committee and its new leadership. As we move into the 100th Congress, I look forward to working with the new committee chairman, Senator LEAHY. When the Senator from Kansas was chairman of the Nutrition Subcommittee during a time when tough budget decisions needed to be made in 1981 and 1982, I was pleased to have the cooperation and support of the Senator from Vermont.

There are some tough issues to be addressed with regard to many of the programs under the Agriculture Committee's jurisdiction. Solutions will require a strong bipartisan spirit of cooperation to do what needs to be done to assist the Nation's farmers. I understand that there is bipartisan support for the goals of this bill, and expect that the committee will act expeditiously to correct the current flaws in the Commodity Distribution Program.

I ask unanimous consent that a copy of the bill's text be printed in the RECORD.

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

S. 236

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 "Commodity Distribution Program Reform Act of 1987".

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(A) FINDINGS.—Congress finds that—

(1) the Secretary of Agriculture currently distributes various foods and agricultural commodities to Federal, State, and private agencies for use in schools, child care institutions, nonprofit summer camps for children, charitable institutions, correctional institutions, nutrition programs for the elderly, other eligible recipient agencies, and for the assistance of needy persons;

(2) the distribution of various foods and commodities by the Secretary is authorized by a variety of laws, including section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes" (7 U.S.C. 612c), section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note), section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), sections 6 and 17(b) of the National School Lunch Act (42 U.S.C. 1755 and 1766(b)), section 311 of the Older Americans Act of 1965 (42 U.S.C. 5179), and section 409 of the Disaster Relief Act of 1965 (42 U.S.C. 3030a);

(3) the distribution of commodities authorized by such laws is an important part of the mission of the Secretary of Agriculture; and

(4) the distribution of commodities is inextricably linked to the agricultural support programs administered by the Secretary.

(b) DECLARATION OF POLICY.—It is the policy of Congress—

(1) to support the commodity distribution program as an effective means to remove surplus commodities;

(2) to provide nutritional high quality foods to recipient agencies for the assistance of needy persons;

(3) to improve the program in accordance with the findings of the "Evaluation of Alternatives to Commodity Donation in the National School Lunch Programs", and other recommendations for improvement in the administration of the commodity distribution program; and

(4) to adopt such policies as are necessary to make the commodity distribution program more efficient and responsive to the eligible recipient institutions and needy persons relying on the program.

SEC. 3. COMMODITY DISTRIBUTION PROGRAM REFORMS.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) (as amended by section 4403 of the Child Nutrition Amendments of 1986 (Public Law 99-661)) is amended by adding at the end thereof the following new subsections:

"(h)(1) The Secretary shall develop specifications for commodities distributed by the Department of Agriculture that will assure products of the quality, size, and form that is most useful to eligible recipient agencies, taking into account the duty of the Secretary to remove surplus stocks of the Commodity Credit Corporation.

"(2) The Secretary shall, to the extent practicable, make food items available in optional package sizes and forms.

"(3) The Secretary shall make available the product specifications to State agencies and eligible recipient agencies.

"(4) The Secretary shall develop and implement an ongoing field testing program for present and anticipated commodity purchases to test product acceptability with program participants. Test results shall be taken into consideration in deciding which commodities, and in what form those commodities, should be provided to recipient agencies.

"(i) Food items and commodities distributed by the Secretary shall, to the maximum extent practical, be consistent with the dietary guidelines published by the Secretary of Agriculture and the Secretary of Health and Human Services.

"(j)(1) Commodities distributed to eligible recipient agencies that are not found to be in good condition shall be replaced. On receiving a commodity that is not in good condition, a recipient agency shall expeditiously notify the State agency of such condition. The State agency shall take all necessary steps to ensure that such commodity is expeditiously replaced.

"(2) The Secretary shall establish procedures governing the handling of commodity items that are not in good condition when received by recipient agencies.

"(3) The Secretary shall establish a system to monitor the age and condition of commodities that are stored by the Secretary, to assure acceptable quality.

"(k)(1) The Secretary shall establish schedules for the distribution of commodities and products consistent with the needs of eligible recipient agencies, taking into account the duty of the Secretary to remove surplus stocks of the Commodity Credit Corporation.

"(2) The Secretary shall monitor the delivery systems used by State agencies and require State agencies to implement an effective delivery system for the intrastate delivery of donated commodities and products. The Secretary shall establish a value of donated commodities and products to be used by State agencies in the allocation of charging of commodities against entitlements.

"(l) The Secretary shall distribute to all recipient agencies suggested recipes for the use of donated commodities and products. Such recipe cards shall be updated on a regular basis to take into consideration changes in the dietary guidelines and the commodities that are distributed.

"(m) The Secretary shall issue such regulations as are necessary to carry out this section, including regulations concerning—

"(1) approval of reasonable intrastate fees that are charged local recipient agencies;

"(2) performance standards;

"(3) procedures for commodity allocations;

"(4) delivery schedules; and

"(5) procedures for local recipient agencies to return commodities delivered not in conformity with product specifications of the Secretary.

"(n) The Secretary shall take such actions as are necessary to assure that regional offices of the Department of Agriculture interpret policies and regulations uniformly across the United States.".

SEC. 4. EFFECTIVE DATE.

This Act, and the amendment made by this Act, shall become effective July 1, 1987.

By Mr. THURMOND (for himself, Mr. METZENBAUM, and Mr. SPECTER):

S. 237. A bill to amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the U.S. Government from attempting to influence the U.S. Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes; to the Committee on the Judiciary.

INTEGRITY IN POST EMPLOYMENT ACT

● Mr. THURMOND. Mr. President, Today, I am introducing tough, forceful legislation that will restrict post employment activities by certain former Federal officials, applying limitations to lobbying or communications on behalf of paying clients. This legislation substantially strengthens the current law on post-employment activity by former Federal officials. The bill provides a uniform, straightforward, and enforceable way to prevent those who are employed by the Federal Government from leaving public service and marketing their access and influence for financial gain. In addition, the legislation prevents Federal employees from vending sensitive information vital to national interests to foreign interests for profit.

Clear threats arise out of the abusive use of access and influence and the vending of sensitive information: First, damage to the integrity of government, as undue and improper influence is brought to bear on decisionmaking processes; second, erosion of public confidence in the operation of the Government, as the American people sense former employees are exerting, or appear to be exerting, improper influence on current Government decisions; and third, jeopardy to the national interests, as some former employees advise foreign clients based on sensitive information gained while in positions of trust with the Federal Government.

This legislation was originally introduced in the 99th Congress on April 17, 1986, and referred to the Judiciary Committee. Senator HOWARD M. METZENBAUM and Senator PAUL SIMON immediately joined in this effort. A substitute amendment was proposed by Senator METZENBAUM, Senator SIMON, and me. When this bill came before the full Judiciary Committee, at that time, members of the committee voiced their concerns about the scope of the bill. As chairman of the Judiciary Committee, I appointed an ad hoc subcommittee to further consider this legislation and to submit a report to me. The subcommittee was composed of Senator ORRIN HATCH as chairman, Senator CHARLES MCC. MATHIAS, Senator PAUL LAXALT, Senator JOSEPH BIDEN, Senator METZENBAUM, and Senator SIMON. On June 26, 1986, the subcommittee's recommendations were offered as a substitute amendment by Senator HATCH during an executive session of the Committee on the Judiciary. The ad hoc subcommittee's substitute amendment was adopted by a voice vote of the full Judiciary Committee, with only one member asking to be recorded in opposition to the bill. This substitute amendment is the legislation I am reintroducing today.

Under the compromise amendment adopted by the committee, the bill would:

Establish a 3-year ban on the Government's highest ranking officials—including Cabinet members and most of their principal deputies, Members of Congress, the top 25 White House aides, and sitting Federal judges and justices—from lobbying or working for a foreign entity after they leave Government service.

Provide a 2-year moratorium on all Government employees with a Civil Service rating of GS-16 or greater and commissioned officers of a uniform service assigned to a pay grade of O-7 or above, from lobbying their former agency on behalf of a foreign entity.

Create a two-tiered prohibition on domestic lobbying by former Government employees. Under this provision, those designated high-ranking officials prohibited from employment with foreign entities, which includes Cabinet members and most of their principal deputies, Members of Congress, the top 25 White House aides, and sitting Federal judges and justices, could not lobby any branch of the Federal Government for 18 months after leaving office.

Individuals holding jobs with a civil service rating of GS-16 and above or commissioned officers of a uniform service assigned to a pay grade of O-7 or above, could not lobby their former agency or department for 1 year.

In addition, this legislation maintains the lifetime ban in current law that prohibits all executive branch employees from lobbying on any issue in which they had a personal and substantial involvement while in Government service.

Under the compromise bill, foreign entities are defined as foreign governments, foreign political parties, or organizations substantially controlled by either. Also, exemptions are included to allow employment and lobbying by former Government officials for foreign governments for certain charitable, scholastic, or humanitarian purposes.

Maximum criminal penalties of $250,000 in fines and 5-year prison terms, or both, are included in the measure, as well as a provision mandating that anyone convicted of violating the foreign entities provision will be required to forfeit all proceeds derived from those violations.

The amended bill would become effective 6 months after the legislation is signed into law.

In conclusion, I believe S. 2334, my original bill introduced on April 17, 1986, was a starting place for Congress to consider much-needed changes to the weak, confusing, and oftentimes conflicting laws governing former Members and Federal officials who lobby the Government or work for a foreign entity. The compromise substitute fine tunes the original proposal.

When we face a serious problem such as the misuse of influence and access or vending of sensitive information vital to National interests, we have two alternatives—do nothing, or take steps to resolve the problem. I believe we must take action to prevent irreparable damage to our Nation and to restore public confidence and integrity in our system of government. It is time that public service be just that—not merely a stepping stone for future employment or profit. This legislation will help to ensure that future Federal officials serve their country—not themselves or foreign interests.●

By Mr. THURMOND:

S. 238. A bill to amend section 534 of title 28, United States Code, to allow railroad police and private university or college police access to Federal Government criminal identification records; to the Committee on the Judiciary.

ACCESS TO FEDERAL GOVERNMENT CRIMINAL RECORDS TO CERTAIN POLICE

● Mr. THURMOND. Mr. President, the bill I am introducing would permit railroad police and private university or college police to have access to the Federal Government criminal identification records maintained at the National Crime Information Center [NCIC]. I originally introduced this bill in the 99th Congress because I believe it is vital to private university and college police and railroad police. The Federal Government criminal identification records would contribute immeasurably toward their ability to perform their services in protecting the welfare of patrons and campus students as well as protecting cargo shipments.

The information in question was restricted by Federal regulation in 1975 to organizations which are recognized specifically as agencies of either the Federal or State government. Prior to this limitation, railroad police and university and college police had total access, across most of the Nation, to all criminal arrest files maintained by the Federal Bureau of Investigation.

After the restriction, an anomaly existed. Universities and colleges which were recognized as State agencies, and had a police force, continued to receive approval for receiving the necessary information. Those police forces which represented large campuses across the United States, on behalf of private universities or colleges, were denied access to the criminal history files by virtue of the fact that they were "private", not State, agencies.

Railroad police were confronted with a similar circumstance. Each year, the President's Conference on Transportation charged the railroad police to enforce strictly Federal regulations governing cargo shipments. However, they were restricted from access to criminal history records that would enable them to carry out this direction. In other words, the Justice Department was advocating a strong stand to protect cargo movements and needed the railroad police to help the Department achieve it, but denied them access to the most valuable tool for assistance.

The efforts of the railroad police and the university and college police to regain access to the NCIC files were joined in 1982 by the International Association of Chiefs of Police [IACP].

In a letter to Mr. Norman Chadwick, executive director of the IACP, Director of the FBI William Webster stated that he does not oppose Federal criminal history access by those agencies, that is, the railroad police and the university and college police, in the many States where they are granted full "peace officer" status by State statute. He further wrote that he thinks it incongruous that such a legal prohibition exists.

Legal counsel for the Law Enforcement Assistance Administration [LEAA] supported that statement. In the early days of LEAA, they had determined that railroad police were, in fact, a part of the criminal justice spectum in all States in which they had full police powers granted by the State government, even though they were not recognized as "State agencies." Further, the railroad police, in States where they were so empowered, could participate in any LEAA-funded program without jeopardizing the funding of that program.

Mr. President, this legislation would not open the criminal files to all groups or institutions that employ any form of security officer. Rather, it is limited to railroad police and university or college police who perform the administration of criminal justice pursuant to a State statute and which allocate a substantial part of their annual budget to the administration of criminal justice. This bill mandates that each police department or agency meets the minimum standards for a police officer in its respective State. This is the same criterion which applies to police forces which are recognized as State agencies and have access to the NCIC files now.

Your attention is called to the fact that there are over 34,000 railroad police and university and college police officers in the United States, commissioned in nearly all of the States within our Nation, who do enforce the law. Railroad police, in particular, enforce passenger/patron safety, tenants, and properties, as well as protect the billion dollar railroad movements of freight and valuable commodities across the land. University police are charged with protecting the vast investments in educational facilities, properties, roads, the welfare of students and faculty, tenants and service people.

Both the railroad police and the university and college police function in areas where the general public must spend a portion of its every day. Nearly all of them are covered by mandatory police training laws and attend State police academies. Access to criminal history files for both of these entities would provide additional law enforcement services to the Nation and to the communities in which they are located. I strongly urge my colleagues to support this measure.●

By Mr. THURMOND:

S. 239. A bill to establish an Intercircuit Panel, and for other purposes; to the Committee on the Judiciary.

INTERCIRCUIT PANEL OF U.S. APPEALS COURTS

● Mr. THURMOND. Mr. President, I rise today to introduce legislation to establish an Intercircuit Panel of the United States Courts of Appeal. This legislation is very similar to S. 704 which I introduced in the 99th Congress and which was approved by the Senate Judiciary Committee on June 12, 1986.

Over the past several decades, the workload of the Federal judiciary has increased dramatically. This increase has occurred as our society has become a far more litigious one, and as the laws of our Nation have become far more numerous and complex.

Since 1950, Congress has acted to meet the increasing demands upon the judiciary by increasing the number of Federal district judges from 211 to 758 and the number of circuit court of appeals judges from 65 to 226. While these increases have helped to ease the burden in the Federal and district courts, little has been done to ease the burden that has been placed on the Supreme Court, which today continues to operate at it original, nine-member size.

Mr. President, each year the burden on the Supreme Court seems to become more acute. In 1953, there were 1,463 cases on the docket of the Court. In 1984, there were more than 5,000 cases on the docket. Over the same period, the number of signed opinions increased from 65 to 139.

In the last dozen years, several major independent commissions have studied the problem of a severely overcrowded Supreme Court docket and have concluded that a new tribunal is imperatively needed.

This legislation would establish, for a 5-year trial period, such a tribunal to be known as the Intercircuit Panel of the United States. The panel would be composed of nine U.S. circuit court judges, to be selected by the Supreme Court. Members of the panel could be active, or senior status, judges.

Meeting biannually in Washington, DC, the panel would serve as a court of limited jurisdiction, reviewing only those cases referred to it by the Supreme Court. The Supreme Court would only be authorized to refer to the panel those cases in which a conflict exists among circuits.

The Supreme Court would have discretion in selecting the cases for resolution by the panel and would retain authority after the panel decides a case in order to grant further review in the case when it deems such review appropriate. It is expected that the panel would generally operate under the same rules and procedures, and parties would enjoy the same rights, that apply in cases under review of the Supreme Court.

Mr. President, this proposal was enthusiastically endorsed by Chief Justice Warren Burger during his tenure as Chief Justice. In his confirmation hearings last year, current Chief Justice William Rehnquist expressed strong support for an intercircuit tribunal.

Creation of this panel appears to be the most effective and least offensive solution to this problem. Under the bill, the panel would be utilized—to the extent desired by the Supreme Court—for a period of 5 years. Congress would, of course, have the option to reauthorize the panel, with or without changes, after a careful assessment of its impact on the Supreme Court and the entire judicial system. Should the Supreme Court become dissatisfied with the effectiveness of the panel at any point in the 5-year period, it could terminate the panel simply by deciding not to send any additional cases to the panel.

I urge my colleagues to join me in supporting this necessary reform.●

By Mr. MURKOWSKI:

S. 240. A bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to the Committee on Veterans' Affairs.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT

● Mr. MURKOWSKI. Mr. President, I rise to introduce a bill which would provide a cost-of-living adjustment for the disability compensation and dependency and indemnity compensation [DIC] paid to veterans with service-connected disabilities and the survivors of individuals who die while in service or due to a service-connected cause.

If enacted, this proposed legislation would increase the rates of disability compensation and DIC by 3.9 percent, the most recent CBO projection for the percentage increase in the cost of living for fiscal year 1987. The increase would be effective December 1, 1987. In addition to increasing the basic monthly rates for compensation and DIC the bill would also increase, by the same percentage, the additional compensation received by certain severely disabled veterans and the additional compensation or DIC paid to veterans and surviving spouses for the benefit of the veterans' dependents.

Disability compensation is intended to offset the impairment to a veteran's earning ability resulting from any disability or disease incurred or aggravated while a servicemember was on active duty or, in the case of some diseases, during a presumptive period following active duty. DIC is paid to the survivors of servicemebers who die while on active duty due to any cause or who subsequently die due to any disease or disability which was incurred or aggravated while on active duty. The survivors of veterans who die due to any cause, after being totally disabled for 10 or more years because of a service-connected disability, also receive benefits at the DIC rate.

Clearly those Americans with the most deserving call on the Nation's resources, those who were injured in the service of their country, are included in the 2½ million recipients of veterans' disability compensation and DIC. For this reason it is critical that these benefits be adjusted to reflect changes in cost-of-living. Since these benefits are not automatically indexed like the pension benefits available to veterans over age 65 or who are disabled due to non-service-connected causes, it is necessary that the Congress each year enact legislation to provide a cost-of-living adjustment. Mr. President, based on current economic projections this bill would provide the necessary protection from increases in the cost-of-living and I urge my colleagues to join me in supporting this important legislation.●

By Mr. D'AMATO:

S. 241. A bill to amend the Truth in Lending Act; to the Committee on Banking, Housing, and Urban Affairs.

CREDIT CARD DISCLOSURE ACT

● Mr. D'AMATO. Mr. President, I am introducing the Credit Card Disclosure Act of 1987 in response to concerns that were addressed in a hearing on this subject conducted by the Committee on Banking, Housing, and Urban Affairs during the 99th Congress.

My feelings on the rates that issuers of credit cards charge is no secret. At a time when the cost of funds to banks have fallen dramatically, these cost savings have not been reflected in the rates that credit card holders are charged. The card issuers are gouging the public by charging an average rate of 17.93 percent while the discount rate, the cost of funds to the banks, has been recently lowered to 5.5 percent. I find it unconscionable that some banks charge credit card interest rates as high as 22.2 percent when their cost of funds is 15 points lower. They are earning excessive profits at the expense of the consumer.

Although the banking industry supported raising interest rate levels when it was to their benefit, it is now opposed to lowering interest rates to realistic and responsible rates when consumers will benefit. Despite this opposition, I remain committed to seeing that credit card interest rates are lowered.

To restore price competition to the marketplace, I believe that the public needs to know where the best credit card rates can be found. The hearings demonstrated that there may be intense competition among credit card issuers for market share. However, there is little price competition among the 10 largest issuers of credit cards. For example, the highest rate charged by 1 of these 10 issuers is 22.2 percent and the lowest is 17.8 percent. Most of the rates are clustered in the area between 18 percent and 22 percent. These figures demonstrate the absence of price competition between the major issuers of credit cards.

To increase price competition in this market, and to respond to concerns that the interest rate alone does not reveal the true costs of credit cards to consumers. I am introducing legislation designed to remove the conspiracy of silence maintained by card issuers that prevents cardholders from finding credit cards with the lowest effective interest rates. Under this bill the card issuer is required to disclose:

First, the annual percentage rate use to determine a finance charge on any balance;

Second, the length of the grace period, if any;

Third, any minimum or fixed amount imposed as a monthly or other periodic finance charge; and

Fourth, any annual or other charge or fee required to be paid for the use of any credit card account.

Armed with this knowledge, cardholders will begin to exercise some economic power by choosing the cards that are most beneficial to them

Card issuers are also required to transmit information regarding the relevant terms and conditions of the credit card to the Federal Reserve Board. The Board would then be required to make this information available to the public upon request and to report this information to the Congress once a year.

The most important feature of the bill requires that these terms and conditions of credit card issuance are disclosed upon the application or solicitation forms that card issuers send through the mail to entice unsuspecting consumers into accepting these preapproved forms of credit. During the hearings we discovered that oftentimes consumers learn of the real costs of their credit cards only after they have been hooked. If consumers have adequate information regarding the real costs of credit cards, then hopefully they will shun unsolicited applications and seek the cards with the lowest rates. Ideally, this form of competition will force those presently gouging the public to lower their rates or forfeit a large share of their market. I believe that such disclosure will work due to the overwhelming response we received after the committee hearing during which we cited the existence of several card issuers with rates as low as 10.5 percent.

I believe that enactment of my bill will further enhance the price competition that has already been set in motion by our hearings. Therefore I urge my colleagues to give serious consideration to this bill to ensure prompt passage.

I ask unanimous consent that the bill be printed in its entirety in the RECORD.

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

S. 241

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 "Credit Card Disclosure Act of 1987".

SEC. 2. DISCLOSURE IN CREDIT CARD APPLICATIONS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end thereof the following:

"(c) In any application to open any credit card account, or in any solicitation which offers to open such an account without the need for an application to be completed, a card issuer shall disclose—

"(1) the annual percentage rate used to determine a finance charge on any balances;

"(2) the time period (if any) within which any credit extended by means of that credit card may be repaid without incurring a finance charge, or if no such time period is provided, the creditor shall disclose such fact;

"(3) any minimum or fixed amount imposed as a monthly or other periodic finance charge; and

"(4) any annual or other charge or fee required to be paid for the use of the credit card account.".

SEC. 3. REPORTING TO THE BOARD OF GOVERNORS.

Section 136 of the Truth in Lending Act (15 U.S.C. 1646) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by inserting after subsection (a) the following new subsection:

"(b) The issuer of any credit card shall submit quarterly to the Board the information required to be disclosed by section 127(c). The Board shall make such information available to the public upon request, and shall report such information annually to Congress."; and

(3) by striking out "subsection (a)" in subsection (c), as redesignated, and inserting in lieu thereof "subsections (a) and (b)",

SECTION-BY-SECTION ANALYSIS

Currently, section 127 of the Truth in Lending Act (15 U.S.C. § 1637) requires disclosure of certain information regarding an open-end consumer credit plan before opening an account. This has been interpreted by the Federal Reserve Board in 12 C.F.R. § 226.5(b)(1) as requiring disclosure "before the first transaction is made under the plan." Thus, disclosure is not required in the application. Section 2 of this bill requires additional disclosure in an application for a credit card, as it is at the application stage that most consumers make the decision to obtain a credit card. However, less information is required in the application than must currently be disclosed before the first transaction, since the goal of such disclosure is to permit easy comparsions between credit card plans.

The information to be disclosed pursuant to this amendment must meet the requirements to section 136 of the Truth in Lending Act (15 U.S.C. § 1646), which requires information to be disclosed "clearly and conspicuously, in accordance with regulations of the Board." Moreover, that section also requires the terms "annual percentage rate" and "finance charge" to be more conspicuous than other information except that relating to the identity of the creditor.

Under section 136 of the Truth in Lending Act (15 U.S.C. § 1646), the Board is authorized to collect, publish, and provide limited dissemination to the public of annual percentage rates charged for nonsale credit by creditors, and it may require such creditors to submit the information to the Board. Section 3 amends this provision by adding a requirement that credit card issuers submit the annual percentage rate, along with grace periods, minimum finance charges, and annual fees, to the Board, which will make such information available to the public upon request and in an annual report to Congress. This will provide a means for better disclosure of information regarding credit cards, contributing to the efficient working of the market.●

By Mr. D'AMATO:

S. 242. A bill to amend the Truth in Lending Act to impose a ceiling on credit card interest rates; to the Committee on Banking, Housing, and Urban Affairs.

CREDIT CARDHOLDER PROTECTION ACT

● Mr. D'AMATO. Mr. President, I rise today to reintroduce legislation designed to limit the amount of interest credit card companies can charge on an outstanding balance. I believe that the time has come for the consumer to be treated fairly. For too long now, many issuers of credit cards have taken advantage of cardholders.

American consumers are becoming more and more dependent on credit cards as a source of currency when they purchase goods. So widely used are credit cards that soon the Internal Revenue Service may permit the American taxpayer to pay his Federal taxes using a credit card.

Lenders are taking advantage of consumer dependence on credit cards. The average interest rate charged on credit card purchases is currently 17.93 percent, with some companies charging as much as 22.2 percent, while the prime rate is a mere 7.5 percent. I am hard pressed to believe that the average credit card issuer requires a 10.4-percent margin over the prime rate to cover the risks and costs involved in issuing credit cards.

Since 1980, while the average interest rate charged on credit card balances has grown from 17.6 percent to 17.93 percent, the prime rate has dropped from 20.5 percent to 7.5 percent, the discount rate has dropped from 14 percent to 5.5 percent, and the T-bill rate has dropped from 14 percent to 5.56 percent.

Why is it that only one rate has moved in the opposite direction from the others? Why is the average credit card interest rate the only commonly used interest rate that has failed to respond to improvements in our economy? What exactly is going on here?

What is going is an inequity—an inequity which must be addressed and which must be addressed now. Although a few major banks have begun to take steps to reduce the interest rate charged on credit cards, there is yet to be a major movement. Credit card users must not be taken advantage of any longer.

In response to this inequity, I am proposing again the Credit Cardholder Protection Act. This legislation has three major components. First, and most importantly, the bill will place a cap—or ceiling—on the legal interest rate a credit card company can charge.

A Federal ceiling on credit card interest rates would be established at 4 points over the Internal Revenue Service charges on late tax payments and pays on tardy refunds. The IRS rate is a compilation of prime interest rates from the previous 3 months and is recomputed on a quarterly basis. The current IRS rate is 8 percent, making the legal cap on credit under this bill 12 percent. This alone would save consumers over $4.7 billion a year.

The use of the IRS rate has several advantages. This rate already has bank profit built in. Thus, the extra 4 percentage points built into the credit card interest rate cap I am proposing more than adequately will provide for the costs and risks involved in issuing credit cards. The IRS rate is subject to change only once every 3 months. Thus, while the interest rate ceiling will reflect fluctuations in the economy, it will provide consumers with sufficient stability to plan their budgets well in advance.

The second part of my bill requires full disclosure of interest rates and fees by credit card companies. Currently, many credit card applications have little specific information pertaining to the interest rate that will be charged and the annual fees the cardholder will incur upon receiving the card.

Under my bill, all credit card applications will have to state the current interest charges and the annual fees charged for possessing the card. My bill also will require that these rates and fees be reported monthly to the Federal Reserve Board for publication.

Many consumers now are unaware of what they are being charged on their credit cards. Disclosure of this information on the initial credit card application will educate the consumer and, by using the publication which will be made available by the Federal Reserve Board, consumers will have the ability to shop for the best credit card for their own individual needs.

Finally, my bill would require the Consumer Advisory Council at Federal Reserve to send to the Congress yearly a report analyzing the credit card industry. The report should analyze issues specifically concerning the credit card industry. In particular, the impact the new interest rate cap will have on consumers and on credit card companies.

I believe my bill is an effective solution to the problem of excessive charges by credit card issuers. It takes quick action—it does not wait for a study to initiate the action. The interest rate cap is based on a nationwide compilation of the prime rate and fluctuates only once every 3 months, rather than monthly, providing for a stable, understandable rate which reflects variations in the economy. My bill will best inform the public as they shop for the best credit card for their needs.

There is no question that banks have a vested interest in credit card legislation—this interest is profit. Many banks now engage in a conspiracy of silence to conceal the fact that they are reaping huge profits by charging excessively high interest rates on credit card accounts, thereby taking advantage of an uninformed public.

Mr. President, in closing, I would like to reemphasize the Senator's intention to address this injustice swiftly and equitably. I urge my colleagues to accept my proposal, and I ask unanimous consent that my legislation be printed in its entirety in the RECORD at the conclusion of my remarks.

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

S. 242

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 "Credit Cardholder Protection Act".

SEC. 2. Section 107 of the Truth in Lending Act (15 U.S.C. 1606) is amended by adding at the end thereof the following:

"(f) The annual percentage rate applicable to an extension of credit obtained by use of a credit card may not exceed by more than 4 percentage points the rate established under section 6621 of the Internal Revenue Code of 1954, as determined by the Board.".

SEC. 3. Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end thereof the following:

"(c) A card issuer shall clearly and conspicuously disclose on initial applications for a credit card—

"(1) the annual percentage rate applicable to extensions of credit by means of that credit card or the means for determining that rate; and

"(2) any annual or other fee imposed for the issuance or use of that credit card.

Each card issuer shall report monthly to the Board for publication the average annual percentage rate and the amount of any annual or other fee applicable during the preceding month to its credit card accounts.".

SEC. 4. Section 703(b) of the Equal Credit Opportunity Act (12 U.S.C. 1691b(b)) is amended—

(1) by inserting "(1)" after "(b)"; and

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

"(2) The Council shall transmit annually to the Congress a report that describes and analyzes the costs and risks involved in issuing credit cards, the percentage of credit card customers that have their cards revoked for non-payment or delinquent payments, revenues derived from interest rates charged by credit card issuers, revenues derived from annual fees and application fees, and the impact that the provisions of section 107(f) of this Act will have on consumers and card issuers.".●

By Mr. DIXON (for himself, Mr. GLENN, Mr. DANFORTH, and Mr. KENNEDY):

S. 243. A bill to amend the United States Housing Act of 1937 to permit tenant management of public housing; to the Committee on Banking, Housing, and Urban Affairs.

PUBLIC HOUSING RESIDENT MANAGEMENT ACT

● Mr. DIXON. Mr. President, together with my distinguished colleagues, Senators GLENN, DANFORTH, and KENNEDY, I am reintroducing legislation to permit tenant management of public housing.

I continue to have hope that we can make public housing in this country a decent place for low- and moderate-income families to live. Tenant management demonstration projects have proven that the overall living conditions of public housing tenants can be improved.

The Public Housing Resident Management Act of 1987 which we offer today would provide an alternative to residents of public housing to manage their own housing conditions. Additionally, it is intended to offer a valuable return on investment for taxpayers.

The act would permit a majority of tenant households in a public housing project to approve the establishment of a resident council, which would determine the feasibility of establishing a resident management corporation. Under contract with the local public housing agency, the management corporation would manage the housing project. Additionally, the act would permit management corporations to retain profits from improved rent collections in order to establish business enterprises that employ tenants or to provide better project maintenance and operation.

As a protection against loss and theft, the act would require each management corporation to provide fidelity bonding and insurance and an annual audit of its books and records. As an incentive to increase flexibility for tenant-managed projects, management corporations may be provided with comprehensive improvement assistance for project renovations.

In order to allay the fears of some of my colleagues, let me stress that this act does not displace current tenants. It does not provide for tenant resident ownership. It does not relieve the Federal Government of its housing programs. It does not require tenant management of public housing. Instead, the act would increase the flexibility of the residents of those public housing projects who choose tenant management.

Since the 1970's—on an experimental basis—tenants have managed at

least one public housing development in the cities of Boston, Rochester, St. Louis, Louisville, Jersey City, New Orleans, and Washington, D.C. However, tenant management is still a new concept to many public housing tenants and to most taxpayers.

Due to the success of tenant-managed projects with which I am familiar, I believe that public housing tenants should be granted the flexibility provided for in this bill. Improvements ascribed to tenant management include higher morale among tenants, decreased vandalism and maintenance problems with consequent lowering of operating costs, decreased rent delinquency resulting in an increase in project income, decreased public assistance caseloads, development of business ventures and jobs, and formation of day care centers and health clinics. Overall, these public housing communities have become safer and more stable.

Tenant management first came to my attention on September 10, 1985, when I hosted a reception for concerned residents from Cabrini-Green, a 14,000 inner-city residence complex in the City of Chicago. The residents were in Washington to study first hand an example of successful tenant-managed public housing at Kenilworth Parkside, an inner-city district complex. While here, the residents and other concerned Illinois constituents requested that I introduce resident management legislation as a possible solution to some of their multiple community problems.

The same concern was expressed by representatives of the Leclaire Courts development which is currently negotiating an agreement with the Chicago Housing Authority to become the first tenant management corporation in Chicago. This Congress, I am again offering the tenant management of public housing proposal in response to requests from constituents, along with my general interest in trying a new concept to improve the housing conditions of public housing residents, while wisely investing our scarce tax dollars.

Recently, graphic illustrations about problems that plague public housing projects appeared in the Chicago Sun Times, the Chicago Tribune, and Time magazine. While I realize that tenant management will not solve all of the problems mentioned in the publications or associated with public housing, I believe that this act would provide a mechanism for an alternative to solving many of the problems.

Mr. President, I urge my colleagues to join Senators GLENN, DANFORTH, KENNEDY, and me in cosponsoring this legislation, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 243

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 "Public Housing Resident Management Act of 1987".

SEC. 2. PUBLIC HOUSING RESIDENT MANAGEMENT.

The United States Housing Act of 1937 is amended by adding at the end thereof the following new section:

"PUBLIC HOUSING RESIDENT MANAGEMENT

"SEC. 20. (a) PURPOSE.—The purpose of this section is to encourage increased resident management of public housing projects, as a means of improving existing living conditions in public housing projects, by providing increased flexibility for public housing projects that are managed by residents by—

"(1) permitting the retention, and use for certain purposes, of any revenues exceeding operating and project costs; and

"(2) providing funding, from amounts otherwise available, for technical assistance to promote formation and development of resident management entities.

"(b) PROGRAM REQUIREMENTS.—

"(1) RESIDENT COUNCIL.—As a condition of entering into a resident management program, the elected resident council of a public housing project shall approve the establishment of a resident management corporation. The resident management corporation and the resident council may be the same organization, if the organization complies with the requirements applicable to both the corporation and council. If there is no elected resident council, a majority of the households of the public housing project shall approve the establishment of a resident council to determine the feasibility of establishing a resident management corporation to manage the project.

"(2) PUBLIC HOUSING MANAGEMENT SPECIALIST.—The resident council of a public housing project, in cooperation with the public housing agency, shall select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties agreed to in the daily operations of the project.

"(3) BONDING AND INSURANCE.—Before assuming any management responsibility for a public housing project, the resident management corporation shall provide fidelity bonding and insurance, or equivalent protection, in accordance with regulations and requirements of the Secretary and the public housing agency. Such bonding and insurance, or its equivalent, shall be adequate to protect the Secretary and the public housing agency against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

"(4) MANAGEMENT RESPONSIBILITIES.—A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency, shall enter into a contract with the public housing agency establishing the respective management rights and responsibilities of the corporation and the public housing agency. Such contract may include specific terms governing management personnel and compensation, access to public housing projects records, submission of and adherence to budgets, rent collection procedures, tenant income verification, tenant eligibility determinations, tenant eviction, the acquisition of supplies and materials, and such other matters as may be appropriate.

"(5) ANNUAL AUDIT.—The books and records of a resident management corporation operating a public housing project shall be audited annually by a certified public accountant. A written report of each audit shall be forwarded to the public housing agency and the Secretary.

"(c) COMPREHENSIVE IMPROVEMENT ASSISTANCE.—Public housing projects managed by resident management corporations may be provided with comprehensive improvement assistance under section 14 for purposes of renovating such projects in accordance with such section. If such renovation activities (including the planning and architectural design of the rehabilitation) are administered by a resident management corporation, the public housing agency involved may not retain, for any administrative or other reason, any portion of the assistance provided pursuant to this subsection.

"(d) OPERATING SUBSIDY AND PROJECT INCOME.—

"(1) CALCULATION OF OPERATING SUBSIDY.—Notwithstanding any provision of section 9 or any regulation under such section, and subject to the exception provided in paragraph (3), the portion of the operating subsidy received by a public housing agency under section 9 that is allocated to a public housing project managed by a resident management corporation shall not be less than the public housing agency per unit monthly amount provided in the previous year as determined in an individual project basis.

"(2) CONTRACT REQUIREMENTS.—Any contract for management of a public housing project entered into by a public housing agency and a resident management corporation shall specify the amount of income expected to be derived from the project itself (from sources such as rents and charges) and the amount of income funds to be provided to the project from the other source of income of the public housing agency (such as operating subsidy under section 9, interest income, administrative fees, and rents).

"(3) CALCULATION OF TOTAL INCOME.—

"(A) Subject to subparagraph (B), the amount of funds provided by a public housing agency to a public housing project managed by a resident management corporation may not be reduced during the 3-year period beginning on the date of the enactment of the Housing Act of 1987 or on any later date on which a resident management corporation is first established for the project.

"(B) If the total income of a public housing agency (including the operating subsidy provided to the public housing agency under section 9) is reduced or increased, the income provided by the public housing agency to a public housing project managed by a resident management corporation shall be reduced or increased in proportion to the reduction or increase in the total income of the public housing agency, except that any reduction in operating subsidy that occurs as a result of fraud, waste, or mismanagement by the public housing agency shall not affect the funds provided to the resident management corporation.

"(4) RETENTION OF EXCESS REVENUES.—

"(A) Any income generated by a resident management corporation of a public hous-

ing project that exceeds the income estimated for purposes of this subsection shall be excluded in subsequent years in calculating (i) the operating subsidies provided to the public housing agency under section 9; and (ii) the funds provided by the public housing agency to the resident management corporation.

"(B) Any revenues retained by a resident management corporation under subparagraph (A) shall be used for purposes of improving the maintenance and operation of the public housing project or for establishing business enterprises that employ residents of public housing.

"(e) RESIDENT MANAGEMENT TECHNICAL ASSISTANCE AND TRAINING.—

"(1) FINANCIAL ASSISTANCE.—To the extent budget authority is available for section 14, the Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

"(2) LIMITATION ON ASSISTANCE.—The financial assistance provided under this subsection with respect to any public housing project may not exceed $100,000.

"(3) FUNDING.—Of the amounts available for financial assistance under section 14 for fiscal year 1988, the Secretary may use not more than $1,500,000 to carry out this subsection.".●

● Mr. GLENN. Mr. President, I rise today to join my distinguished colleague from Illinois, Senator DIXON, in reintroducing the Public Housing Resident Management Act. This bill provides an option for tenant management of public housing projects. It has been demonstrated that involvement of tenants in maintenance, improvement, and management of public housing has had a positive effect on the building, environment, and quality of life in such developments.

I believe that we need to provide an opportunity for public housing tenants to take responsibility for managing their own housing conditions. It must be noted that this concept will not work everywhere and in many areas of my State I would not even recommend resident management. Most housing authorities in Ohio are well maintained and managed. However, this legislation does permit a majority of adult public housing tenants, who are committed to the goals of tenant management, to establish a resident council. This council will determine the feasibility of establishing a resident management corporation.

As a protection against loss and theft, the bill requires management corporations to provide fidelity bonding and insurance, or their equivalents. It also requires an annual audit of the books and records of each corporation, with a written report of the audit to go to the public housing agency and the Secretary of Housing and Urban Development.

Tenant-management, while it is a relatively new approach, is by now means a cure-all for the problems that exist today in the whole area of public housing. I would like to make it perfectly clear that this legislation provides an option for tenant management. It does not divest the Federal Government of its responsibility and support for housing programs. We need more help from the Federal Government, not less.

I urge my colleagues to join Senator DIXON and myself in granting public housing tenants the flexibility of choosing tenant management.●

● Mr. DANFORTH. Mr. President, I am pleased to be a cosponsor of the Public Housing Resident Management Act of 1987 which allows tenant management of public housing projects. Tenant management has been enormously successful in St. Louis, MO. The Cochran Gardens project began a management experiment of this kind in 1976. The project has undergone extensive rehabilitation and is now in the best condition of any public housing in St. Louis.

Cochran Gardens is a conventional public housing development. It is a high-rise, family complex that houses 3,250 residents in 12 buildings. The community is virtually all black, with the average income being $4,000. More than 80 percent of the households are headed by a single female.

The development was built in 1952. By the 1960's, it was suffering from uncontrollable gang violence, mismanagement and conditions of physical disrepair. In 1969, the St. Louis Housing Authority became the target of an unprecedented rent strike, leading to forced negotiations and a creative new tenant management program. In 1976, the Cochran Tenant Management Corp. began to manage the site.

The Cochran Tenant Management Corp. has a board of directors to which five residents are elected by the tenants every 3 years. The board sets policy, provides planning direction, and sponsors all management programs. Each board member chairs one of five TMC committees: Maintenance, security, social services, recreation, and economic development. The tenants are given on-the-job management training, allowing them to learn about rent collections, security, lease and grievance procedures, maintenance and custodial services, and tenant selection.

This new system has proven that public housing can be well managed, despite severe operating deficits. The trained residents have enforced community developed standards, creating a safe environment and improving living conditions. Difficult management decisions which traditionally have been avoided are now being made and accepted by the residents.

Tenant management has had a significant impact on the project and on the lives of its inhabitants. There have been extensive renovations including the establishment of a new community center that sponsors athletic events, talent shows, field trips, and employment-related activities. Since the beginning of this new style of management, reported crime has lessened substantially, vacancy rates have decreased from 250 to 50, and rent collection rates have risen. The project has created many new jobs and has become a vehicle for training and employing those who otherwise would not be in the job market. Tenant management thus offers an opportunity for people to free themselves from the cycle of welfare dependency.

Based on this enormously successful tenant management experiment, I urge the passage of the Public Housing Resident Management Act of 1987.●

By Mr. DIXON:

S. 244. A bill to amend the Federal Deposit Insurance Act; to the Committee on Banking, Housing, and Urban Affairs.

AGRICULTURAL BANK ASSISTANCE ACT

● Mr. DIXON. Mr. President, I am today reintroducing the Agricultural Bank Assistance Act. This legislation is based on the Farm Credit Relief Act and other agricultural bank legislation that I introduced in the last Congress.

This bill is limited. It is a simple attempt to ensure that hard-pressed agricultural banks and their farmer-customers get the kind of assistance they need. It is a long overdue acknowledgment that the remedies, both administrative and legislative, that have been tried so far do not adequately respond to the financial crisis in our agricultural communities.

That crisis is devastating American agriculture and our rural economy. The terrible, unsupportable weight of farm debt is sufficating the family farm. Farmers now owe more than $186 billion, and the simple truth is that continued too-low prices for agricultural products mean that more and more farmers are unable to service that debt.

Farm prices are still down, and the value of farm land has dropped by as much as 40 percent or even more. Bankruptcies, however, are way up, and unless we are able to provide some badly needed assistance, the current appalling bankruptcy rate is likely to go much, much higher.

Unless we act, many of our Nation's full-time farmers will be wiped out. We needed to act 2 years ago. We cannot afford any further delay if we are to save the many family farmers that deserve our help. The shakiest of these midsized farmers owe nearly a third of total farm debt, an amount

that compares with the Latin American debt held by the Nation's largest banks.

Farm debt, however, unlike foreign debt, is not held largely by money center banks. It is held by the Nation's more than 4,200 agricultural banks. These banks are small in size, but they are of vital importance to their communities.

While they do not hold the bulk of long-term debt, agricultural banks are a major source of operating and other short-term loans. According to the Comptroller of the Currency, banks hold about 40 percent of the short-term debt. This is a serious problem because while many farmers have the resources to service their mortgage debt, many can no longer also meet their short-term debt obligations.

Agricultural banks are therefore also under serious strains, and the evidence is that their problems are becoming more severe. We had 138 bank failures last year—the highest number since the Great Depression—and a disproportionate number of those failing were agricultural banks. This trend appears to be continuing. Over 1,100 banks—an alltime record—are on the Federal regulators problem list. There were 120 bank failures in 1985, the majority of which were agricultural banks, and there will probably be well over 150 bank failures this year.

This trend is especially troubling because historically agricultural banks are among the strongest in our financial system. Agricultural banks traditionally have a very strong capital base, and they have followed the kind of prudent banking practices that have protected their depositors.

As strong as they are, however, agricultural banks are not immune from a crisis in the overall agricultural economy. There is no way they could be immune. More than 1,700 banks have more than 50 percent of their portfolios in agricultural loans, and that figure greatly understates the true dimensions of the problem since it does not include loans to agribusiness and other rural businesses dependent on a strong and profitable agricultural sector.

What we need, therefore, are solutions directed toward helping both farmers and the agricultural banks that serve them. It makes no sense to help the banks alone if that help does not permit them to continue to play an active role in their local communities. And farmers clearly need help to restructure their debts so that they are not forced off the land or put in the position of being tenant farmers on what was their land.

This bill, Mr. President, is an attempt to provide assistance and needed flexibility for both farmers and their lenders. It does not pretend to be a complete solution to the problems of either, but it will provide needed transitional assistance as more fundamental, long-term solutions are put into place. We need to make it possible for farm exports to begin expanding again. We need to restore the opportunity to make a profit to American farmers. We need to bring interest rates down to more reasonable levels. But all these things will take time; time that many of our farmers and rural financial institutions do not have unless we are able to act soon on appropriate safety net protections.

The provisions of this bill ought to be a component of this safety net. It will permit banks to negotiate with farmers on appropriate debt restructuring, restructuring that will leave farmers with payments they can meet while bringing the banks greater financial returns than foreclosure would. It helps ensure that farmers aren't forced off their land, and helps the banks retain customers that they want to retain, customers that they have had a good relationship with over the years and who, with this help, will be good customers again. It does not require any bank to act to restructure loans. It simply permits banks to take actions, with the approval of Federal regulators, that banks believe are in their interests and which will benefit hard-pressed but fundamentally sound farmers.

The heart of the legislation is a provision that permits agricultural banks to write down loans from their book value to their fair market value. Banks can do this now, but under current law, they must deduct the amount written off from their capital all at once. Even though agricultural banks are well-capitalized, they cannot withstand losses of this magnitude, so banks are forced to foreclose rather than write down loans. This benefits neither the banks nor the farmers.

Current law forces banks to try not to acknowledge the extent of their problems, because any losses in a loan portfolio must be written off against capital at the time they are recognized. Now in normal business conditions that is sound practice. In the current crisis situation in our agricultural economy, however, the pressure on agricultural bank capital it creates is so great that it actually adds to the problems facing both farmers and banks. Losses on agricultural loans can cause reductions in bank capital. That reduction can force a bank to call in more loans, generating more losses, forcing still further reductions in bank capital, and so on, in a destructive cycle that could destroy both the bank and many basically sound American farmers. At the very least, banks may have to withdraw as lenders to their communities with all the problems that the loss of such a major source of credit always causes.

Amortizing the losses, however, creates an incentive for banks to deal with their problems in a way that can help to minimize those losses. I do not suggest this step lightly. I recognize the seriousness of this proposal, but administrative remedies attempted by banking industry regulators have failed to solve the problem. The only alternative to this kind of package is direct assistance—and with our budget problems, it is difficult to see how that kind of help could be provided.

The bill also permits eligible banks to amortize their losses on the reduced value of farmland they acquired in the process of handling an agricultural loan where the bank is still holding the property but must write-down the asset value of the land on its books. This provision will help reduce the continued downward pressure on agricultural land prices, and assist banks in managing the swollen land portfolios many of them now hold.

Let me say in conclusion that this proposal, if enacted, will work to provide needed assistance for American farmers who deserve our help. It will also provide assistance for agricultural banks, who through no fault of their own, are being squeezed by the ongoing agricultural crisis, permitting these fundamentally sound banks to weather this storm.

This bill will not solve all the problems facing farmers and their community banks. It is scaled back from the original legislation I offered in 1985. However, it will still work effectively for farmers and bankers.

We have provided special assistance for financial institutions in the past, most recently for foreign loans and for the housing industry. We have assisted the Farm Credit System and are considering further assistance. I think agricultural banks and their farmer-customers are just as deserving of the assistance of the U.S. Senate.

Agricultural banks and their farmer-borrowers must not be forgotten as we work on shoring up the Farm Credit System. Agricultural banks play a crucial role in rural America. These banks and their farmer-customers desperately need our help. I urge my colleagues to join me in working to see that this legislation is quickly enacted. I ask unanimous consent that an explanation of the bill and a copy of the legislation be included at this point in the RECORD.

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

S. 244

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 "Agricultural Bank Assistance Act of 1987".

SEC. 2. Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by adding at the end thereof the following:

"(j)(1) The appropriate Federal banking agency shall permit an agricultural bank to

take the actions referred to in paragraph (2) if it finds that there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2).

"(2)(A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1986, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 10 years, as specified in regulations issued by the appropriate Federal banking agency.

"(B) An agricultural bank may reappraise the value of any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1987, and any such additional property that it acquires prior to January 1, 1992. Any loss that such bank would otherwise be required to show on its annual financial statements as the result of such reappraisal may be amortized on its financial statements over a period of not to exceed 10 years, as specified in regulations issued by the appropriate Federal banking agency.

"(3) The appropriate Federal banking agency may issue regulations implementing this subsection with respect to banks that it supervises.

"(4) As used in this subsection—

"(A) the term 'agricultural bank' means a bank which is significantly involved in agricultural lending, as determined by the appropriate Federal banking agency, and the deposits of which are insured by the Federal Deposit Insurance Corporation; and

"(B) the term 'qualified agricultural loan' means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.".

AGRICULTURAL BANK ASSISTANCE ACT OF 1987

EXPLANATION OF PROVISIONS

The bill would permit a commercial bank which is significantly involved in agricultural lending to amortize, over a period up to 10 years, two kinds of losses resulting from its lending activity to agriculture (provided that such losses did not result from fraud or criminal abuse on the part of the bank). The two kinds of losses eligible for multiyear amortization are:

(1) Losses on agricultural loans, whereby in the absence of the bill the bank would have to charge off the entire loss in the immediate year that it is recognized.

Example: An agricultural bank makes an operating loan to a farmer who owes $100,000 on the loan. A bank regulatory agency classifies the loan, so that $30,000 of loss must be recognized by the bank in 1987. Without the bill, the bank must charge off $30,000 in 1987; with the bill, the bank may charge off $3,000 per year during 1987-1996.

(2) Losses on reduced value of property (mostly farmland) which a bank acquired in the process of handling an agricultural loan, whereby the bank still holds the property but must devalue it as an asset.

Example: An agricultural bank acquires 200 acres of farmland in 1986 in a farm debt workout situation. At the time acquired, the land was valued at $2,000 per acre ($400,000), but in 1987 is appraised and revalued at $1,500 per acre ($300,000). Without the bill, the bank asset value of the land would be reduced by $100,000 in 1987; with the bill, the bank may reduce the asset value of the land by $10,000 per year in 1987-1996.

The bill provides for a 5-year period (1987-1991), during which losses that are recognized of the two kinds described above could be stretched out over a period up to 10 years. The bill should result in no cost to the U.S. Treasury, since the banks themselves would absorb the losses over the period of time that is provided.

The amortized farm loan loss accounting will help agricultural banks to remain competitive suppliers of credit to farmers, by permitting the banks to absorb part of their farm lending losses over a period of time sufficient for the agricultural economy and the banks' earnings to have an opportunity to recover. Once the banks' net earnings recovered, the retained earnings and capital position of the agricultural banks could be fully replenished.●

By Mr. BENTSEN (for himself and Mr. BURDICK):

S. 245. A bill to provide for the reimbursement of States for advance construction of highways; to the Committee on Environment and Public Works.

ADVANCE CONSTRUCTION

● Mr. BENTSEN. Mr. President, I am introducing today a bill entitled "Advance Construction" which will provide for the reimbursement of States for advance construction work they have conducted on federally approved highways. We have gone over 90 days now with no new federally authorized highway funds. Over half of the States have depleted their Federal highway funds in one or more funding categories. We need to take whatever steps we can to provide some relief to the construction industry which is hard hit by the lack of construction work and to the highway users of this Nation who have paid for and need better roads. I believe that my bill will provide some help and I urge my fellow Senators to join me in passing this important piece of legislation.

My bill provides for advance construction funding for all categories of Federal-aid highway projects when a State has used its apportionment and allocation funds or obligation authority or demonstrates that it will use its obligation authority. Under present law, advance construction is not permitted on noninterstate highways or when a State has used its obligation authority or has insufficient obligation authority. Under my bill, States may proceed with advance construction up to an amount equal to their existing unobligated fund balance plus expected apportionments from current year authorizations, plus an amount equal to the State's apportionment for one additional fiscal year. Under present law advance construction is not permitted if it will exceed a State's expected apportionment from existing authorizations. Put simply, this bill would expand the conditions under which a State can proceed with an advance construction project in any of several categories and raises the limit to which a State can carry out advance construction work and be qualified for Federal reimbursement.

I would also like to point out that this bill does not add any cost to the Federal-aid highway program. All funds ultimately reimbursed to the States for advanced construction projects will come out of their regular apportionments.

Mr. President, I know the highway department in my State of Texas strongly supports this program expansion. I would assure my colleagues that this amendment does not require any State to do anything unless that State decides it to be in its own best interests.●

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 246. A bill to provide for a Veterans' Administration outpatient satellite clinic in central or southern Jersey; to the Committee on Veterans' Affairs.

VA OUTPATIENT CLINIC IN CENTRAL SOUTHERN NEW JERSEY

● Mr. LAUTENBERG. Mr. President, on the first day of the 100th Congress, I rise to introduce a bill along with my colleague, Senator BRADLEY, to authorize the establishment of a Veterans' Administration satellite outpatient clinic in central or southern New Jersey. I have introduced this bill on the first day of the session as an indication of the high priority I attach to assuring that this clinic becomes a reality for New Jersey in the 100th Congress.

Quality medical care that is accessible to the veteran is one of the commitments we made to our men when we sent them off to fight. But New Jersey veterans are getting the short end of the stick. With only one outpatient facility in my State, veterans either have an inordinate wait for service or a long drive to the nearest outpatient clinic.

Since January 1985, I have urged the Veterans' Administration to approve funding for a satellite outpatient clinic for New Jersey. The facility would provide minor surgery, fill pharmaceutical needs, and provide local diagnostic services for veterans in counties not effectively served by the one outpatient clinic in Newark.

The need for this facility to provide additional medical care for New Jersey's veterans is critical, and that need has long been acknowledged by the Veterans' Administration. The 1984 VA MEDIPP study recognized that the establishment of an ambulatory care facility in New Jersey is the highest priority in the entire VA medical district IV. District IV encompasses New Jersey, Delaware, and parts of Maryland and Pennsylvania.

The level I approval for the funding of this clinic indicates that the Chief Medical Director and the Administrator of the VA concur in medical district IV's assessment of the need for this clinic. The level II approval indicates that an outpatient clinic has been designated as the appropriate facility to meet that need.

I had expected that level III approval, a request for funding in the budget, would be forthcoming this year. However, although the Chief Medical Director told me last year that he expected and hoped funding for the New Jersey clinic would be included in this year's budget, I have today learned it was not.

The VA's own statistics clearly demonstrate the need for this clinic. They show that parts of New Jersey are capable of generating over 52,000 visits per year by veterans to an outpatient facility, while the VA minimum threshold for placement of a clinic is only 15,000 visits annually.

Numbers tell only part of the story. The nearly 1 million New Jersey veterans currently must use the one outpatient facility in the State located in Newark. It has been plagued by continual staffing shortages and equipment breakdowns. Moreover, the need for an additional facility can only increase since the elderly population in New Jersey is growing at a tremendous rate. That growth will certainly place even further stress on a veterans' network that is already chronically overtaxed.

Mr. President, many elderly or severely disabled veterans suffer from infirmities which make it difficult or impossible for them to drive or use public transportation to obtain medical treatment in distant VA facilities. Without the establishment of the outpatient facility called for in my legislation, these veterans will be forced to continue to travel long distances for outpatient care at the VA hospitals in Lyons, Philadelphia, or East Orange, or the single VA clinic in Newark, or do without medical care altogether.

Some veterans in central and southern New Jersey must travel 2 hours each way to obtain veterans services, and then endure a 3- to 6-hour wait at the clinics. Waiting a full day to receive medical care cannot be what we had in mind when we set up the VA medical care system to take care of those who served our Nation so proudly.

New Jersey's veterans should not wait another year for work to begin on this clinic, which is the VA's highest priority in medical district IV.

I pledge to make funding for this clinic my No. 1 veterans priority on the Senate Budget Committee, and the Senate Appropriations Subcommittee on HUD and Independent Agencies, which oversees the Veterans' Administration budget.

I urge my colleagues to approve this bill, and make sure that New Jersey veterans do not have to wait any longer to receive the medical care they so desperately need, and that our society promised them.

Mr. President, I ask unanimous consent that a copy of this bill be printed in the RECORD.

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

S. 246

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Administrator of Veterans' Affairs is authorized (1) to establish a Veterans' Administration outpatient satellite clinic facility in New Jersey; and (2) to construct or acquire by donation, purchase, lease, or otherwise a facility suitable for such purpose. Such facility shall be located in the central or the southern part of the State.

SEC. 2. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.●

By Mr. CRANSTON:

S. 247. A bill to designate the Kern River as a national wild and scenic river; to the Committee on Energy and Natural Resources.

ADDITION OF THE KERN RIVER TO THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to add 151 miles of the north and south forks of the Kern River in California to the National Wild and Scenic Rivers System. The legislation is identical to S. 2544, which I sponsored in the 99th Congress.

The north fork of the Kern designated under this bill includes 78.5 miles from its headwaters in Sequoia National Park to the Tulare/Kern County line. This river segment has been studied by the Forest Service for inclusion in the Wild and Scenic Rivers System and in its January 19, 1982, report the Forest Service identifies this entire stretch as possessing "outstandingly remarkable esthetic and other resource values" and recommends designation.

The 72.5 miles of the south fork from its headwaters to the southern boundary of the Domelands Wilderness have long been recognized as qualifying for the Wild and Scenic Rivers System. Although there's been no formal wild and scenic study, the National Rivers Inventory of January 1982 identified the south fork of the Kern River as a potential candidate for the Wild and Scenic Rivers System. Further the draft forest plan for the Sequoia National Forest issued in November 1985 identifies the entire segment as eligible for designation.

The existing Southern California Edison diversion facility on the north fork would not be affected by the designation. Also the boundaries for the south fork have been drawn to conform with the Domelands Wilderness boundary to allow consideration of the proposed Bloomfield Ranch Project No. 4805 for which a license application has been filed with FERC.

I am aware that some property owners along the north fork of the Kern River are concerned about possible condemnation of their lands. However, under the Wild and Scenic Rivers Act, where the Federal Government already owns more then 50 percent of the total land—as in the case of the Kern—condemnation can be used only to acquire scenic and access easements, not fee title. Additionally, section 16(c) of the act provides that a scenic easement cannot affect, without the owner's consent, any regular use exercised prior to the date of acquisition.

Mr. President, this bill has the strong support of 23 environmental organizations—American Rivers Conservation Council, California League of Women Voters, California Trout, California Native Plant Society, California Wilderness Coalition, California Sportfishing Protective Alliance, Defenders of Wildlife, Environmental Defense Fund, Friends of the River, Kern River Fly Fishermen, Merced Canyon Committee, National Audubon Society, National Parks and Conservation Association, Natural Resources Defense Council, Outdoors Unlimited, Pacific Coast Fly Fishermen, Porterville Area Environmental Council, Planning and Conservation League, Sierra Club, Tulare Audubon Society, WATER, Western River Guides Association, and the Wilderness Society.

In addition, editorials in support of the bill have appeared in the Los Angeles Times, Bakersfield Californian, San Francisco Chronicle, Fresno Bee, and Oakland Tribune.

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

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

S. 247

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraphs at the end:

"(59) NORTH FORK KERN RIVER, CALIFORNIA.—The segment of the main stem from the Tulare-Kern County line to its headwaters in Sequoia National Park, as generally depicted on a map entitled "Proposed North Fork Kern River", numbered fs-59 and dated March, 1986; to be administered by the Secretary of Agriculture; except that those portions of the river within the boundaries of the Sequoia National Park shall be administered by the Secretary of the Interior. With respect to the portions of the river segments designated by this paragraph which are within the boundaries of Sequoia National Park, the requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the gener-

al management plan for the park, and the boundaries, classification, and development plans for such portions need not be published in the Federal Register. Such revision to the general management plan for the park shall assure that no developments or use of park lands shall be undertaken that is inconsistent with the designation of such river segments as a wild river. For the purposes of the segment designated by this paragraph, there are authorized to be appropriated for fiscal years commencing after September 30, 1986, such sums as may be necessary for the acquisition of lands and interests therein and for development.

"(60) SOUTH FORK KERN RIVER, CALIFORNIA.—The segment from its headwaters in the Inyo National Forest to the southern boundary of the Domelands Wilderness in Sequoia National Forest, as generally depicted on the Proposed Boundary Map, numbered fs-60, and dated March, 1986; to be administered by the Secretary of Agriculture. For the purposes of the segment designated by this paragraph, there are authorized to be appropriated for fiscal years commencing after September 30, 1986, such sums as may be necessary for the acquisition of lands and interests in lands and for development.".

By Mr. LAUTENBERG (for himself, Mr. MOYNIHAN, Mr. GRASSLEY, Mr. SIMON, Mr. WILSON, Mr. SPECTER, and Mr. BRADLEY):

S. 248. A bill to amend title 10, United States Code, to permit members of the Armed Forces to wear, under certain circumstances, items of apparel not part of the official uniform; to the Committee on Armed Services.

WEARING OF RELIGIOUS APPAREL IN THE MILITARY

● Mr. LAUTENBERG. Mr. President, today I rise to introduce legislation to permit the wearing of neat and conservative religious apparel in the military. I am pleased to be joined by Senators MOYNIHAN, GRASSLEY, SIMON, WILSON, SPECTER, and BRADLEY as original cosponsors. Under my legislation, which is identical to an amendment I offered last year on the Senate floor, such apparel would be permitted only if it does not significantly interfere with the performance of military duty. Language identical to this bill was adopted by the House last year, and was narrowly defeated in the Senate last year by a vote of 51 to 49.

This legislation responds to the Supreme Court's 5-to-4 decision in Goldman against Weinberger. In Goldman, the Court held that the military's perceived need for uniformity of dress, and for discipline, overrode the first amendment right of an Orthodox Jewish serviceman, Dr. Goldman, to fulfill his traditional Jewish obligation by wearing a skullcap. This bill would permit Dr. Goldman to serve his country while at the same time allowing him to remain true to his religion. And it would permit others like him, of whatever faith, to do the same.

Because this legislation, and this issue, is broader than any one religion. It concerns the right of people of all faiths to serve their country without having to forsake their religious beliefs and practices. It would affirm the religious and ethnic diversity that have made America strong, not weak.

The primary philosophical objection to this bill has been that wearing visible items of religious apparel may threaten the military uniformity necessary in building unit cohesion. While I appreciate and agree with the importance of unit cohesion and esprit de corps in the Armed Forces, I do not believe that wearing neat, conservative, and unobtrusive religious apparel threatens this principle.

To the contrary, it would strengthen morale by affirming that the military is a humane and tolerant institution. And as Justice Brennan made clear in his moving dissent to the majority opinion in Goldman, allowing religious apparel to be worn with a U.S. military uniform is an eloquent reminder that the shared and proud identity of U.S. servicemen embraces and unites religious and ethnic pluralism.

Although uniformity is claimed as an important value the services easily permit other manifestations of religious diversity. Service members attend Christian, Islamic, Jewish, and other religious services. Barracks mates see Mormons wearing temple garments, and Catholics wearing crosses and scapulars. It is obvious that our services are made up of people from different faiths and ethnic backgrounds, and that diversity is America's greatest asset. It is no secret, nor should it be.

Further, I should point out that the record here and abroad on the wearing of religious apparel supports my position. In the Goldman case, for example, it was established that Captain Goldman himself, as well as many other members of the armed services, had worn skullcaps for many years in the military service without any apparent disruption, difficulty, or adverse impact on military effectiveness.

And the dissenting Justices pointed out there was no evidence in the record that the discipline of the Armed Forces would be subverted if Orthodox Jews are allowed to wear skullcaps with their uniforms, nor did the Air Force offer any basis for such a contention as a general proposition.

Further, for years, our own Army accepted Sikhs and allowed them to wear their turbans for decades. It still allows them to reenlist under those conditions. Would an Army that believed that the wearing of turbans impaired morale permit these Sikhs to enlist year after year? I think not.

The Army has stopped enlisting Sikhs since its lawyers voiced concern that if the Army tolerated Sikh turbans, it would have to allow saffron robes as well. So in changing its enlistment policy toward recruits who wear turbans as a matter of religious practice, the Army was objecting not to turbans but to saffron robes. It is my position that the wearing of robes might interfere with the performance of military duty, and would therefore probably not be permitted under the terms of this amendment. However, that would be a decision left for the services to make in the first instance, as would all decisions under this amendment.

There is ample evidence from other countries that wearing religious apparel does not interfere with the fighting spirit of the military unit. The Israeli Defense Forces, for example, have many servicemen who go into battle wearing skullcaps. After successes in four separate wars, it is hard to argue that the yarmulke in any way interfered with their ability to wage successful war.

Furthermore, research by the Congressional Research Service indicates that in Canada, New Zealand, and India, Sikh and Jewish soldiers are permitted to wear their religious headwear and their religious artifacts with other standard items of clothing.

In the United Kingdom, Sikh members of the services are permitted to wear turbans, and to keep their hair long, if they choose. And the Queen's Regulations for the Royal Air Force, which generally require all personnel to remove their headdress while on duty before a judge or magistrate, specifically exempt members of the Jewish faith or other religions which require the head to be covered on solemn occasions.

Our own experience, and that of other countries on this question speaks for itself. There is simply no evidence that the wearing of visible religious apparel interferes with uniformity or unit cohesion.

Our citizens in uniform should not be deprived of their basic constitutional rights, such as the free exercise of religion, the minute they enter the military. There must be a compelling and supportable argument justifying such a prohibition. None has been made.

Some of the services have argued that the neat and conservative standard will be hard to apply, forcing them to make delicate and difficult distinctions between religious garb. But the services have a successful record of using the neat and conservative standard to distinguish acceptable from unacceptable jewelry. If we can make this distinction for neat and conservative jewelry, why can't we make it for religious apparel.

Certainly, the wearing of apparel central to the practice of one's religious beliefs is more important and worthy of review than the wearing of jewelry. The Air Force permits the wearing of up to three rings and one

identification bracelet of neat and conservative but nonuniform design. This jewelry is permitted even if, as is often the case with rings, it associates the wearer with a denominational school or a religious or secular fraternal organization. These items are not deemed to be unacceptably divisive. I cannot see why religious apparel that is neat and conservative would be.

In closing, I want to emphasize, once again, that this legislation is not confined to the wearing of skullcaps, but addresses the wearing of any item of apparel that is part of the member's religious observance. The amendment states:

In order to preserve constitutional rights to the free exercise of religion, a member of the Army, Navy, Air Force or Marine Corps may wear any neat and conservative item of apparel if the wearing of such apparel is part of the religious observance of the member, unless the wearing of such apparel significantly interferes with the performance of the member's military duties.

I urge my colleagues to approve this legislation so that the practice of religion and service to one's country need not be in conflict.

Mr. President, I ask unanimous consent that a copy of this bill appear in the RECORD following my remarks.

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

S. 248

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

SECTION 1. WEARING RELIGIOUS APPAREL NOT PART OF THE OFFICIAL UNIFORM.

(a) IN GENERAL.—Chapter 45 of title 10, United States Code, is amended—

(1) by redesignating section 774 as section 775; and

(2) inserting after section 773 the following new section:

"§ 774. Wearing religious apparel

"(a) Except as provided in subsection (b), a member of the armed forces may wear an item of religious apparel if—

"(1) the wearing of the item of apparel is part of the religious observance of the religious faith practiced by the member; and

"(2) the item of apparel is neat and conservative.

"(b) The Secretary concerned may prohibit a member from wearing an item of religious apparel if the Secretary determines that the wearing of such item significantly interferes with the performance of the member's military duties.".

(b) CONFORMING AMENDMENTS.—The table of chapters at the beginning of such chapter is amended—

(1) by redesignating the item relating to section 774 as 775; and

(2) by inserting below the item relating to section 773 the following new item:

"774. Wearing religious apparel.".

By Mr. DODD (for himself and Mr. SPECTER):

S. 249. A bill to grant employees parental and temporary medical leave under certain circumstances, and for other purposes; to the Committee on Labor and Human Resources.

PARENTAL AND TEMPORARY MEDICAL LEAVE ACT OF 1987

● Mr. DODD. Mr. President, today I am introducing a bill to establish something we have gone without in this country for far too long: namely, a national policy on parental leave. The "Parental and Medical Leave Act of 1987" would promote the economic security of families by providing for parental leave upon the birth, adoption, or serious illness of a child, and temporary medical leave when a serious health condition prevents a parent from working.

Because such leave would be unpaid, it will not add to the deficit nor to the economic burdens carried by employers. Yet it will provide parents with continuing health benefits and a most important assurance: that of a job when they are ready to return to work. I am pleased to have Senator ARLEN SPECTER of Pennsylvania join me in sponsoring this important legislation.

I introduced identical legislation, S. 2278, on April 9, 1986, and had encouraged my colleagues to give it due consideration during the 99th Congress. Given the critical importance of children and families to the future development and security of this Nation, it is imperative we consider this pro-family measure during the 100th Congress. As the new chairman of the Subcommittee on Children and Families on the Committee on Labor and Human Resources, I intend to schedule hearings on this legislation as quickly as possible. Similar legislation will be reintroduced in the House of Representatives by Representatives SCHROEDER and CLAY.

The critical need for a national policy on parental leave has been underscored by the Yale Bush Center in child development and social policy, in a project focusing on infant care leave policies here and abroad. As director Ed Zigler or the Yale Bush Center in my State of Connecticut has pointed out so well, the time has come when we can no longer ignore the changing demographics of our work force.

Today, close to half of all mothers with infants under 1 year of age work outside of the home. That figure has doubled since 1970 and shows no signs of abating. In fact, 85 percent of all women working outside of the home are likely to become pregnant at some point during their child-bearing years. As a result, child care for infants is the fastest growing, most expensive form of supplemental care in this country.

These percentages translate into a total today of 24 million children under age 13 with mothers working outside of the home. In a report entitled the "Subtle Revolution," the urban institute predicts that over the next 5 years, an additional 5 million children will have mothers joining the labor force.

The reasons behind this demographic revolution are quite simple: Mothers are entering the work force out of economic necessity. Two out of every three women working outside of the home today are either the sole providers for their children or have husbands who earn less than $15,000 a year. In 1983, 25 percent of the married women in the work force had husbands earning less than $10,000; 50 percent under $20,000 and nearly 80 percent less than $30,000. In short, these women's wages are critical to the support of their families.

As founder and cochairman of the Senate children's caucus, I have heard and seen first hand the adverse consequences of forcing parents to choose between their children and their jobs. One new parent took an unpaid leave from her job in a retail store, only to find when she returned after her 6 weeks checkup at the doctor's that she had been replaced by a new employee. Another parent had arranged to adopt a child under the condition that she stay at home with that child for 6 months. When her employer refused to grant her more than 2 weeks leave, the agency turned down her request to become an adoptive parent. Unfortunately, the list of such cases appears endless in contrast to the comparatively small group of employees who are able to obtain leave to stay at home for a short time with a new child.

The United States is the only industrialized nation without a policy to guarantee parents who want to stay home temporarily with a new child that their jobs will be waiting for them when they are able to return to work. This is a most dubious distinction, given the importance of the economic security of families to the defense and overall security of any nation. Our economic summit partners, Canada, France, Britain, Japan, West Germany, and Italy, have already recognized this connection between the economic security of families and national security. In having established national parental leave policies, they have more in common with the Soviet Union than they do with us. Likewise, a whole host of developing nations, including Haiti and the Philippines, have national policies on maternity leave firmly in place.

We know that children do not fare well when their parents undergo economic stress: Children of the unemployed are three times more likely to suffer abuse than other children. Neither do children thrive when their parents are suffering from physical and emotional exhaustion in their efforts to work full-time and incorporate a new infant into the family.

In a survey of women in the New Haven area in my State of Connecticut, Yale researchers found that the vast majority of working mothers said they had to return to work sooner than they felt was suitable. They returned out of fear of losing their jobs, jobs their families depend upon.

Even though many physicians assert it takes a woman 6 to 8 weeks to recover from a normal, safe delivery, the typical working mother returns to her job after 3 to 4 weeks. She returns before recovering fully from childbirth, let alone coping with the dramatic changes in finances, scheduling, and family relationships that go along with caring for a new infant.

The Pregnancy Discrimination Act of 1978 mandates that all serious health conditions related to pregnancy be treated like all other short-term serious health conditions. However, only five States have temporary disability insurance policies. Likewise, only half of all private employers offer short-term disability coverage to assist mothers recovering from a complicated delivery or fathers recuperating from surgery.

The "Parental and Medical Leave Act of 1987" provides for up to 6 months of temporary medical leave for both mothers and fathers. Just as importantly, it provides for up to 4 months parental leave to give a mother or father time to integrate a new child into the family or to care for a child who is seriously ill. Although such leave is unpaid, health benefits will be assured as will a job when the parent is ready to return to work.

In endeavoring to assist parents, we must not forget the plight of employers, especially small businessmen and women to whom a stable work force can mean the difference between failure and success. For this reason, my bill exempts small businesses with fewer than 15 employees. The small business exemption is an issue which should be addressed in the Senate hearings, along with a number of other provisions which appear in the House bill but not the Senate bill.

In closing, Mr. President, the need for a national policy on parental leave is clear. I urge my colleagues to join me in sponsoring the "Parental and Medical Leave Act of 1987." For if we are to assure a strong, healthy future for coming generations of Americans, caring for your child can no longer mean losing your job.

I ask unanimous consent that the text of the bill be printed in the RECORD in its entirety.

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

S. 249

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Parental and Medical Leave Act of 1987".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL REQUIREMENTS FOR PARENTAL AND TEMPORARY MEDICAL LEAVE

Sec. 101. Findings and purposes.
Sec. 102. Definitions.
Sec. 103. Parental leave requirement.
Sec. 104. Temporary medical leave requirement.
Sec. 105. Certification.
Sec. 106. Employment and benefits protection.
Sec. 107. Prohibited acts.
Sec. 108. Administrative enforcement.
Sec. 109. Enforcement by civil action.
Sec. 110. Investigative authority.
Sec. 111. Relief.
Sec. 112. Notice.

TITLE II—PARENTAL LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Parental and temporary medical leave.

TITLE III—ADVISORY PANEL ON PAID PARENTAL AND MEDICAL LEAVE

Sec. 301. Establishment.
Sec. 302. Duties.
Sec. 303. Membership.
Sec. 304. Compensation.
Sec. 305. Powers.
Sec. 306. Termination.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect on other laws.
Sec. 402. Effect on existing employment benefits.
Sec. 403. Regulations.
Sec. 404. Effective dates.

TITLE I—GENERAL REQUIREMENTS FOR PARENTAL AND MEDICAL LEAVE

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the number of two-parent households in which both parents work and the number of single-parent households in which the single parent works are increasing significantly;

(2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of children who have serious health conditions;

(3) the lack of employment policies to accommodate working parents forces many individuals to choose between job security and parenting; and

(4) there is inadequate job security for employees who have serious health conditions that prevent the employees from working for temporary periods.

(b) PURPOSES.—It is the purpose of this Act—

(1) to balance the demands of the workplace with the needs of families;

(2) to promote the economic security and stability of families; and

(3) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child who has a serious health condition, without the risk of termination or retaliation by employers.

SEC. 102. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, including "commerce" and any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947 (29 U.S.C. 141 et seq.).

(2) EMPLOY.—The term "employ" has the same meaning given the term in section 3(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)).

(3) EMPLOYEE.—The term "employee" has the meaning given the term in section 3(e) of the Fair Labor Standards Act of 1938, except that—

(A) the term does not include any Federal officer or employee covered under subchapter III of chapter 63 of title 5, United States Code; and

(B) the term includes permanent part-time employees.

(4) EMPLOYER.—The term "employer"—

(A) means any person who employs 15 or more employees and is engaged in commerce or in any industry or activity affecting commerce;

(B) includes—

(i) any person who acts directly or indirectly in the interest of an employer to one or more employees; and

(ii) any successor in interest of such an employer; and

(C) includes any public agency, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)), except that employees of any such agency shall be considered employees engaged in commerce.

(5) EMPLOYMENT BENEFITS.—The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

(6) PERSON.—The term "person" has the same meaning given the term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(7) REDUCED LEAVE SCHEDULE.—The term "reduced leave schedule" means leave scheduled for fewer than the usual number of hours of an employee per workweek or hours per workday.

(8) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(9) SERIOUS HEALTH CONDITION.—The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment or continuing supervision by a health care provider.

(10) SON OR DAUGHTER.—The term "son or daughter" means a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent, who is under 18 years of age.

(11) STATE.—The term "State" has the same meaning given the term in section 3(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(c)).

SEC. 103. PARENTAL LEAVE REQUIREMENT.

(a) IN GENERAL.—(1) An employee shall be entitled to 18 workweeks of parental leave during any 24-month period—

(A) as the result of the birth of a son or daughter of the employee;

(B) as the result of the placement, for adoption or foster care, of a son or daughter with the employee; or

(C) in order to care for the employee's son or daughter who has a serious health condition.

(2) The leave may be taken on a reduced leave schedule. Under the schedule—

(A) the total period during which the 18 workweeks may be taken may not exceed 36 consecutive workweeks; and

(B) the leave shall be scheduled so as not to disrupt unduly the operations of the employer.

(3) In the case of a child who has a serious health condition, the leave may be taken intermittently when medically necessary.

(b) UNPAID LEAVE PERMITTED.—Except as provided in subsection (c), leave granted under subsection (a) may consist of unpaid leave.

(c) RELATIONSHIP TO PAID LEAVE.—(1) If an employer provides paid parental leave for fewer than 18 weeks, the additional weeks of leave added to attain the 18-week total may be unpaid.

(2) An employee may elect to substitute any accrued paid vacation leave, personal leave, or other appropriate paid leave for any part of the 18-week period.

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) IN GENERAL.—(1) Any employee who, as the result of a serious health condition, becomes unable to perform the functions of the position of the employee, shall be entitled to temporary medical leave. The entitlement shall continue for as long as the employee is unable to perform the functions, except that the leave shall not exceed 26 workweeks during any 12-month period.

(2) The leave may be taken intermittently when medically necessary.

(b) UNPAID LEAVE PERMITTED.—Except as provided in subsection (c), leave granted under subsection (a) may consist of unpaid leave.

(c) RELATIONSHIP TO PAID LEAVE.—(1) If an employer provides paid temporary medical leave or paid sick leave for fewer than 26 weeks, the additional weeks of leave added to attain the 26-week total may be unpaid.

(2) An employee may elect to substitute accrued paid vacation leave, sick leave, or other appropriate paid leave for any part of the 26-week period.

SEC. 105. CERTIFICATION.

(a) IN GENERAL.—An employer may require that a claim for parental leave under section 103(a)(1)(C), or temporary medical leave under section 104, be supported by certification issued by—

(1) the duly licensed health care provider of the son, daughter, or employee, whichever is appropriate; or

(2) any other health care provider determined by the Secretary to be capable of providing adequate certification.

(b) SUFFICIENT CERTIFICATION.—The certification shall be considered sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition; and

(3) the medical facts within the knowledge of the provider regarding the condition.

SEC. 106. EMPLOYMENT AND BENEFITS PROTECTION.

(a) RESTORATION TO POSITION.—(1) Any employee who exercises any right provided under section 103 or 104 shall be entitled, on return from the leave—

(A) to be restored by the employer to the position held by the employee when the leave commenced; or

(B) to be restored to a position with equivalent status, benefits, pay, and other terms and conditions of employment.

(2) The taking of leave under this title shall not result in the loss of any benefit accrued before the date on which the leave commenced.

(3) Except as provided in subsection (b), nothing in this section shall be considered to entitle any restored employee to—

(A) the accrual of any seniority or benefits during any period of leave; or

(B) any right or benefit other than any right or benefit to which the employee would have been entitled had the employee not taken the leave.

(b) MAINTENANCE OF HEALTH BENEFITS.—During any period of leave taken under section 103 or 104, health benefits of an employee shall be maintained for the duration of the leave at the level at which the benefits would have been maintained if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a).

SEC. 107. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—(1) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because the individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given or is about to give any information in connection with any inquiry or proceeding relating to any right provided under this title; or

(3) has testified or is about to testify in any inquiry or proceeding relating to any right provided under this title.

SEC. 108. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall issue such rules and regulations as are necessary to carry out this section, including rules and regulations concerning service of complaints, notice of hearings, answers and amendments to complaints, and copies of orders and records of proceedings.

(b) CHARGES.—(1) Any person (or person, including a class or organization, on behalf of any person) alleging an act that violates this title may file a charge respecting the violation with the Secretary. Charges shall be in such form and contain such information as the Secretary shall require by regulation.

(2) The Secretary shall serve a notice of the charge on the person charged with the violation not more than 10 days after the Secretary receives the charge.

(3) A charge may not be filed more than 1 year after the last event constituting the alleged violation.

(c) INVESTIGATION; COMPLAINT.—(1) Within the 60-day period after the Secretary receives any charge, the Secretary shall investigate the charge and issue a complaint based on the charge or dismiss the charge.

(2) If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based on the charge and promptly notify the charging party and the respondent as to the issuance.

(3) If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the charging party and the respondent as to the dismissal.

(4) The charging party and the respondent may enter into a settlement agreement concerning the violation alleged in the charge. To be effective such an agreement must be determined by the Secretary to be consistent with this title.

(5) On the issuance of a complaint, the Secretary and the respondent may enter into a settlement agreement concerning a violation alleged in the complaint, except that any such settlement may not be entered into over the objection of the charging party.

(6) If, within the 60-day period referred to in paragraph (1), the Secretary—

(A) has not issued a complaint under paragraph (2);

(B) has dismissed the charge under paragraph (3); or

(C) has not approved or entered into a settlement agreement under paragraph (4) or (5),

the charging party may bring a civil action under section 109.

(7) The Secretary may issue and serve a complaint alleging a violation of this title on the basis of information and evidence gathered as a result of an investigation initiated by the Secretary pursuant to section 110.

(8) On issuance of a complaint, the Secretary shall have the power to petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for appropriate temporary relief or a restraining order. On the filing of any such petition, the court shall cause notice of the petition to be served on the respondent. The court shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as the court considers just and proper.

(d) RIGHTS OF PARTIES.—(1) In any case in which a complaint is issued under subsection (b), the Secretary shall, not less than 5 days and not more than 30 days after the complaint is issued, cause to be served on the respondent a copy of the complaint.

(2) Any person filing a charge alleging a violation of this title may elect to be a full party to any complaint filed by the Secretary alleging the violation. The election must be made before the commencement of a hearing.

(e) CONDUCT OF HEARING.—(1) The Secretary shall prosecute any complaint issued under subsection (b).

(2) An administrative law judge shall conduct a hearing on the record with respect to a complaint issued under this title. The hearing shall be conducted in accordance with sections 554, 555, and 556 of title 5, United States Code, and shall be commenced within 60 days after the issuance of the complaint.

(f) FINDINGS AND CONCLUSIONS.—(1) After a hearing is conducted under this section, the administrative law judge shall promptly make findings of fact and conclusions of law, and, if appropriate, issue an order for relief as provided in section 111.

(2) The administrative law judge shall inform the parties, in writing, of the reason for any delay in making the findings and conclusions if the findings and conclusions

are not made within 60 days after the conclusion of the hearing.

(g) FINALITY OF DECISION; REVIEW.—(1) The decision and order of the administrative law judge shall become the final decision and order of the Secretary unless, on appeal by an aggrieved party taken not more than 30 days after the action, the Secretary modifies or vacates the decision, in which case the decision of the Secretary shall be the final decision.

(2) Not later than 60 days after the entry of the final order, any person aggrieved by the final order may obtain a review of the order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(3) On the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States on writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—(1) If a respondent does not appeal an order of an administrative law judge under subsection (g)(2), the Secretary may petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in the court a written petition praying that the order be enforced.

(2) On the filing of the petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In the proceeding, the order of the administrative law judge shall not be subject to review.

(3) If, on appeal of an order under subsection (g)(2), the United States court of appeals does not reverse or modify the order, the court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

SEC. 109. ENFORCEMENT BY CIVIL ACTION.

(a) RIGHT TO BRING CIVIL ACTION.—(1) Subject to the limitations in this section, an employee or the Secretary may bring a civil action against any employer to enforce this title in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) A civil action may be commenced under this subsection without regard to whether a charge has been filed under section 108(b).

(3) No civil action may be commenced under paragraph (1) if the Secretary—

(A) has approved a settlement agreement under section 108(c)(4), in which case no civil action may be filed under this subsection if the action is based on a violation alleged in the charge and resolved by the agreement; or

(B) has issued a complaint under section 108(c)(2) or 108(c)(7), in which case no civil action may be filed under this subsection if the action is based on a violation alleged in the complaint.

(4) Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

(5)(A) Except as provided in subparagraph (B), no civil action may be commenced more than 1 year after the date on which the alleged violation occurred.

(B) In any case in which—

(i) a timely charge is filed under section 108(b); and

(ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 108(c)(6)) occurs more than 11 months after the date on which any alleged violation occurred,

the employee may commence a civil action not more than 30 days after the date on which the employee is notified of the failure.

(6) The Secretary may not bring a civil action against any agency of the United States.

(b) VENUE.—An action brought under subsection (a) in a district court of the United States may be brought—

(1) in any appropriate judicial district under section 1391 of title 28, United States Code; or

(2) in the judicial district in the State in which—

(A) the employment records relevant to the violation are maintained and administered; or

(B) the aggrieved person worked or would have worked but for the alleged violation.

(c) NOTIFICATION OF THE SECRETARY; RIGHT TO INTERVENE.—A copy of the complaint in any action brought by an employee under subsection (a) shall be served on the Secretary by certified mail. The Secretary shall have the right to intervene in a civil action brought by an employee under subsection (a).

(d) ATTORNEYS FOR THE SECRETARY.—In any civil action brought under subsection (a), attorneys appointed by the Secretary may appear for and represent the Secretary, except that the Attorney General and the Solicitor General shall conduct any litigation in the Supreme Court.

SEC. 110. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—To ensure compliance with this title, or any regulation or order issued under this title, subject to subsection (c), the Secretary shall have the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) OBLIGATION TO KEEP AND PRESERVE RECORDS.—An employer shall keep and preserve records in accordance with section 11(c) of such Act.

(c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.—The Secretary may not under this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once in any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge brought pursuant to section 108.

(d) SUBPOENA POWERS, ETC.—For purposes of any investigation conducted under this section, the Secretary shall have the subpoena authority provided under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

(e) DISSEMINATION OF INFORMATION.—The Secretary may make available to any person substantially affected by any matter that is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter that may be the subject of the investigation.

SEC. 111. RELIEF.

(a) INJUNCTIVE RELIEF.—(1) On finding a violation under section 108 by a person, an administrative law judge shall issue an order requiring the person to cease and desist from any act or practice that violates this title.

(2) In any civil action brought under section 109, a court may grant as relief any permanent or temporary injunction, temporary restraining order, or other equitable relief as the court considers appropriate.

(b) MONETARY DAMAGES.—Any employer that violates this title shall be liable to the injured party in an amount equal to—

(1) any wages, salary, employment benefits, or other compensation denied or lost to the employee by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate; and

(2) an additional amount equal to the greater of—

(A) the amount determined under paragraph (1), as liquidated damages; or

(B) general or consequential damages.

(c) ATTORNEYS' FEES.—A prevailing party (other than the United States) may be awarded a reasonable attorneys' fee as part of the costs, in addition to any relief awarded. The United States shall be liable for costs in the same manner as a private person.

(d) LIMITATION.—Damages awarded under subsection (b) may not accrue from a date more than 2 years before the date on which a charge is filed under section 108(b) or a civil action is brought under section 109.

SEC. 112. NOTICE.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) PENALTY.—Any employer who willfully violates this section shall be fined not more than $100 for each separate offense.

TITLE II—PARENTAL LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. PARENTAL AND TEMPORARY MEDICAL LEAVE.

(a) IN GENERAL.—(1) Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER III—PARENTAL AND TEMPORARY MEDICAL LEAVE

"§ 6331. Definitions

"For purposes of this subchapter:

"(1) 'employee' means—

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

"(B) an individual under clause (v) or (ix) of such section;

whose employment is other than on a temporary or intermittent basis;

"(2) 'serious health condition' means an illness, injury, impairment, or physical or mental condition that involves—

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment, or continuing supervision, by a health care provider; and

"(3) 'child' means a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent, who is under 18 years of age.

"§ 6332. Parental leave

"(a) Leave under this section shall be granted on the request of an employee if the leave is requested—

"(1) as the result of the birth of a child of the employee;

"(2) as the result of the placement for adoption or foster care of a child with the employee; or

"(3) in order to care for employee's child who has a serious health condition.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

"(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"§ 6333. Temporary medical leave

"(a) An employee who, because of a serious health condition, becomes unable to perform the functions of the position of the employee shall, on request of the employee, be entitled to leave under this section.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

"(3) shall be in addition to any annual leave, sick leave, parental leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"§ 6334. Job protection

"An employee who uses leave under section 6332 or 6333 of this title shall be entitled to be restored to the position held by the employee immediately before the commencement of the leave.

"§ 6335. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of the rights of the employee under this subchapter.

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6336. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the health benefits enrollment of the employee while in leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through the employing agency of the employee, the appropriate employee contributions.

"§ 6337. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Parental and Medical Leave Act of 1987.".

(2) The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—PARENTAL AND TEMPORARY MEDICAL LEAVE

"6331. Definitions.
"6332. Parental leave.
"6333. Temporary medical leave.
"6334. Job protection.
"6335. Prohibition of coercion.
"6336. Health insurance.
"6337. Regulations.".

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, subchapter III of chapter 63,".

TITLE III—ADVISORY PANEL ON PAID PARENTAL AND MEDICAL LEAVE

SEC. 301. ESTABLISHMENT.

(a) ESTABLISHMENT.—There is established an Advisory Panel to be known as the Advisory Panel on Paid Parental and Medical Leave (hereinafter in this title referred to as the "Panel").

SEC. 302. DUTIES.

The Panel shall—

(1) compile and review, to the extent practicable, all studies of existing and proposed methods designed to provide workers with full or partial salary replacement or other income protection during periods of temporary medical leave, parental leave, and leave for care of dependents;

(2) conduct, where it deems appropriate, research activities;

(3) within 2 years after the date on which the Panel first meets, submit a report to Congress, including legislative recommendations concerning implementation of a system of salary replacement for temporary medical leave and parental leave.

SEC. 303. MEMBERSHIP.

(a) COMPOSITION.—The Panel shall be composed of 15 members appointed not more than 60 days after the date of the enactment of this Act as follows:

(1) Three Senators shall be appointed by the majority leader of the Senate, in consultation with the minority leader of the Senate.

(2) Three members of the House of Representatives shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader of the House of Representatives.

(3) The Secretary of Health and Human Services.

(4) The Secretary of Labor.

(5) Seven members shall be appointed jointly by the majority leader of the Senate and the Speaker of the House of Representatives. The members shall be appointed by virtue of demonstrated expertise in relevant family and temporary disability issues.

(b) VACANCIES.—Any vacancy on the Panel shall be filled in the same manner in which the original appointment was made.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Panel shall elect a chairperson and a vice-chairperson from among the members of the Panel.

(d) QUORUM.—Eight members of the Panel shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

SEC. 304. COMPENSATION.

(a) PAY.—Members of the Panel shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Panel shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, while performing duties of the Panel.

SEC. 305. POWERS.

(a) MEETINGS.—The Panel shall first meet not more than 30 days after the date by which all members are appointed. The Panel shall meet thereafter on the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers appropriate. The Panel may administer oaths or affirmations to witnesses appearing before the Panel.

(c) ACCESS TO INFORMATION.—The Panel may secure directly from any Federal agency information necessary to enable the Panel to carry out this Act. On the request of the chairperson or vice chairperson of the Panel, the head of the agency shall furnish the information to the Panel.

(d) DIRECTOR.—The Panel may appoint an Executive Director from the personnel of any Federal agency to assist the Panel in carrying out the duties of the Panel.

(e) USE OF SERVICES AND FACILITIES.—On the request of the Panel, the head of any Federal agency may make available to the Panel any of the facilities and services of the agency.

(f) PERSONNEL FROM OTHER AGENCIES.—On the request of the Panel, the head of any Federal agency may detail any of the personnel of the agency to assist the Panel in carrying out the duties of the Panel.

SEC. 306. TERMINATION.

The Panel shall terminate 30 days after the date of the submission of the final report of the Panel to Congress.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL LAWS.—Nothing in this Act shall be construed to modify or affect any Federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status.

(b) STATE AND LOCAL LAWS.—Nothing in this Act shall be construed to supersede any provision of any State and local law that provides greater employee parental or medical leave rights than the rights established under this Act.

SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act shall be construed to diminish the obligation of an employer to comply with any collective-bargaining agreement or any employment benefit program or plan that provides greater parental and medical leave rights to employees than the rights provided under this Act.

(b) LESS PROTECTIVE.—The rights provided to employees under this Act may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

SEC. 403. REGULATIONS.

The Secretary shall prescribe such regulations as are necessary to carry out title I.

SEC. 404. EFFECTIVE DATES.

(a) IN GENERAL.—Titles I, II, and IV, and the amendments made by title II, shall become effective 6 months after the date of enactment of this Act.

(b) ADVISORY PANEL.—Title III shall become effective on the date of enactment of this Act.●

By Mr. HUMPHREY (for himself, Mr. ROTH, Mr. SYMMS, Mr. ZORINSKY, and Mr. HELMS):

S. 250. A bill to prevent fraud and abuse in HUD programs; to the Committee on Banking, Housing, and Urban Affairs.

HOUSING INCOME VERIFICATION ACT

● Mr. HUMPHREY. Mr. President, today I introduce legislation, the Housing Income Verification Act of 1987, that will go far in the fight for effective delivery of Federal assistance in one of the Government's larger agencies, the Department of Housing and Urban Development [HUD].

According to HUD, every year, at least $200 million is wasted in oversubsidy payments to participants in HUD programs. An oversubsidy occurs when an individual should under the law receive a Federal subsidy for housing of, say, $300 per month, but, since he or she does not report income fully and honestly, that individual receives $400 per month. The oversubsidy in this instance amounts to $100 per month. That means $1,200 per year. This is $1,200 that could be used either to reduce the Federal operating subsidy to the local public housing authority or to provide help to some other individual truly in need of assistance.

Mr. President, this practice is wrong. Congress should do what it can to stop it.

The legislation I am proposing suggests a straightforward solution to the problem of fraud and abuse. Under my proposal, the Department of Housing and Urban Development would be granted access to the Social Security numbers of those individuals who participate in any HUD program which involves loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance. For those programs involving initial or periodic review or an applicant's or participant's income, applicants and participants would be required to sign a consent form authorizing the verification of salary and wage information pertinent to eligibility for, or level of, benefits. Through the Social Security numbers and consent forms, HUD would be able to access the State employment records in order to verify wage and unemployment compensation information.

Mr. President, I introduced similar legislation last year, along with several of my colleagues as part of a 15 bill package implementing several Grace Commission recommendations. A similar proposal was also included in the Senate version of the Housing reauthorization bill. Since that time, the proposal has been refined and reworked with interested parties.

Housing eligibility verification is one of the top priorities of the Department of Housing and Urban Development. The Congress should also take up the cause. With huge deficits, it has become even more critical to target each and every Federal dollar as effectively as possible. Mr. President, that is precisely what this bill proposes. I urge my colleagues to join me in support of the Income Verification Act.

Mr. President, I ask unanimous consent that a copy of my bill appear in the RECORD at this point.

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

S. 250

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 "Income Verification Act of 1987".

PREVENTING FRAUD AND ABUSE IN HOUSING AND URBAN DEVELOPMENT PROGRAMS

SEC. 2. (a) DISCLOSURE OF SOCIAL SECURITY AND EMPLOYER IDENTIFICATION NUMBERS.—As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving loans, grants, interest, or rental assistance of any kind, or mortgage or loan insurance, and to assure that the level of benefits provided under these programs is proper, the Secretary may require that an applicant or participant (including members of an applicant's or participant's household) disclose his or her social security number or employer identification number to the Secretary.

(b) APPLICANT AND PARTICIPANT CONSENT.—As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving initial and periodic review of an applicant's or participant's income, and to assure that the level of benefits provided under the program is proper, the Secretary may require that an applicant or participant (including members of an applicant's or participant's household) sign a consent form approved by the Secretary authorizing the Secretary, or the public housing agency or owner responsible for determining eligibility or level of benefits, to verify salary and wage information of a current or previous employer pertinent to the applicant's or participant's eligibility or level of benefits. This consent form may not be used to request taxpayer return information protected by section 6103 of the Internal Revenue Code of 1954.

(c) DEFINITIONS.—As used in this section:

(1) The term "Secretary" means the Secretary of Housing and Urban Development.

(2) The terms "applicant" and "participant" shall have such meaning as the Secretary by regulation shall prescribe. Such terms shall not include persons whose involvement is only in their official capacity, such as State or local government officials and officers of lending institutions.

(3) The term "public housing agency" means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

(d)(1) ACCESS TO STATE EMPLOYMENT RECORDS.—Section 303 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(h)(1) The State agency charged with the administration of the State law—

"(A) shall disclose, upon request and on a reimbursable basis, to officers or employees of the Department of Housing and Urban Development, any of the following information contained in the records of the State agency, with respect to individuals applying for or participating in any housing assistance program administered by the Department—

"(i) wage information, and

"(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual; and

"(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for the purpose of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program of the Department of Housing and Urban Development.

"(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.".

(2)(A) APPLICANT AND PARTICIPANT PROTECTIONS.—In order to protect applicants for and recipients of benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 303(h) of the Social Security Act from the State agency charged with the administration of the State unemployment compensation law, no Federal, State, local, or public housing agency, or owner responsible for determining eligibility or level of benefits, receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency or owner has taken appropriate steps to independently verify information relating to—

(i) the amount of the wages or unemployment compensation involved,

(ii) whether such individual actually has (or had) access to such wages or benefits for his own use, and

(iii) the period or periods when, or with respect to which, the individual actually received such wages or benefits.

(B) Such individual shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3)(A) Any person who knowingly and willfully requests or obtains any information concerning an individual pursuant to the authority contained in section 303(h) of the Social Security Act under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term "person" as used in this paragraph includes an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, or any owner (or employee thereof).

(B) Any individual affected by (i) a negligent or knowing disclosure of information referred to in this section or in section 303(h) of the Social Security Act about such person, by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section or section 303(h), or (ii) any other negligent or knowing action that is inconsistent with this section or section 303(h) of the Social Security Act (or regulations promulgated thereunder), may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action, and the district court of the United States in the district in which the affected individual resides, or in which such unauthorized action occurred, or in which the individual alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney fees and other litigation costs.

(4)(A) The amendment made by subsection (d)(1) shall take effect on September 30, 1988, except that at the initiative of a State or the State agency of the State, and with the approval of the Secretary of Labor, the amendment may be made effective in such State on any date prior to September 30, 1988, which is more than 90 days after the date of enactment of this section.

(B) The effective dates of subsections (d)(2) and (d)(3) shall be 90 days after the date of enactment of this section.●

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 251. A bill to designate certain segments of the Maurice, the Manantico, and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

DESIGNATION OF CERTAIN WILD AND SCENIC RIVERS AREAS

● Mr. BRADLEY. Mr. President, it is my pleasure to send the following bill to the desk on behalf of myself and my colleague from New Jersey, Senator LAUTENBERG. This legislation is identical to a bill I introduced last Congress. Its purpose is to direct the Department of the Interior to study the potential addition of the Maurice River, the Manantico Creek, and the Manumuskin River in southern New Jersey to the National Wild and Scenic Rivers System. Companion legislation is being again introduced by Congressman WILLIAM HUGHES in the House of Representatives.

Mr. President, the National Wild and Scenic Rivers Act, enacted in 1968, offered the first Federal protection for the Nation's rapidly disappearing network of free-flowing rivers and streams. This landmark law preserves selected rivers and river corridor landscapes which possess outstanding scenic, recreational, historic, and cultural values. I believe the Maurice, Manumuskin, and Manantico Rivers are just those kind of unique resources. As early as 1977, each of these rivers was recommended for inclusion in the national inventory of scenic rivers by the commissioner of the New Jersey Department of Environmental Protection.

The Maurice River has its headwaters in small tributaries in Gloucester and Salem Counties. In its progress toward the Delaware Bay, the river meanders through wooded and wetland terrain. As the river nears the bay, it widens and becomes tidal. The river winds in broad loops past the communities of Laurel Lake, Port Elizabeth, Mauricetown, Dorchester, Leesbury, Shell Pike, and Vivalre. The Manantico and Manumuskin Rivers also have a rich diversity, passing through fresh water wetlands, swamp forest, upland forest, and local communities.

These rivers host a variety of plant and animal life, including a number of threatened and endangered species. Additionally, this river area is lauded as one of the finest for canoeing in the coastal region and is recognized for its pristine water quality.

Mr. President, those who live in southern New Jersey would like to assure that the rivers' water quality and recreational opportunities are maintained through sound planning and management. The Wild and Scenic Rivers Act would help provide this protection through the development of a management plan. The proposed study has the support of all the local municipalities.

Last session, time ran out before the bill could be passed by the Senate. However, in my discussions with various Senators, I believe there was a consensus that this bill could be addressed quickly in committee and moved to the Senate floor. This session I will be working to insure the swift and, I trust, favorable consideration of this bill by my colleagues in the Senate.

Mr. President, the Wild and Scenic Rivers Act has been successful in preserving a number of our Nation's free-flowing rivers. The Maurice, Manantico and Manumuskin Rivers are excellent candidates for the preservation and protection afforded by this act. I ask unanimous consent that the text of the bill be printed in the RECORD

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

S. 251

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

SECTION 1. DESIGNATION AS STUDY RIVERS.

Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(A)) is amended by adding at the end thereof of the following:

"(92) MAURICE, NEW JERSEY.—The segment from Shell Pile to the point three miles north of Laurel Lake.

"(93) MANUMUSKIN, NEW JERSEY.—The segment from its confluence with the Maurice River to the crossing of State Route 49.

"(94) MANANTICO CREEK, NEW JERSEY.—The segment from its confluence with the Maurice River to its source.●

● Mr. LAUTENBERG. Mr. President, I am pleased to join my colleague from New Jersey, Senator BRADLEY, in introducing legislation to designate sections of three New Jersey rivers for inclusion in the National Wild and Scenic Rivers System. This bill would name certain segments of the Maurice, Manumuskin, and Manantico Rivers in New Jersey as study rivers. This is the first step in the wild and scenic designation process. Our distinguished colleague in the House of Representatives, BILL HUGHES, is introducing the companion measure today.

Mr. President, this is the same bill that Senator BRADLEY and I introduced late in the 99th Congress. In the closing days of the session, it was not possible to have this important measure considered. But our desire, and the desire of the local community, to see these valuable rivers protected did not end with the session. These rivers still deserve the protection offered by inclusion in the Wild and Scenic Rivers System. By introducing this bill at the outset of the 100th Congress, it is my hope to see the process of protecting these rivers begin quickly.

The Wild and Scenic Rivers Act, enacted in 1968, expressed the national policy of balancing the need for dams and other construction at appropriate sections of rivers with the need to preserve selected rivers and sections of rivers in their free-flowing condition. It was the intent of Congress to protect such rivers and the natural resources surrounding them, for their scenic, recreational, historic, cultural, and other outstanding qualities. There are currently 68 rivers in the wild and scenic system.

The Maurice, Manumuskin, and Manantico Rivers are located in a sparsely developed region in the southern portion of New Jersey. The Manumuskin is a tributary to the Maurice River which flows into the Delaware River Bay. Together, these rivers possess some of the most delicate species of animal and plant life in the State.

The Maurice contains many of the physical remnants of New Jersey's once prosperous oyster harvesting and processing industry. Many species of reptiles and amphibians, including the threatened and endangered tiger salamander, and corn and pine snakes, inhabit the Maurice. This type of environment is unqiue to New Jersey and represents an important part of the Atlantic coastal landscape.

The water quality of the Manumuskin River is of the highest in the State. The Manumuskin encompasses a diverse stretch of wetlands, swamp forests and upland forests. It is the site of an historic church which dates back to the American Revolution. One species of plant found along the Manumuskin appears in only five locations throughout the world. This fall, thousands of migrating waterfowl, rail birds, and bobolink will stop along the river.

Large portions of the Maurice, Manumuskin, and Manantico lie within the boundaries of the Pinelands National Reserve, one of our most valuable natural resources. In the last session, we were successful in having portions of the Great Egg Harbor River designated as a study river. I look forward to its eventual addition to the wild and scenic system. Inclusion of these rivers within the system would complement that effort, and enhance protection of these areas in cooperation with the Federal, State, and local efforts through the Pinelands Comprehensive Management Plan.

Local support for the protection of these rivers is overwhelming. My constitutents have been working hard to preserve and protect important portions of the Maurice, Manumuskin, and Manantico Rivers. The National Park Service strongly supports inclusion of these rivers in the wild and scenic rivers system. Designation of these rivers by the Park Service as study rivers would represent the culmination of years of efforts by local individuals, the State of New Jersey, conservation groups, and the Federal Government who wish to preserve them for the enjoyment of residents and visitors alike.

Mr. President, last October I spent a day touring these rivers. It was a day I'll not soon forget. On the tour, we saw a tremendous abundance of wildlife, including the endangered national symbol, the bald eagle. This is an area of great natural beauty. It's part of our State that we New Jerseyans are most proud of. It's a side of New Jersey many people do not know exists. I want to make sure that future generations will be able to see and enjoy this area as I have.

I urge my colleagues to support this legislation, and I look forward to working with the local communities, the State of New Jersey, and the Park Service in protecting these important natural resources.●

By Mr. DECONCINI (for himself and Mr. MCCAIN):

S. 252. A bill to establish a San Pedro Riparian National Conservation Area; to the Committee on Energy and Natural Resources.

SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

● Mr. DECONCINI. Mr. President, I am introducing legislation today that I sponsored in the 99th Congress which will establish special protection for a unique riparian ecosystem in southern Arizona known as the San Pedro Riparian Area. Lands along a 31-mile stretch of the San Pedro River in western Cochise County, AZ, comprise some of the most valued riparian, wildlife, archaeological, paleontological, scientific, cultural, and recreational resources in the Southwest. Intense national interest in this area sparked action by the Bureau of Land Management to acquire riparian lands along the San Pedro. On March 7, 1986, title to these lands was turned over to the Bureau of Land Management through a land exchange initiative with the private owner, Tenneco Inc. Since that time, the BLM has closed the 43,371 acres of land to the public while it formulates an interim land management policy for these important public lands.

The legislation I am sponsoring today, with my good friend from Arizona, Senator MCCAIN, will place the San Pedro Riparian Area under the management of a national conservation area of the Bureau of Land Management. The lands will be managed to protect the fragile resource values but will be open to the public for recreation and other uses on a controlled basis.

Mr. President, in previous years individuals and organizations came to me seeking land and water conservation funds to acquire the lands now comprising the San Pedro River Riparian Area. Two years ago, estimates on the cost to acquire this area ranged from $20 to $30 million. Through the initiative of the Bureau of Land Management, the Federal Government now owns these lands and can manage them to protect the resources and assure public enjoyment for the years to come. I commend the BLM for its foresight and leadership in acquiring and protecting these lands. In times when all of us are gravely concerned about spiraling Federal deficits, it is good to see actions undertaken that respond to our public land needs without deepening the Federal budgetary problems. Dean Bibles, the Arizona State director for the BLM, is largely responsible for this achievement and deserves substantial credit.

The 43,371 acres of land along the San Pedro River are rich in wildlife and significant cultural resources. The area provides habitat to the largest diversity of reptiles, birds, and mammals found in the United States and North America. Mexican birds, whose northern range is southeastern Arizona, use the area and species like the Harris hawk, the black hawk, the zone-tailed hawk, gray hawk, aplomado falcon, and the elegant trogon are prevalent. Experts estimate that the area includes 161 species of birds, 80 species of mammals, a dozen fish species, and about 68 species of reptiles and amphibians.

Equally important are the abundance of cultural and historic resources found in the area. There are 110 known archaeological sites including the famous and highly significant Paleo Indian sites dating to 11,000 years ago, the Presideo of Santa Cruz de Terrante (Quiburi), Murray Springs, and the Escapule site. This is one of the few areas within the United States where known sites of the period between the prehistoric and historic occupation of the Southwest still exist. While many of these sites must be carefully preserved, they do afford excellent opportunities for interpretation and education for the public.

While the Bureau of Land Management has existing authority under the Federal Land Policy and Management Act of 1976 to manage these lands, because of the fragile nature of the significant resources and the need to ensure the proper protection and use of the area for the years to come, I believe special consideration should be afforded this area by the designation of the San Pedro Riparian Area as a national conservation area. Under the legislation I propose today, the San Pedro lands will be managed primarily to conserve and protect the riparian, aquatic, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreation resources of the area. None of the lands will be eligible for disposal and the Secretary will be directed to work with the public to develop a long-term management policy for the national conservation area. The Secretary shall have the authority to enter into cooperative agreements with State and local agencies like the Arizona Game and Fish Department, Arizona State Parks and private organizations who may have special management expertise and concern for the preservation of the area. Subject to valid existing rights, the area will be withdrawn from min-

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eral entry and livestock grazing. Because of the environmental importance of this area, an Advisory Council will be established to advise and recommend to the Secretary of the Interior the appropriate practices for the development and implementation of the management plan for this area. Also, because there have been concerns about the BLM's ability to sufficiently manage and protect this area under the designation of a national conservation area, I have included a provision which requires the Secretary of the Interior to submit a report to the appropriate committees of the House and the Senate within 5 years of the date of enactment of the act and every 10 years thereafter, on the implementation of the terms of the act. That report is to include a detailed statement on the condition of the resources and the BLM's ability to achieve the management objectives outlined in the bill.

Mr. President, through the initiative taken by Dean Bibles of the BLM and through the permanent management authority offered to the San Pedro area in this legislation, a unique area of diverse resources, breathtaking beauty, and historic values will be preserved and protected for all Americans to enjoy for the years to come. The cooperation and continued work by experts and citizens in Arizona, working with the BLM, will assure this goal.

In order to adopt a permanent management plan for this important area this year, it is my hope that the Energy and Natural Resources Committee will take expeditious action on this measure early in the session and report the bill intact. The bill I am introducing today is virtually identical to the bill which passed the House of Representatives in the 99th Congress. One minor change involves the expansion of the boundary to take in 48,707 acres. Last year, despite the strong support of the entire Arizona congressional delegation for this designation, the legislation was stalled because of concerns about grazing language and the issue of Federal reserve water rights. My position on both of these issues has not changed from the previous Congress. The BLM is currently honoring a lease issued by Tenneco to a grazing allottee through 1987. After that time, the BLM has no intentions of issuing any Federal grazing permits for this area because of its desire to undertake extensive research and evaluation on the land in the absence of grazing. A provision has been included in the legislation restricting livestock grazing in the San Pedro area for a period of 15 years. On the subject of Federal reserve water rights, I have specifically excluded language on this subject in order to afford all parties an opportunity to address this matter in an equitable fashion if and when the issue of water rights should become a question in the future. I know of no way at this time to quantify how much water in this desert riparian area will be necessary to accommodate a minimum flow to protect the area in perpetuity.

The support for this legislation continues to be widespread. I hope the committee will take the appropriate steps to protect this area early in the 100th Congress.

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

S. 252

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

SECTION 1. ESTABLISHMENT OF SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT.—In order to protect the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the Public lands surrounding the San Pedro River in Cochise County, Arizona, there is hereby established the San Pedro Riparian National Conservation Area (hereafter in this Act referred to as the "conservation area").

(b) AREA INCLUDED.—The conservation area shall consist of public lands as generally depicted on a map entitled "San Pedro Riparian National Conservation Area—Proposed" dated July 1986, comprising approximately 48,707 acres.

(c) MAP.—As soon as is practicable after enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Each such map shall have the same force and effect as if included in this Act. Such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the Bureau of Land Management offices of the State Director for Arizona, and the district office responsible for the management of the conservation area.

SEC. 2. MANAGEMENT OF CONSERVATION AREA.

(a) GENERAL AUTHORITIES.—The Secretary shall manage the conservation area in a manner that conserves, protects, and enhances the riparian area and the aquatic, wildlife, archeological, paleonotological, scientific, cultural, educational, and recreational resources of the conservation area. Such management shall be guided by this Act and, where not inconsistent with this Act, by the provisions of the Federal Land Policy and Management Act of 1976 (hereinafter in this Act referred to as "FLPMA").

(b) USES.—The Secretary shall only allow such uses of the conservation area as he finds will further the primary purposes for which the conservation area is established. Except where needed for administrative or emergency purposes, the use of motorized vehicles in the conservation area shall only be allowed on roads specifically designated for such use as part of the management plan prepared pursuant to section 3 of this Act. The Secretary shall have the power to implement such reasonable limits to visitation and use of the conservation area as he finds appropriate for the protection of the resources of the conservation area, including requiring permits for public use, or closing portions of the conservation area to public use.

(c) LIVESTOCK.—In order to provide an opportunity for the study, evaluation, and monitoring of riparian areas in the absence of livestock grazing, the Secretary shall not, subject to valid existing contractual rights, issue any permit for the grazing of livestock on lands designated as part of the conservation area by this Act for a period of 15 years from the date of enactment of this Act.

(d) WITHDRAWALS.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; 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) ENFORCEMENT.—Any person who violates any provision of this Act or any regulation promulgated by the Secretary to implement this Act shall be subject to a fine of up to $10,000, or imprisonment for up to one year, or both.

SEC. 3. MANAGEMENT PLAN.

(a) DEVELOPMENT OF PLAN.—No later than 2 years after the enactment of this Act, the Secretary shall develop a comprehensive plan for the long-range management and protection of the conservation area. The plan shall be developed with full opportunity for public participation and comment, and shall contain provisions designed to assure protection of the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreation resources and values of the conservation area.

(b) RECOMMENDATIONS.—The Secretary shall, in the comprehensive plan referred to in subsection (a), develop recommendations to Congress on whether additional lands should be included in the conservation area.

(c) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with appropriate State and local agencies, pursuant to section 307(b) of FLPMA, to better implement the plan developed pursuant to subsection (a).

(d) RESEARCH.—In order to assist in the development of appropriate management strategies for the conservation area, the Secretary may authorize research on matters including the environmental, biological, hydrological, and cultural resources of the conservation area, pursuant to section 307(a) of FLPMA.

SEC. 4. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary shall establish a San Pedro Riparian National Conservation Area Advisory Committee, whose purpose shall be to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required pursuant to section 3 of this Act.

(b) REPRESENTATION.—There shall be 7 members of the Committee, who shall be appointed by the Secretary. Members of the Committee shall be appointed for terms of 3 years, except that of the members first appointed 2 shall be appointed for terms of 1 year and 3 shall be appointed for terms of 2 years. The Secretary shall appoint one member from nominations supplied by the Governor of the State of Arizona, and one member from nominations supplied by the Supervisors of Cochise County, Arizona. The other members shall be persons with

recognized backgrounds in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the primary purposes for which the conservation area was created.

SEC. 5. LAND ACQUISITION.

The Secretary may acquire lands or interests in lands within the boundaries of the conservation area by exchange, purchase, or donation, except that any lands or interests therein owned by the State or local government may be acquired by donation or exchange only. Any purchase or exchange of lands to be added to the conservation area shall require the consent of the owner of those lands or rights.

SEC. 6. REPORT TO CONGRESS.

No later than five years after the enactment of this Act, and every ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on the implementation of this Act. Such report shall include a detailed statement on the condition of the resources within the conservation area and of the progress of the Bureau of Land Management in achieving the purposes of this Act.

SEC. 7. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.●

By Mr. DECONCINI (for himself and Mr. MCCAIN):

S. 253. A bill to convey Forest Service land to Flagstaff, AZ; to the Committee on Energy and Natural Resources.

TRANSFER OF CERTAIN FEDERAL LANDS TO FLAGSTAFF, AZ

● Mr. DECONCINI. Mr. President, I am sponsoring legislation today which will authorize the Secretary of Agriculture to convey 134.57 acres of Forest Service land to the city of Flagstaff, AZ. The bill I am introducing today is identical to the bill which was reported by the Energy and Natural Resources Committee in the 99th Congress. It conveys Forest Service land to the city of Flagstaff for use as a public park. It contains a provision specifying that the land must be used for open space and public recreation, otherwise the land will revert to the Federal Government.

The land identified for transfer in the bill will go to the city without consideration except for the administrative costs of transferring title to the land. The lands to be transferred are presently being utilized by the city of Flagstaff for a public park known as Thorpe Park, under special use permit. The Forest Service has no plans to use the lands for other purposes. The city would like to make major improvements to the Thorpe Park lands. However, if the city has to pay the costs to acquire the Forest Service property, it will have to forgo recreational improvements on the land until some time well into the future. Since the lands will be managed for public purposes and because they are presently being used by the city for those purposes, it makes sense to me that the lands ought to be transferred to the city. The city can then make its own decisions on future improvements and management of the lands which will be best for public use.

It is my hope that this legislation will receive expeditious consideration by the Energy and Natural Resources Committee. I ask unanimous consent that the full text of the bill appear in the RECORD.

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

S. 253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b)(1) of section 1 of Public Law 96-581, relating to land conveyances in the State of Arizona, is amended by striking out "Any conveyances" and inserting in lieu thereof "Except as provided in subsection (c), any conveyances".

(b) Subsection (c) of section 1 is amended to read as follows:

"(c)(1) Of the tract of land described in subsection (a) of this section, the Secretary shall offer to sell at the fair market value as determined on December 23, 1980, to the Flagstaff Medical Regional Center, Flagstaff, Arizona, not to exceed 18.25 acres immediately adjacent to said Flagstaff Medical Regional Center and shall convey, without consideration, except for administrative costs associated with the preparation of title and legal description, to the city of Flagstaff, Arizona, 134.57 acres, under special use permit in effect on the date of enactment of this Act to the city of Flagstaff.

"(2) Title to any real property acquired by the city of Flagstaff pursuant to this section shall revert to the United States if the city attempts to convey or otherwise transfer ownership of any portion of such property to any other party or attempts to encumber such title, or if the town permits the use of any portion of such property for any purpose incompatible with the purposes specified in paragraph (3) of this section.

"(3) Real property conveyed to the city of Flagstaff pursuant to this section shall be used for public open space, park and recreational purposes.

"(4) Except for any land to be conveyed to the Flagstaff Medical Regional Center and the city of Flagstaff, the Secretary shall solicit public offers for the remaining lands and improvements authorized under subsection (a) of this section. All offers shall be publicly opened at the time and place stated in the solicitation in accordance with the administrative requirements of the Secretary. The Secretary shall consider price and land values before entering into agreements or land exchanges with any party whose offer conforming to the solicitation notice is determined by the Secretary to be the most advantageous to the Government. Notwithstanding any other provision of this Act, the Secretary may reject any offer if the Secretary determines that such rejection is in the public interest.".●

By Mr. DIXON:

S. 254. A bill to provide a one-time amnesty from criminal and civil tax penalties and 50 percent of the interest penalty owed for certain taxpayers who pay previous underpayments of Federal tax during the amnesty period, to amend the Internal Revenue Code of 1954 to increase by 50 percent all criminal and civil tax penalties, and for other purposes; to the Committee on Finance.

TAX AMNESTY DELINQUENCY ACT OF 1987

● Mr. DIXON. Mr. President, I have been very pleased by the many indications of support for a national tax amnesty. When I first introduced tax amnesty legislation, S. 203, in the 99th Congress, the ranks of those willing to take a serious look at the idea were very thin. The successful tax amnesties conducted by my own State of Illinois, however, and the States of Massachusetts, California, and New York have had a real impact. Their experience demonstrated the potential of this idea at the national level.

It is true that Federal tax collection efforts are more sophisticated than those of the States. However, compliance with the Federal tax laws is declining, and almost one-fifth of the taxes legally owed and due the United States are currently not being collected. This tax gap currently amounts to roughly $100 billion a year, and it grows every year as the percentage of taxpayers who comply with our Nation's tax laws continues to fall.

We have made substantial efforts to improve compliance levels in recent years, but they have not been effective in reducing the tax gap. One of the reasons for that lack of success is that Congress and the administration reduced the personnel levels at the Internal Revenue Service to levels that makes it impossible for them to effectively administer tax compliance, in spite of the fact that each additional revenue agent returns 10 to 12 times his or her salary to the Government in the form of additional tax revenues. The percentage of returns being audited has fallen in the last 15 years from almost 5 percent to slightly over 1 percent.

These figures indicate that even with the Federal Government's significant enforcement efforts, there is a large and growing amount of revenue not being collected, and a lot of room for significantly tougher enforcement actions. Given the enormous size of the Federal tax gap, the Federal Government would not need to be anywhere near as proportionately successful as Illinois or Massachusetts, for example, to collect many billions of dollars in additional revenue.

Revenues from a tax amnesty/enforcement package can be used to help reduce our budget deficits, and to help preserve high-priority Federal programs that are currently facing drastic cuts or even elimination. A tax amnesty/tougher enforcement program, because it is not a new tax or a tax increase for honest taxpayers of any

kind, can help break the current budget gridlock by making it possible to comply with the Gramm-Rudman-Hollings defict reduction targets while preserving our ability to meet both essential defense and domestic needs.

There is considerable debate on how much revenue a Federal tax amnesty might produce. The Senate Budget Committee in the last Congress used an estimate of $8.6 billion. My own estimate is that it could produce $20 billion or more.

In 1981, Federal tax collections were more than $81 billion below what they would have been if every taxpayer had paid his or her legal tax obligations. Individual taxpayers failed to report to the Internal Revenue Service almost $250 billion in income that year.

Unfortunately, 1981 is not an unusual year. The tax gap was more than $28 billion in 1973, or approximately double the budget deficit of $14 billion that year, and it has increased steadily since then. The Treasury Department estimates that the tax gap—the difference between the amount of tax that would be collected with 100 percent compliance with our Nation's tax laws and what is actually collected—was $92 billion or more in 1985, and believes that level could rise to between $386 to $473 billion by the turn of the century.

Congress has recognized the growing compliance problem these numbers represent and has taken a number of actions to try to correct it. During consideration of Senate Concurrent Resolution 32, the fiscal year 1986 budget resolution, the Senate adopted, by an overwhelming vote of 93 to 5, a resolution offered by the distinguished Senator from Massachusetts, Senator KERRY, urging the taxwriting committees to act to strengthen tax compliance. The Tax Reform Act also contained a number of provisions designed to improve tax compliance.

Congress has also been part of the problem, however. We have let IRS manpower levels erode in the past few years. IRS personnel levels are only now returning to their 1980 levels, and are still grossly inadequate to cover the increase in workload caused by increased complexity and the increasing number of tax returns being filed. Further, there have been at least 19 major changes in the tax laws in the past 22 years. The Tax Code has become so complicated that over 44 percent of all taxpayers are now using paid preparers, up from 37 percent just 2 years ago. The complexity and rapid pace of change has encouraged the growth of the perception that the Tax Code is unfair, and therefore helped to undermine the voluntary compliance that our tax laws fundamentally depend upon.

The Tax Reform Act was, in no small part, an attempt to deal with the interrelated problems of fairness, complexity, and noncompliance. In fact, the administration's original tax reform proposal was titled "The President's Tax Proposals to the Congress for Fairness, Growth, and Simplicity."

In my view, perhaps the most crucial measure of the success of any tax reform is its impact on future compliance. If taxpayers believe the Tax Reform Act really simplifies the Tax Code and makes it fairer, than the slide in voluntary compliance levels will be reversed.

Tax reform, however, speaks only to future compliance. It does nothing about collecting even some part of the billions and billions of dollars that the tax system failed to collect in the past. Neither will increased collection efforts by the Service result in the payments of the vast majority of these outstanding delinquent balances. The IRS has stated that it would take an additional 200,000 agents or even more to track down and collect a significant part of the tax gap, and that kind of police State option is something that no one, including the IRS wants.

That does not mean, though, that there is no way to recover any part of the tax gap from prior years. There is a mechanism that has been used successfully in a number of States, including Massachusetts and my own State of Illinois. That mechanism is known as tax amnesty.

Amnesty is a simple concept. It provides an opportunity for delinquent taxpayers to fully pay their overdue tax liability without being subject to criminal or civil prosecution. Fourteen States—Illinois, Massachusetts, New York, Connecticut, Kansas, Alabama, Texas, Missouri, Minnesota, North Dakota, New Mexico, Arizona, California, and Idaho—have already enacted, and in many cases implemented, tax amnesty programs.

Illinois, for example, collected approximately $150 million, far more than the $20 million the State department of revenue originally estimated. Massachusetts collected over $72 million, and in California, over 130,000 delinquent taxpayers came forward.

The State programs were not giveaways. They did not reward tax cheaters. The State programs were balanced; they increased compliance efforts and penalties for noncompliance after the amnesty period. The State programs resulted in placing additional taxpayers back on the rolls, and in additional tax collections that the States would not otherwise have received.

While I recognize the enormous differences between the State and national tax systems, I believe a national Tax Amnesty Program could be effective and ought to be considered. I am therefore today reintroducing the Federal Tax Amnesty Delinquency Act.

My bill establishes a 6-month amnesty period, to begin on July 1 after the bill is enacted. The amnesty period would cover all tax years through 1985 still subject to collection by the IRS—and I understand that the Service, in some circumstances, can go back 7 years or more.

All taxpayers would be eligible for the amnesty with some limited exceptions: First, those involved with the IRS in administrative or judicial proceedings before the amnesty period begins; second, those under criminal investigation where the IRS has referred the matter to the Justice Department before the amnesty period begins; and third, those who make false or fraudulent representations in attempting to take advantage of the amnesty.

The amnesty itself would be simple and straightforward. It would include amnesty from criminal and civil penalties and from 50 percent of any interest penalty owed. It would, however, apply only to legal-source income. Taxes due on income resulting from criminal activity would not be covered by the amnesty.

All Federal taxes would be included under the amnesty, not just the income tax.

The amnesty provisions are generous and provide a substantial incentive for taxpayers to take advantage of the amnesty period. However, the bill does not rely just on carrots; it also contains a couple of substantial sticks.

First, it increases all tax-related civil and criminal penalties, including money fines and jail terms, by 50 percent. The tougher penalties would apply to any tax year after 1986, and after the amnesty period, to any open tax year. Of course, the increased penalties would not apply to cases pending on the date of enactment where a judgment was entered before that date.

Second, the bill authorizes such funds as are necessary to add 3,000 additional revenue agents to the IRS, an increase of about 20 percent in the agent force. Adding agents can be extremely cost effective, because each additional agent can bring in as much as 12½ times his salary in additional tax revenue. In fact, the IRS has told me that agents can bring in as much as 40 times their salary, depending on where enforcement efforts are concentrated.

The bill also authorizes the funds the Treasury will need to administer and publicize the amnesty program. The State experience demonstrates that wide publicity can significantly enhance the effectiveness of an amnesty program.

I believe in the amnesty concept. I was greatly disappointed that the Tax Reform Act did not include a one-time amnesty provision. Amnesty and tax

reform fit very well together. It is not yet too late, though, to take advantage to the benefits of tax amnesty as we phase in the new Tax Reform Act. I urge my colleagues to carefully examine the amnesty concept. I remain confident that a thorough and fair-minded review will result in enactment of a Federal tax amnesty by large, bipartisan majorities in both the House and the Senate. I look forward to working with the Members of the Senate toward that objective. Mr. President, I ask unanimous consent that a copy of the bill be printed at this point in the RECORD.

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

S. 254

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 "Federal Tax Delinquency Amnesty Act of 1987".

SEC. 2. WAIVER OF CRIMINAL AND CIVIL PENALTIES AND 50 PERCENT OF INTEREST PENALTY.

(a) GENERAL RULE.—In the case of any underpayment of Federal tax for any taxable period, the taxpayer shall not be liable for any criminal or civil penalty (or addition to tax) or 50 percent of any interest penalty provided by the Internal Revenue Code of 1954 with respect to such underpayment if—

(1) during the amnesty period—

(A) the taxpayer files a written statement with the Secretary which sets forth—

(i) the name, address, and taxpayer identification number of the taxpayer,

(ii) the amount of the underpayment for the taxable period, and

(iii) such information as the Secretary may require for purposes of determining the correct amount of the underpayment for the taxable period, and

(B) the taxpayer agrees to a waiver of any restriction on the assessment or collection of such underpayment,

(2) when filing the statement described in paragraph (1), the taxpayer pays the amount of the underpayment shown on such statement, and

(3) not later than 30 days after the date on which the taxpayer is notified by the Secretary of the amount which equals 50 percent of the interest payable with respect to the underpayment (and the amount of any tax delinquent amount with respect to the taxpayer), the taxpayer pays the full amount of such interest (and such tax delinquent amount).

(b) INSTALLMENT PAYMENT OF TAX PERMITTED IN CERTAIN CASES.—The requirements of paragraphs (2) and (3) of subsection (a) shall be treated as met if—

(1) the taxpayer in the statement filed under subsection (a)(1) requests the privilege of making installment payments under this subsection, and

(2) the taxpayer enters into an agreement with the Secretary for the payment (in installments) of the amounts required to be paid under paragraphs (2) and (3) of subsection (a) within 30 days after contacted by the Secretary for purposes of entering into such an agreement (or in any case where the Secretary determines that permitting the payment in installments of such amounts is not appropriate, the taxpayer pays the entire amount of such amounts within 30 days after notified by the Secretary of such determination).

(c) AMOUNT OF UNDERPAYMENT DISPUTED.—If the amount under paragraph (3) of subsection (a) is disputed by the taxpayer, such amount must be paid within the period described in subsection (a). If the taxpayer is entitled to a refund as a result of the resolution of the dispute through normal administrative and judicial procedures, the Secretary shall refund the amount plus interest at the 6-month Treasury bill rate in effect as of the date the dispute is resolved.

(d) AMNESTY NOT TO APPLY IN CERTAIN CASES.—

(1) WHERE TAXPAYER CONTACTED BEFORE STATEMENT FILED.—Subsection (a) shall not apply to any underpayment of Federal tax for any taxable period to the extent that before the statement is filed under subsection (a)(1)—

(A) such underpayment was assessed,

(B) a notice of deficiency with respect to such underpayment was mailed under section 6212 of the Internal Revenue Code of 1954, or

(C) the taxpayer was informed by the Secretary that the Secretary has questions about the taxpayer's tax liability for the taxable period.

(2) WHERE FRAUD IN SEEKING AMNESTY OR WHERE CRIMINAL INVESTIGATION PENDING.—Subsection (a) shall not apply to any taxpayer if—

(A) any representation made by such taxpayer under this section is false or fraudulent in any material respect, or

(B) a Justice Department referral (within the meaning of section 7602(c)(2) of the Internal Revenue Code of 1954) is in effect with respect to such taxpayer as of the time the statement is filed under subsection (a)(1).

(3) ILLEGAL SOURCE INCOME.—Subsection (a) shall not apply to any underpayment of Federal tax with respect to income resulting from a criminal offense under Federal, State, or local law.

(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) AMNESTY PERIOD.—The term "amnesty period" means the 6-month period which begins on July 1, 1987, or on the first July 1 after the date of the enactment of this Act.

(2) FEDERAL TAX.—The term "Federal tax" means any tax imposed by the Internal Revenue Code of 1954.

(3) TAXABLE PERIOD.—

(A) IN GENERAL.—The term "taxable period" means—

(i) in the case of a tax imposed by subtitle A of the Internal Revenue Code of 1954, the taxable year, or

(ii) in the case of any other tax, the period in respect of which such tax is imposed.

(B) SPECIAL RULE FOR TAXES WITH NO TAXABLE PERIOD.—In the case of any tax in respect of which there is no taxable period, any reference in this section to a taxable period shall be treated as a reference to the taxable event.

(4) ADDITION TO TAX INCLUDES ADDITIONAL AMOUNT.—The term "addition to tax" includes any additional amount.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(6) FORM OF STATEMENT.—Any statement under subsection (a)(1) shall be filed in such manner and form as the Secretary shall prescribe.

(7) NOTICE TO RELATED PERSONS TREATED AS NOTICE TO THE TAXPAYER.—

(A) IN GENERAL.—For purposes of subsection (d)(1)(C), any notice to a related person with respect to a matter which may materially affect the tax liability of the taxpayer for any taxable period shall be treated as notice to the taxpayer with respect to such taxable period.

(B) RELATED PERSON.—For purposes of subparagraph (A), the term "related person" means—

(i) any person who during the taxable period bore a relationship to the taxpayer described in section 267(b) of the Internal Revenue Code of 1954,

(ii) any partnership in which the taxpayer was a partner during the taxable period, or

(iii) any S corporation (as defined in section 1361 of such Code) in which the taxpayer was a shareholder during the taxable period.

(f) PERIODS FOR WHICH AMNESTY AVAILABLE.—The provisions of this section shall apply only to underpayments of Federal tax for taxable periods ending before January 1, 1986 (or, in the case of a tax for which there is no taxable period, taxable events before January 1, 1986).

(g) ADDITIONAL AUTHORIZATIONS.—

(1) AMNESTY PROGRAM.—There are authorized to be appropriated such sums as are necessary to administer the amnesty program, using special efforts to publicize such program including direct-mail contacts and radio, television, and print-media advertising.

(2) ADDITIONAL IRS AGENTS.—There are authorized to be appropriated such sums as are necessary to employ 3,000 additional Internal Revenue Service agents.

SEC. 3. CRIMINAL AND CIVIL TAX PENALTIES INCREASED BY 50 PERCENT.

(a) CIVIL PENALTIES.—

(1) Paragraphs (2) and (3) of section 6651(a) of the Internal Revenue Code of 1954 (relating to failure to file tax return or to pay tax) are each amended by striking out "0.5 percent" each place it appears and inserting in lieu thereof "0.75 percent".

(2) The following provisions of such Code are each amended by striking out "1 percent" each place it appears and inserting in lieu thereof "1.5 percent".

(A) Section 6657 (relating to bad checks).

(B) Subsection (b) of section 6706 (relating to original issue discount information requirements).

(C) Paragraph (2)(B)(i) of section 6707(a) (relating to failure to register tax shelter).

(3) The following provisions of such Code are each amended by striking out "5 percent" each place it appears and inserting in lieu thereof "7.5 percent".

(A) The heading and paragraph (1) of section 72(q) (relating to 5-percent penalty for premature distributions from annuity contracts).

(B) Paragraph (5)(A)(i) of section 6013(b) (relating to joint return after filing separate return).

(C) Paragraph (1) of section 6038(c) (relating to penalty of reducing foreign tax credit).

(D) Subsection (a)(1) of section 6651 (relating to file tax return or to pay tax).

(E) Subsection (a)(3)(A)(ii) and (g)(3)(B) of section 6652 (relating to failure to file certain information returns, registration statements, etc.).

(F) Paragraph (1) of section 6653(a) (relating to failure to pay tax).

(G) Subsection (a) of section 6656 (relating to failure to make deposit of taxes or overstatement of deposits).

(H) Subsection (a) of section 6677 (relating to failure to file information returns with respect to certain foreign trusts).

(I) Subsection (a) of section 6689 (relating to failure to file notice of redetermination of foreign tax).

(4) The following provisions of such Code are each amended by striking out "10 percent" each place it appears and inserting in lieu thereof "15 percent".

(A) Subsection (m)(5)(B) and (o)(2) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts).

(B) Paragraph (1) of section 408(f) (relating to additional tax on certain amounts included in gross income before age 59½).

(C) Paragraph (1) of section 6038(c) (relating to penalty of reducing foreign tax credit).

(D) Paragraph (3)(A)(i) of section 6652(a) (relating to returns relating to information at source, payments of dividends, etc., and certain transfers of stock).

(E) Subsection (a) of section 6661 (relating to substantial understatement of liability).

(F) Section 6683 (relating to failure of foreign corporation to file return of personal holding company tax).

(5) The following provisions of such Code are each amended by striking out "10 percent" each place it appears and inserting in lieu thereof "15 percent".

(A) Subsection (b) of section 6659 (relating to addition to tax in the case of valuation overstatements for purposes of the income tax).

(B) Subsection (b) of section 6660 (relating to addition to tax in the case of valuation understatement for purposes of the estate or gift taxes).

(6) Subsection (a) of section 6700 of such Code (relating to promoting abusive tax shelters, etc.) is amended by striking out "20 percent" and inserting in lieu thereof "30 percent".

(7) The following provisions of such Code are each amended by striking out "20 percent" each place it appears and inserting in lieu thereof "30 percent".

(A) Subsection (b) of section 6659 (relating to addition to tax in the case of valuation overstatements for purposes of the income tax).

(B) Subsection (b) of section 6660 (relating to addition to tax in the case of valuation understatement for purposes of the estate or gift taxes).

(8) The following provisions of such Code are each amended by striking out "25 percent" each place it appears and inserting in lieu thereof "37.5 percent".

(A) Subsection (b) of section 6038B (relating to notice of certain transfers to foreign persons).

(B) Paragraphs (1), (2), and (3) of section 6651(a) (relating to failure to file tax return or to pay tax).

(C) Paragraph (1) of section 6656(b) (relating to overstated deposit claims).

(9) Subsection (f) of section 6659 of such Code (relating to addition to tax in the case of valuation overstatements for purposes of the income tax) is amended by striking out "30 percent" and inserting in lieu thereof "45 percent".

(10) The following provisions of such Code are each amended by striking out "30 percent" each place it appears and inserting in lieu thereof "45 percent".

(A) Subsection (b) of section 6659 (relating to addition to tax in the case of valuation overstatements for purpose of the income tax).

(B) Subsection (b) of section 6660 (relating to addition to tax in the case of valuation understatement for purposes of the estate or gift taxes).

(11) The following provisions of such Code are each amended by striking out "50 percent" each place it appears and inserting in lieu thereof "75 percent".

(A) Paragraph (5)(A)(ii) of section 6013(b) (relating to joint return after filing separate return).

(B) Paragraph (2) of section 6332(c) (relating to enforcement of levy).

(C) Subsection (c) of section 6652 (relating to failure to report tips).

(D) Subsection (a)(2), (b)(1), (b)(2), and (e) of section 6653 (relating to failure to pay tax).

(12) Subsection (b) of section 6697 of such Code (relating to assessable penalties with respect to liability for tax of qualified investment entities) is amended to read as follows:

"(b) 75-PERCENT LIMITATION.—The penalty payable under this section with respect to any determination shall not exceed 75 percent of the amount of the deduction allowed by section 860(a) for such taxable year.".

(13) Subsection (a) of section 6651 of such Code (relating to failure to file tax return or to pay tax) is amended by striking out "100 percent" and inserting in lieu thereof "150 percent".

(14) The following provisions of such Code are each amended by inserting "150 percent of" after "equal to" each place it appears.

(A) Subsection (a) of section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax).

(B) Section 6684 (relating to assessable penalties with respect to liability for tax under chapter 42).

(C) Subsection (a) of section 6697 (relating to assessable penalties with respect to liability for tax of qualified investment entities).

(D) Subsection (a) of 6699 (relating to assessable penalties relating to tax credit employee stock ownership plans).

(15) Paragraph (1) of section 6621(d) of such Code (relating to interest on substantial underpayments attributable to tax motivated transactions) is amended by striking out "120 percent" and inserting in lieu thereof "180 percent".

(16) Subsection (a) of section 6675 of such Code (relating to excessive claims with respect to the use of certian fuels) is amended by striking out "Two times" and inserting in lieu thereof "Three times".

(17) Subsection (b) and (e) of section 6652 of such Code (relating to failure to file certain information returns, registration statements, etc.) is amended by striking out "$1" and inserting in lieu thereof "$1.50".

(18) The following provisions of such Code are each amended by striking out "$5" each place it appears and inserting in lieu thereof "$7.50".

(A) Section 6657 (relating to bad checks).

(B) Subsection (a) of section 6687 (relating to failure to supply identifying numbers).

(C) Subsection (a) of section 6687 (relating to failure to supply information with respect to place of residence).

(D) Paragraph (2) of section 6695(e) (relating to failure to file correct information return).

(19) The following provisions of such Code are each amended by striking out "$10" each place it appears and inserting in lieu thereof "$15".

(A) Subsections (d), (i), and (j) of section 6652 (relating to failure to file certain information returns, registration statements, etc.).

(B) Subsection (a) of section 6675 (relating to excessive claims with respect to the use of certain fuels).

(20) The following provisions of such Code are each amended by striking out "$25" each place it appears and inserting in lieu thereof "$37.50".

(A) Subsections (f), (g)(2), and (h) of section 6652 (relating to failure to file certain information returns, registration statements, etc.).

(B) Subsection (a), (b), and (c) of section 6695 (relating to other assessable penalties with respect to the preparation of income tax returns for other persons).

(21) The following provisions of such Code are each amended by striking out "$50" each place it appears and inserting in lieu thereof "$75".

(A) Paragraphs (1) and (2) of section 6652(a) (relating to returns relating to information at source, payments of dividends, etc., and certain transfers of stock).

(B) Section 6674 (relating to fraudulent statement or failure to furnish statement to employee).

(C) Subsection (a), (b), and (c) of section 6676 (relating to failure to supply identifying numbers).

(D) Subsection (a), (b), and (c) of section 6678 (relating to failure to furnish certain statements).

(E) Section 6690 (relating to fraudulent statement or failure to furnish statement to plan participant).

(F) Subsection (a) of section 6693 (relating to failure to provide reports on individual retirement accounts or annuities).

(G) Subsection (d) of section 6695 (relating to other assessable penalties with respect to the preparation of income tax returns for other persons).

(H) Subsection (b)(1) of section 6698 (relating to failure to file partnership return).

(I) Subsection (b)(1) of section 6704 (relating to failure to keep records necessary to meet reporting requirements under section 6047(e)).

(J) Subsection (a) of section 6706 (relating to original issue discount information requirements).

(K) Paragraph (2) of section 6707(b) (relating to failure to furnish tax shelter identification number).

(L) Subsection (a) of section 6708 (relating to failure to maintain lists of investors in potentially abusive tax shelters).

(22) The following provisions of such Code are each amended by striking out "$100" each place it appears and inserting in lieu thereof "$150".

(A) Subsection (as) of section 6651 (relating to failure to file tax return or to pay tax.

(B) Paragraph (3)(A)(iii) of section 6652(a) (relating to returns relating to information at source, payments of dividends, etc., and certain transfers of stock).

(C) Section 6686 (relating to failure to file returns or supply information by DISC or FSC).

(D) Section 6688 (relating to assessable penalties with respect to information required to be furnished under section 7654).

(E) Subsection (a) of section 6694 (relating to understatement of taxpayer's liability by income tax return preparer).

(F) Paragraph (1) of section 6695(e) (relating to failure to file correct information return).

(G) Paragraph (1) of section 6707(b) (relating to failure to furnish tax shelter identification number).

(23) Subsection (c) of section 6708 of such Code, as added by section 612(d)(1) of Deficit Reduction Act of 1984 (relating to penalties with respect to mortgage credit certificates) is amended by striking out "$200" and inserting in lieu thereof "$300".

(24) The following provisions of such Code are each amended by striking out "$500" each place it appears and inserting in lieu thereof "$750".

(A) Subsection (a) of section 6602 (relating to false information with respect to withholding).

(B) Subsection (b) of section 6694 (relating to understatement of taxpayer's liability by income tax return preparer).

(C) Subsection (f) of section 6695 (relating to other assessable penalties with respect to the preparation of income tax returns for other persons).

(D) Subsection (a) of section 6702 (relating to frivolous income tax return).

(E) Subsection (a) of section 6705 (relating to failure by broker to provide notice to payors).

(F) Paragraph (2)(A) of section 6707(a) (relating to failure to register tax shelter).

(25) The following provisions of such Code are each amended by striking out "$1,000" each place it appears and inserting in lieu thereof "$1,500".

(A) Paragraphs (1) and (2) of section 6038(b) (relating to dollar penalty for failure to furnish information).

(B) Paragraphs (1) and (2) of section 6038A(d) (relating to penalty for failure to furnish information).

(C) Subsection (b) and (e)(2) of section 6652 (relating to failure to file certain information returns, registration statements, etc.).

(D) Subsection (a) of section 6679 (relating to failure to file information returns with respect to certain foreign trusts).

(E) Subsection (a) of section 6679 (relating to failure to file returns, etc. with respect to foreign corporations or foreign partnerships).

(F) Section 6685 (relating to assessable penalties with respect to private foundation annual returns).

(G) Section 6686 (relating to failure to file returns or supply information by DISC or FSC).

(H) Section 6692 (relating to failure to file actuarial report).

(I) Subsection (a) of section 6700 (relating to promoting abusive tax shelters, etc.).

(J) Subsection (b)(1) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability).

(K) Subsection (a) of section 6708, as added by section 612(d)(1) of Deficit Reduction Act of 1984, (relating to penalties with respect to mortgage credit certificates).

(26) Subsection (c) of section 6708 of such Code, as added by section 612(d)(1) of Deficit Reduction Act of 1984 (relating to penalties with respect to mortgage credit certificates) is amended by striking out "$2,000" and inserting in lieu thereof "$3,000".

(27) The following provisions of such Code are each amended by striking out "$5,000" each place it appears and inserting in lieu thereof "$7,500".

(A) Subsections (d), (e)(1), and (i) of section 6652 (relating to failure to file certain information returns, registration statements, etc.).

(B) Section 6673 (relating to damages assessable for instituting proceedings before the tax court primarily for delay, etc.).

(28) The following provisions of such Code are each amended by striking out "$10,000" each place it appears and inserting in lieu thereof "$15,000".

(A) Paragraph (2)(A) of section 6038(c) (relating to penalty of reducing foreign tax credit).

(B) Subsection (h) of section 6652 (relating to failure to file certain information returns, registration statements, etc.).

(C) Subsection (b)(2) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability).

(D) Paragraph (2) of section 6707 (relating to failure to register tax shelter).

(E) Subsection (b) of section 6708, as added by section 612(d)(1) of Deficit Reduction Act of 1984, (relating to penalties with respect to mortgage credit certificates).

(29) Subsection (f) of section 6652 of such Code (relating to failure to file certain information returns, registration statements, etc.) is amended by striking out "$15,000" and inserting in lieu thereof "$22,500".

(30) Subsection (e) of section 6695 of such Code (relating to other assessable penalties with respect to the preparation of income tax returns for other persons) is amended by striking out $20,000" and inserting in lieu thereof "$30,000".

(31) Paragraph (2) of section 6038A(d) of such Code (relating to penalty for failure to furnish information) is amended by striking out "$24,000" and inserting in lieu thereof "$36,000".

(32) The following provisions of such Code are each amended by striking out "$25,000" each place it appears and inserting in lieu thereof "$37,500".

(A) Paragraph (3) of section 6652(g) (relating to returns, etc., required under section 6039C).

(B) Section 6686 (relating to failure to file returns or supply information by DISC or FSC).

(C) Subsection (d) of section 6695 (relating to other assessable penalties with respect to the preparation of income tax returns for other persons).

(33) The following provisions of such Code are each amended by striking out "$50,000" each place it appears and inserting in lieu thereof "$75,000".

(A) Paragraphs (1) and (3)(B) of section 6652(a) (relating to returns relating to information at source, payments of dividends, etc., and certain transfers of stock).

(B) Subsection (a) of section 6676 (relating to failure to supply identifying numbers).

(C) Subsection (a) of section 6678 (relating to failure to furnish certain statements).

(D) Subsection (b)(2) of section 6704 (relating to failure to keep records necessary to meet reporting requirements under section 6047(e)).

(E) Subsection (a) of section 6708 (relating to failure to maintain lists of investors in potentially abusive tax shelters).

(b) CRIMINAL PENALTIES.—

(1) Paragraph (3) of section 9012(e) of such Code (relating to kickbacks and illegal payments) is amended by striking out "125 percent" and inserting in lieu thereof "187.5 percent".

(2) Subsection (b) of section 7212 of such Code (relating to attempts to interfere with administration of internal revenue laws) is amended by striking out "$500" and inserting in lieu thereof "$750", and by striking out "double" and inserting in lieu thereof "triple".

(3) The following provisions of such Code are each amended by striking out "$1,000" each place it appears and inserting in lieu thereof "$1,500".

(A) Section 7204 (relating to fraudulent statement or failure to make statement to employees).

(B) Subsections (a) and (b) of section 7205 (relating to fraudulent withholding exemption certificate or failure to supply information).

(C) Section 7209 (relating to unauthorized use or sale of stamps).

(D) Section 7210 (relating to failure to obey summons).

(E) Section 7211 (relating to false statements to purchasers or lessees relating to tax).

(F) Subsection (b) of section 7213 (relating to unauthorized disclosure of information).

(G) Subsection (a) of section 7216 (relating to disclosure or use of information by preparers of returns).

(4) Subsection (a) of section 7212 of such Code (relating to attempts to interfere with administration of internal revenue laws) is amended by striking out "$3,000" and inserting in lieu thereof "$4,500".

(5) The following provisions of such Code are each amended by striking out "$5,000" each place it appears and inserting in lieu thereof "$7,500".

(A) Subsection (a) of section 7212 (relating to attempts to interfere with administration of internal revenue laws).

(B) Subsection (a) of section 7213 (relating to unauthorized disclosure of information).

(C) Subsection (b) of section 7214 (relating to offenses by officers and employees of the United States).

(D) Subsection (a) of section 7215 (relating to offenses with respect to collected taxes).

(E) Section 7231 (relating to failure to obtain license for collection of foreign items).

(F) Section 7232 (relating to failure to register or false statement by manufacturer or producer of gasoline or lubricating oil).

(G) Subsections (a)(2), (b)(3), (f)(3), and (g)(2) of section 9012 (relating to criminal penalties).

(6) The following provisions of such Code are each amended by striking out "$10,000" each place it appears and inserting in lieu thereof "$15,000".

(A) Section 7202 (relating to willful failure to collect or pay over tax).

(B) Section 7207 (relating to fraudulent returns, statements, or other documents).

(C) Section 7208 (relating to offenses relating to stamps).

(D) Subsection (a) of section 7214 (relating to offenses by officers and employees of the United States).

(E) Section 7240 (relating to officials investing or speculating in sugar).

(F) Section 7241 (relating to willful failure to furnish certain information regarding windfall profit tax on domestic crude oil).

(G) Subsection (c)(3), (d)(2), and (e)(2) of section 9012 (relating to criminal penalties).

(H) Subsections (b)(2), (c)(2), and (d)(2) of section 9042 (relating to criminal penalties).

(7) The following provisions of such Code are each amended by striking out "$25,000" each place it appears and inserting in lieu thereof "$37,500".

(A) Section 7203 (relating to willful failure to file return, supply information, or pay tax).

(B) Subsection (a) of section 9042 (relating to criminal penalties).

(8) Section 7207 of such Code (relating to fraudulent returns, statements, or other documents) is amended by striking out "$50,000" and inserting in lieu thereof "$75,000".

(9) The following provisions of such Code are each amended by striking out "$100,000" each place it appears and inserting in lieu thereof "$150,000".

(A) Section 7201 (relating to attempt to evade or defeat tax).

(B) Section 7203 (relating to willful failure to file return, supply information, or pay tax).

(C) Section 7206 (relating to fraud and false statements).

(10) The following provisions of such Code are each amended by striking out "$500,000" each place it appears and inserting in lieu thereof "$750,000".

(A) Section 7201 (relating to attempt to evade or defeat tax).

(B) Section 7206 (relating to fraud and false statements).

(11) Section 7209 of such Code (relating to unauthorized use or sale of stamps) is amended by striking out "6 months" and inserting in lieu thereof "9 months".

(12) The following provisions of such Code are each amended by striking out "$1 year" each place it appears and inserting in lieu thereof "1.5 years".

(A) Section 7203 (relating to willful failure to file return, supply information, or pay tax.

(B) Section 7204 (relating to fraudulent statement or failure to make statement to employees).

(C) Section 7205 (relating to fraudulent withholding exemption certificate or failure to supply information).

(D) Section 7207 (relating to fraudulent returns, statements, or other documents).

(E) Section 7210 (relating to failure to obey summons).

(F) Section 7211 (relating to false statements to purchasers or lessees relating to tax).

(G) Subsection (a) of section 7212 (relating to attempts to interfere with administration of internal revenue laws).

(H) Subsection (b) of section 7213 (relating to unauthorized disclosure of information).

(I) Subsection (a) of section 7215 (relating to offenses with respect to collected taxes).

(J) Subsection (a) of section 7216 (relating to disclosure or use of information by preparers of returns).

(K) Section 7231 (relating to failure to obtain license for collection of foreign items).

(L) Section 7241 (relating to willful failure to furnish certain information regarding windfall profit tax on domestic crude oil).

(M) Subsections (a)(2), (b)(3), (f)(3), and (g)(2) of section 9012 (relating to criminal penalties).

(13) The following provisions of such Code are each amended by striking out "2 years" each place it appears and inserting in lieu thereof "3 years".

(A) Subsection (b) of section 7212 (relating to attempts to interfere with administration of internal revenue laws).

(B) Section 7240 (relating to officials investing or speculating in sugar).

(14) The following provisions of such Code are each amended by striking out "3 years" each place it appears and inserting in lieu thereof "4.5 years".

(A) Section 7206 (relating to fraud and false statements).

(B) Subsection (a) of section 7212 (relating to attempts to interfere with administration of internal revenue laws).

(15) The following provisions of such Code are each amended by striking out "5 years" each place it appears and inserting in lieu thereof "7.5 years".

(A) Section 7201 (relating to attempt to evade or defeat tax).

(B) Section 7202 (relating to willful failure to collect or pay over tax).

(C) Section 7208 (relating to offenses relating to stamps).

(D) Section 7213 (relating to unauthorized disclosure of information).

(E) Subsection (a) of section 7214 (relating to offenses by officers and employees of the United States).

(F) Section 7232 (relating to failure to register, or false statement by manufacturer or producer of gasoline or lubricating oil).

(G) Subsections (c)(3), (d)(2), and (e)(2) of section 9012 (relating to criminal penalties).

(H) Section 9042 (relating to criminal penalties).

(c) OTHER PENALTIES.—

(1) Section 7273 of such Code (relating to penalties for offenses relating to special taxes) is amended by inserting "double the amount of" after "equal to".

(2) The following provisions of such Code are each amended by striking out "double" each place it appears and inserting in lieu thereof "triple".

(A) Section 7268 (relating to possession with intent to sell in fraud of law or to evade tax).

(B) Section 7270 (relating to insurance policies).

(C) Section 7273 (relating to penalties for offenses relating to special taxes).

(3) Section 7273 of such Code (relating to penalties for offenses relating to special taxes) is amended by striking out "$10" and inserting in lieu thereof "$15".

(4) The following provisions of such Code are each amended by striking out "$50" each place it appears and inserting in lieu thereof "$75".

(A) Section 7271 (relating to penalties for offenses relating to stamps).

(B) Section 7272 (relating to penalty for failure to register).

(5) Subsection (c) of section 7275 of such Code (relating to penalty for offenses relating to certain airline tickets and advertising) is amended by striking out "$100" and inserting in lieu thereof "$150".

(6) The following provisions of such Code are each amended by striking out "$500" each place it appears and inserting in lieu thereof "$750".

(A) Section 7268 (relating to possession with intent to sell in fraud of law or to evade tax).

(B) Section 7269 (relating to failure to produce records).

(7) The following provisions of such Code are each amended by striking out "$1,000" each place it appears and inserting in lieu thereof "$1,500".

(A) Section 7261 (relating to representation that retailers' excise tax is excluded from price of article).

(B) Section 7262 (relating to violation of occupational tax laws relating to wagering—failure to pay special tax).

(8) Section 7262 of such Code (relating to violation of occupational tax laws relating to wagering—failure to pay special tax) is amended by striking out "$15,000" and inserting in lieu thereof "$7,500".

(d) EXCISE TAX PENALTIES.—

(1) Subsection (a)(1) of section 4701 of such Code (relating to tax on issuer of registration—required obligation not in registered form) is amended by striking out "1 percent" and inserting in lieu thereof "1.5 percent".

(2) The following provisions of such Code are each amended by striking out "2½ percent" each place it appears and inserting in lieu thereof "3.75 percent".

(A) Subsection (a)(2) of section 4941 (relating to taxes on self-dealing).

(B) Subsection (a)(2) of section 4945 (relating to taxes on taxable expenditures).

(C) Subsection (a)(2) of section 4951 (relating to taxes on self-dealing).

(D) Subsection (a)(2) of section 4952 (relating to taxes on taxable expenditures).

(3) Section 4981 of such Code (relating to excise tax based on certain real estate investment trust taxable income not distributed during the taxable year) is amended by striking out "3 percent" and inserting in lieu thereof "4.5 percent".

(4) The following provisions of such Code are each amended by striking out "5 percent" each place it appears and inserting in lieu thereof "7.5 percent".

(A) Subsection (a)(1) of section 4941 (relating to taxes on self-dealing).

(B) Subsection (a)(1) of section 4943 (relating to taxes on excess business holdings).

(C) Subsections (a) and (b)(2) of section 4944 (relating to taxes on investments which jeopardize charitable purpose).

(D) Subsection (a) of section 4953 (relating to tax on excess contributions to black lung benefit trusts).

(E) Subsection (a) of section 4971 (relating to tax on prohibited transactions).

(F) Subsection (a) of section 4975 (relating to tax on prohibited transactions).

(5) Subsection (a) of section 4973 of such Code (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended by striking out "6 percent" each place it appears and inserting in lieu thereof "9 percent".

(6) The following provisions of such Code are each amended by striking out "10 percent" each place it appears and inserting in lieu thereof "15 percent".

(A) Subsection (a)(1) of section 4945 (relating to taxes on taxable expenditures).

(B) Subsection (a)(1) of section 4951 (relating to taxes on self-dealing).

(C) Subsection (a)(1) of section 4952 (relating to taxes on taxable expenditures).

(D) Subsection (b)(1) of section 4978 (relating to tax on certain dispositions by employee stock ownership plans and certain cooperatives).

(7) Subsection (a) of section 4942 of such Code (relating to taxes on failure to distribute income) is amended by striking out "15 percent" and inserting in lieu thereof "22.5 percent".

(8) The following provisions of such Code are each amended by striking out "25 percent" each place it appears and inserting in lieu thereof "37.5 percent".

(A) Subsection (a)(1) of section 4911 (relating to tax on excess expenditures to influence legislation).

(B) Subsection (b)(1) of section 4944 (relating to taxes on investments which jeopardize charitable purpose).

(9) Subsection (a) of section 4977 of such Code (relating to tax on certain fringe benefits provided by an employer) is amended by striking out "30 percent" and inserting in lieu thereof "45 percent".

(10) The following provisions of such Code are each amended by striking out "50 percent" each place it appears and inserting in lieu thereof "75 percent".

(A) Subsection (b)(2) of section 4941 (relating to taxes on self-dealing).

(B) Subsection (b)(2) of section 4945 (relating to taxes on taxable expenditures).

(C) Subsection (b)(2) of section 4951 (relating to taxes on self-dealing).

(D) Subsection (b)(2) of section 4952 (relating to taxes on taxable expenditures).

(E) Subsection (a) of section 4974 (relating to excise tax on certain accumulations in individual retirement accounts or annuities).

(11) The following provisions of such Code are each amended by striking out "100 percent" each place it appears and inserting in lieu thereof "200 percent".

(A) Paragraph (6)(A) of section 857(b) (relating to method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest).

(B) Subsection (b) of section 4942 (relating to taxes on failure to distribute income).

(C) Subsection (b)(1) of section 4945 (relating to taxes on taxable expenditures).

(D) Subsection (b)(1) of section 4951 (relating to taxes on self-dealing).

(E) Subsection (b)(1) of section 4952 (relating to taxes on taxable expenditures).

(F) Subsection (b) of section 4971 (relating to taxes on failure to meet minimum funding standards).

(G) Subsection (b) of section 4975 (relating to tax on prohibited transactions).

(H) Subsection (a) of section 4976 (relating to taxes with respect to funded welfare benefit plans).

(12) The following provisions of such Code are each amended by striking out "200 percent" each place it appears and inserting in lieu thereof "300 percent".

(A) Subsection (b)(1) of section 4941 (relating to taxes on self-dealing).

(B) Subsection (b) of section 4943 (relating to taxes on excess business holdings).

(13) Paragraph (5) of section 857(b) of such Code (relating to method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest) is amended by inserting "2 times" after "equal to".

(14) The following provisions of such Code are each amended by striking out "$5,000" each place it appears and inserting in lieu thereof "$7,500".

(A) Subsection (d)(2) of section 4944 (relating to taxes on investments which jeopardize charitable purpose).

(B) Subsection (c)(2) of section 4945 (relating to taxes on taxable expenditures).

(15) The following provisions of such Code are each amended by striking out "$10,000" each place it appears and inserting in lieu thereof "$15,000".

(A) Subsection (c)(2) of section 4941 (relating to taxes on self-dealing).

(B) Subsection (d)(2) of section 4944 (relating to taxes on investments which jeopardize charitable purpose).

(C) Subsection (c)(2) of section 4945 (relating to taxes on taxable expenditures).

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1986 (or, in the case of a tax for which there is no taxable period, taxable events occurring after such date).

(2) AMNESTY PERIOD.—At the expiration of the amnesty period described in section 2, in the case of any taxpayer remaining liable for any underpayment of Federal tax, the amendments made by this section shall apply to any taxable year (or any taxable event occurring during such taxable year) for which any period of limitation has not expired.

(3) EXCEPTION.—Paragraphs (1) and (2) shall not apply to any judicial or administrative proceeding with respect to any underpayment of Federal tax pending on the date of enactment of this Act in which a judgment was entered before such date.●

By Mr. BOREN (for himself and Mr. BINGAMAN):

S. 255. A bill to repeal the windfall profit tax on domestic crude oil; to the Committee on Finance.

REPEAL OF WINDFAL PROFITS TAX

● Mr. BINGAMAN. Mr. President, I am pleased to join my distinguished colleague from Oklahoma, Senator BOREN, in introducing legislation to repeal the windfall profits tax. The tax was passed in 1980, at a time when oil prices had skyrocketed, following actions of the OPEC cartel.

Today we have an entirely different set of circumstances. The oil industry is not paying a windfall profits tax, because the price is not high enough to trigger the tax and they do not have any profits. Additionally, there are significant costs associated with the paperwork required to meet the administrative requirements of the tax. It is ridiculous to require companies to spend millions of dollars on paperwork to report to the Government that they do not owe anything. Now is the time to repeal this tax.

The tax has done nothing to help us combat imports. It is only a tax on domestic producers. It is not a tax on imports. And it is these imports that have displaced domestic production and contributed to our negative balance of payments and the negative balance of trade we currently are experiencing in this country—last year, over a $50 billion deficit in oil.

NEW MEXICO

New Mexico is the fifth largest oil and gas-producing State in the Nation in terms of total quantity and has suffered from the decline of oil and gas prices. Oil prices have declined from $26 a barrel last January to $11 in July, with a gradual increase since then to $15. Natural gas prices fell from $2.47 a barrel in January to $1.64 in September with the current price at about $1. Revenues generated by the industry showed a 25-percent drop in 1986. The total value of New Mexico's oil and gas activity has dropped 46 percent in the past year. Employment by the industry dropped from a low of 13,200 in 1985 to 9,000 in October 1986. The number of drilling rigs are down to an average of 29 compared with 71 last year. And of the State's bankruptcies, estimated to be 2,500 for 1986, one-fourth occurred in those counties where most of the State's oil and gas is produced. Clearly, effective action is needed to correct the decline of the industry.

CONCLUSION

I don't have to describe in great detail the current condition of our struggling oil industry. One can easily evaluate the status of this industry in which 86 percent of its drilling rigs are not pumping oil, and the only profits come from refining and distributing imported oil. Our independent producers, the backbone of our exploration efforts in this country, are in severe financial straits. These problems threaten our ability to meet future energy needs domestically. We must acknowledge that the future of the industry is bleak unless we in the Congress take some positive steps to help this important industry recover. The repeal of the windfall profits tax is one such step.

I ask my colleagues to help us take that step to begin to revitalize the oil industry that is so critical to our future.●

By Mr. DIXON (for himself, Mr. PROXMIRE, Mr. GRASSLEY, Mr. LEVIN, and Mr. RIEGLE):

S. 257. A bill to correct imbalances in certain States in the Federal tax to Federal benefit ratio by reallocating the distribution of Federal spending, and for other purposes; to the Committee on Governmental Affairs.

● Mr. DIXON. Mr. President, I rise today to reintroduce "The State Minimum Return Act of 1987," along with my colleagues, Senators PROXMIRE, GRASSLEY, LEVIN, and RIEGLE. This act will correct imbalances in the amount of Federal spending that certain States receive in return for the tax dollar they send to Washington.

Although this bill contains complex language and provisions, I want to assure my colleagues and the taxpayers of the United States, at the outset, that the bill does not require any increases in spending. Rather, the bill reallocates funds among States within existing spending limits, so as not to increase the deficit.

This bill addresses a very important issue which has caused real hardship in my State of Illinois, and in many other States, principally in the Midwest and Northeast. In 1985, for example, Illinois received only 68 cents in Federal spending for each tax dollar it sent to the Federal Government. For the past 50 years, this ratio has been well below $1. The unfortunate truth is that Illinois and other disadvantaged States are sending billions of dollars to Washington every year that they never see again.

Many of these disadvantaged States were among those that suffered most during the recession of 1982. They are the States whose economies are growing more slowly than the national average. They can ill afford the ongoing drain of billions of dollars to Washington.

Federal fiscal policy must be changed. It should not be designed to make a bad situation worse. Rather, it should lend a hand to States whose

economies have needed the most help in the recent past.

The bill I am introducing will adjust Federal spending in the categories of Government contracts and grant programs. Contracts and grants accounted for $275 billion of the Federal budget in fiscal 1984, and are the chief sources of imbalances among States. These spending categories help stimulate economic growth, creating jobs and spurring private investment. Grants and contracts cause a "ripple effect" in the economy of a community. The award of a Government contract not only creates jobs in the company in which the work is performed. It also increases business and creates jobs in local companies supplying goods to the contractor.

Grant programs that will be eligible for this 10-percent adjustment include those administered by the Departments of Interior, Transportation, Agriculture—except farm income supports—the Environmental Protection Agency, Housing and Urban Development, and the U.S. Army Corps of Engineers. These are the grants that create jobs and economic growth in States and communities.

For grant programs that require an income test to determine eligibility for assistance, such as aid to families with dependent children, this bill will require an increase of 1 percent per year in the share of each eligible State. This increase will ease the fiscal burdens on the State governments of eligible States, which share the cost of these programs; let me add that the bill requires that benefit levels for needy individuals in all States may not be reduced as a result of a shift in the Federal share of these program funds among States.

Disadvantaged States will also receive additional moneys in the area of Federal contracts. With respect to competitive procurements and noncompetitive procurements, the head of each Federal agency will be required to award a contract to a firm that will do the work in a disadvantaged State if it submits a bid that is lower or equivalent to a bid from a firm that would do the work elsewhere. This means that if a metal cabinet for a Government office or a rubber fuel line for an Air Force plane can be made in Illinois more cheaply, or at the same price, than it can be made in a State that gets more than its fair share of spending from the Federal Government, that cabinet or fuel line is going to be made in Illinois by workers and businesses in Illinois.

What is being suggested here is a reallocation of Federal moneys among the States, rather than the creation of a new Government spending program. In addition, in order not to penalize the needy and other citizens who currently receive direct Government benefits in all States, the bill will not affect payments to individuals by the Federal Government. Such programs as Social Security, Food Stamps, supplemental security income, Pell grants, lower income housing assistance, veterans assistance, black lung disability, guaranteed student loan interest subsidies, retirement payments for railroad workers, and Federal workers' compensation, retirement and disability, and employee life and health insurance will not be affected by the bill.

The State Minimum Return Act is an attempt to develop the comprehensive approach we need to end what amounts to a multibillion dollar penalty being paid each year by Illinois and many other States. By any measure, there is every reason that these States should be getting back their fair share of the Federal budget.

I urge my colleagues to join me in this effort to help these disadvantaged States get back a fair share of their tax dollars.

I ask unanimous consent that the bill and a summary be printed at this point in the RECORD.

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

S. 257

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 "State Minimum Return Act of 1987".

STATEMENT OF POLICY

SEC. 2. It is the purpose of this Act to provide, within existing budgetary limits, authority to reallocate the distribution of certain Federal spending to various States in order to ensure by the end of fiscal year 1992 that each State receive in each fiscal year an amount of Federal expenditures equal to a minimum of 90 percent of the Federal tax burden attributable to such State for such fiscal year.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "Federal agency" means any agency defined in section 551(1) of title 5, United States Code.

(3) The term "State" means each of the several States and the District of Columbia.

(4) The term "historic share" means the average percentage share of Federal expenditures received by any State during the most recent three fiscal years.

(5) The term "Federal expenditures" means all outlays by the Federal Government as defined in section 3(1) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 622(1)).

(6) The term "Federal tax revenues" means all revenues collected pursuant to the Internal Revenue Code of 1954.

(7) The term "need-based program" means any program which results in direct payment to individuals and which involves an income test to help determine the eligibility of an individual for assistance under such program.

DESIGNATION OF ELIGIBLE STATES

SEC. 4. (a) Any State shall be eligible for a positive reallocation of Federal expenditures described in section 5 and received by such State under section 7(a), if such State, for any fiscal year, has a Federal expenditure to Federal tax ratio which is less than 90 percent.

(b) Any State shall be eligible for a positive reallocation of Federal expenditures described in section 5 and received by such State under paragraph (1) of section 7(a), if such State, for any fiscal year, has a Federal expenditure to Federal tax ratio which is less than 100 percent but greater than or equal to 90 percent.

(c) During each fiscal year, the Director after consultation with the Secretary of the Treasury and the Director of the Census Bureau, shall determine the eligibility of any State under this section using the most recent fiscal year data and estimated data available concerning Federal tax revenues and Federal expenditures attributable to such State. The Secretary of the Treasury shall determine the attribution of Federal tax revenues to each State after consultation with the Comptroller General of the United States.

(d) For purposes of determining the eligibility of any State under subsection (c), any water or power program in which the Federal Government, through Government corporations, provides water or power to any State at less than market price shall be taken into account in computing such State's Federal expenditure to Federal tax ratio by characterizing as an imputed Federal expenditure the difference between the market price and the program's actual price of providing such water or power to such State.

DESIGNATION OF REALLOCABLE FEDERAL EXPENDITURES

SEC. 5. All Federal expenditures in any fiscal year shall be subject to reallocation to ensure the objective described in section 2 with respect to eligible States designated under section 4, except for such expenditures with respect to the following:

(1) Water and power programs which are described in section 4(d).

(2) Compensation and allowances of officers and employees of the Federal Government.

(3) Maintenance of Federal Government buildings and installations.

(4) Offsetting receipts.

(5) Programs for which the Federal Government assumes the total cost and in which a direct payment is made to a recipient other than a governmental unit. Such programs include:

(A) Social Security, including disability, retirement, survivors insurance, unemployment compensation, and Medicare, including hospital and supplementary medical insurance;

(B) Supplemental Security Income;

(C) Food Stamps;

(D) Black Lung Disability;

(E) National Guaranteed Student Loan interest subsidies;

(F) Pell grants;

(G) lower income housing assistance;

(H) social insurance payments for railroad workers;

(I) railroad retirement;

(J) excess earned income tax credits;

(K) veterans assistance, including pensions, service connected disability, nonservice connected disability, educational assistance, dependency payments, and pensions for spouses and surviving dependents;

(L) Federal workers' compensation;

(M) Federal retirement and disability;

(N) Federal employee life and health insurance; and

(O) farm income support programs.

REALLOCATION AUTHORITY

SEC. 6. (a) Notwithstanding any other provision of law, during any fiscal year the head of each Federal agency shall, after consultation with the Director, make such reallocations of expenditures described in section 5 to eligible States designated under section 4 as are necessary to ensure the objective described in section 2.

(b) Notwithstanding any other provision of law and to the extent necessary in the administration of this Act, the head of each Federal agency shall waive any administrative provision with respect to allocation, allotments, reservations, priorities, or planning and application requirements (other than audit requirements) for the expenditures reallocated under this Act.

(c) The head of each Federal agency having responsibilities under this Act is authorized and directed to cooperate with the Director in the administration of the provisions of this Act.

REALLOCATION MECHANISMS

SEC. 7. (a) Notwithstanding any other provision of law, for purposes of this Act, during any fiscal year reallocations of expenditures required by section 6 shall be accomplished in the following manner:

(1)(A) With respect to procurement contracts, and beginning in fiscal year 1990 subcontracts in excess of $25,000, the head of each Federal agency shall—

(i) identify qualified firms in eligible States designated under section 4 and disseminate any information to such firms necessary to increase participation by such firms in the bidding for such contracts and subcontracts,

(ii) in order to ensure the objective described in section 2, increase the national share of such contracts and subcontracts for each eligible State designated under section 4(a) by 10 percent each fiscal year, and

(iii) thirty days after the end of each fiscal year, report to the Director regarding progress made during such fiscal year to increase the share of such contracts and subcontracts for such eligible States, including the percentage increase achieved under clause (ii) and if the goal described in clause (ii) is not attained, the reasons therefor.

Within ninety days after the end of each fiscal year, the Director shall review, evaluate, and report to the Congress as to the progress made during such fiscal year to increase the share of procurement contracts and subcontracts the preponderance of the value of which has been performed in such eligible States.

(B) With respect to each fiscal year, if any Federal agency does not attain the goal described in subparagraph (A)(ii), then during the subsequent fiscal year such agency shall report to the Director prior to the awarding of any contract or subcontract described in subparagraph (A) to any firm in an ineligible State the reasons such contract or subcontract was not awarded to any firm in an eligible State.

(C) In the case of any competitive procurement contract or subcontract, the head of the contracting Federal agency shall award such contract or subcontract to the lowest bid from a qualified firm that will perform the preponderance of the value of the work in an eligible State designated under section 4 if the bid for such contract or subcontract is lower or equivalent to any bid from any qualified firm that will perform the preponderance of the value of the work in an ineligible State.

(D) In the case of any noncompetitive procurement contract or subcontract, the head of each Federal agency shall identify and award such contract or subcontract to a qualified firm that will perform the preponderance of the value of the work in an eligible State designated under section 4 and that complete such contract or subcontract at a lower or equivalent price as any qualified firm that will perform the preponderance of the value of the work in an ineligible State.

(E) For purposes of this paragraph, in the case of any procurement contract or subcontract, any firm shall be qualified if—

(i) such firm has met the elements of responsibility provided for in section 8(b)(7) of the Small Business Act as determined by the head of the contracting Federal agency to be necessary to complete the contract or subcontract in a timely and satisfactory manner, and

(ii) with respect to any prequalification requirement, such firm has been notified in writing of all standards which a prospective contractor must satisfy in order to become qualified, and upon request, is provided a prompt opportunity to demonstrate the ability of such firm to meet such specified standards.

(F) In order to reallocate expenditures with respect to subcontracts as required by subparagraph (A), each Federal agency shall collect necessary data to identify such subcontracts beginning in fiscal year 1987.

(2)(A) With respect to need-based programs, any eligible State designated under section 4(a) shall receive 101 percent of such State's historic share with respect to such programs.

(B) With respect to all other expenditures described in section 5, including all grants administered by the Department of Transportation, the Department of the Interior, the Department of Agriculture, the Environmental Protection Agency, and the United States Army Corps of Engineers, and funds provided under general revenue sharing, any eligible State designated under section 4(a) shall receive 110 percent of such State's historic share with respect to such expenditures.

(b)(1) Except as provided in paragraph (2), no reallocation shall be made under this section with respect to expenditures for any program to any State in any fiscal year which results in a reduction of 10 percent or more of the amount of such expenditures to such State.

(2) No reallocation shall be made under subsection (a)(2)(A) with respect to expenditures for any need-based program to any State in any fiscal year which results in a reduction of 1 percent or more of the amount of expenditures to such State for any such program.

(c) No reallocation shall be made under the provisions of this Act which will result in any Federal expenditure to Federal tax ratio of any State being reduced below 90 percent.

(d) With respect to any need-based program eligible for reallocation under subsection (a)(2)(A), notwithstanding any reallocation of such program funds that may be mandated under this section, no State or eligible governmental unit may reduce program benefits to the ultimate beneficiaries of such program or change such program's eligibility requirements because of such reallocation of funds.

AMENDMENTS

SEC. 8. No provision of law shall explicitly or implicitly amend the provisions of this Act unless such provision specifically refers to this Act.

EXTENSION OF FEDERAL FUNDS REPORT ACT

SEC. 9. Subsection (a) of section 3 of the Consolidated Federal Funds Report Act of 1982 (31 U.S.C. 6102 note) is amended by striking out "and 1985" and inserting in lieu thereof "1985, 1986, 1987, 1988, 1989, 1990, 1991 and 1992".

STUDY

SEC. 10. (a) The Secretary of the Treasury or a delegate of the Secretary shall conduct a study on the impact of Federal spending, tax policy, and fiscal policy on State economies and the economic growth rate of States and regions of the United States.

(b) The report of the study required by subsection (a) shall be submitted to Congress not later than December 31, 1985.

EFFECTIVE DATE

SEC. 11. The provisions of this Act shall take effect for fiscal years beginning after the date of the enactment of this Act.

THE STATE MINIMUM RETURN ACT OF 1987

SUMMARY

The State Minimum Return Act reallocates spending to States that send more money in taxes to the Federal government than they receive in Federal spending.

States that receive Federal expenditures that amount to less than 90 percent of the amount the state's residents pay in Federal taxes will receive additional funds in the spending categories of grants-in-aid and procurement contracts.

States that receive Federal expenditures that amount to between 90 percent and 100 percent of the amount the state's residents pay in Federal taxes will receive additional funds in the spending category of procurement contracts.

A state's eligibility will be determined by the Office of Management and Budget, in consultation with the Census Bureau regarding Federal expenditures and the Treasury regarding tax revenues.

All spending categories are included for the purpose of determining eligibility, including subsidies given for water and power programs through Government corporations.

Each state must receive an amount of Federal spending that is at least 90 per cent of the amount of federal taxes each state's residents pay by fiscal 1992.

In order to ensure that all states meet the 90 per cent standard, all eligible states must receive an annual increase of 10 per cent in its share of the national total in the categories of grants-in-aid and/or procurement contracts. This 10 per cent increase applies only to those grants that are not allocated based on income tests for individuals. Such grants that are eligible for the 10 per cent reallocation include those administered by the Departments of Transportation, Interior, Agriculture (except farm income supports), the Environmental Protection Agency and the U.S. Army Corps of Engineers.

For grant programs that require an income test, eligible states will receive an annual increase of 1 per cent in their share of the national total.

No state shall incur an annual reduction of more than 10 per cent in its share of contracts and eligible grants, or an annual re-

duction of more than 1 per cent in its share of income-based grants.

Procurement contracts will be rellocated to firms in eligible states if two conditions are met: (1) if the firm submits a bid that is lower or equivalent to a bid of a firm in an ineligible state, and (2) if the firm will perform the bulk of the contract in an eligible state.

In the event that sufficient contracts are not reallocated each year, the head of the contracting agency that has not met the requirement will have to report to OMB before awarding any contract to a firm in an ineligible state in the following year as the reasons why that contract was not awarded to a firm in an eligible state.

The Secretary of the Treasury is required to conduct a study of the impact of Federal spending, tax, and fiscal policies on state economies and the economic growth rate of states and regions.●

By Mr. D'AMATO:

S. 258. A bill to amend and extend laws relating to housing and community development; to the Committee on Banking, Housing, and Urban Affairs.

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987

● Mr. D'AMATO. Mr. President, I rise to introduce a bill that addresses many of the housing concerns we discussed during the 99th Congress. These and other housing and community development issues need to be addressed during the 100th Congress. This legislation, offered as a catalyst for this effort, includes some items that were contained in the various housing bills of the 99th Congress, such as H.R. 1, H.R. 3500, S. 1730, S. 1913, and S. 2507.

This legislation in no way encompasses all current housing and community development program needs. Rather, it reflects an attempt to include only a few items that need immediate consideration. Hopefully, other items not included in this legislation also will be addressed during the 100th Congress.

It is my hope that this bill serves as a starting point for housing legislation during this session of Congress. It contains a limited number of timely program amendments and new initiatives that should be enacted this year. It includes the Nehemiah Housing Program, as well as a homeless shelter program. I introduced these programs last year and worked with many of my colleagues in developing them.

The Nehemiah Housing Program permits families that otherwise would not be able to purchase a home to achieve homeownership. It provides a grant of up to $15,000 to families in distressed neighborhoods.

To date, 501 Nehemiah homes have been completed in New York. There are 266 homes now under construction, and 1,200 sites committed for future construction. In the successful Nehemiah Program in Brooklyn, sponsored by the East Brooklyn Churches, 50 percent of the Nehemiah buyers come from assisted housing. Families that replace the new Nehemiah homeowners have an average income of $6,500. Thus, the Nehemiah Program helps the poorest of families and frees-up housing for the less fortunate.

Those who argue that this program needs to be targeted more narrowly are missing important points. First of all, most of the Nehemiah occupants are low income; 99 percent of the participants are first-time homeowners. The median income for participants in New York is approximately $24,000, and 50 percent of new homeowners come from assisted housing; 35 percent of the participants in Brooklyn are from public housing, which has made 175 public housing units available for the homeless and other low-income individuals; and 15 percent of the participants previously were receiving other Federal assistance, such as section 8, which has made 75 units available for others.

The reason why Nehemiah-type housing will be purchased primarily by lower income families is due to the fact that there are restrictions in the bill on the type of neighborhoods in which this housing can be located. It is unlikely that these neighborhoods will attract many families with incomes near the eligibility limit. The preponderance of funds in any metropolitan area must be from families with income below 95 percent of median income. Few families above this category want to purchase in the area unless they have a special attachment to the neighborhood, such as growing up in the neighborhood or having relatives in the area—and there is nothing wrong with wanting to stay in a neighborhood near relatives.

The U.S. Department of Housing and Urban Development's assessment of the Nehemiah Program is hardly based on sufficient data to comment on the merits of the Nehemiah Program. HUD's study was mostly based on a telephone survey of 10 cities. This does not compare with the hands-on-assessments made by officials of numerous cities and localities who have visited the Nehemiah Brooklyn site and have expressed an interest in replicating the Brooklyn effort.

This program would allow cities the flexibility to develop cost-effective housing that would work in other communities. The legislation should not be modified to hamper cities from using the resources available to them to provide safe and decent housing. Many will not have the same kind of city, State. and private assistance that was provided in Brooklyn, but this does not mean that they should not have the opportunity to create Nehemiah housing. We should commend them and provide the assistance necessary to strengthen our neighborhoods by allowing the Nehemiah program to expand and revitalize our cities nationwide.

The Saturday, July 19, 1986, editorial in the New York Times summarizes this point well. It states: "Give Nehemiah a National Test." The Nehemiah approach is founded on fundamental American values of ownership, equity, and family stability. The savings are enormous to the Federal Government if we consider the $120,000 cost for one new unit of public housing. This same amount would buy 12 new Nehemiah homes—if the average no-interest second mortgage is $10,000—in addition, 6 freed-up units of public housing would be made available for a total of 18 housing units for the cost of 1 new unit of public housing.

Mr. President, we have every reason to believe that this program, which I sponsored in the Senate as S. 1913 and subsequently included in S. 2507, provides residents with new hope and incentive to work and to save. With the pride of homeownership, residents will fight crime and drugs in their communities. Organized homeowners demand, and have received, better police protection and better park and other community services. They have become active in health care and the quality of life in the entire community which benefits the poorest of neighborhoods.

Other provisions in this bill include a Community Development Block Grant entitlement transition, as well as authorization of, and amendments, to the Urban Development Action Grant [UDAG] Program. I hope my colleagues will join me in considering the merits of expanding the UDAG Program so that low interest guaranteed loans can be provided to our cities; UDAG could be provided in the form of grants, loans, and low interest loan guarantees. This effort would be at no additional cost to the Government, while providing enormous benefits to a multitude of cities.

My bill also extends the Home Mortgage Disclosure Act, and restricts various fees and charges. Mr. President, I firmly believe that our Nation will benefit from the housing and community development provisions included in this bill. As I have stated on numerous previous occasions, it is noteworthy that, for more than the past 50 years, the Federal Government has played a major role in advancing national housing policies in its partnership with the housing industry. We have provided Federal tax incentives to promote homeownership and the availability of affordable housing. Government assistance has been provided in establishing specialized financial institutions. Government chartered thrift institutions have channeled funds into housing and have given homebuyers access to affordable mortgage credit. Programs also have been developed to revitalize and renovate our communities.

If our cities and neighborhoods are to continue to grow and prosper, the Federal Government must continue to play an important role in housing. Therefore, I hope that my colleagues will join me in supporting this legislation.

Mr. President, we must not destroy the economic development that has been initiated in our communities. Instead, we must give each community an opportunity to continue to expand and develop. The efforts made by our cities and neighborhoods are worthy of the assistance provided in this bill.

Mr. President, I ask unanimous consent that the full text of my bill be printed 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. 258

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 "Housing and Community Development Act of 1987".

TITLE I—COMMUNITY DEVELOPMENT
Sec. 101. National Nehemiah Housing Opportunity program.
Sec. 102. CDBG entitlement transition.
Sec. 103. Urban development action grants.
TITLE II—MORTGAGE CREDIT AND MISCELLANEOUS PROVISIONS
Sec. 201. Mortgage limits for multifamily projects in high cost areas.
Sec. 202. GNMA mortgage-backed securities limitations.
Sec. 203. Fees and charges.
Sec. 204. Home Mortgage Disclosure Act extension.
Sec. 205. Purchase of Second Mortgage.
TITLE III—HOMELESS ASSISTANCE
Sec. 301. Definitions.
PART 1—EMERGENCY FOOD AND SHELTER PROGRAM
Sec. 311. National board.
Sec. 312. National board transition.
Sec. 313. Distribution of program funds.
Sec. 314. Agency responsibilities.
Sec. 315. Local boards.
Sec. 316. Local homeless assistance plan.
Sec. 317. Service providers.
Sec. 318. Use of funds.
Sec. 319. Limitation on certain costs.
Sec. 320. Program guidelines.
Sec. 321. Authorization.
Sec. 322. Surplus food distribution.
PART 2—TRANSITION TO INDEPENDENCE DEMONSTRATION PROJECT
Sec. 331. Authority to make grants.
Sec. 332. Application for grants.
Sec. 333. Allocation of grants.
Sec. 334. Program requirements.
Sec. 335. Regulations.
Sec. 336. Reports to Congress.
Sec. 337. Authorization.

TITLE I—COMMUNITY DEVELOPMENT

NATIONAL NEHEMIAH HOUSING OPPORTUNITY PROGRAM

SEC. 101. (a) Section 105(a) of the Housing and Community Development Act of 1974 is amended—

(1) by striking out "and" at the end of paragraph (17);

(2) by striking out the period at the end of paragraph (18) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(19) provision of assistance to facilitate new construction or substantial reconstruction in instances in which persons of low- and moderate-income own and occupy a home that the grantee determines is not suitable for rehabilitation.".

(b)(1) It is the purpose of this subsection (A) to encourage homeownership by families in the United States who are not otherwise able to afford homeownership; (B) to undertake a concentrated effort to rebuild the depressed areas of the cities of the United States and to create sound and attractive neighborhoods; and (C) to increase the employment of neighborhood residents.

(2) For the purposes of this subsection:

(A) The term "Fund" means the Nehemiah Housing Opportunity Fund established in paragraph (9)(A).

(B) The term "home" means any 1- to 4-family dwelling. Such term includes any dwelling unit in a condominium project or cooperative project consisting of not more than 4 dwelling units, any townhouse, and any manufactured home.

(C) The term "lower income families" has the meaning given in such term in section 3(b)(2) of the United States Housing Act of 1937.

(D) The term "metropolitan statistical area" means a metropolitan statistical area as established by the Office of Management and Budget.

(E) The term "nonprofit organization" means a private corporation, or other private nonprofit legal entity, that is approved by the Secretary as to financial responsibility.

(F) The term "Secretary" means the Secretary of Housing and Urban Development.

(G) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(H) The term "substantial rehabilitation" means—

(i) rehabilitation involving costs in excess of 60 per centum of the maximum sale price of a home assisted under this title in the market area in which it is located; or

(ii) the rehabilitation of a vacant, uninhabitable structure.

(I) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(3) The Secretary may provide assistance to nonprofit organizations to carry out Nehemiah housing opportunity programs in accordance with the provisions of this subsection. Such assistance shall be made in the form of grants. Applications for assistance under this subsection shall be made in such form, and in accordance with such procedures, as the Secretary may prescribe.

(4)(A) Any nonprofit organization receiving assistance under this subsection shall use such assistance to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with a Nehemiah housing opportunity program approved under this subsection.

(B) Each loan made to a family under this subsection shall—

(i) be secured by a second mortgage held by the Secretary on the property involved;

(ii) be in an amount not exceeding $15,000;

(iii) bear no interest; and

(iv) be repayable to the Secretary upon the sale or other transfer of such property.

(5)(A) Assistance provided under this subsection may be used only in connection with a Nehemiah housing opportunity program of construction or substantial rehabilitation of homes.

(B) Each family purchasing a home under this subsection shall—

(i) have a family income on the date of such purchase that is not more than whichever of the following is higher:

(I) 115 per centum of the median income for a family of 4 persons in the metropolitan statistical area involved; or

(II) the national median income for a family of 4 persons; and

(ii) and shall not have owned a home during the 3-year period preceding such purchase.

(C)(i) Each family purchasing a home under this subsection shall make a downpayment of not less than 10 percent of the sale price of such home, or of such greater amount determined by the nonprofit organization involved to be appropriate.

(ii) Any downpayment made shall accrue interest from the date on which such downpayment is made through the date of settlement, at a rate not less than the passbook rate. Such interest shall be paid by the nonprofit organization involved to the family purchasing the home for which such downpayment was made.

(D) No family purchasing a home under this subsection may lease such home.

(6)(A) No proposed Nehemiah housing opportunity program may be approved by the Secretary under this subsection unless the nonprofit organization involved demonstrates to the satisfaction of the Secretary that—

(i) it has consulted with and received the support of residents of the neighborhood in which such program is to be located; and

(ii) it has the approval of each unit of general local government in which such program is to be located.

(B) Each nonprofit organization applying for assistance under this subsection shall submit to the Secretary an estimated schedule for completion of its proposed Nehemiah housing opportunity program, which schedule shall have been agreed to by each unit of general local government in which such program is to be located.

(C) Minimum participation. No nonprofit organization receiving assistance under this subsection may commence any construction or substantial rehabilitation (except with respect to homes to be constructed or substantially rehabilitated for the purpose of display) until not less than 25 percentum of the homes to be constructed or substantially rehabilitated are constructed for sale to purchasers who intend to live in such homes and the required downpayments are made.

(D) The Secretary may not provide any assistance under this subsection to any nonprofit organization unless such organization demonstrates the financial feasibility of its proposed Nehemiah housing opportunity program, including the availability of non-Federal public and private funds.

(E) A Nehemiah housing opportunity program may be approved under this subsection only if it provides that—

(i) the number of homes to be constructed or substantially rehabilitated under such program will not be less than whichever of the following is less:

(I) the greater of (a) 50 homes; or (b) 0.25 percentum of the number of existing dwelling units in the unit of general local government that provides the most assistance to such programs; or

(II) 250 homes;

(ii) each home constructed or substantially rehabilitated under such program will comply with—

(I)(a) applicable local building code standards or

(b) in any case in which there is not an applicable local building code, a nationally recognized model building code mutually agreed upon by the sponsoring nonprofit organization and the Secretary; and

(II) the energy performance requirements established under Section 526 of the National Housing Act;

(iii) all homes constructed or substantially rehabilitated under such program will be located in census tracts, or identifiable neighborhoods within census tracts, in which the median family income is not more than 80 percent of the median family income of the area in which such program is to be located, as such median family income and area are determined for purposes of assistance under section 8 of the United States Housing Act of 1937;

(iv) all homes constructed or substantially rehabilitated under such program will be concentrated in a single neighborhood and located on contiguous parcels of land, except that if the unit of general local government in which the project is located certifies that such land cannot be made available for a program of the size required by subparagraph (E)(i)(I), homes may be constructed in a single identifiable neighborhood if the program provides for construction or substantial rehabilitation of homes on not less than 20 percent of the lots in such neighborhoods; and

(v) sales contracts entered into under such program will contain provisions requiring repayment of any loan made under this subsection upon the sale or other transfer of the home involved, unless the Secretary approves a transfer of such homes without repayment (in which case the second mortgage held by the Secretary on such home shall remain in force until such loan is fully repaid).

(7)(A) In selecting Nehemiah housing opportunity programs for assistance under this subsection from among eligible programs, the Secretary shall make such selection on the basis of the extent to which—

(i) non-Federal public or private entities will contribute land necessary to make such program feasible;

(ii) non-Federal public and private financial or other contributions (including tax abatements, waivers of fees related to development, waivers of construction, development, or zoning requirements, and direct financial contributions) will reduce the cost of homes constructed or substantially rehabilitated under each program;

(iii) each program will produce the greatest number of units for the least amount of assistance provided under this subsection, taking into consideration the cost difference among different market areas;

(iv) each program is located in a neighborhood of severe physical and economic blight (and, in determining the degree of physical blight, the Secretary shall consider the condition (but not age) of the housing, other buildings, and infrastructure, in the neighborhood of the proposed program);

(v) each program uses construction methods that will reduce the cost per square foot below the average construction cost in the market area involved; and

(vi) each program provides for the involvement of local residents in the planning, and construction or substantial rehabilitation, of homes.

(B) To the extent that non-Federal public entities are prohibited by the law of any State from making any form of contribution described in clause (i) or (ii) of subparagraph (a), the Secretary shall not consider such form of contribution in evaluating such program.

(8)(A) Following the selection of any Nehemiah housing opportunity program for assistance under this subsection, the Secretary shall reserve sufficient amounts in the Nehemiah Housing Opportunity Fund for such assistance.

(B) Distribution of Assistance. Following the sale of any home constructed or substantially rehabilitated under a Nehemiah housing opportunity program selected for assistance under this subsection, the Secretary shall provide to the sponsoring organization an amount equal to the amount of the loan made to the family purchasing such home. Such amount shall be provided not more than thirty days after the sale of such home.

(C) The assistance provided to any nonprofit organization under this subsection may not exceed $15,000 per home.

(9)(A) There hereby is established in the Treasury of the United States a revolving fund, to be known as the Nehemiah Housing Opportunity Fund. The Fund shall be available to the Secretary, to the extent approved in appropriation Acts, for purposes of providing assistance under paragraph (3).

(B) The Fund shall consist of—

(i) any amount appropriated under paragraph (12);

(ii) any amount received by the Secretary under paragraph (4)(B)(iv); and

(iii) any amount received by the Secretary under subparagraph (C).

(C) Any amount in the Fund determined by the Secretary to be in excess of the amount currently required to carry out the provision of this subsection shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(10) The Secretary shall annually prepare and submit to the Congress a comprehensive report setting forth the activities carried out under this subsection. Such report shall include—

(A) an analysis of the characteristics of the families assisted under this subsection during the preceding year, including family size, number of children, family income, sources of family income, race, age, and sex;

(B) an analysis of the market value of homes purchased under this subsection during the preceding year;

(C) an analysis of the non-Federal public and private financial or other contributions made during the preceding year to reduce the cost of homes constructed or substantially rehabilitated under each program;

(D) an analysis of the sale prices of homes under this subsection during the preceding year;

(E) an analysis of the amounts of the grants made to programs under this subsection during the preceding year; and

(F) any recommendations of the Secretary for modifications in the program established by this subsection in order to ensure the effective implementation of such program.

(11) The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection. Any such regulations shall be issued in accordance with section 553 of title 5, United States Code, notwithstanding the provisions of subsection (a)(2) of such section.

(12) There are authorized to be appropriated such sums as may be provided by a fiscal year 1986 appropriation Act. Any amount appropriated under this paragraph shall be deposited in the Nehemiah Housing Opportunity Fund, and shall remain available until expended.

CDBG ENTITLEMENT TRANSITION

SEC. 102. Section 102(a)(4) of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following new sentence: "Any city classified as a metropolitan city pursuant to the first or second sentence of this paragraph that no longer qualifies as a metropolitan city under such first or second sentence in a fiscal year beginning after fiscal year 1986, shall retain its classification as a metropolitan city for that fiscal year and the succeeding three fiscal years.".

URBAN DEVELOPMENT ACTION GRANTS

SEC. 103. (a) Section 119(a) of the Housing and Community Development Act of 1974 is amended by striking out the last sentence and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out the provisions of this section not to exceed $366,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal year 1989. Any amount appropriated under the preceding sentence shall remain available until expended.".

(b)(1) Section 119(d) of the Housing and Community Development Act of 1974 is amended—

(A) by indenting clauses (A) and (B) of paragraph (1);

(B) by striking out "as the primary criterion," in clause (A);

(C) by striking out clause (C) of paragraph (1) and inserting in lieu thereof the following:

"(C) at least the following other criteria:

"(i) the extent to which the grant will stimulate economic recovery by leveraging private investment;

"(ii) the number of permanent jobs to be created and their relation to the amount of grant funds requested;

"(iii) the proportion of permanent jobs accessible to lower income persons and minorities, including persons who are unemployed;

"(iv) the impact of the proposed activities on the fiscal base of the city or urban county and its relation to the amount of grant funds requested;

"(v) the extent to which State or local government funding or special economic incentives have been committed;

"(vi) the extent to which the project is located in the portion of the applicant city or urban county with the highest comparative degree of economic distress and the project will directly improve the quality of housing or employment opportunities for low and moderate income residents of that portion;

"(vii) the extent to which the project will produce goods or services the majority of which can be expected to be exported from the applicant's economy; and

"(viii) to the extent the Secretary deems appropriate, the extent to which other Federal assistance is to be made available shall be considered in applying the criteria referred to in clauses (i), (ii), (iv) of this subparagraph;

"(D) additional consideration for the extent to which the project, in the determination of the Secretary, would—

"(i) retain jobs which would be lost without the provision of a grant under this section; and

"(ii) relieve the applicant's most pressing employment or residential needs by—

"(I) reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally,

"(II) retraining recently unemployed residents in new skills, or

"(III) providing training to increase the local pool of skilled labor; and

"(E) additional consideration for projects with the following characteristics:

"(i) projects to be located within a city or urban county to which no grant under this section was made during the preceding twelve-month period; and

"(ii) twice the amount of the additional consideration provided under clause (i) in the case of a grant for projects to be located in cities or urban counties to which no grant under this section was made during the preceding twenty-four month period."; and

(D) by adding at the end thereof the following:

"(3) The Secretary may not award a grant under paragraph (1) unless he determines that the project would have a substantial impact on physical and economic development of the city or urban county, that the proposed activities are likely to be accomplished in a timely fashion within the grant amount available, and that the city or urban county has demonstrated performance in housing and community development programs.

"(4) The Secretary shall award points to each application as follows:

"(A) not more than 35 points on the basis of the factors referred to in subparagraph (A) of paragraph (1);

"(B) not more than 35 points on the basis of the factors referred to in subparagraph (B) of paragraph (1);

"(C) not more than 30 points on the basis of the factors referred to in subparagraph (C) of paragraph (1), of which not more than 3 points in the aggregate shall be awarded for the factors referred to in clauses (vi) and (vii) of subparagraph (C);

"(D) not more than 3 additional points as the Secretary deems appropriate for projects described in subparagraph (D) of paragraph (1); and

"(E) not more than 2 additional points as the Secretary deems appropriate for projects described in subparagraph (E) of paragraph (1).

"(5) The Secretary shall distribute grant funds under this section so that to the extent practicable during each funding cycle—

"(A) two-thirds of the funds are first made available utilizing all of the criteria set forth in paragraph (1); and

"(B) one-third of the funds is then made available solely on the basis of the factors referred to in subparagraphs (C), (D), and (E) of paragraph (1).

"(6) In determining the score to be awarded each of the criteria under subparagraphs (C), (D), and (E) for applications for grants for housing activities, the Secretary shall compare such applications only with other applications for grants for housing activities. For purposes of this subparagraph, an application shall be considered an application for a grant for housing activities if such application proposes that—

"(A) not less than 51 per centum of all funds available for the project shall be used for dwelling units and related facilities; and

"(B) not less than 20 per centum of all funds used for dwelling units and related facilities shall be used for dwelling units to be occupied by persons of low and moderate income.

"(7)(A) For each fiscal year, the Secretary shall hold—

"(i) 3 competitions for grants under paragraph (1) for cities not described in the first sentence of subsection (i) (relating to small cities) and urban counties; and

"(ii) 3 competitions for cities described in the first sentence of subsection (i) (relating to small cities).

"(B) Each competition for grants described in any clause of subparagraph (A) shall be for an amount equal to the sum of—

"(i) approximately one-third of the funds available for such grants for the fiscal year;

"(ii) any funds available for such grants in any previous competition that are not awarded; and

"(iii) any funds available for such grants in any previous competition that are recaptured.".

(2) Notwithstanding any provision of section 119 of the Housing and Community Development Act of 1974, for purposes of funding decisions made before February 1, 1986, the Secretary of Housing and Urban Development shall give additional consideration, equal to the points otherwise awarded under clause (C) of paragraph (1) of section 119(d) of the Housing and Community Development Act of 1974, as amended by paragraph (1) of this subsection, in the case of a project to be located in a city or urban county to which no grant under section 119 of such Act was made during the preceding twenty-four month period if such project has met the criteria for preliminary approval in the three consecutive funding cycles immediately preceding the date of enactment of this paragraph.

(3) The provisions of paragraphs (1)(E), (4)(E), and (5) of section 119(d) of the Housing and Community Development Act of 1974, as amended by paragraph (1) of this subsection, and the provisions of paragraph (2) of this subsection shall take effect on the date of enactment of this Act, except that in applying section 119(d)(5)(b) of such Act prior to the issuance of implementing regulations under the second sentence of this paragraph, the Secretary shall exclude those criteria for which regulations are required to be issued. The remainder of the amendments made by paragraph (1) shall take effect upon the issuance of implementing regulations, which the Secretary shall issue not later than four months after the date of enactment of this Act.

(4)(A) Not later than March 15, 1987, the Secretary of Housing and Urban Development shall prepare and submit to the Congress a comprehensive report evaluating the eligibility standards and selection criteria applicable under section 119 of the Housing and Community Development Act of 1974. Such report shall evaluate in detail the standards and criteria specified in such section that measure the level or comparative degree of economic distress of cities and urban counties. Such report shall also evaluate in detail the extent to which the economic and social data utilized by the Secretary in awarding grants under such section is current and accurate, and shall compare the data used by the Secretary with other available data. The Secretary shall make recommendations to the Congress on whether or not data should be collected by the Federal Government in order to fairly and accurately distribute grants under such section based on the level or comparative degree of economic distress. The Secretary shall also make recommendations on whether or not existing data should be collected more frequently in order to ensure that timely data is used to evaluate grant applications under such section. Such report shall also describe in detail the standard and criteria utilized by the Secretary to evaluate project quality under paragraphs (C), (D), (E) of section 119(d)(1) of such Act.

(B) Not later than the expiration of the three-month period following the date of the final competition for grants for fiscal year 1987 under section 119 of the Housing and Community Development Act of 1974, the Secretary of Housing and Urban Development shall prepare and submit to the Congress a comprehensive report describing the effect of the amendments made by this section on—

(i) the targeting of grant funds to cities and urban counties having the highest level or degrees of economic distress;

(ii) the distribution of grant funds among regions of the United States;

(iii) the number and types of projects receiving grants; and

(iv) the per capita funding levels for each city, urban county, or identifiable community described in section 119(p) of such Act, receiving assistance under that section.

(c) Section 119(f) of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following: "In any case where the project proposes the repayment to the applicant of the grant funds, such funds shall be made available by the applicant for economic development activities which are or would be eligible activities under this section or section 104. The applicant shall annually provide the Secretary with a statement of the projected receipt and use of repaid grant funds during the next year together with a report acceptable to the Secretary on the use of such funds during the most recent preceding full fiscal year of the applicant.".

(d) Section 119(n)(1) of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following: "Such term also includes the counties of Kauai, Maui, and Hawaii in the State of Hawaii, except that in the case of such counties grants shall be made only to assist projects that, in the determination of the Secretary, are located in and will improve the employment base of urban areas within such counties.".

(e) Section 119(r) of the Housing and Community Development Act of 1974 is amended by striking out "among programs" and inserting in lieu thereof "against projects"; and is further amended by striking out "In" and inserting in lieu thereof "Except as provided in subsection (D)(6), in".

(f) On or before July 1, 1987 the Secretary of Housing and Urban Development shall report to the Congress any recommendations as to legislation that may be needed or desirable in the implementation of Section 119(h) of the Housing and Community Development Act of 1974.

TITLE II—MORTGAGE CREDIT AND MISCELLANEOUS PROVISIONS

MORTGAGE LIMITS FOR MULTIFAMILY PROJECTS IN HIGH COST AREAS

SEC. 201. Section 207(c)(3), the second proviso of section 213(b)(2), the first proviso of section 220(d)(3)(B)(iii), section 221(d)(3)(ii), section 221(d)(4)(ii), section 231(c)(2) and section 234(e)(3) of the National Housing Act are each amended by striking out "not to exceed 75 per centum" and all that follows through "involved) in such an area" and inserting in lieu thereof the following: "not to exceed 110 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 140 percent where the Secretary determines it necessary on a project-by-project basis, but in no case may any such increase exceed 90 percent where the Secretary determines that a mortgage purchased or to be purchased by the Government National Mortgage Association in implementing its special assistance functions under section 305 of this Act (as such section existed immediately before November 30, 1983) is involved". Section 221(d)(4)(ii) of the National Housing Act of 1934 is amended by striking out "$19,406"; "$22,028"; "$26,625"; "$33,420"; "$37,870"; "$20,962"; "$24,030"; "$29,220"; "$37,800"; and $41,494" and inserting in lieu thereof, "25,228"; "$28,636"; "$34,613"; "$43,446"; "$49,231"; "$27,251"; "$31,239"; "$37,986"; "$49,140" and "$53,942", respectively.

GNMA MORTGAGE-BACKED SECURITIES LIMITATIONS

SEC. 202. Section 306(g)(2) of the Federal National Mortgage Association Charter Act is amended by striking out "and 1985" and inserting in lieu thereof ", 1985, 1986, and 1987".

FEES AND CHARGES

SEC. 203. (a)(1) No fee, premium or other charge shall be assessed or collected by the United States (including any executive department, agency, or independent establishment thereof) on or with regard to loans, guarantees or insurance provided by the Secretary of Housing and Urban Development unless such fee, premium or other charge is established at no greater than an amount, if any, that reasonably could be expected to compensate the United States with respect to such activities for such actual administrative expenses and anticipated losses on actual experience.

(2) Any fee, premium or other charge in effect as of November 1, 1985, shall be deemed to be in compliance with paragraph (1) of this subsection.

(b) No risk premium or loan fee may be assessed or collected by the Secretary of Housing and Urban Development or any other Federal agency directly or indirectly from the borrower with regard to a loan made by the Secretary under section 312 of the Housing Act of 1964.

(c) No fee, premium or other charge shall be assessed or collected by the United States (including any executive department, agency, or independent establishment thereof) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee or redemption of any mortgage, asset, obligation, trust certificate of beneficial interest or other security by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal Home Loan Bank; *Provided, however,* That nothing herein shall prohibit incidental imposition of any reasonable and appropriate fee or charge pursuant to section 304(c) or 309(g) of the Federal National Mortgage Association Charter Act, section 303(c) of the Federal Home Loan Mortgage Corporation Act, or section 11(i) of the Federal Home Loan Bank Act.

(3)(A) No fee or charge in excess of six basis points (other than fees or charges for the issuance of commitments or miscellaneous administrative fees that do not exceed the level set for such fees by the Government National Mortgage Association as of September 1, 1985) may be assessed or collected by the United States (including any executive department, agency or independent establishment of the United States) on or with regard to any guaranty of the timely payment of principal or interest on trust certificates or securities backed or based on mortgages that are secured by one-to two-family dwellings, and insured by the Federal Housing Administration pursuant to title II of the National Housing Act, or which are insured or guaranteed under the Serviceman's Readjustment Act of 1944 or chapter 37 of title 38 of the United States Code, or title V of the Housing Act of 1949. The fees charged for the guaranty of securities or trust certificates backed or based on all other types of mortgages, as authorized by other provisions of law shall be set by the Government National Mortgage Association at a level adequate to create reserves sufficient to meet anticipated claims based on actuarial analysis, and for no other purpose. The Secretary of Housing and Urban Development shall certify to Congress ninety days prior to any increase in these fees that the fees charged (or the proposed increases) are solely for the purposes specified in the preceding sentence.

(B) Fees or charges for the issuance of commitments or miscellaneous administrative fees shall remain at the level set for such fees as of September 1, 1985. Any increases in these fees shall be reasonably related to the cost of administering the program, and for no other purpose. The Secretary shall certify to Congress ninety days prior to any increase in these fees that the fees charged (or the proposed increases) are solely for the purposes specified in the preceding sentence.

(4) Section 203(c) of the National Housing Act is amended to read as follows:

"(C) The Secretary is authorized to fix premium charges for the insurance of mortgages under the separate sections of this title but in the case of any mortgage such charge shall not be more than 3.8 per centum of the principal obligation of the loan or mortgage involved. The fee charged for the insurance of mortgages under this title shall be set by the Secretary at a level adequate to create reserves sufficient to meet anticipated claims based on actuarial analysis, and for no other purpose, except: that premium charges fixed for insurance (1) under sections 245, 247, 251, 252 or 253 or any other financing mechanism providing alternative methods for repayment of a mortgage that is determined by the Secretary to involve additional risk, or (2) under subsections (n) and (k) are not required to be the same as the premium charges for mortgages insured under the other provisions of this section.".

(d) This section shall not be deemed to authorize any fee, premiums or other charge in excess of that allowable under another statute or to authorize any fee, premium or other charge to be imposed that is not authorized under any other statute.

HOME MORTGAGE DISCLOSURE ACT EXTENSION

SEC. 204. Section 312 of the Home Mortgage Disclosure Act of 1975 is amended by striking out "1987" and inserting in lieu thereof "1989".

PURCHASE OF SECOND MORTGAGES

SEC. 205. (a) Paragraph (5)(A) of Section 302(b) of the Federal National Mortgage Association Charter Act is amended by deleting the phrase "until October 1, 1987,".

(b) Paragraph (4)(A) of Section 305(a) of the Federal Home Loan Mortgage Corporation Act is amended by deleting the phrase "until October 1, 1987,".

TITLE III—HOMELESS ASSISTANCE

DEFINITIONS

SEC. 301. For the purpose of this title—

(1) the term "emergency shelter" means an entire facility, or that part of a facility, which is used or designated to be used to provide temporary housing to not fewer than twenty individuals;

(2) the term "operating costs" means expenses incurred by States, local governments, and private nonprofit organizations operating transitional housing for the homeless with respect to—

(A) the administration, maintenance, minor repairs, and security of such housing;

(B) utilities, fuel, furnishings, and equipment for such housing; residents of such housing; and

(C) the conducting of the assessment of supportive services to residents of such housing; and

(D) the provision of supportive services to the residents of such housing;

(3) the term "private nonprofit organization" means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under subtitle A of such code, and which has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance;

(4) the term "Secretary" means the Secretary of Housing and Urban Development;

(5) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(6) the term "supportive services" means assistance to the residents of transitional housing in obtaining permanent housing, medical and psychological counseling and supervision, employment counseling, referral to job training, nutritional counseling, and such other services essential for establishing independent living as the Secretary determines to be appropriate. Such term includes the provision of assistance to the residents of transitional housing in obtaining other Federal, State, and local government assistance available for such person, including mental health benefits, employment counseling, referral to job training programs, and medical assistance; and

(7) the term "transitional housing" means a single- or multi-family structure suitable for the provision of housing and supportive services for not more than 15 homeless persons, who cannot presently live independently without supportive services in a supervised residential setting but who are believed capable of transition to independent living with 6 months of assistance in a stable environment.

PART 1—EMERGENCY FOOD AND SHELTER PROGRAM

NATIONAL BOARD

SEC. 311. (a) The Director of the Federal Emergency Management Agency shall, as soon as practicable after September 30, 1986, constitute a national board for the purpose of carrying out an emergency food and shelter program.

(b) The national board shall consist of seven members. The United Way of America, the Salvation Army, the National Council of Churches of Christ in the United States of America, the National Conference of Catholic Charities, the Council of Jewish Federations, Incorporated, the American Red Cross, and the Federal Emergency Management Agency shall each designate a representative to sit on the national board.

(c) The representative of the Federal Emergency Management Agency shall chair the national board.

NATIONAL BOARD TRANSITION

SEC. 312. (a) The national board constituted by the Director of the Federal Emergency Management Agency, pursuant to section 311, shall continue to be authorized until March 30, 1987, and on such date, the personnel, property, records, and undistributed program funds of such national board shall be transferred to the national board constituted under subsection (b).

(b) On or before March 30, 1987, the Secretary of Housing and Urban Development shall constitute a national board for the purpose of carrying out an emergency food and shelter program. This national board shall consist of the same representatives, or their successors, of the same organizations as the national board constituted pursuant to section 311(b), except that the Secretary of Housing and Urban Development shall designate a representative to replace the Federal Emergency Management Agency representative. Such national board shall assume authority on March 30, 1987.

DISTRIBUTION OF PROGRAM FUNDS

SEC. 313. The national boards constituted pursuant to sections 311 and 312(b) shall determine how program funds are to be distributed to individual localities. The national board shall identify localities having the highest need for emergency food and shelter assistance, based on unemployment and poverty rates and such other need-related data as the national boards deem appropriate, determine the amount and distribution of funds to these localities, and ensure that funds are properly accounted for.

AGENCY RESPONSIBILITIES

SEC. 314. (a) The Director of the Federal Emergency Management Agency shall award a grant for such amount as Congress appropriates for this program to the national board constituted pursuant to section 311 within thirty days after the beginning of fiscal year 1987, for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and through units of local government.

(b) The Director of the Federal Emergency Management Agency, or his representative, shall have the following responsibilities: provision of guidance, coordination, and staff assistance to the national board in carrying out the program; and cooperation and coordination with the Secretary of Housing and Urban Development in the conducting of an audit of program funds awarded to the national board constituted pursuant to section 311 or transferred to the national board constituted pursuant to section 312(b). The responsibilities of the Director of the Federal Emergency Management Agency with respect to this program shall end with the completion of the audit for program funds distributed during fiscal year 1987.

(c) The Secretary of Housing and Urban Development shall award a grant for such program to the national board constituted pursuant to section 312(b) within thirty days after the beginning of fiscal years 1988 and 1989, for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and through units of local government.

(d) The Secretary of Housing and Urban Development shall have the following responsibilities: provision of guidance, coordination, and staff assistance to the national board in carrying out the program; and the conducting of an audit of program funds awarded to and transferred to the national boards constituted pursuant to sections 311 and 312(b).

(e)(1) In carrying out the responsibilities under subsection (d), the Secretary shall coordinate activities with the Federal Interagency Task Force on Food and Shelter, chaired by the Secretary of Health and Human Services, to identify vacant and surplus Federal facilities which could be renovated or converted for use as emergency shelter facilities for the homeless.

(2) Not later than three months after the end of fiscal year 1987, the Secretary shall submit to the Congress a report on obstacles, if any, including agency rules or procedures, to the availability of vacant and surplus Federal facilities for renovation or conversion to use as emergency shelter facilities for the homeless, with recommendations for legislative or administrative changes to overcome such obstacles.

LOCAL BOARDS

SEC. 315. (a) Each locality designated by the national boards constituted pursuant to sections 311 and 312(b) shall constitute a local board for the purpose of determining how program funds allotted to the locality will be distributed. The local board shall consist, to the extent practicable, of representatives of the same organizations as the national boards, expect that the mayor or other appropriate heads of government will replace the Federal Emergency Management Agency or Department of Housing and Urban Development member; organizations providing services on a locality wide basis should also be allowed to serve on the local board. The chair of the local board shall be elected by a majority of the members of the local board. Local boards are encouraged to expand participation of other private nonprofit organizations on the local board.

(b) Local boards shall have the following responsibilities: determining which private nonprofit organizations or public organizations of the local government in the individual locality shall receive grants to act as service providers; monitoring recipient service providers for program compliance; reallocation of funds among service providers; ensuring proper reporting; and coordinating with other Federal, State, and local government assistance programs available in the locality.

(c) Prior to March 30, 1987, local boards constituted pursuant to subsection (a) shall be accountable to the national board constituted pursuant to section 311. On and after March 30, 1987, local boards constituted pursuant to subsection (a) shall be accountable to the national board constituted pursuant to section 311(b).

LOCAL HOMELESS ASSISTANCE PLAN

SEC. 316. (a) At the end of each fiscal year, each local board shall submit to the national board constituted pursuant to section 312(b), a plan describing programs, goals, and objectives for providing assistance to the homeless in that locality. The plan shall be developed in cooperation with the local government head represented on the local board.

(b) The local plan shall address the following subjects: description of existing shelter, mass feedings, and food bank activities in that locality, including activities not receiving assistance under this subtitle; use and availability of all public and private resources in the locality to assist the homeless; coordination of all public and private services and resources in that locality to assist the homeless; coordination among all shelter providers in the locality to use all available shelter space for the homeless; and preservation of low-income housing in the locality.

(c) The local plan shall be placed on file in the office of the local government head represented on the local board and shall be made available to the public. The local plan shall be forwarded to that individual locality's representatives in Congress. The national board shall maintain files of local plans and make them available upon request to other localities.

(d) The preparation and submission of the local plan shall be regarded as the legal duty of the local board, but failure to do so shall not be grounds for the withholding of funds appropriated under this title from that locality. Any citizen residing in the locality in which such local board is constituted shall have standing in the Federal district court of jurisdiction to seek an order compelling the preparation and submission of the local plans as required by this section. The substance and contents of the local plan shall be within the sole discretion of the local board and shall not be subject to administrative or judicial review.

SERVICE PROVIDERS

SEC. 317. Designation by the local board of a service provider to receive program funds should be based upon a private nonprofit organization's or unit of local government's ability to deliver emergency food and shelter to needy individuals and such other factors as are deemed appropriate to program objectives by the local board.

USE OF FUNDS

SEC. 318. (a) The national boards constituted by sections 311 and 312(b) may authorize the following use of funds to address the emergency food and shelter needs of needy individuals:

(1) Expenditures necessary to purchase emergency food and shelter for needy individuals, to supplement and extend currently available resources and not to substitute or reimburse ongoing programs and services; and

(2) expenditures necessary to conduct minimum rehabilitation of existing mass shelter or mass feeding facilities to make facilities safe, sanitary, and bring them into compliance with local building codes.

(b)(1) Local boards are authorized to expend up to 25 percent of the funds allotted to that locality for substantial renovation or conversion, but no acquisition or new construction, of buildings for use as emergency shelter facilities to provide additional

shelter space. Such expenditures shall be made in the form of noninterest bearing advances, repayment of which shall be waived if—

(A) the applicant utilizes the building as an emergency shelter facility for not less than the 10-year period following the completion of such renovation or conversion, or

(B) the Secretary determines that such facility is no longer needed to provide shelter to the homeless and approves use of the building for another charitable purpose for the remainder of such 10-year period. If the recipient of such advance fails to comply with the conditions for such a waiver, the recipient shall repay to the Secretary in cash the full amount of the advance received on such terms as the Secretary shall require. It shall be the responsibility of the local board to obtain documentation, signed by the responsible official, showing that the recipient of such advance is aware of and agrees to the conditions of its receipt.

(2) Local boards are encouraged to provide, to the neighborhood in which a new emergency shelter facility is to be located, adequate notice and an opportunity to comment. Local boards are also encouraged to achieve the widest possible distribution of emergency shelters throughout the locality to avoid a disproportionate burden on any one section or neighborhood of the locality.

LIMITATION ON CERTAIN COSTS

SEC. 319. Not more than 3 percent of the total appropriation for this program each year may be expended for the costs of administration.

PROGRAM GUIDELINES

SEC. 320. (a) The national boards constituted pursuant to sections 311 and 312(b) shall establish written guidelines for carrying out this program, including methods for identifying localities with the highest need for emergency food and shelter assistance; methods for determining amount and distribution to these localities; eligible program costs, with the aim of providing emergency essential services based on currently existing needs; and responsibilities and reporting requirements of the national boards, local boards, and service providers.

(b) These guidelines shall be published annually, and whenever modified, in the Federal Register. The national boards shall not be subject to the procedural rulemaking requirements of subchapter II of chapter 5 of title 5, United States Code.

(c) Guidelines established by the national board constituted pursuant to section 311 shall continue in effect until modified or revoked by that board or by the national board constituted pursuant to section 312(b).

AUTHORIZATION

SEC. 321. (a) To carry out this part, there are authorized to be appropriated such sums as may be approved in an appropriation Act for fiscal year 1987, $88,000,000 in fiscal year 1988, and $91,000,000 in fiscal year 1989.

(b) Any appropriated funds not obligated in a fiscal year shall remain available for obligation during the following fiscal year.

SURPLUS FOOD DISTRIBUTION

SEC. 322. The Commodity Credit Corporation shall process and distribute surplus commodities acquired by the corporation for the purpose of carrying out the food distribution and emergency shelter program in cooperation with the national boards constituted pursuant to sections 311 and 312(b).

PART 2—TRANSITION TO INDEPENDENCE DEMONSTRATION PROJECT

AUTHORITY TO MAKE GRANTS

SEC. 331. (a) The Secretary of Housing and Urban Development shall make grants to States, local governments, or private nonprofit organizations for the operation of demonstration projects to develop and apply innovative approaches in providing transitional housing and supportive services to the homeless to assist them in the transition to independent living.

(b) Grants under subsection (a) may be made in the form of—

(1) annual payments for operating expenses of transitional housing, not to exceed 75 percent of the annual operating expenses of such housing;

(2) technical assistance in establishing and operating transitional housing and providing supportive services to the residents of such housing to assist them in the transition to independent living; and

(3) a one-time only non-interest bearing advance, not to exceed $100,000, for the purposes of acquiring, rehabilitating, or acquiring and rehabilitating an existing structure for use in providing transitional housing, if the applicant agrees to utilize such structure as transitional housing, if the applicant agrees to utilize such structure as transitional housing for not less than 5 years. Repayments of such advance shall be waived if the applicant utilizes the structure as transitional housing for not less than the 10-year period following the initiation of operation of such transitional housing facility, or if the Secretary determines that such structure is no longer needed for use as transitional housing and approves the use of such structure for another charitable purpose for the remainder of such 10-year period. If the applicant fails to comply with the conditions for waiver of repayment, the applicant shall repay to the Secretary in cash the full amount of the advance received on such terms as the Secretary shall require.

(c) Grants made under this section are to be used to supplement and extend currently available resources and not to substitute or reimburse ongoing programs and services.

APPLICATIONS FOR GRANTS

SEC. 332. Each application for a grant submitted by a State, local government, or private nonprofit organization shall contain—

(1) documentary material demonstrating that such applicant has the ability and resources necessary to operate transitional housing;

(2) documentary material describing the program and supportive services intended to be provided in such transitional housing, including the innovative quality of the proposed program;

(3) documentary material demonstrating that the State, local government, or private nonprofit organization involved has provided the emergency food and shelter program local board, constituted pursuant to section 315, if such local board has been constituted in the locality where the proposed transitional housing will be located, an opportunity to comment with respect to this application, and a statement as to whether the local board approves or disapproves of such application and its reasons for any disapproval; and

(4) such other information or material as the Secretary shall establish.

ALLOCATION OF GRANTS

SEC. 333. In selecting States, local governments, or private nonprofit organizations for assistance in providing transitional housing under this title, the Secretary shall consider—

(1) the innovative quality of the proposal to provide transitional housing and supportive services to the homeless to assist them in the transition to independent living;

(2) the ability of the State, local government, or private nonprofit organization to develop and operate transitional housing for homeless persons and to provide supportive services to the residents of such housing;

(3) the need for such transitional housing and supportive services in the locality to be served; and

(4) such other factors as the Secretary determines to be appropriate for purposes of carrying out the demonstration project established in this Act in an effective and efficient manner.

PROGRAM REQUIREMENTS

SEC. 334. (a) Each State, local government, or private nonprofit organization receiving assistance under this part shall agree—

(1) to operate transitional housing assisting residents in the transition to independent living and generally limiting the stay of individual residents to not more than six months;

(2) to conduct an assessment of the supportive services required by the residents of such transitional housing to assist them in the transition to independent living;

(3) to employ a full-time residential supervisor with sufficient expertise to provide, or supervise the provision of, supportive services to the residents of such housing;

(4) to keep and make available to the Secretary such records of the expenditure of funds as the Secretary may require by rule; and

(5) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the demonstration project established by this part in an effective and efficient manner.

(b) Each homeless individual residing in transitional housing assisted under this part shall pay as rent an amount determined in accordance with the provisions of section 3(a) of the United States Housing Act of 1937.

REGULATIONS

SEC. 335. Not later than 120 days following the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to carry out the provisions of this part.

REPORTS TO CONGRESS

SEC. 336. (a) The Secretary shall submit to Congress—

(1) not later than three months after the end of each of the fiscal years 1987 and 1988, an interim report summarizing the activities carried out under this part during such fiscal year and setting forth any preliminary findings, conclusions, or recommendations of the Secretary as a result of such activities; and

(2) not later than six months after the end of fiscal year 1989, a final report summarizing all activities carried out under this part and setting forth any findings, conclusions, or recommendations of the Secretary as a result of such activities.

(b) Such interim and final reports shall address—

(1) the cost of operating transitional housing and providing supportive services to the homeless to assist them in the transition to independent living;

(2) the various types of transitional housing assisted under this part, including innovative approaches to assisting the homeless in the transition to independent living;

(3) the social, financial, and other advantages and disadvantages of transitional housing and supportive services as a means of assisting the homeless;

(4) the success of transitional housing programs assisted under this part, as measured in terms of placement of homeless individuals in permanent housing, placement in employment, and reductions in welfare dependency; and

(5) such other findings, conclusions, and recommendations as the Secretary deems appropriate with regard to assisting the homeless in the transition to independent living.

AUTHORIZATION

SEC. 337. To carry out this part, there are authorized to be appropriated such sums as may be approved in an appropriation Act for fiscal year 1987, and $15,000,000 in each of the fiscal years 1988 and 1989. Any amount appropriated under this section shall remain available until expended.●

By Mr. CHILES:

S. 259. A bill to create a Department of Trade, to promote economic growth and trade expansion, to open foreign markets, to enhance the competitiveness of United States firms, and for other purposes; to the Committee on Governmental Affairs.

TRADE EXPANSION ACT

● Mr. CHILES. Mr. President, I am introducing today the Trade Expansion Act of 1987.

We are at an economic turning point in our history. After years of drift and indecision, a new sense is developing in this country that we are sliding behind our world competition. And much of the reason for inertia has been an inability to assert our historic economic power.

Economic power is the ability to deliver a rising standard of living on a sustainable basis. In the modern world, one of the keys to rising standard of living is providing good jobs by producing goods and services for export.

And we have been lagging on that score. Within the last month or so, the administration has taken some belated, piecemeal steps to show the United States has been victimized by foreign trade barriers long enough. But the steps have no pattern, no organized force behind them.

We must do better and that's the reason for the Trade Expansion Act I'm introducing today.

The United States must take practical steps toward a vigorous system of open and fair world trade.

We must not be shy about insisting on the removal of foreign trade barriers to the sale of our goods abroad. But neither should we be shy about facing up to the fact that some of our problems are self-inflicted.

The administration has, in the past, rejected the findings of the International Trade Commission that our copper and footware industries have been damaged by foreign trade practices. It did nothing to help our machine tool industry until it was too late.

We have not monitored predatory practices of our competitors, nor have we systematized our approach to making our own laws foster our trade prospects.

It seems to me, Mr. President, that if we can put American astronauts on the Moon's Sea of Tranquility, we ought to be able to put American goods on the Sea of Japan.

One of our most nagging problems in the arena of trade is political. Everytime someone counsels getting this country in shape to compete, someone else is sure to call it protectionism. That's nonsense.

In this country, we believe in equal opportunity. We expect no less in the world marketplace. There is a vast difference between competition and protection.

Protection is negative, passive, a fortress mentality. Competition demands agility, imagination, and activism. We must demand competition, promote exports, and make the most of our opportunities.

Accordingly, the Trade Expansion Act of 1987 would create a cabinet-level Department of Trade in the executive branch. The Trade Secretary would be responsible for developing, coordinating, and implementing trade policy. The Secretary would become the chief advocate for U.S. trade interests.

The new Department would combine the functions of the U.S. Trade Representative with the many trade-related and industrial functions of the Department of Commerce.

The Export-Import Bank, the International Trade Commission, and the Overseas Private Investment Corporation would be transferred to the Department.

The bill would also establish a Trade Committee in the Executive Office of the President comprised of the Secretaries of Trade, Commerce, Agriculture, State, Labor, and Treasury to assist the President in carrying out his functions under the trade laws.

The Trade Expansion Act would require the Secretary of Trade to inventory the effects on American exports of lifting foreign trade barriers. This inventory will serve as a reference point for setting bottom-line access goals to foreign markets. If other nations are unwilling to open their markets in accordance with those goals, the United States will take the action necessary to make up the shortfall by limiting the amount of foreign imports into this country.

The bill would require us to identify and remove our own barriers to trade to show good faith, and keep us from tying our own hands. We have many government policies in our country that have proven to be barriers to our own producers in the search for foreign markets. We must work to remove those barriers.

The bill directs the Export-Import bank to work with state agencies in the promotion of exports to produce a truly national effort.

It seeks to improve U.S. agricultural trade through export incentive programs, and seek ways to increase the competitive potential of American farmers.

The bill would streamline procedures for American industries damaged by imports. It would also require the Trade Secretary to automatically implement their decisions unless overridden by the President.

The bill also instructs the Secretary of Trade to monitor foreign industries which engage in predatory practices. It would protect the creativity of American intellects by prohibiting trade with foreign firms whose goods are manufactured as a result of the illegal use of U.S. patents. In that sense, it also protects America's investment in research and development.

Beyond these items, the President would be instructed to enter into negotiations to strengthen GATT with regard to services, agricultural trade, technology, and investments.

It would also involve the U.S. Treasury and the Federal Reserve Board in an effort to find ways to ease the international debt crisis.

And at the heart of the bill is the idea of promoting growth and economic power—not just through expanding exports—but through serious work on the problems of deficits and consumption affecting the nations of the world.

We begin this work to invigorate world trade. And we start it because we value the benefits that dynamic and competitive partnership can bring to this Nation and all others who join the effort.

America is a proud and strong country. We have great latent power to shape our own future. We have used it before. We must use it again. And we must use it now.

Mr. President, I ask unanimous consent that a more detailed explanation of the bill be printed at this point in the RECORD.

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

THE TRADE EXPANSION ACT OF 1987—SECTION-BY-SECTION SUMMARY

TITLE I—CREATING A DEPARTMENT OF TRADE

Creates a cabinet-level Department of Trade in the executive branch to develop, coordinate, and execute trade policy—becoming the chief advocate for U.S. trade interests.

The new Department combines the functions of the U.S. Trade Representative with the many trade-related and industrial functions of the Department of Commerce.

The Export-Import Bank, the International Trade Commission, and the Overseas Private Investment Corporation are transferred to the Department.

Establishes a Trade Committee in the Executive Office of the President comprised of the Secretaries of Trade, Commerce, Agriculture, State, Labor, and Treasury to assist the President in carrying out his functions under the trade laws.

TITLE II—OPENING FOREIGN MARKETS

Requires the Secretary of Trade to calculate the potential increase in U.S. exports from lifting foreign trade barriers. These amounts form the basis for export goals and timeliness for countries whose barriers are a significant impediment to U.S. exports.

Sets export goals for Japan leading to a $10 billion increase in U.S. exports at the end of three years.

Failure to meet the export goals would result in the foreign country being denied access to the U.S. market by the amount of the shortfall from the target.

In initiating Section 301 cases (unfair trade barriers), the Secretary of Trade is instructed to focus not only on the most egregious practices, but to also consider the ability of smaller exporters to pursue their own remedies.

TITLE III—SUPPORTING U.S. EXPORT EFFORTS

Establishes a $300 million "war chest" administered by the Department of Trade to counter mixed credits and other forms of subsidized financing. Prohibits funding of projects that would increase excess supply of goods or commodities in U.S. or global markets.

Requires the Trade Department to identify existing U.S. barriers to U.S. exports and report to Congress on the increased value of exports that could be expected from their removal.

Revises Foreign Corrupt Practices Act by replacing the imprecise "reason to know" standard with a cleaner "knowledge standard". Strengthens enforcement of FCPA by doubling penalties. Requires Secretary of Trade to review impact of FCPA on U.S. exports.

Mandates competitiveness impact statements for major legislative or regulatory initiatives by federal agencies. In addition, the Congressional Budget Office will monitor committee-reported bills to identify those which would have a major impact on the international trade of the United States.

Instructs U.S. directors to multilateral development banks to aid procurement opportunities for U.S. firms.

Directs the Export-Import bank to work with state agencies that promote exports to establish procedures for consultation and coordination of efforts. Assures that these state agencies have ready access to the Trade Department's trade data bank (see Title IX).

Requires diplomatic missions to facilitate U.S. export efforts.

TITLE IV—AGRICULTURAL TRADE

Directs the Secretary of Agriculture to conduct research to enhance the competitiveness of U.S. agricultural commodities. Mandates studies of U.S. comparative advantage, new developments in research conducted by foreign countries, and the level of export subsidization by foreign governments.

Authorizes the Secretary of Agriculture to conduct an export quality incentive program using export PIK commodities. The government would provide commodities in exchange for each 1 percent improvement in grain quality above the standard contract.

Directs the Secretary of Agriculture to issue an annual report summarizing the impact of actions taken by the USTR on U.S. exports of agricultural commodities.

TITLE V—RELIEF FROM INJURY CAUSED BY IMPORTS

Streamlines section 201 procedures for industries damaged by imports. Requires the International Trade Commission's recommendation to be automatically implemented unless overridden by the President.

Has section 201 relief accompanied by adjustment measures aimed at restoring the competitiveness of the damaged industry.

Temporary relief under section 201 would be in the form of tariffs or auctioned quotas, so that the "surplus" created by the protection flows to the Treasury rather than foreign producers. Does not include antitrust exemption as a remedy under Section 201.

Monitors impact of imports on technologies, components, and outputs critical to U.S. economic or national security interests.

TITLE VI—RESISTING PREDATORY TRADE PRACTICES

Instructs the Trade Department to monitor for foreign industries which engage in predatory competition (such as protecting an industry while building a large export capacity).

The Trade Department would monitor the flow of these industries' products to the U.S. and submit to Congress a report identifying cases of excessive increases in sales.

Requires the Trade Department to monitor the investment in the U.S. by foreign countries engaging in unfair trade practices.

Mandates study of foreign financial and regulatory systems on ability of U.S. businesses to compete in domestic and foreign markets.

Restricts access of foreign nationals and firms from countries which violate U.S. patents to U.S. research and educational facilities.

Adopts language of S. 1543 which strengthens the protection of intellectual property rights by prohibiting foreign firms from selling goods in the U.S. whose manufacture involves the illegal use of U.S. process patents.

Calls for sufficient funding for personnel to vigorously enforce U.S. trade laws.

TITLE VII—INTERNATIONAL TRADE NEGOTIATIONS

Instructs the President to enter into international trade negotiations to create or strengthen the GATT articles with regard to trade in services, agricultural trade, technology and related processes, intellectual property rights, investments.

Creates as negotiating objectives revision of GATT procedures to allow unilateral actions to enforce panel recommendations; to enable independent, nongovernment experts to arbitrate disputes; and to develop scientific, market-related estimates of trade potentials from trade concessions. Calls for the strengthening of GATT as an institution through tougher enforcement mechanisms and streamlined procedures.

Calls for international agricultural negotiations to remove unreasonable health and safety standards used as barriers to U.S. agricultural exports, and to establish strict, enforceable definitions of agricultural subsidies.

TITLE VIII—INTERNATIONAL DEBT CRISIS

Requires the U.S. Treasury and the Federal Reserve Board, in consultation with the International Monetary Fund and the World Bank, to report on the options for ameliorating the international debt crisis.

The report will consider the options for debt repayment flexibility conditioned on an increased role for the private sector in the indebted countries, appropriate monetary, fiscal and regulatory policies, movement toward membership in and adherence to the GATT articles.

Calls on industrialized countries which benefit from a U.S. defense presence to play a greater financial role in supporting the international institutions which aid indebted countries.

Instructs the Administration to evaluate the feasibility of selling surplus agricultural and other commodities in exchange for local currencies, goods, or services (countertrade) in indebted countries where hard currency supplies are low.

TITLE IX—TRADE INFORMATION

Mandates that the Trade Department develops and maintains a centralized trade data bank with information on foreign economies and market opportunities (including countertrade), foreign business practices, laws and regulations, and information on specific industrial sectors.

Requires gathering and dissemination of trade data on a state-by-state basis, allowing the determination of value-added by a particular state.

Establishes a new service in the Trade Department aimed at meeting the information needs of particular U.S. firms—with the companies sharing the cost.

TITLE X—ECONOMIC GROWTH AND TRADE EXPANSION

Instructs the President to negotiate with foreign countries:

to coordinate macroeconomic adjustment, with reductions in the U.S. budget deficit matched by the expansion of foreign economies.

to base their economic growth on a balance of external and domestic demand, recognizing that exclusive reliance on export-led growth creates trade imbalances which increase protectionist pressures and undermine the world trade system.

to work with the United States and international organizations to pursue a pro-growth strategy to resolving the international debt crisis.

NEW ELEMENTS TO TRADE EXPANSION ACT OF 1987

(1) Creates a cabinet-level Department of Trade in the executive branch to develop, coordinate, and execute trade policy—becoming the chief advocate for U.S. trade interests.

(2) Establishes bottom-line export goals for Japan leading to a $10 billion increase in U.S. exports at the end of 3 years. Failure to meet the goals would result in Japanese goods being denied access to the U.S. market by the extent of the shortfall.

(3) Based on numerical calculations of the potential for increased U.S. exports from removal of foreign trade barriers, requires the Trade Department to set bottom-line export goals for at least three countries in the year following enactment.

(4) Prohibits the Export-Import Bank from financing projects that would result in an excess supply of goods or commodities in U.S. or world markets.

(5) Requires the Department of Trade to monitor the impact of imports on technologies, components, or final products critical

to U.S. economic or national security interests.

(6) Requires the Department of Trade to monitor investments in the U.S. by foreign countries engaging in unfair trade practices.

(7) Mandates the study of foreign financial and regulatory systems (including antitrust) on ability of U.S. businesses to compete in domestic and foreign markets.

(8) Allows restriction of access of foreign nationals and firms from countries which violate U.S. patents to U.S. research and educational facilities.

(9) Creates GATT negotiating objectives which allow: unilateral actions to enforce panel recommendations; creation of panels of independent, nongovernmental experts to arbitrate trade disputes; development of scientific, market-related estimates of trade potentials from tariff and other concessions.

(10) Calls for international agricultural negotiations to remove unreasonable foreign health and safety standards which impede U.S. exports, and to establish strict, enforceable definitions of agricultural subsidies.

(11) Expands data bank of Department of Trade to include information on opportunities for countertrade (barter) both by offiicial and private parties.

(12) Requires gathering of trade data on a state-by-state basis, allowing the determination of value-added of a particular state.●

By Mr. THURMOND (for himself, Mr. CHILES, Mr. HATCH, Mr. TRIBLE, Mr. D'AMATO, Mr. HELMS, Mr. WILSON, Mr. GRASSLEY, and Mr. DECONCINI):

S. 260. A bill to reform procedures for collateral review of criminal judgments, and for other purposes; to the Committee on the Judiciary.

REFORM OF HABEAS CORPUS PROCEDURES

● Mr. CHILES. Mr. President, I am pleased to join the distinguished Senator from South Carolina, Senator THURMOND, in introducing a bill to reform procedures for collateral review of criminal judgments. This bill amends the statute governing the writ of habeas corpus used by State and Federal prisoners to challenge a court criminal conviction on constitutional grounds. The purpose of this bill is to cure the current flagrant abuse of the writ, which in many cases is used to subvert a State court's conviction or delay the imposition of a sentence. This abuse clogs the courts with frivolous claims that have oftentimes already been litigated in the State courts and potentially overshadow those claims that are meritorious. This legislation is a modified version of habeas corpus reform legislation which I coauthored in 1981 and have cosponsored in every Congress since then. While the Senate passed this legislation in 1984, the House of Representatives' version was never acted upon. I believe that the time is ripe to enact legislation to correct the current abuse of the writ.

The right to challenge one's incarceration by use of petition for habeas corpus is grounded in our Constitution. However, the current statutory framework providing guidelines for use of the writ allows for much abuse. According to the Florida attorney general's office, studies indicate abuse of the writ may take several forms. The most frequently cited form of abuse is when prisoners bring petitions many years after conviction. Other prisoners choose to raise new issues or allege different facts which could have been presented at the State court trial or on direct appeal. The potential result is a neverending cycle of appeals. The legislation we introduce today forestalls the use of these tactics and instills the notion of finality of judgment into our State criminal justice systems.

Support for habeas corpus reform is widespread. It is endorsed by members of the Federal bench, the U.S. Department of Justice, and the National Association of Attorneys General. In speaking before the American Bar Association, Chief Justice Burger stressed the need for finality of judgment in our criminal justice system as a means of deterrence to crime. The current machinery robs the system of justice of finality or certainty. The Supreme Court has also signaled the need for reform. In its last term, the decisions interpreting the scope of habeas review evidence a move in the direction sought by the legislation we propose. As a further comment on the present system, one noted authority describes State prisoners' use of the habeas petition as a form of occupational therapy.

Specific examples of abuse abound in my own State of Florida. In 1960, Floyd Halzapfel plead guilty to the first degree murders of a Florida circuit judge and his wife. Halzapfel told the State trial court his plea was free and voluntary and he understood the consequences of his plea. In 1969, he sought in State court to vacate the judgment and sentence he received claiming, among other things, his plea was involuntary, and he was not informed of his right to appeal. After a full evidentiary hearing on these issues, the State court denied the prisoner's motion. The denial was affirmed by the appellate court.

Over 9 years later, in 1978, Holzapfel filed a second motion to vacate in State court. He raised the same issues he had raised in 1969, and added a new charge—that his court appointed counsel had been ineffective. An additional hearing was held on the new claim in 1979. Based on the findings of that hearing and the 1969 hearing, the State court denied the second motion to vacate. In 1980, the State appellate court affirmed the lower court's denial.

In 1981, 21 years after his original conviction, Holzapfel filed a petition for habeas corpus relief in a Federal district court. In bringing this suit, he combined the claims already litigated in State court 12 years earlier with the claims he had litigated 3 years earlier. Clearly, his delay in bringing this suit imposed a great burden on the State's case, since two key witnesses, attorneys, had died prior to the Federal appeal. Both attorneys could testify concerning the voluntariness of the prisoner's confession. Holzapfel should have raised these issues in the original State proceedings when the facts, witnesses, and evidence were readily available and when the State court could correct any recognized errors.

Perhaps the premier beneficiary of our system's lack of finality is another Florida prisoner, Willie Darden, whom Justice Burger has described as the recipient of review "by 95 judges over 13 years." Darden, who was originally convicted in 1976 and sentenced to death in 1979 continues to make appeals, and is a classic example of a prisoner who has taken undue advantage of the availability of Federal review of State court proceedings.

The current system operates in such a way as to suggest that a prisoner, duly convicted in a "full and fair" State proceeding, can challenge that conviction time and time again, for years or even decades after his State court conviction became final. This system results in an erosion of public confidence in the criminal justice system. It undermines the notion of finality of judgment. Habeas cases relitigate the same facts and issues that were decided in the State courts, either at trial or on direct appeal. Moreover, Federal review of issues that have already been "fully and fairly" adjudicated in State court proceedings give rise to a presumption of inadequacy to State court proceedings. This has caused a great deal of friction between the State and Federal courts. Furthermore, the sheer volume of petitions filed is a strain on the resources of our courts. To the extent that our prosecutors, defense attorneys and judges devote their time and effort to reviewing and processing these petitions, we dilute the resources of the courts, and ironically actually hurt those who have valid habeas claims.

There are five major components of the bill which would amend the current statutory scheme relating to habeas corpus appeals by State prisoners. The first provision relates to the degree of deference accorded by a Federal habeas court to State court adjudication of legal issues that have been "fully and fairly" adjudicated. Under current law, a Federal habeas court is automatically required to make its own determination of legal issues regardless of how "fully and fairly" adjudicated in State court proceedings. Rather than making an automatic de novo review of legal issues mandatory, our proposal would impose a limited standard of review which would condition the granting of relief on the pri-

sioner's demonstrating that the State process was inadequate does not meet the "full and fair" standard and that he or she deserves a new hearing, the prisoner must demonstrate that a minimum standard of reasonableness is not met by the State court, or that the State adjudication was not conducted in accordance with Federal rights that are embodied in the notion of due process and equal protection. Readjudication would also be allowed if new evidence of substantial importance to the decision is produced which could not have been obtained through the exercise of reasonable diligence.

Review under this provision assumes that the claim presented was decided on the merits in State court proceedings. If not, the propriety of considering this claim would fall under another provision governing access to Federal habeas corpus.

Our proposal modifies current law regarding the standard of review for State findings of fact similar to standard of review for State court determinations of legal issues. This bill prohibits any redetermination of facts unless the habeas petitioner can establish that a specified defect existed in the State proceeding. It also tightens up the conditions themselves to ensure that needless redetermination of facts does not occur.

Another provision sets a uniform standard for review by a Federal habeas court when ruling on a prisoner's failure to raise a constitutional issue in accordance with State procedures. The intent behind this provision is to accord due deference to State procedures. More specifically, this provision codifies the "cause and prejudice" standard articulated in Wainwright versus Sykes in cases where there is a State procedural default. In order to obtain relief in a procedural default context, a prisoner must establish that actual prejudice resulted from the alleged denial of the right asserted and that the prisoner's failure to raise the claim is excused because it was a result of State action, or that the right asserted was newly recognized by the Supreme Court, or that the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence prior to the default.

Another proposal in this bill creates a statute of limitations of 1 year for filing habeas petitions for State prisoners, running from the time that State remedies are exhausted. This assures that habeas claims are filed and considered while the evidence is still readily accessable and is designed to remedy cases such as the example regarding the case of Halzapfel mentioned earlier. There are exceptions to this general rule in cases where State action prevented the prisoner from filing a habeas petition, or the petitioner is asserting newly recognized rights, or where the factual predicate of the claim could not have been discovered earlier through the exercise of reasonable diligence.

Mr. President, I think this bill will infuse the present system of filing habeas petitions with a measure of finality and certainty. I believe it will go a long way toward eliminating the filing of claims that are without merit or frivolous while guaranteeing those individuals with legitimate habeas petitions review in Federal court. I am pleased to join with Senator THURMOND in his efforts to secure this long overdue remedy.●

By Mr. MATSUNAGA (for himself, Mr. CRANSTON, and Mr. WILSON):

S. 261. A bill to authorize the establishment of a Peace Garden on a site to be selected by the Secretary of the Interior; to the Committee on Energy and Natural Resources.

ESTABLISHMENT OF PEACE GARDEN

● Mr. MATSUNAGA. Mr. President, I am introducing today, with the cosponsorship of Senators CRANSTON and WILSON of California, a bill to authorize the establishment of a Peace Garden in the Nation's Capital. Our Senate bill is identical to the House bill introduced in the 99th Congress by a Congressman GEORGE MILLER of California, and passed by the House in the closing days of the last Congress. Under its provisions, a new garden, dedicated to the ideal of peace, would be established in the District of Columbia on a site selected by the Secretary of the Interior, subject to the approval of the Commission on Fine Arts and the National Capital Planning Commission.

The garden would be designed and constructed by the Peace Garden Project, Inc., a nonprofit corporation chartered in the State of California. This organization will undertake to raise private funds for the design, construction and maintenance of the Peace Garden, so that the garden will not cost the taxpayers of this Nation 1 penny.

Mr. President, in a city filled with memorials to the great patriots who have died to protect freedom and our democratic way of life, it seems to me to be entirely appropriate that we should have a garden dedicated to the ideal of peace—a place of serenity and beauty for contemplation and meditation on the attainment of mankind's highest, yet most elusive goal. I urge the early consideration of this bill.

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

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

S. 261

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

SECTION 1. ESTABLISHMENT OF PEACE GARDEN.

The Secretary of the Interior, acting through the Director of the National Park Service is authorized to enter into an agreement with the Peace Garden Project, Incorporated (a nonprofit corporation organized under the laws of the State of California) pursuant to which the Peace Garden Project, Incorporated may construct a garden to be known as the "Peace Garden" on a site on Federal land in the District of Columbia to honor the commitment of the people of the United States to world peace. The site for the Peace Garden shall be selected by the Secretary of the Interior, subject to the approval of the Commission of Fine Arts and the National Capital Planning Commission.

SEC. 2. PROCEDURES AND DOCUMENTATION.

(a) PROCEDURES.—The site selection, design and construction of the Peace Garden shall comply with all procedures, rules, policies, and provisions of law applicable to the establishment of commemorative works on Federal land in the District of Columbia.

(b) DOCUMENTATION.—The agreement under section 1 shall require that the Peace Garden Project, Incorporated provide complete documentation of the design and construction of the Peace Garden to the Director of the National Park Service. Such documentation shall be permanently maintained.

SEC. 3. PREPARATION AND APPROVAL OF DESIGN PLANS.

The agreement under section 1 shall require the Peace Garden Project, Incorporated to be responsible for the preparation of the design plans for the Peace Garden. Such plans shall be subject to the approval of the Secretary of the Interior, the Commission of Fine Arts, and the National Capital Planning Commission.

SEC. 4. APPROVAL FOR COMMENCEMENT OF CONSTRUCTION

The Peace Garden Project, Incorporated may not commence construction of the Peace Garden until both of the following conditions have been met:

(1) The Secretary of the Interior has determined that the full amount of funds estimated to be necessary for the completion of such construction in accordance with the design plans approved under section 3 are available from non-Federal sources.

(2) An additional amount equal to 10 percent of the estimated construction cost has been made available from non-Federal sources to the Secretary of the Interior to provide for maintenance of the Peace Garden.

SEC. 5. MAINTENANCE.

The Secretary of the Interior shall, upon the completion of the construction of the Peace Garden, maintain the garden. Notwithstanding any other provision of law, the Secretary may retain and use for such purpose the monies made available under paragraph (2) of section 4.

SEC. 6. PAYMENT OF EXPENSES.

The United States may not pay any expense of the construction of the Peace Garden except that technical advice may be provided by the Secretary of the Interior as he deems necessary.

SEC. 7. EXPIRATION OF AUTHORITY.

The authority to establish the Peace Garden under this Act shall expire at the

end of the 5-year period beginning on the date of enactment of this Act, unless construction of such garden begins during such period.

By Mr. FORD:

S. 262. A bill for the relief of land grantors in Henderson, Union, and Webster Counties, to the United States, and their heirs; to the Committee on the Judiciary.

RELIEF OF KENTUCKY LAND GRANTORS

● Mr. FORD. Mr. President, today I am reintroducing a bill and a resolution which would grant private relief which seeks compensation for the oil, gas, and mineral rights for which the owners of land condemned in 1942 for Camp Breckinridge were never paid. The companion resolution would refer the entire matter to the Commissioners of the Court of Claims for fact finding and their report.

These pieces of legislation which determine the legal and moral responsibility of the Government to a group of Kentuckians who sold land to our Government in good faith and have now discovered that their faith was misplaced. We in Congress are increasingly called upon to respond to our constituents' waning confidence in our Government. Passage of this legislation by the Senate would be a positive step toward bridging the credibility gap. In simple terms, this bill seeks compensation for land condemned by the United States so that Camp Breckinridge could be established, land for which many families were paid less than $100 per acre.

Camp Breckinridge consisted of some 36,000 acres in a rural farming section of Henderson, Union, and Webster Counties, KY. The land was condemned in 1942 and used for a military training camp during World War II and the Korean conflict. With the declaration of war on the Axis powers, the United States was involved in a war of new, and at the time, unknown dimensions. The need for immediate action by the United States in Europe and the Pacific was desperate and properly trained troops were needed without delay. Hence, getting the camp in working order in the shortest possible time became the Government's objective.

To some extent, this necessity for quick action explains the callous attitude displayed by the Government and the cavalier manner in which the 1,500 families who stood between the Government and an operating training camp were treated. It is an explanation but not an excuse. Some residents were ordered to evacuate in 2 or 3 weeks time. Some notices of eviction were tacked on porch columns to avoid the problem of facing the owners. The appraisers were equally pressed for time. Farms were appraised, not by walking the metes and bounds, but by viewing the property from a car parked in a driveway. There are other accounts which have grown more bitter with the passage of time.

Similar stories are not uncommon in condemnation situations. In most cases condemnation is simply a very unpleasant experience. No one, regardless of their patriotism, likes to have his property taken. An understanding of the necessity of private sacrifice for the public good rarely makes the situation more palatable. The constitutional guarantee that no property will be taken without just compensation is the only factor in the whole equation designed to relieve the anguish of those forced to leave their homes and farms for the public good.

However, in this situation, there was not just compensation as required by the fifth amendment of the U.S. Constitution. This may seem unlikely when the various court battles fought by the former owners of the camp are considered, but through a combination of factors, the Government managed to acquire this property at an unreasonably low price. The Government's negotiators who handled the purchase of the camp property were instructed to obtain the property at the best price for the Government. This was an admirable instruction. However, in their zeal to carry it out, the negotiators seem to have forgotten the constitutional stricture placed upon their actions, namely, that the compensation must be just.

The land involved was fertile farmland with the necessary accoutrements for housing 1,500 families and producing a living for them by farming. Also there had been coal mining activity in the area for years. Oil wells were in existence at the time on some of the property in question. There were oil leases outstanding on approximately 70 percent of the property.

Despite this, the Corps of Engineers publicly stated that the oil and gas leases were "of nuisance value only" and subtracted the meager amounts paid for the leases from the valuation of the properties. This completely ignored the very real possibility of substantial continued income to owners of property on which wells might in the future be located. In the end, many of the property owners received less for their land than they had invested to make it productive and nothing for the future value of their oil leases.

The obvious question in response to this information is, "Why didn't the owners fight the condemnation appraisals in court?" There are several answers to that question, some of which reflect very badly on the good faith of the U.S. Government. The major reason involved the Surplus Property Acts of 1939 and 1944. These laws provided a third priority repurchase right for the owners of property condemned by the United States which later became surplus.

This priority followed a first priority for other Federal agencies and a second priority for State and local governments since it is obviously better to fill governmental property needs with Government property than to visit the trauma of condemnation on a new set of property owners. When this repurchase privilege was provided by Congress, it was expressly created on a temporary basis, each of the laws expiring by its own terms at the end of 5 years unless it were extended by an act of Congress. Hence, the repurchase priority which did exist was anything but a guarantee that the property would be returned to the former owners.

This was not the story told the owners by the governmental negotiators. The property owners were told they would be able to repurchase their property at the end of the war. There was no mention of only a third priority or that it was effective only if the property were declared surplus and refused by other Government agencies.

Furthermore, the owners were strongly encouraged not to contest the Government appraisals of their property because that appraised value would be the price they would pay when they would be allowed to repurchase the property after the war. This can be characterized as intentional misrepresentation or, as some have implied, fraud.

It is generally assumed that our legal system provides remedies for such wrongs. In this situation, the law was all on the Government's side. In all of the documents prepared by the Government, the owners conveyed a fee simple absolute to the United States. Having conveyed everything to the Government, the former owners had no rights left.

These written documents could not be disputed by oral evidence and the Government had never made any of its promises in writing. The case of *Harrison* v. *Phillips*, 282 F.2d 927 (5th Cir. 1960) highlights the legal cul-de-sac faced by the former owners. The plaintiff, Harrison, based his case on statements by Coast Guard officials who condemned his property in Texas, which was identical to those made by the negotiators in Kentucky. Even though such representations were made, the Government

> . . . would not be bound by any representations made by . . . its negotiators since they did not have authority to bind the United States to reconvey the property on a priority basis . . . Any statements made by the negotiators were clearly beyond the scope of their authority and not binding upon the government (Harrison, at p. 208).

There were other more basic reasons why many of the owners did not contest their appraisals. They were told that they would receive their compensation immediately if they did not contest. For those who followed this

advice, the payment was often a year away. For those who chose to contest, the last suits were not completed until after the war had been over for 2 years.

In retrospect, all of this may seem inconsequential or simply water under the bridge, but think for a moment of the difficulties of moving a farming operation to new land when one-quarter of the land in the county in question has just been removed from the market and prices have risen accordingly for remaining land, when no compensation has yet been received, and when the completely disrupted farming operation is the only source of income. The thought is not pleasant. In this situation, many simply could not afford to contest the appraisals.

The hardships and indignities of the move were endured with a mixture of bitterness, patriotism, and faith that the separation from land and home would not be a long one. During the Korean conflict, the camp was used again by the military but it was not until 1962 that it was finally declared surplus Government property. It seemed that the hopes of the owners would at last be fulfilled. However, injustice was to win in the end. In 1949, the third repurchase priority of the Surplus Property Act of 1944 expired. No notice of this event had been given to any of the former owners although they had been in continuous contact with the Government concerning the property. Further offense had been given the owners in 1957 when the Government leased two tracts of the property for productive oil wells.

In 1962, when it was learned that the camp was to be sold, the former owners sought to exercise their promised repurchase priority only to learn that the land was to be sold at public auction and that the supposedly worthless oil, gas, and mineral right were to be auctioned separately in seven tracts. These proposed actions were fought through the Federal court system concluding with the denial of certiorari by the Supreme Court. Thus, the former land owners lost their legal efforts to repurchase their property in 1968.

The last of the Camp Breckinridge property was sold in 1969. The dollar figures for this whole transaction are astounding. The owners of the property received $3,100,000 for the 36,000 acres of land, housing for 1,500 families, and the fencing and buildings necessary to farm this amount of land. When the Government sold the land, oil, and coal rights in the 1960's, it received approximately $40 million in return. Thus, the U.S. Government held property for 10 years after its last public use and made a $37 million profit with the help of broken promises. While I admire the ability to make a profit fairly, the Government of this country should not be in the business of making a profit by breaking its promises, legally authorized or not, and doing so at the expense of the individual citizens of this Nation.

As we have noted, the owners of Camp Breckinridge land fought their case to the highest court in the land. The sixth circuit court of appeals held against the owners, asserting that their interest in the land began only after its oil resources were discovered. These resources have never been the sole interest of those who owned the land on which the camp was built, but even if they were, these resources were well known long before the condemnation by the Government, contrary to the assertions of the court of appeals. Furthermore, the Government considered these leases of sufficient value to bring separate condemnation proceedings to obtain them, after the war was over.

At the time of the initial condemnation proceedings, the Corps of Engineers estimated that there were oil exploration leases outstanding on 65 to 70 percent of the land. Under these leases, small amounts ranging from $1 to $5 per acre were paid for explanation rights and the owners retained a one-eighth overriding royalty on all oil production. To date, in excess of 60 million dollars worth of oil has been extracted from the Camp Breckinridge land. The wells are still pumping on this land where the Corps of Engineers said that the oil leases were of simply nuisance value. This is the same land to which the Government sold oil and coal rights in 1965 for $32 million.

I do not find the continued interest of the former owners at all out of place. Nor do I find it greedy or unpatriotic. In fact, I find it quite admirable that this group has refused to be completely defeated by the numerous setbacks and injustices through which they have suffered and have once again sought relief from the Congress, the arbiter of last resort.

To aid their cause, I am introducing a private relief bill seeking compensation in the amount of $32 million, the amount for which the Government sold the oil, gas, and mineral rights it acquired for free.

Along with this bill, I am also introducing a Senate resolution seeking to refer this matter to the Commissioners of the Court of Claims for a thorough and objective review of the situation and a recommendation as to the amount to which the former owners are "equitably due" from the United States.

I firmly believe that the circumstances surrounding the creation of Camp Breckinridge and subsequent Government action should be given a full hearing. This hearing should go to the heart of the injustice done the former owners and consider all evidence presented rather than revolving around the principles of agency and being inhibited by such legalities as the parole evidence rule.

These are obviously very important parts of our legal system but they should never be used to insulate from exposure Government conduct that some might describe as fraudulent. It is for situations such as this that private relief and congressional reference procedures have been developed over the years. They are only applicable when there is no other remedy.

Cases such as this one, when sent to the Commissioners of the Court of Claims by congressional reference, are judged by the standard of the Government's "broad moral responsibility," *Sherman Webb et al.* v. *United States,* 192 Ct. Cl., 925 (1970), and the pleas are addressed to the conscience of the sovereign. We should never be hesitant to subject the actions of the Government to review before such a standard. The amount of money potentially involved should not frighten us away from action but should make us more determined to give the former owners an opportunity to obtain justice.

Furthermore, we should neither rely on the absence of precedent for cases of this size nor refrain from acting for fear that we will establish a precedent for the future. Rather, we should be eager to establish a precedent for redress any time the Government of the United States has perpetrated injustice upon its citizens.

The action of this Chamber on the resolution I am submitting today will be but the first step toward such redress. Upon referral to the Commissioners of the Court of Claims, they will report to us on their findings. Upon receipt of their report, the Senate and House will be called on to make a final decision. I feel very strongly about this issue. I urge my colleagues to support this effort. While I realize that I have set a goal which will be difficult to achieve, I also realize that the former owners have been fighting this battle for over 30 years.

We pride ourselves for standing tall in the name of justice. What justice is there in a government that does not keep its promise? These people gave up good agricultural acreage, the potential for oil and mineral rights, homesteads that had been passed from generation to generation. They trusted the Government representatives who told them they would have the chance to buy back their land after the war. Unfortunately, this did not prove to be true.

Now, four decades later my constituents are looking to this body to right this wrong, to give them just compensation for land that, had not World War II intervened, would be a viable

part of the economy of Kentucky and the Nation in 1987.

Mr. President, I, in introducing this bill, call on my Senate colleagues to join in passing a piece of legislation that will renew the confidence of a group of patriotic citizens who have felt the sting of injustice.●

By Mr. HUMPHREY:

S. 263. A bill to amend the Tennessee Valley Authority Act; to the Committee on Environment and Public Works.

TENNESSEE VALLEY AUTHORITY ACT

● Mr. HUMPHREY. Mr. President, today I am introducing legislation that proposes a number of long-overdue reforms at the Tennessee Valley Authority [TVA].

During the 98th and 99th Congresses, it was my privilege to serve as chairman of the Subcommittee on Regional and Community Development which had oversight responsibilities for TVA. During that time, I became familiar with the agency, its history, its mission and the challenges which it now faces.

When the original Tennessee Valley Authority Act was signed into law in 1933, the intent was to lift the seven-State Tennessee Valley Region out of economic depression. More than 50 years later, TVA remains, operating the Nation's largest electric utility as well as regional and community development programs.

Mr. President, whatever successes lie in TVA's past, they are greatly overshadowed by an enormous crisis facing the agency now. TVA's multibillion-dollar nuclear program, financed through the Federal Government, has been shaken by safety-related concerns. For well over a year, the agency's operating reactors have been shut down, and construction on four other reactors has been halted.

It has long been my view that what lies at the root of the present crisis facing the Tennessee Valley Authority is a systemic problem arising from very serious flaws in the enacting legislation. Indeed, as testimony before the subcommittee suggested, the agency has frequently found itself in trouble over the years and, I believe, those troubles can be traced to these same fundamental problems.

Because of a variety of odd institutional arrangements incorporated into the act, TVA is effectively shielded from direct accountability to the Congress, to the executive, to the marketplace and, least of all, to the 7 million people it is supposed to serve. For example, because of TVA's access to the Federal Financing Bank—an entity of the U.S. Treasury—it is able to borrow virtually as much money as it needs whenever it needs it without any oversight at all from the executive or the Congress. Needless to say, a tidy arrangement—unless of course, you are a ratepayer who is stuck holding the bag for $1 billion investment that should never have been made.

My bill proposes eight reforms that would open small, but very important, windows of accountability at TVA:

First, reduce terms of members of TVA Board of Directors: Presently, the three members of the Board of Directors serve for a term of 9 years. This bill proposes to reduce the term of Directors to 3 years. Reducing the length of the terms of members of the Board will significantly increase accountability at TVA. Under this plan, a new Board member would have to be nominated by the President, and confirmed by the Senate every year. Because the nomination process offers the Congress one of the few opportunities to effect policy at TVA, this change will increase Congress' ability to speak to problems at TVA on a regular basis.

Second, limit number of terms a Board member can serve to two: Presently, members of the Board of Directors can serve an unlimited number of 9-year terms. This has the potential to lead to even more removed accountability. With the reduction of length of terms to 3 years, it will be particularly important that no member would be able to serve more than two terms or 6 years.

Third, reduce TVA's bond ceiling to $18 billion: Under present law, the TVA bond ceiling is $30 billion. To date, the Agency has borrowed about $16 billion from the Federal Government. The Agency has made plans to repay only a small portion of that amount. The present debt ceiling will enable the Agency to continue borrowing heavily, and thus accumulating even more debt, for many years to come. The effect of reducing the bond ceiling to $18 billion would be to require TVA to come before Congress to request an increase before it could embark on any major new construction program.

Fourth, restrict TVA's access to the Federal Financing Bank: By forcing TVA to borrow exclusively from the private sector, the agency will be subjected to the same scrutiny by the investment community as other utilities in the Nation. TVA's unrestrained access to FFB funds may have led to unwise investment decisions that may not have withstood careful analysis by outside investors.

Fifth, require TVA to repay outstanding debt owed to the Federal Government: At present, TVA owes more than $14 billion in obligations to the U.S. Treasury. By requiring TVA to repay the debt, the American taxpayer will be guaranteed that the investment in TVA will be recouped.

Sixth, codify office of inspector general: in January 1986, the TVA Board wisely established an office of inspector general. However, the TVA inspector general is outside the inspector general system established for Government agencies by the Inspector General Act of 1978. This provision would simply establish the office of inspector general under the terms of the Inspector General Act.

Seventh, mandate that TVA power decisions be subject to regulatory review: State utility boards would have the power to review all utility-related decisions made by the TVA Board of Directors.

Eighth, remove TVA's self-authorizing powers: by removing TVA's present exemption from the authorization process, TVA programs will be subject to the same scrutiny by the authorizing committees of the Congress as other agencies of the Federal Government.

Mr. President, I believe strongly that until reforms such as these are enacted, TVA will likely continue to face difficult times. No agency of the Government should be above basic principles of accountability.

Until these reforms are enacted, the citizens of the Tennessee Valley may legitimately ask who may be held accountable for the costly mistakes which have been made. Today, unfortunately, the answer is no one. They had no direct voice in the selection of the Board of Directors, the individuals who made the key decisions, and there is no formal means for the public to seek their removal. They had no voice in any regulatory proceeding, because there were none. They had no direct means to effect the decisions of the Board members. Even their directly elected Members of Congress can have no voice in the decisions which the Agency makes since it is exempt from the congressional authorization process. And, through the relationship with the Federal Financing Bank [FFB], TVA has effectively cut itself off from the discipline of the private marketplace.

It is this wall of unaccountability which my bill seeks to begin to break down. Each of the provisions which I have described will create a new window of citizen, congressional, and marketplace accountability for the Agency.

Mr. President, I believe that had these reforms been enacted years ago, the Tennessee Valley Authority would be a far healthier agency than it is today. Interestingly, however, TVA's strongest supporters, both inside the Congress and out, are loathe to opening the TVA Act for any reason. They fear destroying the special nature of the Agency. Ironically, their reluctance to examine critically TVA may devastate the very thing they are trying to save.

I ask unanimous consent that a copy of my bill be reprinted in the RECORD at this point.

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

S. 263

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 "Tennessee Valley Authority Fiscal Responsibility and Accountability Act of 1987".

SEC. 2. BOARD OF DIRECTOR ACCOUNTABILITY.

(a) LENGTH OF TERMS.—Subsection (b) of section 2 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831a(b)) is amended by—

(1) inserting "(1)" after "(b)"; and

(2) striking out the second sentence and inserting in lieu thereof the following:

"(2) Members of the board appointed after the date of enactment of the Tennessee Valley Authority Fiscal Responsibility and Accountability Act of 1987 shall be appointed as follows:

"(A) the successor to the first member whose term expires after such date shall be appointed for 1 year;

"(B) the successor to the second member whose term expires after such date shall be appointed for two years; and

"(C) the successor to the third member whose term expires after such date shall be appointed for three years. Any member of the board appointed after the member appointed under the provisions of clause (C) shall serve for a term of three years.".

(b) LIMIT OF TERMS.—Subsection (b) of section 2 of the Tennessee Valley Authority Act of 1933 (as amended by subsection (a) of this section) is further amended by adding at the end thereof the following;

"(3) Any member of the board appointed after the date of enactment of the Tennessee Valley Authority Fiscal Responsibility and Accountability Act of 1987 shall serve no more than two terms.".

SEC. 3. REDUCTION OF BOND CEILING.

The first sentence of subsection (a) of section 15d. of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n-4(a)) is amended by striking out "$30,000,000,000" and inserting in lieu thereof "$18,000,000,000".

SEC. 4. TENNESSEE VALLEY AUTHORITY BORROWING FROM PRIVATE MARKETPLACE ONLY.

Section 15d. of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n-4) is amended by adding at the end thereof the following new subsection:

"(i) Notwithstanding any other provision of this Act, obligations issued or guaranteed by the Corporation may not after the date of enactment of the Tennessee Valley Authority Fiscal Responsibility and Accountability Act of 1987 be purchased by the Federal Financing Bank.".

SEC. 5. PAYMENT OF BONDS ON A TIMELY BASIS.

The first sentence of the fourth undesignated paragraph of subsection (a) of section 15d. of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 821n-4(a)) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "and shall be paid on a timely basis.".

SEC. 6. PERMANENT INSPECTOR GENERAL FOR TENNESSEE VALLEY AUTHORITY.

(a) AMENDMENT TO SECTION 2.—Clause (1) of section 2 of the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended by inserting before", and the Department of State" the following: ", the Tennessee Valley Authority".

(b) AMENDMENT TO SECTION 11.—Section 11 of the Inspector General Act of 1978 is amended—

(1) in clause (1) by inserting after "Transportation" the following: ", the Board of Directors of the Tennessee Valley Authority ,"; and

(2) in clause (2) by inserting after "the Small Business Administration," the following: "the Tennessee Valley Authority,".

SEC. 7. TENNESSEE VALLEY AUTHORITY SUBJECT TO STATE REGULATION.

The Tennessee Valley Authority Act of 1933 is amended by inserting at the end thereof the following new section:

"SEC. 32. the Corporation shall be subject to regulation by a State as if the Corporation is a private utility subject to regulation by such State except that no State may interfere with the obligations of the Corporation imposed by this Act or any other provision of Federal law.".

SEC. 8. REPEAL OF EXEMPTION FROM AUTHORIZATION PROCESS.

Section 27 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831z) is repealed.●

By Mr. HUMPHREY (for himself, Mr. PROXMIRE, Mr. ARMSTRONG, Mr. HELMS, Mr. GARN, and Mr. GRAMM):

S. 264. A bill to amend the Internal Revenue Code of 1986 to deny status as a tax-exempt organization, and as charitable contribution recipient, for organizations which perform, finance, or provide facilities for abortions; to the Committee on Finance.

INTERNAL REVENUE CODE

● Mr. HUMPHREY. Mr. President, on behalf of Mr. PROXMIRE, Mr. ARMSTRONG, Mr. HELMS, Mr. GRAMM, Mr. GARN, and on my own behalf, today I am introducing a bill proposing to eliminate the tax-exempt and tax-deductible status of organizations performing, financing, or providing facilities for abortion.

The Federal Government currently subsidizes scores, if not hundreds, of clinics and organizations whose nominal business includes the provision of family planning services to the poor, and whose primary industry often is no more than performing abortions. Many of these clinics are both exempt from paying taxes and are charitable contribution recipients—able to receive tax-deductible contributions.

This bill will eliminate both the tax-exempt and the tax-deductible status of organizations and clinics that perform abortions, finance them, or provide facilities for the performance of abortions. Organizations that perform an abortion to save the life of the mother will not be precluded from retaining their prior tax-exempt status. This "exception" is identical to the Hyde amendment "exception" with which my colleagues are no doubt familiar. The language of this bill was offered in amendment form on the floor of the Senate during the 99th Congress.

The Congress has consistently opposed the direct use of Federal moneys to pay for abortions. In fact, the embodiment of this policy, the Hyde amendment, was first enacted in 1976, and has been enacted every year since. The Hyde amendment prohibits the use of Federal tax dollars provided under the Medicaid Program for reimbursements to the various States for the direct costs of abortion, and for related costs, including lab fees and hospitalization costs. Language similar to the Hyde amendment has governed the use of Federal funds in other Federal programs and agencies, including, but not limited to, the Department of Defense, the Legal Services Corporation, Indian Health Services, Federal employees' health benefits insurance, and the Peace Corps.

These continued restrictions on abortion funding indicate that the American people refuse to provide public funds for the costs of abortion and abortion-related services. The Congress, wisely I believe, has firmly supported the desire of the American people with restrictions in statute and in appropriations.

Moreover, the Supreme Court, in Harris versus McRae and Progeny, has upheld the right of Congress to withhold such funding for abortion. In a 1980 decision, the Court held that Congress may refuse to subsidize abortions under the Medicaid Program, even while subsidizing childbirth, because the Government maintains a legitimate interest in childbirth and in the unborn child. Refusing to subsidize abortion is, of course, rationally related to that interest.

The Court applied the lower level rational basis test rather than higher level strict scrutiny, even though abortion is considered a fundamental right, because the Hyde amendment—limiting Federal funding of abortions under Medicaid—"places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest."

And yet, at the same time, Congress continues to permit the indirect subsidization of abortion with Federal funds. This has been achieved through the tax subsidization of some nonprofit organizations which are currently engaged in financing or providing abortions. These very organizations which are unable to submit abortion claims for reimbursement under Medicaid, receive Federal tax exemptions and Federal tax deductions under section 501 of the Internal Revenue Code.

Mr. President, abortion clinics are being subsidized by the American people through this Nation's Federal tax system, at a time when the Congress has refused to provide direct cash outlays to the same clinics. Clearly Congress has the right and the obli-

gation to discontinue this back-door financing of an activity so offensive to many of this Nation's citizens.

In 1983, the Supreme Court made clear that conferring tax-exempt status or eligibility for tax-deductible contributions constitutes one form of Government subsidy. In the words of the Supreme Court—

Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the origination 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.

Mr. President, I note several provisions in this bill that were widely misunderstood when the legislation was last debated. First, nothing in this bill will preclude any free-speech activity related to abortion. The legislation I have proposed does not address counseling and referral for abortion, and so leaves untouched those lobbying and "educational" groups which merely propound ideas regarding the subject of abortion.

Second, I wish to note that this bill does not preclude organizations such as hospitals which currently perform or provide facilities for abortion, from restructuring the corporation so that all of its other functions remain tax exempt and charitable contributions to such functions remain tax deductible to the donor.

Finally, I wish to note that, while the Supreme Court itself has not ruled on the matter specifically, at least two Federal courts have determined that hospitals are under no affirmative obligation to perform abortions. In addition, the church amendment governing funds made available under the Public Health Service Act, including "Hill-Burton" funds, allows organizations to refuse to perform or assist in the performance of abortions where this would violate the moral convictions or religious beliefs of the institution.

Mr. President, I am proud to introduce this bill today, on behalf of myself and my colleagues. I am confident that it has been drafted in a manner that will withstand court scrutiny, and I am confident that, while expressing a firm moral principle, it will have little harmful effect on the provision of health services not related to abortion. This bill will end the indirect subsidization of abortion with public funds. It will reaffirm congressional commitment to the promotion and support of childbirth, and will restate our legitimate interest in the protection of the lives of the unborn.

I encourage my colleagues to cosponsor this bill and to support efforts to bring the bill for a vote.

I ask unanimous consent that a copy of the bill be printed in the RECORD at this point.

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

S. 264

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

SECTION 1. DENIAL OF TAX BENEFITS FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.

(a) DENIAL OF TAX-EXEMPT STATUS.—Section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) 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) of the Internal Revenue Code of 1986 (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(n))."

(2) ESTATE TAX.—

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

"(g) DENIAL OF DEDUCTION FOR CONTRIBUTONS 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(n))."

(B) TECHNICAL AMENDMENTS.—

(1) Subparagraph (E) of section 2106(a)(2) of such Code (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".

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

(3) GIFT TAX.—Section 2522 of such Code (relating to charitable and similar gifts) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) 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(n))."

(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(n) of the Internal Revenue Code of 1986 as added by this section) performed after the date of the enactment of this Act.

(2) SUBSECTION (a).—The amendments made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

(3) SUBSECTION (b).—The amendments made by subsection (b) shall apply to estates of decedents dying, and gifts made, after the date of the enactment of this Act.●

By Mr. HUMPHREY (for himself, Mr. ROTH, Mr. SYMMS, and Mr. ZORINSKY):

S. 265. A bill to require executive agencies of the Federal Government to contract with private sector sources for the performance of commercial activities; to the Committee on Governmental Affairs.

FEDERAL GOVERNMENT PRIVATE SECTOR CONTRACTS

● Mr. HUMPHREY. Mr. President, today I am introducing legislation which will promote competition when the Government seeks to contract for the procurement of goods or services with a Federal agency or a private firm. This legislation would require that cost comparisons be conducted prior to the awarding of a Federal contract for commercial activities.

The idea of contracting-out to the private sector is not new. The Office of Management and Budget [OMB] does have a program which directs agencies to contract-out for goods and services if, after conducting a detailed cost comparison between in-house suppliers and private firms, they find it is more economically efficient to do so. However, this program, based on OMB circular A-76, is simply an executive directive and does not carry with it the force of law.

Although the existing A-76 Program requires agencies to conduct cost comparisons in order to determine whether to contract-out, it has become apparent over the years that many agencies are simply ignoring the directive. A recent OMB study shows that of 22 agencies reporting, 50 percent did not award any service contracts as a result of the review, and they did not complete any cost comparison studies during fiscal year 1982 through fiscal year 1985.

One agency which has successfully contracted-out is, interestingly, the Department of Defense [DOD]. In fiscal year 1984, DOD completed 257 cost comparisons. As a result, 131 contracts were awarded to private bidders and 126 were awarded to in-house organizations. The contractors achieved approximately $43.8 million in savings—a cost reduction of 33 percent. Even the contracts that remained in-house realized savings of 18 percent, or some $21.8 million, as a direct result of competition with the private sector. If the Department of Defense is able

to implement successfully the A-76 Program, there is no reason for the failure of other agencies to follow suit.

Mr. President, the purpose of this legislation is to generate competition in the cost-comparison process. With competition as a motivator, both in-house and private organizations can be expected to streamline their operations to achieve optimal efficiency.

Whether the commercial activity remains within the agency or is awarded to a private bidder, cost savings through competition will surely result. A recent Congressional Budget Office report, based on fiscal year 1985 statistics, found that when a contract was awarded to a private firm, the average savings to the Government for a particular activity was approximately 37 percent. Similarly, when the contract was awarded in-house, an average savings of 20 percent resulted solely from the cost comparison itself.

Here are just two examples of the cost savings which were achieved simply by conducting cost comparisons. A contract for operation of 12 Navy oceanographic research vessels, awarded at about $79 million for a 3-year performance period, was $66 million less than the most recent cost to the Government of operating the activity with Federal employees, for a savings of 45.4 percent. In another case, the Coast Guard contracted for food services freeing up to 226 Federal civilian positions and saving the taxpayer $7.6 million per year.

Mr. President, the United States has historically had great faith in the value of the competitive, free marketplace. And with good reason: When the marketplace has been allowed to work, competition has produced an efficient and thriving economy. Unfortunately, our own Federal Government has not caught on to the idea that competition breeds efficiency. Both the American taxpayer and the Government should reap the benefits associated with market competition—better quality goods and services at lower costs.

Mr. President, in light of the enormous Federal deficit there is no better time than now to enact this legislation. It is both simple and straightforward. It does not contain any provisions which would give unfair advantage to either the in-house or private sector bid. The bill simply promotes the concept of competition, thus taking a small step toward efficiency in Government.

I ask unanimous consent that a copy of the bill be reprinted in the RECORD at this point.

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

S. 265

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

SECTION 1. DEFINITIONS.

For the purposes of this Act—

(1) the term "executive agency" has the same meaning as is provided in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1));

(2) the term "commercial activity" includes—

(A) any activity which provides goods or services which can be procured from a responsive and responsible profitmaking business concern; and

(B) such other activity as the Director may prescribe by regulation; and

(3) the term "Director" means the Director of the Office of Management and Budget.

SEC. 2. REQUIREMENT TO CONTRACT WITH PRIVATE SECTOR SOURCES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), an executive agency may not start or conduct any commercial activity in the executive agency to provide goods or services for the use of or on behalf of the agency if such goods or services can be procured from any responsive and responsible profitmaking business concern.

(b) EXCEPTIONS.—(1) An executive agency may start or conduct a commercial activity in the executive agency if the head of the executive agency, after considering all direct and indirect costs of starting or conducting such activity, determines in accordance with the cost of accounting principles and the procedures prescribed by the Director under section 3 that there is a clearly identified and demonstrated economic advantage to the Federal Government to start or conduct such activity.

(2) The Director may prescribe additional limited exceptions to the requirement set out in subsection (a) when appropriate to protect the interests of the Federal Government.

SEC. 3. REGULATIONS.

The Director shall—

(1) prescribe regulations and take such other actions as may be appropriate to carry out section 2;

(2) require in the regulations that each head of an executive agency, in making a determination under section 2(b)(1) in the case of an activity, consider all direct and indirect costs of starting or conducting such activity in the executive agency; and

(3) in consultation with certified public accountants employed in the private sector, prescribe in the regulations generally accepted cost accounting principles and simple procedures for each head of an executive agency to apply in making a determination under section 2(b)(1).

By Mr. HUMPHREY (for himself, Mr. GRAMM, Mr. ZORINSKY, Mr. SYMMS, and Mr. HELMS):

S. 266. A bill to amend the Service Contract Act to reform the administration of such act, and for other purposes; to the Committee on Labor and Human Resources.

SERVICE CONTRACT ACT

● Mr. HUMPHREY. Mr. President, today I am introducing the Service Contract Reform Act of 1987. The Congressional Budget Office [CBO] has estimated that enactment of this legislation would save the Federal Government at least $1.2 billion in outlays over a 5-year period. Importantly, these savings will be obtained without undermining the intent of the Service Contract Act.

The Service Contract Act of 1965 [SCA] was enacted to protect the wages and benefits of service employees hired by private contractors to supply services to the Federal Government. The law is similar to other Federal prevailing wage legislation such as the Davis-Bacon Act, and is designed to ensure that covered employees will be paid wages and benefits that are consistent with the wages paid to similar jobs within the same locality. The Service Contract Act is supposed to prevent service employers from successfully bidding a Government contract by undercutting the local wage rate.

Unfortunately, over the years, misapplication and misinterpretation of the law's provisions, as well as its burdensome wage determination procedures and paperwork requirements, have resulted in unnecessary service procurement costs to the Federal Government. For example, the Grace Commission estimated that the Service Contract Act raises the Government's cost of procuring services by as much as $1.5 billion a year. Similarly, a 1983 report by the General Accounting Office found so many needless costs associated with the act that GAO recommended outright repeal.

This legislation does not repeal the SCA. Rather, it is intended to preserve the basic intent of the Service Contract Act—that is, to protect the wages and benefits of service employees working on Government contracts—while at the same time implementing reforms that will substantially reduce excess costs that have resulted from shortcomings in the original law.

The Service Contract Reform Act of 1987 contains five basic provisions which modify the law as it now stands:

First, the bill raises the contract coverage threshold from $2,500 to $200,000. The act currently requires that employees working under Government service contracts valued at over $2,500 be paid prevailing wages and benefits as determined by the Secretary of Labor. The contract threshold level has remained at $2,500 since the SCA was enacted in 1965, despite increases in inflation that now make such an amount insignificant in relative terms.

CBO reports that nearly 90 percent of the estimated dollar volume subject to the SCA is in contracts in excess of $200,000. Raising the threshold from $2,500 to $200,000 exempts only an estimated $1.2 billion out of a total of $11.7 billion in contract dollars from SCA coverage. At the same time, increasing the threshold will exempt numerous small contracts from the law's redtape, thus substantially reducing the high administrative costs associated with the act. More importantly,

raising the threshold will increase participation in the contract process by small businesses, who presently avoid bidding Government service contracts because of redtape and arbitrary wage determinations. Because these small businesses are likely to be almost exclusively local employers, the purpose of the law in protecting local prevailing wages and benefits will be ensured. CBO estimates that raising the threshold to $200,000 would produce a 5-year savings in outlays of some $244 million.

Second, the bill codifies the Department of Labor's [DOL] 1983 regulation which strictly interprets the act as only applying to a contract "The principal purpose of which is to furnish services in the United States through service employees." This simply means that a contract will not be covered by the SCA unless the principal purpose of the contract as a whole is to provide services. Prior to revising the regulation in 1983, the DOL applied the act to separate line items and specifications for services in contracts which were not otherwise principally for the purpose of furnishing services. This overly broad interpretation resulted in extending the act's coverage well beyond what Congress originally intended. By codifying the 1983 revised regulation, we will be assured that the original congressional intent is preserved.

Third, the bill amends the SCA to provide that any wages and fringe benefits provided for in a successor contract shall apply for purposes of the SCA unless the Secretary of Labor establishes that such wages are not prevailing within the locality where the work is performed. The current language of the act operates in practice to require that union wage rates in an existing service contract become the floor for all succeeding contracts. The provision was inserted in the original law to prevent union busting through the Government procurement process. Although the law states that the predecessor contract rates do not apply where the Secretary finds that they are substantially at variance with local prevailing rates—for example, where the union rates are much higher than wages paid for similar jobs within an area, the process for making such a finding is so burdensome and time consuming that it has proved to be totally useless.

The bill simplifies and makes the successor contract provision meaningful by permitting the successor contract wage rates to take effect—even if they are not the same as the union rates in the predecessor contract—unless the successor contract wages are not prevailing within the locality where the work is performed. If the Secretary of Labor can show that such rates are not prevailing, then the rates in the predecessor contract would automatically replace the rates in the successor contract. For example, a contractor could not get around a union by bringing in low-paid employees to perform the services if those rates were not similar to rates paid to other service employees within the area. Thus, the bill preserves the original purpose of the successor contract provision by assuring that prevailing rates will be paid while minimizing the disruption to wages and benefits in successor contracts.

Fourth, the bill defines the terms "prevailing rates" and "locality." The original law did not define these key terms, and there has been considerable confusion since the SCA was enacted as to what they mean and how they should be applied. Experience has shown that the Labor Department's interpretation of these terms has frequently led to wage rate determinations far in excess of local prevailing rates. Both GAO and the Grace Commission found in their comprehensive reports on the SCA that DOL routinely sets wage and benefit rates inconsistent with local prevailing rates, thereby adding substantially to the cost of Government procurement.

Under the bill, prevailing rate is defined to mean the entire range of wages and benefits paid to similar jobs working in the area where the service contract is performed. If the contract wage rate falls within the range of wages shown to be paid within the contract's georgraphic area, the rate is deemed to be prevailing for purposes of the SCA. For example, if it is shown that the rates paid to food service workers within an area range from $4.50 to $6.50 an hour, any contract rate within that range would be considered prevailing. It should be stressed that this is a minimum rate. Thus, in the example, any rate less than $4.50 would not qualify as prevailing, but any rate over $6.50 would qualify if the service contract was awarded to the contractor paying such rates. The bill's definition of prevailing rate assures that local prevailing rates will be applied to service contracts, thereby protecting the basic intent of the Service Contract Act. At the same time, the possibility that prevailing rate determinations will be distorted is substantially reduced. Finally, it is important to note that in no case would the prevailing rate ever be set lower than the current Federal minimum wage.

The term "locality" is defined by the bill to mean "the particular urban or rural subdivision of a State in which work is performed." Because the law requires that the Labor Secretary set wages in accordance with prevailing rates for service employees within the locality where the work is performed, it is important to assure that the Secretary interprets locality to, in fact, mean what it is supposed to mean. For example, such a definition will prevent the importation of traditionally higher urban wage rates to a rural subdivision, and vice versa. Again, the definition will help to ensure that local prevailing rates are applied.

Fifth, the bill changes the SCA to require the Secretary of Labor to make wage and fringe benefit determinations only with respect to service contracts under which 25 or more service employees are to be employed. Current law requires such determinations on any service contract employing five or more service employees. This proposed change to the law, similar to the proposed contract threshold dollar increase, is designed to improve administration and enforcement of the act by relieving the Secretary's obligations with respect to small service contracts affecting very small populations of workers.

Mr. President, I believe that the proposals incorporated in this legislation are reasonable. After more than 20 years, it is time to revise this statute to make it more efficient and cost effective without undermining its original intent.

I ask unanimous consent that a copy of my bill be reprinted in the RECORD.

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

S. 266

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 "Service Contract Reform Act of 1987."

SEC. 2. MINIMUM CONTRACT SIZE.

The matter preceding paragraph (1) of section 2(a) of the Service Contract Act of 1965 (41 U.S.C. 351(a)) is amended by striking out "$2,500" and inserting in lieu thereof "$200,000".

SEC. 3. PRINCIPAL PURPOSE RULE.

(a) IN GENERAL.—Section 2 of the Service Contract Act of 1965 (41 U.S.C. 351) is amended by adding at the end thereof the following new subsection:

"(c) This Act shall apply only to a contract the principal purpose of which is to furnish services and shall not apply to a contract provision for services contained in a contract if the principal purpose of the contract is not to furnish services.".

(b) CONFORMING AMENDMENT.—The matter preceding paragraph (1) of section 2(a) of such Act is amended by striking out "Every" and inserting in lieu thereof "Subject to subsection (c), every".

SEC. 4. PREDECESSOR CONTRACTS.

Section 4 of the Service Contract Act of 1965 (41 U.S.C. 353) is amended by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c) A contractor or subcontractor under a contract, that succeeds a contract subject to this Act and under which substantially the same services are furnished, shall not be required to pay any service employee under such contract the wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective bargaining agreement as a result of arm's-

length negotiations, to which such service employees would have been entitled if the employees were employed under the predecessor contract, unless the Secretary determines that the wages and fringe benefits under the successor contract are less than the prevailing wages and fringe benefits in the locality in which the work is to be performed.".

SEC. 5. DEFINITIONS.

Section 8 of the Service Contract Act of 1965 (41 U.S.C. 357) is amended—

(1) by redesignating subsections (a), (b), (c), and (d) as subsections (d), (e), (a), and (f), respectively; and

(2) by inserting after subsection (a) (as so redesignated) the following new subsections:

"(b) The term 'locality' means the particular urban or rural subdivision of a State in which work is to be performed.

"(c) The term 'prevailing rates', as used in paragraphs (1) and (2) of section 2(a), includes the rate of the entire range of wages and benefits paid to corresponding classes of service employees in the locality in which work is to be performed.".

SEC. 6. WAGE AND FRINGE BENEFIT DETERMINATIONS OF SECRETARY.

(a) IN GENERAL.—Section 10 of the Service Contract Act of 1965 (41 U.S.C. 358) is amended to read as follows:

"SEC. 10. The Secretary shall make determinations of minimum monetary wages and fringe benefits for the various classes or service employees under paragraphs (1) and (2) of section (a) with respect to a service contract order which more than 25 service employees are to be employed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to contracts entered into after September 30, 1987.

By Mr. HUMPHREY (for himself, Mr. GRASSLEY, Mr. HECHT, Mr. GRAMM, Mr. NICKLES, Mr. HELMS, and Mr. SYMMS):

S. 267. A bill to limit the uses of funds under the Legal Services Corporation Act to provide legal assistance with respect to any proceeding or litigation which relates to abortion; to the Committee on Labor and Human Resources.

LEGAL SERVICES CORPORATION ACT

● Mr. HUMPHREY. Mr. President, on behalf of my distinguished colleagues, Mr. GRASSLEY, Mr. HECHT, Mr. GRAMM, Mr. NICKLES, Mr. HELMS, and Mr. SYMMS, and on my own behalf, I introduce a bill that would limit the use of funds provided under the Legal Services Corporation [LSC] Act for the provision of legal assistance on any matter relating to abortion.

Mr. President, the majority of Americans today oppose the use of their tax dollars to fund abortions. The U.S. Supreme Court, in its 1980 Harris versus McRae decision, and in the progeny of this ruling, has decreed that Congress cannot be compelled to use Federal tax money to pay for abortion. Indeed, the Court noted, Congress has a legitimate interest in not funding abortion, for the legislature has an interest in promoting childbirth.

Since 1976, the Congress, without exception, has refused to fund abortions and abortion-related services under the Federal Medicaid Program. In addition, the Congress has annually passed legislation restricting the use of Federal funds to pay for abortion under Treasury, Postal, Peace Corps, Defense, and other Federal employee insurance programs.

Each of these restrictions assures that the American taxpayer will not be required to pay for abortions, fund activities designed to assist in the procurement of abortions, or fund activities related to the procurement of abortions—such as pathology reports, hospitalization, et cetera, our bill is thoroughly consistent with these restrictions.

In this legislation, we propose that: No funds made available by the Corporation under this subchapter, either by grant or contract, may be used "To provide legal assistance with respect to any proceeding or litigation which relates to abortion."

Mr. President, it is important to note that language currently exists in the Legal Services Corporation Act of 1974 that restricts some litigation of abortion. That language reads:

No funds made available by the Corportion under this subchapter, either by grant or contract, may be used * * * to provide legal assistance with respect to any proceedings or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.

In the past, however, Legal Services Corporation grantees have chosen to interpret narrowly the restrictions provided in the act—so narrowly that there is some question regarding what some of the grantees would recognize as binding. Unfortunately, some of the LSC grantees have taken the ambiguous language now found in the 1974 act, and used it as a back-door opportunity to engage in almost unlimited abortion litigation and related activities.

Thus, there is a need to clarify the current restrictions. Both Houses of Congress have recognized this and included language similar to this bill in the fiscal year 1986 and fiscal year 1987 Commerce, Justice, State appropriations bills. The bill I am introducing today will make these expanded restrictions permanent.

Specifically, this bill will:

Apply to any person or entity receiving any funds made available by the Corporation under the act.

Restrict the use of Federal and private, but not other public funds concerning abortion-related legal activities by LSC grantees. This restriction on the use of private funds is consonant with current restrictions on LSC abortion activities and other restrictions found in section 2996(f)(b) of the Legal Services Act.

Apply to any form of proceeding or litigation involving abortion—legal assistance in preparation for or during administrative or other hearings, amicus briefs, actual litigation and the like.

The abuse of the existing restrictions on abortion involvement under the LSC Act by grantees has been intolerable. In fact, the existing restrictions have proven all but useless.

Consequently, LSC grantees have engaged in litigation against statutes limiting abortion funding, against parents seeking to retain their rights to consult with their children, against laws limiting the number of abortions a State should be forced to fund, and more.

I cite several cases where legal services grantees have, I believe, overstepped the provisions in the act which prohibited abortion litigation. In the late 1970's, grantees launched a number of attacks on statutes limiting State and Federal funding of abortions:

In Preterm versus Dukakis, a Boston grantee challenged a Massachusetts law limiting State funding of abortions.

In Zbaraz versus Quern, a Chicago grantee helped overturn a similar Illinois statute and force abortion funding.

In Stopczynski versus Milliken, a Michigan grantee filed an amicus brief in favor of a veto of a Michigan statute limiting abortion funding.

In Planned Parenthood versus Leo Hegstrom, an Oregon grantee litigated to overturn a State law limiting the number of abortions for any one woman that would be publicly funded.

Similar abortion funding cases have been litigated in Ohio, Idaho, California, Louisiana, and Pennsylvania. In addition, in Valley Family Planning versus North Dakota, grantees litigated to allow family planning clinics receiving title X funds to refer for abortions. And in Doe versus Jennings, a Pittsburgh grantee acted to force a local jail to transport an inmate to a hospital for an abortion.

There is no doubt that legal services grantees and attorneys have in recent years engaged in abortion litigation less frequently than they did several years ago, though I suspect that a number of potential violations of current restrictions remain uninvestigated. But I attribute this improved compliance not to modified grantee behavior, but to increased vigilance and improved oversight by the National Legal Services Corporation. I fear that, should the Corporation no longer enforce current restrictions, grantees would in fact revert to previous patterns of abortion activity. This bill would make permanent the restrictions favored by Congress in its annual appropriations provisions, and it would

eliminate the loopholes exploited by grantee attorneys.

Mr. President, legal services grantees have shown a frequent disregard for their congressional mandate, all at the expense of the American public. With this bill we have the opportunity to close the loopholes we never imagined could exist and end the use of taxpayer funds to support abortion litigation.

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

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

S. 267

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1007(b)(8) of the Legal Services Corporation Act is amended to read as follows:

"(8) to provide legal assistance with respect to any proceeding or litigation which relates to abortion;".

By Mr. HUMPHREY:

S. 268. A bill to amend title 5, United States Code, to provide child adoption benefits for Federal Government employees; to the Committee on Governmental Affairs.

S. 269. A bill to amend title 10, United States Code, to provide child adoption benefits for members of the Armed Forces; to the Committee on Armed Services.

CHILD ADOPTION BENEFITS FOR GOVERNMENT EMPLOYEES

● Mr. HUMPHREY. Mr. President, today I am introducing legislation to provide adoption benefits for Federal Government employees and members of the Armed Forces.

One of the cruelest barriers to adoption is cost. The desire to form a family is fundamental to us all, no matter what our economic circumstances. But for those who form their family through adoption, cost is a necessary and important consideration and sometimes an impediment.

The costs involved in adopting today are similar to what those people incur when they have children biologically—the costs for a delivery, prenatal care for the mother, and the baby's care in the hospital. The chief difference is that there is no insurance coverage to help cover the adoption charges. In addition, there may be charges for foster care for infants from the time they are released from the hospital nursery until placement, costs involved in preadoption and postadoption counseling, and legal fees. The average fee, in 1985, for those who adopted through a nonprofit agency, was at least $6,000. When transportation or other special fees are required, as in many adoptions from other countries, the costs are even higher.

In development of employee benefit plans, employers in the private sector are recognizing the inequity of providing insurance coverage for a biological birth but giving no help to an employee who adopts a child, and are providing adoption benefit plans for their employees.

An adoption benefits plan is an employer-sponsored program that financially assists or reimburses employees for expenses related to the adoption of a child and/or provides for paid leave for the adoptive parent employee. A growing number of corporations—almost 50 at latest count—are establishing an adoption benefits plan for their employees.

A representative sample of these companies follows: Acacia Mutual Life Insurance Co.; American Can Co.; Bank of America; Campbell Soup Co.; Honeywell; Humana Inc.; Intermetrics; IBM; Control Data Corp.; Deseret Mutual Benefit Association; Digital Equipment Corp.; Eli Lilly & Co.; Emery World Wide Corp.; Felt Products; First Pennsylvania Bank; Foote, Cone & Belding Communications, Inc.; Gannett Co.; G.D. Searle & Co.; General Mills, Inc.; Hallmark Cards, Inc.; Hewitt Associates; International Minerals & Chemical; Johnson Wax; Lincoln National Life Insurance Co.; Pfizer Inc.; Pitney Bowes; the Procter & Gamble Co.; Signode Industries, Inc.; Smithkline Beckman Corp.; Temple, Barker & Sloane; Time, Inc.; Victor F. Weaver Co.; Inc.; and Xerox Corp.

Similar to corporations, State and local governments are developing adoption benefit plans for their employees. For example, Philadelphia has an adoption leave policy and the State of Illinois has recently developed a plan to reimburse adoptive parents for adoption expenses and to ensure insurance coverage for adopted children.

The National Adoption Center in Philadelphia has pioneered ways to increase corporate involvement through its adoption in the workplace program. In addition, the National Committee for Adoption in Washington, DC, has worked extensively with employers on adoption benefits. The number of companies offering adoption benefits nearly tripled between 1980 and 1984, from 10.3 to 27.5 percent of firms surveyed by catalyst, a national research organization. I expect adoption benefits will become an accepted standard for major companies within 5 years.

Mr. President, it is time for the Federal Government to bring its employee benefits plan up to date. The two bills I am now introducing will do just that by providing adoption benefits for Federal Government employees and members of the Armed Forces. Benefits provided to each group are identical.

A maximum benefit of $2,000 will be paid for expenses incurred in the adoption of any child. Reimbursement will be provided for qualifying adoption expenses incurred in the adoption of a child under 16 years of age.

Qualifying adoptions include an adoption by a single person, infant adoption, adoption of a child with special needs—a child who is older, in a sibling group, mentally, physically, or emotionally disabled, or a member of a minority group—and intercountry adoption, but do not include an adoption in which one of the adopting parents is the biological parent of the adopted child.

"Qualifying adoption expenses" are defined as reasonable and necessary expenses directly related to the legal adoption of a child and include public and private agency fees; placement fees, including fees charged adoptive parents for counseling; legal fees, including court costs; medical expenses; expenses relating to pregnancy and childbirth for the biological mother; temporary foster care charges; and transportation expenses relating to the adoption.

Mr. President, there are several factors employers consider in deciding to provide adoption benefits. First is the equity consideration I have already mentioned. Employees with a biological birth receive pregnancy benefits, adoptive parents receive no such benefits and often their expenses are larger.

A second consideration is the positive image adoption benefits will create of an employer sensitive to the different ways families may be built. A third consideration is the goodwill generated and employee morale boosted, which will far exceed the costs of the benefit since adoptions are infrequent.

Although the States have primary jurisdiction over adoption, the Federal Government does relate to adoption in a number of programs. Chief among these are the Adoption Opportunities Program established by the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (P.L. 95-266), the Adoption Assistance Program established by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), and funding for adoption services under the Adolescent Family Life Act of 1981. In recent years through the national special needs adoption initiative, the Department of Health and Human Services has actively promoted adoption, especially the adoption of children with special needs.

Furthermore, this administration has emphasized the importance of strengthening family values. Recently Constance Horner, Director of the Office of Personnel Management, issued new personnel guidance urging heads of departments and agencies to formulate policies on leave for parental and family responsibilities—including leave for adoption—that are com-

passionate and flexible for the employee. Legislation providing limited reimbursement for adoption expenses to adoptive parents who are Federal Government employees and members of the Armed Forces will complement the Federal policy on adoption leave and further enhance the role of the Federal Government as a family oriented employer.

On a panel addressing the issue of adoption benefits at the first hearing of the Congressional Coalition on Adoption last April, Dorcas Hardy, who was then the Assistant Secretary for Human Development Services of the Department of Health and Human Services, testified that "every employer should offer adoption benefits." Dorcas Hardy is right. It is time for the Federal Government to join the growing number of employers in the private and public sectors who provide adoption benefits to their employees. I ask unanimous consent that the two bills be printed in the RECORD as follows:

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

S. 268

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 "Federal Employee Adoption Benefits Act of 1987".

SEC. 2. REIMBURSEMENT FOR ADOPTION EXPENSES OF FEDERAL GOVERNMENT EMPLOYEES.

(a) IN GENERAL.—Subpart G of part III of title 5, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 91—MISCELLANEOUS EMPLOYEE BENEFITS

"9101. Child adoption benefits.

"§ 9101. Child adoption benefits

"(a) An employee of the Federal Government shall be reimbursed, as provided in this section, for the qualifying adoption expenses incurred by the employee in the adoption of a child under 18 years of age.

"(b) Adoptions for which expenses may be reimbursed under this section include an adoption by a single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c)), but do not include an adoption in which one of the adopting parents is the biological parent of the adopted child.

"(c) Benefits may be paid under this section in the case of an adoption only after the adoption is final.

"(d) A benefit may not be paid under this section for any expense paid from any funds received by an employee under any other Federal Government or State or local government adoption benefits program.

"(e)(1) Not more than $2,000 may be paid to an employee under this section for expenses incurred in the adoption of any child.

"(2) Not more than $5,000 may be paid to an employee under this section for all adoptions by such employee in any calendar year.

"(f)(1) Except as provided in paragraphs (2) and (3) of this subsection, the Director of the Office of Personnel Management shall prescribe regulations to carry out this section.

"(2) The Speaker of the House of Representatives and the President pro tempore of the Senate shall prescribe regulations to carry out this section with respect to Congressional employees.

"(3) The Director of the Administrative Office of the United States Courts shall prescribe regulations to carry out this section with respect to employees of the Judicial branch.

"(g) As used in this section:

"(1) 'Employee' includes—

"(A) an individual paid as described in section 2105(c) of this title; and

"(B) an employee described in section 2105(e) of this title.

"(2) 'Qualifying adoption expenses'—

"(A) means reasonable and necessary expenses which are directly related to the legal adoption of a child, but only if such adoption is arranged—

"(i) by a State or local government agency which has responsibility under State or local law for child placement through adoption;

"(ii) by a nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption; or

"(iii) through a private placement; and

are not incurred in violation of Federal, State, or local law;

"(B) includes—

"(i) public and private agency fees, including adoption fees charged by an agency in a foreign country;

"(ii) placement fees, including fees charged adoptive parents for counseling;

"(iii) legal fees, including court costs;

"(iv) medical expenses, including hospital expenses of a newborn infant, medical care furnished the adopted child before the adoption, and physical examinations for the adopting parents;

"(v) expenses relating to pregnancy and childbirth for the biological mother, including counseling, transportation, and maternity home costs;

"(vi) temporary foster care charges when payment of such charges is required to be made immediately before the child's placement; and

"(vii) except as provided in subparagraph (C)(ii) of this paragraph, transportation expenses relating to the adoption; and

"(C) does not include any expenses incurred—

"(i) in the adoption of a child who was conceived—

"(I) by artificial insemination;

"(II) by embryo transplantation;

"(III) by in vitro fertilization; or

"(IV) in so-called 'surrogate parenthood', including conception by any person who serves as a surrogate voluntarily and without remuneration; or

"(ii) for any adopting parent's travel outside the United States, unless such travel—

"(I) is required by law as a condition of a legal adoption in the country of the child's origin;

"(II) is necessary for the purpose of assessing the health and status of the child to be adopted; or

"(III) is necessary for the purpose of escorting the child to be adopted to the United States or the place where the adopting employee is stationed.".

(b) CONFORMING AMENDMENTS.—(1) The heading of such subpart is amended to read as follows:

"Subpart G—Annuities, Insurance, and Miscellaneous Benefits".

(2) The analysis at the beginning of such part is amended—

(A) by striking out the item relating to subpart G and inserting in lieu thereof the following:

"Subpart G—Annuities, Insurance, and Miscellaneous Benefits";

and

(B) by inserting after the item relating to chapter 89 the following:

"91. Miscellaneous Employee Benefits . . . 9101".

S. 269

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 "Federal Adoption Benefits Act of 1987".

SEC. 2. REIMBURSEMENT FOR ADOPTION EXPENSES OF MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1051. Child adoption benefits

"(a) The Secretary concerned shall reimburse a member of the armed forces, as provided in this section, for the qualifying adoption expenses incurred by the member in the adoption of a child under 18 years of age.

"(b) Adoptions for which expenses may be reimbursed under this section include an adoption by a single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c)), but do not include an adoption in which one of the adopting parents is the biological parent of the adopted child.

"(c) Benefits may be paid under this section in the case of an adoption only after the adoption is final.

"(d) A benefit may not be paid under this section for any expense paid from any funds received by a member of the armed forces under any other Federal Government or State or local government adoption benefits program.

"(e)(1) Not more than $2,000 may be paid to a member of the armed forces under this section for expenses incurred in the adoption of any child.

"(2) Not more than $5,000 may be paid to a member of the armed forces under this section for all adoptions by such member in any calendar year.

"(f) The Secretary of Defense shall prescribe regulations to carry out this section.

"(g) As used in this section, 'qualifying adoption expenses'—

"(1) means reasonable and necessary expenses which are directly related to the legal adoption of a child, but only if such adoption is arranged—

"(A) by a State or local government agency which has responsibility under State or local law for child placement through adoption;

"(B) by a nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption; or

"(C) through a private placement; and

are not incurred in violation of Federal, State, or local law;

"(2) includes—

"(A) public and private agency fees, including adoption fees charged by an agency in a foreign country;

"(B) placement fees, including fees charged adoptive parents for counseling;

"(C) legal fees, including court costs;

"(D) medical expenses, including hospital expenses of a newborn infant, for medical care furnished the adopted child before the adoption, and for physical examinations for the adopting parents;

"(E) expenses relating to pregnancy and childbirth for the biological mother, including counseling, transportation, and maternity home costs;

"(F) temporary foster care charges when payment of such charges is required to be made immediately before the child's placement; and

"(G) except as provided in clause (3)(B), transportation expenses relating to the adoption; and

"(3) does not include any expenses incurred—

"(A) in the adoption of a child who was conceived—

"(i) by artificial insemination;

"(ii) by embryo transplantation;

"(iii) by in vitro fertilization; or

"(iv) in so-called 'surrogate parenthood', including conception by any person who serves as a surrogate voluntarily and without remuneration; or

"(B) for any adopting parent's travel outside the United States, unless such travel—

"(i) is required by law as a condition of a legal adoption in the country of the child's origin, or is otherwise necessary for the purpose of qualifying for the adoption of a child;

"(ii) is necessary for the purpose of assessing the health and status of the child to be adopted; or

"(iii) is necessary for the purpose of escorting the child to be adopted to the United States or the place where the adopting member of the armed forces is stationed.".

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

"1051. Child adoption benefits.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect on October 1, 1987.

By Mr. HUMPHREY:

S. 270. A bill to provide a transition period for the full implementation of the Nonrecurring Adoption Expenses Reimbursement Program; to the Committee on Finance.

ADOPTION EXPENSES REIMBURSEMENT PROGRAM

● Mr. HUMPHREY. Mr. President, today I am introducing legislation to provide a transition period during which the tax deduction for expenses related to the adoption of a child with special needs will be retained until procedures for direct reimbursement under the new tax bill can be established.

One of the great accomplishments of the 99th Congress was the tax reform bill. I supported tax reform, but I have concerns about the immediate effect one of its provisions will have on adoptive parents and on the movement of children out of the foster care system into permanent homes.

According to the Department of Health and Human Services, an estimated 276,000 children are in foster care, and at least 36,000 of these children are legally free and waiting for adoptive homes. Many of the 36,000 are children with special needs; that is, children who are older, in sibling groups, mentally, physically or emotionally disabled, or members of minority groups.

Financial considerations are a necessary concern for parents who adopt any child. The adoptive parents entitled to this reimbursement are the individuals and couples who give a permanent home to children who need it most. They are people who are willing to take on large responsibilities in order to build a family and bring joy to a child who needs a home.

Congress has recognized the need to encourage, and reduce the financial burdens associated with, special needs adoption. Until January 1987 this was accomplished through an itemized tax deduction. The 1986 tax reform law repealed this deduction and substituted a direct payment for adoptive parents of special needs children.

My concern is that while adoptive parents lost the tax deduction at the end of 1986, the new system under which States directly reimburse parents for adoption expenses is a long way from being in place.

Under the Reconciliation Act of 1981, Congress provided an itemized deduction for up to $1,500 of expenses incurred by an individual in the legal adoption of a child with special needs. Deductible expenses included reasonable and necessary adoption fees, court costs, and attorney fees.

Because of limitations in available data, we do not know exactly how many adoptive parents have utilized the adoption expenses deduction. But we do know the number of special needs adoptions has risen in recent years, and the number of children in foster care has dropped. Undoubtedly many factors have contributed to this progress in special needs adoptions, but clearly the tax deduction helps reduce one important barrier to adoption, the cost.

The Senate tax reform bill retained the adoption expenses deduction, but the conference agreement followed the House bill in repealing the deduction. In place of the deduction, the final tax bill amends the Adoption Assistance Program in title VI-E of the Social Security Act to provide matching funds as an administrative expense to reimburse adoptive parents for their one-time adoption expenses when they adopt, in accordance with State and local law, a child with special needs. The repeal of the deduction takes effect for taxable years beginning with 1987 and the direct payment substitute for the deduction is to be effective for adoption expenditures made after December 31, 1986.

The Federal Government, State title IV-E adoption agencies, and private adoption agencies will all be involved in working out procedures to guarantee reimbursement to eligible adoptive parents. According to adoption experts, the Department of Health and Human Services will have to issue regulations under the title IV-E Adoption Assistance Program. Unwittingly, because of the necessary delay before the plan can be implemented, we may be leaving these families and children out in the cold with no financial help.

Mr. President, the adoption expenses tax deduction was straightforward and simple, and procedures and forms were well established under the Tax Code. The implementation of a new system of direct reimbursement is anything but simple. This legislation I am proposing will provide a transition period during which the adoption expenses tax deduction will be retained until final regulations implementing the Nonrecurring Adoption Expenses Reimbursement Program are issued. This will guarantee that adoptive parents will not suffer delays while administrators struggle to develop a reimbursement system.

I ask that the bill be printed in the RECORD as follows:

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

S. 270

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

SECTION 1. TRANSITION PERIOD FOR FULL IMPLEMENTATION OF NONRECURRING ADOPTION EXPENSES REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—Section 151 of the Tax Reform Act of 1986 (relating to effective dates) is amended by adding at the end thereof the following new subsection:

"(f) ADOPTION EXPENSES.—

"(1) IN GENERAL.—The amendments made by section 135 shall apply to taxable years beginning after December 31 of the calendar year in which final regulations are issued to implement the reimbursement of nonrecurring adoption expenses under any adoption assistance agreement under subtitle E of title IV of the Social Security Act.

"(2) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed with respect to amounts paid for adoption expenses directly related to the legal adoption of a child with special needs under section 222 of the Internal Revenue Code of 1986 to any taxpayer receiving reimbursement for such amounts under any adoption assistance agreement under subtitle E of title IV of the Social Security Act.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 151 of the Tax Reform Act of 1986.

By Mr. HUMPHREY:

S. 271. A bill to amend section 1001 of the Public Health Service Act to permit family planning projects to

offer adoption services; to the Committee on Labor and Human Resources.

PUBLIC HEALTH SERVICE ACT

● Mr. HUMPHREY, Mr. President, today I am introducing legislation to amend title X of the Public Health Service Act to allow family planning clinics to provide, at their discretion, adoption services.

For too long, our image of family planning has been exclusively family planning through the prevention of pregnancy, the limiting of family size, or the spacing of pregnancies. It is time to recognize the importance of planning families through adoption for children born to parents unable to care for them and for couples who would otherwise be unable to establish a family.

If a young, single woman becomes pregnant, she may not know much about adoption, and the counselors she encounters may be poorly informed also. Even if a single woman considers adoption, she may dismiss it prematurely as too expensive or too difficult, and instead choose to have an abortion or raise her child out-of-wedlock. No pregnant woman should ever be coerced into releasing her child for adoption, but she should be allowed to make an informed decision, after considering all of her alternatives.

Most pregnant teens do not get a chance to consider and do not understand the adoption process. A recent study by Edmund V. Mech of the school of social work at the University of Illinois at Urbana-Champaign showed a significant adoption gap among counselors. Mech found that counselors believe that most pregnant adolescents will not choose to place their child for adoption, use nondirective counseling techniques, and rarely initiate discussion of the adoption option. As a result, adoption often is not considered as an alternative in the counseling of pregnant adolescents and the young woman is not given any information about adoption.

Title X is currently the largest Federal program dealing with the problem of teenage pregnancy, and more than a third of the individuals served by this program are adolescents. In a recent report on teenage pregnancy, the National Research Council noted this fact and stressed that adoption should be an option for pregnant adolescents. The report acknowledged the many agencies involved in a teenager's pregnancy—including family planning clinics for pregnancy testing, health and social service facilities for services during pregnancy, labor and delivery, and counsel and supportive services after the birth—and stated that the "fragmentation of needed services may serve as a disincentive for some pregnant teenagers to make adoption plans."

The Council's report also included the recommendation that "public agencies, in cooperation with the private sector, explore ways of strengthening adoption services, including (1) improved decision counseling for pregnant teenagers and (2) development of effective models for providing comprehensive care to pregnant girls who choose adoption as an alternative to parenthood." This legislation is a much needed start in that direction.

Mr. President, I introduced similar legislation in the 99th Congress. During the Labor and Human Resources Committee markup of S. 881, the Family Planning Amendments of 1986, similar language was approved as an amendment offered by Senator GRASSLEY. The committee also approved a perfecting amendment by Senator METZENBAUM to require that any adoption services provided shall be nondiscriminatory. Senator METZENBAUM'S amendment improves this legislation and I have added his amendment to the original language in the current bill.

To clarify the intent of the Labor and Human Resources Committee in agreeing on this provision, I include the following statement on the adoption services amendment from the committee report on the Family Planning Amendments of 1986, S. 881 (Report 99-297):

The legislation contains a new provision which permits title X projects to offer adoption services. The provision does not require that family planning projects offer adoption services; projects may determine whether they wish to offer adoption services in addition to the counseling, and referral upon request, which are included in the existing title X guidelines. The committee does not intend any changes in the general mission of the title X law or projects, nor any diminution of Federal support for grantees or projects not electing to expand their services.

The definition of adoption services is vague to allow flexibility in services family planning providers may offer. Examples of services include, but are not limited to, adoption education programs, training, counseling, referral and placement services. The committee does not intend the use of subcontracting for these services. During Senate Committee on Labor and Human Resources deliberation over this amendment a reference was made to the Family Health Council of Western Pennsylvania as an example of a program which provides adoption services. Secondly, it is the intention of the committee that when adoption services includes placement services, as in the Family Health Council example, those placement services are offered only by a project which has obtained a child placement license. The committee does not intend to authorize the expenditure of title X funds for placement services except when such placement services are offered by a title X project which is also a licensed child placing agency. Where State adoption licensing requirements do not exist, such services must be provided in compliance with State laws regarding adoption services.

The legislation also provides that services offered are to be nondiscriminatory as to race, color, religion, or national origin. This amendment is not intended to affect the applicability of any existing Federal provision intended to prevent discrimination on the basis of these or other factors. The language is not intended to prohibit agencies from taking into account all relevant factors in deciding to place a child in a setting which is in the child's best interest. However, adoption services should not be denied nor significantly delayed on the basis of factors specified. This amendment is not intended to prevent discrimination on the basis of these other factors.

For the purposes of this new provision, projects are defined as delegate agencies or service sites.

Although S. 881 was reported out of the Labor and Human Resources Committee, no action was taken on the bill before Congress adjourned. I am hopeful that any reauthorization of the Title X Family Planning Program in the 100th Congress will once again include this adoption provision.

Mr. President, adoption is a positive alternative for women, particularly adolescents, with unintended pregnancies. Since family planning clinics are often the first point of contact between these women and the health care system after they have, or suspect they have, become pregnant, these clinics are the most important places to provide information about adoption.

This provision authorizing adoption services would not substantially divert funds from current family planning services. The provision is written in permissive language, it does not force any grantee to offer adoption services; rather, it merely clarifies that grantees may do so.

Since the title X statute requires that grantees provide a comprehensive range of family planning services, this provision could not result in the funding of adoption only service projects. I suspect that in most cases, those grantees who decide to provide adoption services would provide information and counseling services, which are not expensive. Even with regard to counseling and referral, this provision would not result in substantial diversion of program funds, since projects are currently required under certain circumstances to provide counseling and referral for adoption. Except in rare circumstances, actual adoption placement services would continue to be provided by existing adoption or social service agencies.

This legislation clarifies policy regarding adoption services in title X projects. Research has shown that adoption is more likely to be discussed by counselors in a social agency setting than by counselors in a health provider setting. This provision will help to emphasize the role that health care providers can play in discussing and encouraging adoption.

Mr. President, adoption has been called the loving option. I urge my col-

leagues to support this effort to help ensure that adoption does not become the forgotten option because of a lack of information.

I ask unanimous consent that the bill be printed in the RECORD as follows:

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

S. 271

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1001(a) of the Public Health Service Act is amended by inserting after the first sentence the following new sentences: "Such projects may also offer adoption services. Any adoption services provided under such projects shall be nondiscriminatory as to race, color, religion, or national origin.".

By Mr. HUMPHREY (for himself and Mr. HELMS):

S. 272. A bill to require certain individuals who perform abortions to obtain informed consent; to the Committee on Labor and Human Resources.

By Mr. HUMPHREY (for himself and Mr. HELMS):

S. 273. A bill to require certain individuals who perform abortions to obtain informed consent; to the Committee on Labor and Human Resources.

ABORTION CONSENT

● Mr. HUMPHREY. Mr. President, over the past year I have devoted considerable time and resources to publicizing a medical condition which increasingly has demanded attention from many concerned citizens. That condition is known as "postabortion trauma"—a term encompassing the many psychological and physical complications arising from abortion.

Postabortion trauma, particularly in the last several years, has come to light as a medical problem with serious and recognizable symptoms. Prior to the early 1970's, abortions were not performed in sufficient numbers for the ill-effects of abortion to be widely recognized or understood. But, following the Roe versus Wade decision in 1973, the number of abortions rose sharply to over 1.5 million a year, and as time passed, allowing many psychological and long-term abortion complications to manifest themselves, we have begun to observe increasing numbers of women who suffer from postabortion trauma.

Since the early 1960's, abortion advocates called for the legalization of abortion in order that all women would enjoy safe abortion. Abortion is now legal "on demand" at any time in a pregnancy, and yet women across the Nation suffer in ever greater numbers the physical and emotional injury caused by abortion. A number of physicians and researchers have investigated this trend in the late 1970's and early 1980's. More recently, private, nonprofit organizations have begun compiling a comprehensive list of the numerous studies and articles devoted to the subject.

Information about this issue has been publicized by "American Victims of Abortion" and "Women Exploited by Abortion"—two organizations devoted to counseling women who have suffered the ill-effects of postabortion trauma. These two groups are also committed to alerting the public to the potential and actual health hazards inherent in abortion. W.E.B.A. and A.V.A. members are primarily women who have experienced some of the tragic side effects of the abortion procedure.

The subsequent introduction of legislation relating to this issue—in the 99th Congress this included bills S. 2420 and S. 2791—drew scores of letters from women who themselves had suffered postabortion trauma. Most of these letters attribute much of their resentment about the abortion decision to the fact that they were not presented adequate information, or were misinformed about the abortion. These women now describe difficulties including subsequent premature births, cervical weakness, periodic or complete sterility, and miscarriages. They detail emotional ailments such as eating disorders, nightmares, depression and suicidal tendencies. They reveal guilt and anger, obsession with the dead child and a resulting failure to relate emotionally to the spouse and other children. They describe turning to alcohol and drugs.

The bills I am introducing today are revised versions of S. 2791, an informed consent bill I introduced late last year. Let me emphasize that the bills concern informed consent, and not parental information issues such as parental consent or parental notification. Parental information legislation would mandate the involvement of parents in the abortion decision of their minor daughter. These are important and worthwhile matters, but they are not the subject of the legislation before us now. Rather, these bills relate to the informing of any woman, minor or adult, about the abortion procedure, possible complications of the abortion, alternatives to abortion, and/or about the development of the unborn child.

Informed consent for any other medical surgery is standard procedure in the medical profession. Physicians are expected to conscientiously inform their patients about an operation, the risks of the operation, and alternatives to the procedure. However, while abortionists claim to counsel prospective patients prior to performing the abortion, currently there are no Federal requirements mandating that informed consent be sought prior to an abortion.

Today I introduce two bills that would allow women to be informed of the potential for postabortion trauma. One bill applies only to medical personnel who receive Department of Health and Human Services funds for the provision of health services. The other bill applies to those personnel receiving Department of Defense funds. Each bill applies to those personnel who, within the scope of their employment, perform an abortion on a woman. These persons must ensure that the pregnant woman has received the general information necessary to give written "informed consent" to the abortion. The bills also require that general information relevant to a woman's abortion decision be printed by the departments and that the information be available to the public. It does not require that any literature be provided to the woman, or that printed information be supplied by the doctor.

Medical personnel who fail to comply with the bills' requirements would be unable to receive Federal funds for the provision of health services. More importantly, any woman who is injured as a result of the medical personnel's failure to comply with this requirement, will be entitled to bring a cause of action for appropriate relief in Federal court.

Concerns have been raised about the constitutionality of such informed consent requirements following the recent Supreme Court decision in Thornburgh versus American College of Obstetricians and Gynecologists. In fact, I have revised the informed consent bill I introduced before the Thornburgh decision, in two ways in order to comply with the Court's opinion. However, it is important to note that the concept of informed consent has not been invalidated by the Court, even in this latest progeny of Roe versus Wade. Rather, in Thornburgh, the Court recognized that: A requirement that the woman give what is truly a voluntary and informed consent, as a general proposition, is, of course, proper and is surely not unconstitutional.

Supreme Court decisions prior to Thornburgh; namely, City of Akron versus Akron Center for Reproductive Health and Planned Parenthood of Central Missouri versus Danforth, have also upheld the concept of requiring informed consent from women contemplating abortion.

So, the Supreme Court has not invalidated the concept of informed consent, but rather has implied certain principles that must be respected in order for informed consent legislation to withstand court scrutiny:

Informed consent legislation may only require the provision of information that is relevant to the consent, thus advancing a legitimate interest.

The law's intent may not be to dissuade a woman from having an abortion. Instead, it must further a State's legitimate interest in promoting the health of the woman.

The informed consent provisions may not require a rigid body of information be provided to the woman. The physician must have flexibility to meet the particular needs of the woman, and may not be required to present what she considers extraneous information.

The informed consent statute must not make the physician an agent of the Government, by requiring that he or she distribute printed information, even upon the request of the woman.

I believe that this informed consent legislation has been drafted in accordance with the strictures outlined in the Thornburgh decision:

This legislation is not intended to limit the access of women to abortion, nor to limit the number of abortions procured each year by American women. The bills in no way restrict a woman's ability to procure an abortion. It is likely that some, indeed many, of the 1.5 million women undergoing legal abortions each year throughout the entire 9 months of pregnancy, have not been adequately informed about the procedure they are undergoing. Indeed, some of these women have been misinformed and lied to about the consequences and risks of their abortion. As a result, many of these women will possibly decline to procure an abortion once they have been adequately and accurately been informed about the abortion they originally sought.

Averting the procurement of abortions, however, is merely a side effect resulting from the alerting of women to the potential ill-effects caused by abortion. In fact, the intent of these bills is nothing more than the protection of the health of women who are considering abortion without being advised of the potential ill-effects to their health.

I have already described some of the identified health risks associated with abortion. Clearly, then, legislation aimed at informing women of the health hazards of abortion can only promote the health of this Nation's women.

I have eliminated the prior requirement that a specific body of information be provided to women by medical personnel before the abortion. The bills require only that the physician provide general information in a manner that will properly inform the woman. The physician is free from providing a "rigid" set of information to the woman, but nevertheless retains the responsibility to appropriately assess the needs of the woman and to properly inform her of various aspects of the abortion.

I have eliminated a requirement that printed information regarding alternatives to abortion be provided by the physician. However, in light of the vast numbers of letters from women pleading for improved information about alternatives to abortion, the bills require the Departments to print such information and make them available to the public. Such information should include listings of some of the thousands of pregnancy centers around the Nation that provide access to prenatal care, support, and counseling beyond the term of the pregnancy, and should refer to the hundreds of adoption centers around the Nation providing counseling and adoption placement services at no expense or at minimal cost. The Departments must also provide information about abortion procedures and some of the potential complications that might arise, and information regarding fetal development.

Mr. President, the need for informed consent is clear. The health of many women in this Nation is at stake. And beyond this, we must ensure that all women considering abortion are making an informed choice. I ask my colleagues to consider this: of what use is a right, if the information to use it wisely is withheld? Any choice made on an uninformed or misinformed basis is no choice at all.

Mr. President, I ask unanimous consent that the bills as introduced be printed in the CONGRESSIONAL RECORD.

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

S. 272

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 "Informed Consent Act".

DEFINITIONS

SEC. 2. For purposes of this Act, the term—

(1) the term "abortion" means the use of any instrument, medicine, drug, or any other substance or device, to terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus;

(2) the term "Department" means the Department of Health and Human Services;

(3) the term "Federal financial assistance" means any type of Federal financial assistance for the provision of health services which is provided directly by the Department to a recipient or which is provided through a recipient of such assistance from the Department to another individual or entity, and includes grants, contracts, loans, cooperative agreements, and reimbursements and payments for services;

(4) the term "informed consent" means the consent to an abortion by a pregnant woman after such woman is provided with all information necessary in order to enable such woman to intelligently exercise their judgment with respect to the abortion by reasonably balancing the probable risks of the abortion against the probable benefits of the abortion;

(5) the term "pregnant woman" means any woman who is pregnant and, with respect to factors other than age, is legally capable of giving valid consent to the performance of an abortion; and

(6) the term "Secretary" means the Secretary of Health and Human Services.

INFORMED CONSENT REQUIRED

SEC. 3. (a) No individual who—

(1) is employed in a hospital, clinic, institution, or facility which provides health care services and is owned or operated by the Department;

(2) is employed by a hospital, clinic, institution, or facility which receives any Federal financial assistance; or

(3) receives any Federal financial assistance, shall, within the scope of employment of such individual, perform an abortion on a pregnant woman unless such individual has, prior to the performance of such abortion, complied with the provisions of this section.

(b) An individual to whom subsection (a) applies shall, prior to performing an abortion on a pregnant woman—

(1) ensure that such woman has been given sufficient information to enable such woman to give informed consent to the abortion; and

(2) obtain the written certification of such woman that her consent to the abortion is informed, has been freely given, and is not the result of coercion.

(c) Any written certification obtained from a pregnant woman under subsection (b)(2) shall be confidential, and may not be released to any person other than—

(1) such woman;

(2) the individual who performed the abortion; or

(3) any other individual who is required to consent to the abortion pursuant to law,

unless such woman provides written consent to the release of such certification to any other person or a Federal or State court issues an order requiring the release of such certification to any other person.

(d)(1) The Secretary shall promulgate rules and procedures to ensure that officers and employees of any hospital, clinic, institution, or facility described in subsection (a) comply with this Act.

(2) The head of each hospital, clinic, institution, or facility described in subsection (a)(2) shall—

(A) promulgate rules and procedures to ensure that officers and employees of such hospital, clinic, institution, or facility comply with this Act; and

(B) take appropriate actions to monitor and enforce complicance by such officers and employees with this Act and such rules and procedures.

MEDICAL EMERGENCY EXCEPTION

SEC. 4. The provisions of subsections (a) and (b) of section 3 shall not apply in the case of an abortion performed on a pregnant woman, if the woman's physician determines, in the exercise of such physician's best medical judgment, that a medical emergency exists that complicates the woman's pregnancy in a manner which requires an immediate abortion.

ENFORCEMENT

SEC. 5. (a) The Secretary shall monitor compliance with this Act by individuals, hospitals, clinics, institutions, and facilities subject to this Act. If the Secretary determines that such an individual, hospital, clinic, institution, or facility has failed to

comply with this Act, the Secretary shall provide a written notice to such individual, hospital, clinic, institution, or facility which—

(1) specifies such determination; and

(2) states that unless such individual, hospital, clinic, institution, or facility complies with this Act within 15 days after the receipt of such notice, all Federal assistance provided to such entity will be terminated.

(b) Any individual, hospital, clinic, institution, or facility which receives a written notice under subsection (a), may, within 30 days after the receipt of such notice, request the Secretary for a hearing with respect to—

(1) the determination of the Secretary under subsection (a);

(2) compliance by such individual, hospital, clinic, institution, or facility with this Act; and

(3) the termination of Federal assistance to such individual, hospital, clinic, institution, or facility pursuant to this Act.

(c) If the Secretary receives a request for a hearing under subsection (b), the Secretary shall schedule a hearing in response to such request within 30 days after receiving such request. Such hearing shall be conducted on the record in accordance with sections 554 through 559 of title 5, United States Code.

LEGAL ACTIONS

SEC. 6. Any individual who is aggrieved by the failure of an individual subject to this Act to provide the informed consent required by this Act, or by the failure of a hospital, clinic, institution, or facility subject to this Act to comply with this Act, may bring an action for appropriate relief in the district court of the United States in which such individual resides or in which such failure occurred.

INFORMATIONAL MATERIALS

SEC. 7. (a) Within 120 days after the date of enactment of this Act, the Secretary shall prepare and make available to the public, materials which contain—

(1) a description of the various methods of abortion;

(2) a description of the medical risks, both physical and psychological, associated with abortion;

(3) a description of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including information on the unborn child's ability to survive outside the mother's womb; and

(4) information concerning the availability of financial assistance and social services, including a comprehensive list of (A) public and private agencies, including adoption agencies, which are available to assist a woman through pregnancy, childbirth, and the period of dependency of her child or children, (B) the addresses and telephone numbers of such agencies, and (C) a description of the services offered by each such agency.

(b) The Secretary shall prepare the materials required by subsection (a) in each language used by a significant portion of the population of the United States.

(c) The Secretary shall make the materials required by subsection (a) available to the public without charge.

(d) The Secretary shall annually review and update the materials required by subsection (a).

SEVERABILITY

SEC. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

S. 273

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 "Informed Consent Act".

DEFINITIONS

SEC. 2. For purposes of this Act, the term—

(1) the term "abortion" means the use of any instrument, medicine, drug, or any other substance or device, to terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus;

(2) the term "Department" means the Department of Defense.

(3) the term "informed consent" means the consent to an abortion by a pregnant woman after such woman is provided with all information necessary in order to enable such woman to intelligently exercise her judgment with respect to the abortion by reasonably balancing the probable risks of the abortion against the probable benefits of the abortion;

(4) the term "pregnant woman" means any woman who is pregnant and, with respect to factors other than age, is legally capable of giving valid consent to the performance of an abortion; and

(5) the term "Secretary" means the Secretary of Defense.

INFORMED CONSENT REQUIRED

SEC. 3. (a) No individual who is employed in a hospital, clinic, institution, or facility which provides health care services and is owned or operated by the Department

shall, within the scope of employment of such individual, perform an abortion on a pregnant woman unless such individual has, prior to the performance of such abortion, complied with the provisions of this section.

(b) An individual to whom subsection (a) applies shall, prior to performing an abortion on a pregnant woman—

(1) ensure that such woman has been given sufficient information to enable such woman to give informed consent to the abortion; and

(2) obtain the written certification of such woman that her consent to the abortion is informed, has been freely given, and is not the result of coercion.

(c) Any written certification obtained from a pregnant woman under subsection (b)(2) shall be confidential, and may not be released to any person other than—

(1) such woman;

(2) the individual who performed the abortion; or

(3) any other individual who is required to consent to the abortion pursuant to law,

unless such woman provides written consent to the release of such certification to any other person or a Federal or military court issues an order requiring the release of such certification to any other person.

(d)(1) The Secretary shall (A) promulgate rules and procedures to ensure that officers and employees of any hospital, clinic, institution, or facility described in subsection (a) comply with this Act; and

(B) take appropriate actions to monitor and enforce compliance by such officers and employees with this Act and such rules and procedures.

MEDICAL EMERGENCY EXCEPTION

SEC. 4. The provisions of subsections (a) and (b) of section 3 shall not apply in the case of an abortion performed on a pregnant woman, if the woman's physician determines, in the exercise of such physician's best medical judgment, that a medical emergency exists that complicates the woman's pregnancy in a manner which requires an immediate abortion.

ENFORCEMENT

SEC. 5. The Secretary shall monitor compliance with this Act by individuals, hospitals, clinics, institutions, and facilities subject to this Act.

LEGAL ACTIONS

SEC. 6. Any individual who is aggrieved by the failure of an individual subject to this Act to provide the informed consent required by this Act, or by the failure of a hospital, clinic, institution, or facility subject to this Act to comply with this Act, may bring an action for appropriate relief in the district court of the United States in which such individual resides or in which such failure occurred.

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(3) a description of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including information on the unborn child's ability to survive outside mother's womb; and

(4) information concerning the availability of financial assistance and social services, including a comprehensive list of (A) public and private agencies, including adoption agencies, which are available to assist a woman through pregnancy, childbirth, and the period of dependency of her child or children, (B) the addresses and telephone numbers of such agencies, and (C) a description of the services offered by each such agency.

(b) The Secretary shall prepare the materials required by subsection (a) in each language used by a significant portion of the population of the United States.

(c) The Secretary shall make the materials required by subsection (a) available to the public without charge.

(d) The Secretary shall annually review and update the materials required by subsection (a).

SEVERABILITY

SEC. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

By Mr. HUMPHREY (for himself and Mr. HELMS):

S. 274. A bill to restrict the use of Federal funds available to the Bureau

of Prisons to perform abortions; to the Committee on the Judicairy.

PROHIBITION OF USE OF FEDERAL FUNDS FOR ABORTIONS IN PRISONS

● Mr. HUMPHREY. Mr. President, I introduce today a bill prohibiting the use of Federal funds by the Justice Department, through its agency, the Bureau of Prisons, to pay for abortions procured by Federal prison inmates.

Regulatory authority providing for bureau involvement with abortion can be found in title 28 of the Code of Federal Regulations. Section 551.20 states:

The Bureau of Prisons provides an inmate with medical and social services related to birth control, pregnancy child placement, and abortion. The warden shall ensure compliance with the applicable law regarding these matters.

Section 551.24 specifies the following:

(a) The inmate has the responsibility for deciding to have an abortion or bear the child.

(b) The warden shall provide medical, religious and social counseling to aid the inmate in making the decision to have an abortion or bear the child.

(c) An inmate shall sign a statement of responsibility for the decision to have an abortion or bear the child.

(d) At the inmate's request, medical staff shall arrange for the abortion to take place at a hospital or clinic outside the institution.

The statutory authority obligating the Bureau of Prisons to manage Federal correctional institutions and to "provide for the safekeeping, care, and subsistence of all persons" incarcerated in those institutions. 18 U.S.C. 4042. Section 4007 authorizes funding for the care of the prisoners, requiring that "the expenses attendant upon the confinement of persons arrested or committed under the laws of the United States * * * shall be paid out of the Treasury of the United States in the manner provided by law." 18 U.S.C. 4007. The regulations cited above are intended to carry out this authority.

Actual funds for prisoner abortions, however, are provided by annual Commerce, Justice, State appropriations bills. In the past, efforts have been made to restrict this funding. Most notable of these was a Dornan amendment to the fiscal year 1986 appropriations bill, which would have prohibited the use of Federal funds to pay for most abortions. That language provided that:

None of the funds contained in this act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

This bill was passed by the House, but was ultimately rejected by the Senate. However, in fiscal year 1987, the House and the Senate agreed to language prohibiting some Federal funding of prisoner abortions. The House passed a dramatically more restrictive version of the Dornan amendment by a wide margin. That language prohibited the use of Federal funds to pay for an abortion, to provide facilities for the performance of an abortion, or to pay for travel expenses, staff escorts, or housing related to the procuring of an abortion. The Senate Appropriations Subcommittee deleted the language from the Senate version of the bill, and following the chaotic climax to that Congress' bungling of the budget, when the Commerce appropriations bill was rolled into the continuing resolution with every other appropriations bill, there was no vote on the original House language or on the subcommittee deletion.

The resulting compromise governing appropriations for the current fiscal year dictates that no funds be expended for the abortion itself, except in cases where the life of the mother would be endangered, or where the pregnancy was the result of a rape.

Under the policy existing prior to the passage of these appropriations measures, the Bureau of Prisons reportedly paid for 37 elective—not medically necessary, but elective—abortions in fiscal year 1985, 33 in fiscal year 1984, 41 in fiscal year 1983, 21 in fiscal year 1982, 21 in fiscal year 1981 and 14 in fiscal year 1980. Dozens of additional therapeutic and spontaneous abortions were also paid for during that same period. The average cost of the abortions was between $500 and $750.

The number of abortions, and the Federal funds devoted to paying for them may appear insignificant in and of themselves. Nevertheless, any Federal funding of elective abortion represents a radical departure from the current Federal practice under the Hyde amendment and its progency of paying for abortion only when the life of the mother is physically and imminently endangered by a pregnancy. I applaud the recent progress made in bringing the Bureau of Prisons more nearly in compliance with Federal policy governing the funding of abortion and abortion-related services under the Departments of Defense and Health and Human Services, and for Federal employees' health benefits, Peace Corps volunteers, Indian Health Services and the Legal Services Corporation. But I firmly believe that the Bureau of Prisons abortion funding policy must be consistent with current Medicaid policy under the Hyde amendment, and I intend this bill to accomplish that goal.

While the Supreme Court has not directly addressed the issue of funding for Federal inmate abortions, lower courts have issued related opinions in at least three cases:

In *Doe* v. *Jennings,* No. 79-681D (W.D. PA. May 23, 1979), a county jail warden refused to allow an inmate to obtain a first-trimester abortion without a court order. The district court ordered that the inmate be transported for an abortion, but that she fund the procedure.

In *Commonwealth of Virginia* v. *Doe,* No. 13899-13905 (Cir. Ct. Arlington County, March 1, 1979), the officials of the Arlington County jail refused to allow an inmate to obtain an abortion although a clinic would perform the abortion without charge. The court ordered that the inmate be allowed to receive an abortion as long as the expense would not be borne by the county.

In Lett versus Witworth, the court ordered that the plaintiff be allowed to have a second-trimester abortion at a hospital, although no ruling was made on payment for the procedure. In this instance, the County Welfare Department paid for the abortion.

Despite these generally favorable rulings on similar issues, a number of arguments have been raised against restrictions on the funding of abortions for prison inmates who are often too poor to pay for health care, and who are wards of the State. While no one can accurately anticipate how the Supreme Court will rule in this area, I believe that it is important to note the similarities between the issue of withholding abortion funding for prisoners, and doing so for the poor—a related issue on which the Court has ruled.

Opponents of this legislation note that incarcerated persons retain their fundamental constitutional rights, including the right to adequate medical care, and the right to have an abortion.

Although there may be a right to abortion, the Supreme Court has held in Harris versus McRae and its progeny, that there is no accompanying right to public funding for the exercise of the right to abortion. The Court noted in Harris that abortion differs from other medical procedures: "No other procedure involved the purposeful termination of potential life." The Court, then, has granted a right to abortion, found within the penumbra of the right to privacy, to all women, including incarcerated women. It has refused, however, to grant poor women the right to funding for their abortion.

Opponents also argues that the legislation creates an absolute barrier to indigent prisoners seeking abortions.

The Court, in reviewing abortion restrictions similar to those found in this bill, has focused on barriers raised by the State in obstructing a woman's access to abortion. The Court has emphasized that barriers not of the Government's making are not the responsibility of the Government. The Court further ruled that indigency was not a barrier erected by the Government. This bill does not address a woman's right to an abortion. It only concerns

whether the abortion shall be funded by the Government. The bill does not erect an absolute barrier to abortion: As with the Hyde amendment restricting Medicaid funding for abortion, friends, family, or clinics serving indigent women are not precluded from paying for the abortion.

Opponents further argue that the eighth amendment to the Constitution prohibits cruel and unusual punishment. As a result, they argue that the Bureau of Prisons must provide a standard of medical care including publicly funded abortions.

It is true that the Government must provide prisoners with food, shelter, and minimum adequate medical treatment. Indeed, courts have ruled that this constitutional right to care arises whenever there is a serious medical need, such as physical danger to the life of the mother. However, inmates are not entitled to Federal funding of a variety of discretionary care available to the general public. Elective abortions are, by definition, discretionary, and funding for such activities need not be provided by the Government.

In short, the issue is not the standard of medical care to be provided to prisoners or the right of a prisoner to an abortion. Instead the issue concerns whether taxpayers must be compelled to pay for elective abortions and the deliberate destruction of innocent human life. We have refused to do so for over a decade under the Hyde amendment, and we should no longer do so in the Federal prisons system.

I ask unanimous consent that the bill as introduced be printed in the RECORD.

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

S. 274

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 301 of Title 18 of the United States Code is amended to add the following new section:

"SEC. . None of the funds available to the Bureau of Prisons shall be used to perform abortions, except where the life of the mother would be endangered if the fetus were carried to term."

By Mr. WILSON: (for himself and Mr. CRANSTON):

S. 275. A bill to amend the Wild and Scenic River Act; to the Committee on Energy and Natural Resources.

WILD AND SCENIC RIVERS ACT

● Mr. WILSON. Mr. President, I rise today to introduce for myself and my colleague from California, Senator CRANSTON, a bill to designate segments of the main stem and the south fork of the Merced River in California as part of the National Wild and Scenic Rivers System. I believe that this river—which flows out of the famed Yosemite Valley—represents just the kind of river that the Wild and Scenic Rivers Act of 1968 was intended to protect.

This bill reflects the draft recommendations of the National Forest Service as included in the draft environmental impact statement for the proposed forest land and resource management plan for the Sierra National Forest. It calls for 82 miles of the main stem of the river, from its source in Yosemite National Park to Lake McClure, and 43 miles of the south fork of the Merced, from its source in Yosemite to the confluence with the main stem, to be included in the National Wild and Scenic Rivers System. I am pleased to introduce this measure which represents the culmination of an extensive study conducted by the National Forest Service, the Bureau of Land Management, and the National Park Service. I commend those involved in the development of the draft environmental impact statement for their spirit of dedication and cooperation which allowed this comprehensive proposal for the Merced and its south fork to become a reality.

The Merced River and its south fork travel almost 125 miles in their journey from the 12,000 foot peaks of Yosemite's Clark Range down to the quiet waters of Lake McClure, only 800 feet above sea level in the Sierra Nevada foothills. The banks of both the main stem and the south fork are rich in rare vegetation, and in the spring, a brilliant array of flowers carpet the steep canyon walls of the river. The area surrounding the river abounds in cultural heritage and is well known for its fascinating gold rush history. Over 1 million park visitors enjoy the Merced River and its south fork. They come to experience the thrill of rafting its rapids, to fish its waters, and to witness its extraordinary beauty.

The draft Forest Service recommendations that are embodied in this bill are supported by area businessmen, the Merced Canyon Committee, and many other local residents. The opportunity to protect this river has arisen in part because of the fine work done by the Merced Canyon Committee and others who have flushed out and resolved the potential problems that might have arisen from wild and scenic designation of the river. What has emerged from this long examination process is a draft Forest Service recommendation that allows new tourist business possibilities while at the same time preserving something very special. I am not aware of any major hydroelectric development potential that would be precluded by this legislation.

Mr. President, I am proud to introduce this bill which will ensure permanent protection for this unique and most deserving river. I believe that addition of the Merced and its south fork with complement beautifully the fine work that Congress did a little over 2 years ago in adding the Merced's sister river to the north—the Tuolumne River—to the National Wild and Scenic Rivers System. I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 275

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

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) as amended is further amended by inserting the following new paragraph:

"( ) MERCED, CALIFORNIA.—The main river from its source on the south side of Mount Lyell in Yosemite National Park to the point of maximum flood control storage of Lake McClure, consisting of approximately 82 miles, and the South Fork of the river from its source near Triple Divided Peak in Yosemite National Park to the confluence with the main stem, consisting of approximately 43 miles, both as generally depicted on the map entitled 'Merced and So. Fork Merced Rivers' contained in the Appendices of the Draft Environmental Impact Statement for the Sierra National Forest published by the United States Department of Agriculture in 1986; to be administered by the Secretary of Agriculture and the Secretary of the Interior. After consultation with State and local governments and the interested public and within two years from the date of enactment of this paragraph, the Secretary shall take such action as is required under subsection (b) of this section. For fiscal years commencing after September 30, 1987, there are authorized to be appropriated such sums as may be necessary to implement the provisions of this subsection."

By Mr. NICKLES:

S. 276. A bill to amend the Internal Revenue Code of 1954 to impose a fee on the importation of crude oil or refined petroleum products; to the Committee on Finance.

CRUDE OIL IMPORT FEE

● Mr. NICKLES. Mr. President, imports of crude oil and petroleum products are threatening our national security interests. The latest numbers published by the Energy Information Administration indicate that net imports during the first 352 days of 1986 averaged 5.3 million barrels per day, about 24 percent above the average for the same period in 1985.

The United States now relies on imports for about 40 percent of its needs. We have returned to the same degree of reliance on foreign crude that we had during 1973, and all indications are that our reliance on foreign oil will increase further. For this reason, I am sponsoring legislation today to impose a fee on oil imports. This legislation is identical to S. 2886, which I introduced last year.

The measure that I am introducing today would place a fee on imported

crude oil equal to the difference in international prices for crude oil and $20. It would impose an additional fee on imported products equal to the oil fee plus $3.

This oil import fee will go a long way toward reversing our dependency on OPEC and bolstering our domestic oil and gas industry. The domestic energy industry is clearly in a depression. It is therefore imperative that we focus not just on the import fee proposal but on the Federal Government's entire energy policy. Accordingly, I am also introducing today a measure to repeal the windfall profit tax.

By the fall of 1986, world oil prices had fallen to less than half what they were the year before, and to less than a third of the price levels of 1983. This decline in oil prices has not been caused by the demise of OPEC but by the calculated strategy of a couple of major exporting nations trying to manipulate the market for future gain. Therefore, we don't see pure market principles at work but calculated maneuvers by Government entities to increase their control over the world oil market.

I believe it would be unwise for our Government to sit idly by and allow countless American producers and refiners to go bankrupt while the Saudis and others are tightening the screws on oil producing countries. As a bare minimum, let's require that they pay at least the same tax that our domestic producers have been forced to pay since 1980. The average windfall profit tax for the lower 48 States has averaged more than $5 per barrel since passage of the windfall profit tax.

An oil equalization fee would be a first step toward regaining the losses we have suffered in years past at the hands of OPEC. Let us not lose this present opportunity to make a positive change.●

By Mr. THURMOND (for himself, Mr. HATCH, Mr. TRIBLE, Mr. D'AMATO, Mr. HELMS, Mr. WILSON, Mr. SPECTER, Mr. DECONCINI, and Mr. GRASSLEY):

S. 277. A bill to establish constitutional procedures for the imposition of the sentence of death, and for other purposes; to the Committee on the Judiciary.

By Mr. THURMOND (for himself, Mr. HATCH, Mr. TRIBLE, Mr. HELMS, Mr. WILSON, Mr. DECONCINI, and Mr. ZORINSKY):

S. 278. A bill to amend title 18 to limit the application of the exclusionary rule; to the Committee on the Judiciary.

DEATH PENALTY

● Mr. THURMOND. Mr. President, today, as the 100th Congress convenes, I am introducing three bills similar to ones that I introduced during the last Congress. These bills address important issues with regard to the administration of the criminal laws in this country: The establishment of constitutional procedures for the imposition of the death penalty for certain Federal offenses, Federal habeas corpus review of State criminal convictions, and the use of the exclusionary rule in Federal criminal trials. Similar bills passed the Senate by overwhelming margins in the 98th Congress; however, the full Senate did not have the opportunity to consider these measures in the last Congress. Passage of these measures is long overdue.

DEATH PENALTY

The first of these bills would establish constitutional procedures for the imposition of the death penalty.

Currently, numerous Federal statutes provide that a sentence of death may be imposed if a person is found guilty. However, the reality is that the death penalty cannot be imposed because constitutional procedures for imposing such a sentence do not exist. In 1972, the Supreme Court, in Furman versus Georgia, ruled that the existing death penalty statutes were unconstitutional because the jury was allowed to use its unfettered discretion in determining whether a sentence of death should be imposed. This decision rendered the Federal death penalty inoperative. Subsequently, in a series of landmark decisions handed down in 1976, the Supreme Court determined that the death penalty was constitutional when imposed under certain procedures specifically designed to guard against the jury using its unfettered discretion.

The Supreme Court has subsequently handed down many decisions which have clarified circumstances under which the death penalty may be imposed. Efforts have also been underway in the Senate since 1977 to establish procedures for the imposition of the death penalty which pass constitutional muster.

The bill that I am offering today comports with the constitutional requirements outlined by the Supreme Court. The bill sets up a bifurcated process which the factfinder must follow when determining whether a sentence of death is justified. This process consists of a hearing to determine the guilt or innocence of the defendant and a second hearing to determine whether to impose the death penalty on a guilty defendant.

In order to seek a sentence of death, the attorney for the Government would be required to give notice to the defendant a reasonable time before the trial that the Government intends to seek a sentence of death. The attorney for the Government must also identify in that notice the statutory aggravating factor or factors the Government intends to prove. The sentencing hearing would be held before the same jury which determined that the defendant was guilty; or if the defendant requests and the attorney for the Government agrees, the trial judge alone.

If a verdict of guilty is returned, the factfinder, in its deliberation held after the sentencing hearing, would have to make a series of determinations before a sentence of death could be imposed.

First, depending upon the crime involved, the factfinder must determine that special threshold requirements exist. If none is found to exist, then a sentence other than death would have to be imposed.

Second, if the required threshold factors are found to exist, the jury—or judge—would have to make special findings as to the existence of statutory aggravating and mitigating factors presented at the sentencing hearing. Every member of the jury must believe at least one of the presented statutory aggravating factors exists, but only those factors believed to exist by a majority of the jury would be considered in the final weighing. A majority of the jury must also feel that a specific mitigating factor exists in order for it to be considered in the final deliberation. If no statutory aggravating factors are found to exist, then a sentence other than death would have to be imposed.

Finally, if at least one common statutory aggravating factor is found to exist by a majority of the jury, the deliberation moves to a third step. Here the jury—or judge—must weigh all the statutory aggravating and mitigating factors found to exist along with any nonstatutory aggravating and mitigating factors presented at the sentencing hearing. After weighing all of these factors, the jury—or judge—would then decide whether the death penalty should be imposed. This bill, as amended by the Judiciary Committee, during the 99th Congress, also contains a new provision which prohibits the imposition of a sentence of death on a person who was less than 18 years of age at the time of the offense.

In addition to establishing constitutional procedures for the imposition of the death penalty, this bill also authorizes the death penalty for the first time for the following offenses: (1) Certain attempts to assassinate the President and (2) murder by a Federal prisoner serving a life term in a Federal correctional institution. These provisions were contained in the bill as approved by the Judiciary Committee.

In addition, I have included the following provisions for the first time: (1) To authorize a sentence of death for a person who, while engaged in a continuing criminal enterprise, causes the death of another person. This provision is similar to a provision included

in the drug bill last Congress. As many of my colleagues will recall, that provision was overwhelmingly approved by the House, but was unfortunately dropped during Senate consideration of the drug bill. (2) A provision sometimes referred to as the Klinghoffer amendment—that authorizes the death penalty in hostage-taking situations where death results to the hostage, or to a person attempting to rescue a hostage or apprehend the hostage takers. (3) To authorize the death penalty for two related offenses first enacted by the Comprehensive Crime Control Act of 1984 regarding murder for hire and murder in aid of racketeering activity.

The death penalty is not a new issue. In the 98th Congress, the Senate approved a death penalty bill which is essentially the same as the bill that I am offering today. That bill passed by an overwhelming vote of 63 to 32. It has been more than 10 years since the Supreme Court determined that the death penalty was constitutional, and we should not go another moment without the ability to fully implement our laws for the protection of our law-abiding citizens.

HABEAS CORPUS REFORM

The second bill I am introducing here would reform Federal habeas corpus and collateral attack procedures. This will minimize Federal judicial interference with State criminal convictions, promote finality of such convictions, and deal with common abuses typical of habeas prisoner petitions. In the 97th Congress, the Senate passed a bill identical to the one I am introducing today by an overwhelming vote of 67 to 9. I introduced that same bill in the 99th Congress; however, no action was taken.

This bill proposes amendments to various sections of chapter 153 of title 28 of the United States Code, and a related rule of appellate procedure. Its objectives are to establish a more appropriate scope and function for Federal habeas corpus for State prisoners, accord more appropriate weight to State interests in finality and orderly procedures in criminal adjudication, improve the efficiency of habeas corpus litigation and appellate review of such litigation, and effect certain corresponding improvements in the operation of collateral remedies for Federal prisoners. The proposed amendments would change the operation of Federal collateral remedies in several respects.

First, the proposed amendments would preclude granting relief with respect to matters that have been fully and fairly adjudicated in State proceedings. This important change would enhance the finality of State criminal adjudications and avoid duplicative litigation of claims that have already been adequately considered and decided.

Second, the proposed amendments would generally bar the consideration of claims that have not been properly raised in State proceedings, provided the State has afforded the petitioner an opportunity consistent with the requirements of Federal law to raise his claims in the State proceedings.

Third, the proposed amendments would establish a 1-year limitation period for the filing of habeas corpus petitions by State prisoners, which would generally run from the time of exhaustion of State remedies. This limitation period would bar petitions in cases in which the passage of time has made reliable adjudication of the petitioner's claims or retrial of the petitioner difficult or impossible. The limitation period would also advance the policies supporting finality and repose in criminal adjudication.

Fourth, the proposed amendments would clearly state that a Federal habeas court can deny a petition on the merits without requiring prior exhaustion of State remedies, thereby avoiding the waste of judicial resources that results when a person presenting a frivolous petition is sent back to the State courts to exhaust State remedies.

Fifth, the proposed amendments would vest in the judges of the courts of appeals exclusive authority to issue certificates of probable cause for appeal in habeas corpus proceedings. This would entrust the decision concerning the propriety of an appeal to the judges who are in the best position to determine if there is a realistic likelihood of reversal. It would also avoid duplicative consideration of the suitability of a case for appeal, first by a district judge, and then by a circuit judge.

Sixth, the proposed amendments would make similar changes in the law governing applications for collateral relief by Federal prisoners pursuant to 28 U.S.C. 2255 in the areas of appeal, procedural default and time limitation.

EXCLUSIONARY RULE

The third of these bills would codify an exception to the exclusionary rule, an exception which has been recognized by the Supreme Court. It also contains a provision with regard to the application of the exclusionary rule for violations of Federal statutes and rules.

A bill similar to this bill passed the 98th Congress by a vote of 63 to 24. I reintroduced that bill in the 99th Congress; however, no action was taken.

The exclusionary rule is a judiciary created remedy for Government violations of the fourth amendment. More simply, if evidence is obtained in violation of the fourth amendment prohibition against illegal search and seizure then that evidence will be excluded in a criminal trial. The rationale behind this remedy is to deter law enforcement officers from violating the fourth amendment by excluding illegally seized evidence. Unfortunately, as we have seen in recent years, the exclusionary rule can provide a "loophole" which often results in the release of the accused on a basis other than the merits of the underlying criminal charge. I do not believe that law enforcement officers should be allowed to randomly enter our homes or private places and search without just cause.

However, as the Supreme Court has recognized, there are certain instances in which the application of the exclusionary rule is not justified.

The bill I am introducing today recognizes one of those instances. It would allow the admission of evidence, which is later determined to have been illegally seized, in a criminal trial, if the evidence is obtained, with or without a warrant, by a law enforcement officer acting with an objectively reasonable belief that his conduct conforms with the fourth amendment. This bill would in essence, codify the 1984 Supreme Court decision in United States versus Leon with respect to searches pursuant to a warrant, and extend the application of the Leon rationale to warrantless searches.

Also, for the first time, this bill includes a provision which would provide that the exclusionary rule should not be invoked for violation of a Federal statute or rule of procedure if the underlying violation does not reach constitutional proportions. The exclusionary rule would be applied if the statute or rule specifically provides for its application. This is an issue that the Supreme Court has not considered thoroughly. However, as we have seen, the exclusion of evidence most often results in the release of the accused. This is a high price to pay for nonconstitutional violations. Therefore, I think it wise to preclude the use of the exclusionary rule in these situations unless Congress so provides.

The three bills I have introduced today would make important reforms in our criminal justice system. These bills have been the subject of many hearings in previous Congresses and I hope that the Senate will act without delay in the 100th Congress to approve these measures.

I ask unanimous consent that the text of the bills be printed in the CONGRESSIONAL RECORD.

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

S. 277

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18 of the United States Code is amended—

(a) by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH SENTENCE

"Sec. 2
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.

"§ 3591. Sentence of death.

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title, if the offense, as determined beyond a reasonable doubt at the hearing under section 3593, constitutes an attempt to kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing death of the President; or

"(c) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—

"(1) intentionally killed the victim;

"(2) intentionally inflicted serious bodily injury that resulted in the death of the victim; or

"(3) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act;

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified; provided that no person may be sentenced to death who was less than eighteen years of age at the time of the offense.

§ 3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(2) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; and

"(3) the defendant was an accomplice whose participation in the offense was relatively minor.

The jury, or if there is no jury, the court, shall consider whether any other mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the defendant has previously been convicted of another offense involving espionage or treason for which either a sentence of life imprisonment or death was authorized by statute;

"(2) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; and

"(3) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (b) or (c), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property in interstate commerce by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)) (aircraft piracy);

"(2) the defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute;

"(3) the defendant has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person;

"(4) the defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense;

"(5) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

"(6) the defendant procured the commission of the offense by payment, or promise of payment, or anything of pecuniary value;

"(7) the defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value;

"(8) the defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism; or

"(9) the defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, the Vice-President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if he is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he is engaged in the performance of his official duties;

"(ii) because of the performance of his official duties; or

"(iii) because of his status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists:

"§ 3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter; and

"(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provision of Rule 32(e) of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government. A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighted by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The attorney for the government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor, concerning which information is presented at the hearing, required to be considered under section 3592. The jury must find the existence of a mitigating or aggravating factor by a unanimous vote, although it is unnecessary that there be a unanimous vote on any specific mitigating or aggravating factor if a majority of the jury finds the existence of such a specific factor.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(a), an aggravating factor required to be considered under section 3592(b) is found to exist; or

"(2) an offense described in section 3591 (b) or (c), an aggravating factor required to be considered under section 3592(c) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

"§ 3594. Imposition of a sentence of death

"Upon a finding under section 3593(e) that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding under section 3593(e) that a sentence of death is not justified, or under section 3593(d) that no aggravating factor required to be found exists, the court shall impose any sentence other than death that is authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without parole.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of an aggravating factor required to be considered under section 3592;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"§ 3597. Use of State facilities

"A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.";

(b) by repealing sections 3566 and 3567;

(c) in the chapter analysis of part II, by adding the following new item after the item relating to chapter 227:

"228. Death sentence ..... 3591";

and

(d) in the section analysis of chapter 227, by amending the items relating to sections 3566 and 3567 to read as follows:

"3566. Repealed.

"3567. Repealed.".

SEC. 2. Section 34 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 3. Section 794(a) of title 18 of the United States Code is amended by changing the period at the end of the section to a comma and by adding immediately thereafter the words "except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.".

SEC. 4. Section 844(d) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 5. Section 844(f) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 6. Section 844(i) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 7. The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

SEC. 8. Section 1116(a) of title 18 of the United States Code is amended by striking the words "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

SEC. 9. Chapter 51 of title 18 of the United States Code is amended—

(a) by adding at the end thereof the following:

§ 1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, murders another shall be punished by death by life imprisonment without the possibility of parole.

"(b) For the purposes of this section—

"(1) 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death;

"(3) 'murders' means committing first degree or second degree murder as defined by section 1111 of this title."; and

(b) by amending the section analysis to add:

"1118. Murder by a Federal prisoner.".

SEC. 10. Section 1201 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 11. The last paragraph of section 1716 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the paragraph.

SEC. 12. Subsection (c) of section 1751 of title 18 of the United States Code is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to kill the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing death of the President.".

SEC. 13. The second to the last paragraph of section 1992 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 14. Section 2031 of title 18 of the United States Code is amended by deleting the words "death, or".

SEC. 15. Section 2113(e) of title 18 of the United States Code is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof the words "or if death results shall be punished by death or life imprisonment".

SEC. 16. Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), is amended by striking subsection (c).

SEC. 17. The provisions of chapter 228 of title 18 of the United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

SEC. 18. Section 1203 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 19. Subsection (a) of section 1952A of title 18 of the United States Code is amended by deleting the words "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting in lieu thereof "and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both".

SEC. 20. Paragraph (1) of subsection (a) of section 1952B of title 18 of the United States Code is amended to read as follows: "for murder, by death or life imprisonment, or a fine of not more than $250,000, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine of not more than $250,000, or both;".

SEC. 21. Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by inserting a new subsection (c), as follows:

"(c) Any person who engages in a continuing criminal enterprise shall be fined in accordance with subsection (a) and imprisoned for life or sentenced to death if, while so engaged, such person causes the death of another person."

S. 278

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 "Exclusionary Rule Limitation Act of 1987".

SEC. 2. (a) Chapter 223 of title 18, United States Code, is amended by adding the following two sections:

§ 3508. Limitation of the fourth amendment exclusionary rule

"Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was undertaken in an objectively reasonable belief that it was in conformity with the fourth amendment. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable belief, unless the warrant was obtained through intentional and material misrepresentation.

§ 3509. General limitation of the exclusionary rule

"Except as specifically provided by statute or rule of procedure, evidence which is otherwise admissible shall not be excluded in a proceeding in a court of the United States on the ground that the evidence was obtained in violation of a statute or rule of procedure, or of a regulation issued pursuant thereto.".

(b) The table of sections of chapter 223 of title 18, United States Code, is amended by adding at the end thereof:

"3508. Limitation of the fourth amendment exclusionary rule.

"3509. General limitation of the exclusionary rule.".

By Mr. SPECTER (for himself and Mr. DODD):

S. 280. A bill to provide, through greater targeting, coordination, and structuring of services, assistance to strengthen severely economically disadvantaged individuals and families by providing greater opportunities for employment preparation which can assist in promoting family economic stability; to the Committee on Labor and Human Resources.

By Mr. SPECTER (for himself and Mr. DODD):

S. 281. A bill to amend part A of title IV of the Social Security Act to promote the transition of severely economically disadvantaged individuals to unsubsidized employment; to the Committee on Finance.

WELFARE REFORM LEGISLATION

Mr. SPECTER. Mr. President, today, my distinguished colleague Senator DODD and I are reintroducing major welfare reform legislation which will help severely disadvantaged families get off the welfare rolls and place them on the payrolls. The two-part initiative, the "Opportunities for Employment Preparation Act" and the "Aid to Families and Employment Transition Act" better utilizes existing Job Training Partnership Act [JTPA] funds and Aid to Families With Dependent Children [AFDC] and Medicaid benefits to provide an employment preparation and supportive service package to enable long-term welfare recipients to obtain jobs and support their families.

These bills were first introduced on June 19, 1986, as S. 2579, the "Opportunities for Employment Preparation Act" and S. 2579, the "Aid to Families and Employment Transition Act." Congressman JACK KEMP introduced companion legislation (H.R. 5064 and H.R. 5065) in the House on the same day.

These bills are an outgrowth of work which Rev. Leon H. Sullivan, founder and chairman of Opportunities Industrialization Centers of America [OIC], and I began in the 97th Congress when I introduced and gained passage of legislation to help provide literacy and job training for severely disadvantaged youth. That legislation is now title IIIA of the Carl Perkins Vocational Education Act, and represents the first time in history that community based training organizations were given a specific title in vocational education legislation.

Following the success of title IIIA. Reverend Sullivan and I discussed his concerns about the need for welfare families to receive job training during a meeting in my office on February 4, 1986. I offered my assistance in addressing this problem, and together with Reverend Sullivan and Mr. John E. Jacob, president and chief executive officer of the National Urban League, developed the legislation which Senator DODD and I are reintroducing today.

Mr. President, although the Job Training Partnership Act has had notable success in providing job training, it is an acknowledged fact that programs often train and place those who are easiest to serve, and who often would have obtained jobs without Government intervention. Thus, those most in need, those most at risk for long-term Government dependency, often are left untouched by the job training opportunities that exist.

While the most severely economically and educationally disadvantaged remain unserved, millions of Federal Job Training Partnership Act funds remain unspent. As of June 30, 1986, $750 million in JTPA title IIA funds and $220 million for training dislocated workers had not been spent. Already some of my colleagues are viewing the job training carryover as a means of helping to reduce the deficit. Some of us would like to believe that

these unspent funds are not needed for job training purposes. I vehemently disagree. What is needed is an outreach and feeder mechanism to enable us to better reach the hard-core disadvantaged. This is the purpose of the "Opportunities for Employment Preparation Act."

Under this legislation, the Job Training Partnership Act would be amended to allow community-based training organizations such as Opportunities Industrialization Centers of America [OIC], the National Urban League, 70,001, National Puerto Rican Forum, National Council of La Raza, Ser-Jobs for Progress, and the United Way of America, to conduct outreach efforts targeted to AFDC recipients of longer than 2 years and to two parent families where the principal breadwinner has not had steady employment for over 2 years. Potential trainees who need it would participate in a pretraining program to provide them with the basic skills and orientation necessary to enable them to obtain maximum benefit from the education or training program they will enter. The pretraining services offered will include:

Skills assessments for participants.

Registration with the Bureau of Employment Security.

An 8-week internship for participants with no work experience, or who wish to try a different type of work setting. The internship is preceded by a structured job search and interview process.

Educational preparation and basic skills development to increase literacy and computational skills.

Programs to strengthen the attitude and motivation of youth toward the world of work.

Parenting, home and family living skills and nutrition and health education targeted to teenage parents.

Guidance and counseling to assist particiants with occupational choices and with the selection of employment preparation programs.

Counseling and information and referral to assist participants experiencing personal or family problems, which may cause severe stress, and lead to poor performance, or dropping out of training.

Following the pretraining program, participants will be able to go on to employment training, including vocational and adult education, or community college programs. Another skills assessment will be conducted, and the participant can then participate in on-the-job-training [OJT] and other appropriate services available under the Job Training Partnership Act.

The Aid to Families and Employment Transition Act amends title IV of the Social Security Act to provide that AFDC beneficiaries making the transition to unsubsidized employment shall have the first year of salary excluded from determination of AFDC eligibility. Further, AFDC benefits will not be forfeited in a family where a second parent returns to the household, if at least one parent participates in an employment preparation program.

In addition, it provides that persons making a transition to unsubsidized employment shall maintain Medicaid coverage until eligible for an employer health plan, or for a period not to exceed 15 months.

Mr. President, our country is engaged in a vigorous debate about the future of Federal welfare policy. Many solutions are being offered to help better the lives of long-term Government dependents. I submit that, in the short and long run, the most meaningful way to help the poor is to provide them with the education, training and transition support services that will enable them to embrace the work ethic, earn their way with jobs and skills, and live in dignity as full members of our society.

In 1987, an estimated 4 million families will receive AFDC. Many of these families will be on our welfare rolls for 8 or more years unless they are given the opportunity to receive the training they need to compete for jobs. Easing the transition from welfare to the workplace will help us move more families off the rolls more quickly and, I am convinced, ultimately more than make up for any initial expense of these changes.

It is concern for our most severely disadvantaged families which has prompted me to develop and introduce this legislation. Together with Reverend Sullivan, Mr. John Jacob, and Dr. Douglas Glasgow, vice president of the National Urban League, a package has been developed which can serve as a cornerstone of Federal efforts to prepare the poor for jobs and self-reliance.

Our Nation cannot afford the long-term costs of failing to create training and employment opportunities for the poor. The only way America will be able to continue to compete in the world's markets is if it makes maximum use of a productive, well-trained work force. A better trained, more highly skilled work force would mean spending fewer Federal dollars on welfare programs while returning higher tax revenues.

Mr. President, the task before us is clear. We must provide greater opportunities for training, embrace policies which help create employment, and strengthen efforts to equalize opportunities so that poor families can get a hand up instead of being forced into receiving the traditional handout. This legislation which Senator DODD and I are introducing today is a vital first step in that process.

Mr. President, I ask unanimous consent that my statement, a letter summarizing the legislation, a news release indicating private sector support, a newspaper article discussing the legislation, and the text of the bills be printed in the RECORD at this point.

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

S. 280

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 "Opportunities for Employment Preparation Act of 1987".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of the amendments made by this Act to provide, through greater targeting, coordination, and structuring of services, assistance to strengthen severely economically disadvantaged individuals by providing greater opportunities for employment preparation which can assist in promoting family economic stability.

DEFINITION

SEC. 3. Section 4 of the Job Training Partnership Act (hereafter referred to in this Act as the "Act") is amended by adding at the end thereof the following new paragraph:

"(29) The term 'severely economically disadvantaged' means individuals—

"(A) who receive benefits under a State plan approved under part A of title IV of the Social Security Act, relating to aid to families with dependent children, for a period of 2 years or more prior to the date on which the determination is made and includes individuals who are parents of young children who have left the household of the family, lived separately from the family, and returned to the family unit;

"(B) who have been unemployed or who have been without steady employment for a period of 2 years or more prior to the date on which the determination is made; and

"(C) who are not eligible under title III of this Act."

TARGETED ASSISTANCE FOR SEVERELY ECONOMICALLY DISADVANTAGED INDIVIDUALS AUTHORIZED

SEC. 4. (a) Section 104(b) of the Act is amended—

(1) by redesignating clauses (7), (8), (9), and (10) as clauses (8), (9), (10), and (11), respectively; and

(2) by adding after clause (6) the following new clause:

"(7) a description of the procedures and methods of carrying out the outreach and training activities for severely economically disadvantaged individuals required by section 109;".

(b) Part A of title I of the Act is amended by adding at the end thereof the following new section:

"TARGETED ASSISTANCE FOR SEVERELY ECONOMICALLY DISADVANTAGED INDIVIDUALS

"SEC. 109. (a) The job training program in each service delivery area shall establish a feeder system utilizing community based organizations such as OIC, the National Urban League, the National Council of La Raza, 70,001, National Puerto Rican Forum, Ser-Jobs for Progress, the United Way of America, and other community-based organizations of demonstrated effectiveness to conduct outreach and provide preemployment services to severely economically disadvantaged individuals in order to provide

such individuals greater access to and benefit more fully from employment opportunities and placement available under this Act and to prepare such individuals for gainful employment.

"(b) The outreach and feeder system established by subsection (8) of this subsection shall include—

"(1) skills assessment for participants and assistance to participants with respect to the selection and referral for education and training;

"(2) registration with the Bureau of Employment Security;

"(3) preemployment training including an internship not to exceed 8 weeks;

"(4) employment training including vocational adult, and community college and other postsecondary programs; and

"(5) on-the-job training and other employment preparation activities available under this Act.

"(c)(1) Preemployment training required by clause (3) of subsection (b) shall include structured search for an internship with a private organization or public agency. Each participant must search and interview for placement from a list of options provided by community-based organizations. The internship shall be designed for program participants with no previous work experience, or who need or wish to try a different type of work setting.

"(2) preemployment services under subsection (b) provided may include—

"(A) educational preparation and basic skills development to increase literacy and computational skills:

"(B) programs designed to strengthen the attitude and motivation of youth to achieve and succeed in the world of work;

"(C) guidance and counseling to assist participants with occupational choices and with the selection of employment preparation programs;

"(D) counseling and information, referral, and follow-up to assist participants experiencing personal or family problems, which may cause severe stress, and lead to poor performance or dropping out of the program; and

"(E) parenting, and home and family living skills, including nutrition and health education, targeted to teenage parents.

"(3) The outreach and preemployment services required by this section may be offered in any service delivery area pursuant to an arrangement that includes one or more community based organizations and appropriate State and local public agencies.

"(d) Participants in training activities under this section shall receive supportive services, including child care and transportation assistance, notwithstanding any other provision of this Act relating to cost limitations or expenses.

"(c) The performance standards for the program authorized by this section shall be the performance standards prescribed for youth under section 106(b)(2) of this Act.

"(f) Notwithstanding any other provision of law, unless enacted in the express limitation of this subsection, the amount of any benefits received under this Act (including scholarships and educational assistance) by a participant in the program authorized by this section shall not result in the loss of or the decrease in any other benefits (including AFDC and food stamps) to which the participant is entitled under any other provision of Federal law.".

"(c) Section 121(b) of the Act is amended—

"(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

"(2) by adding after paragraph (2) the following new paragraph:

"(3) The plan shall include a description of the agreement between the private industry council, the public welfare or public assistance agency of the State, and the designated community based organizations involved in the targeted assistance required by section 109, together with the manner in which the State will coordinate vocational education, adult education, other training programs authorized by Federal law, and employment preparation programs to benefit the participants of the program authorized by section 109.".

S. 281

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 "Aid to Families and Employment Transition Act of 1987".

SEC. 2. AFDC EARNED INCOME DISREGARD FOR SEVERELY ECONOMICALLY DISADVANTAGED INDIVIDUALS.

Section 402(a)(8)(A) of the Social Security Act is amended.

(1) by striking "and" at the end of clause (vi); and

(2) by inserting after clause (vii) the following:

"(viii) notwithstanding clause (v), shall disregard—

"(I) the income of any child, relative, or individual specified in clause (ii) that is derived from a program established pursuant to the amendments made by the Opportunities for Employment Preparation Act of 1987, and

"(II) the income of an individual specified in subclause (I) that is derived from unsubsidized employment obtained pursuant to the program specified in such subclause, for the 12-month period following the initial placement of the individual, and".

SEC. 3. MEDICAID COVERAGE FOR SEVERELY ECONOMICALLY DISADVANTAGED INDIVIDUALS.

Section 402(a)(37) of the Social Security Act is amended—

(1) by inserting "(A)" after "(37)"; and

(2) by adding at the end the following:

"(B) provide that, in any case where a family would cease to receive aid under the plan but for subclause (II) of paragraph (8)(A)(viii), such family shall continue to be eligible for medical assistance under title XIX for the period beginning with the first day of the 12-month period specified in such subclause and ending with the earlier of (i) the date on which the family becomes eligible to participate in a group health plan maintained by an employer, or (ii) the last day of the 3-month period immediately following such 12-month period.".

SEC. 4. AFDC COVERAGE FOR CERTAIN 2-PARENT FAMILIES.

Section 402 of the Social Security Act is amended by adding at the end the following:

"(i) The term 'dependent child' shall, notwithstanding section 406(a), include a needy child who meets the requirements of section 406(a)(2), who lives with both parents, and at least one of the parents is a participant in a program established pursuant to the amendments made by the Opportunities for Employment Preparation Act of 1987 or is in the 12-month period specified in subsection (a)(8)(A)(viii)(II).".

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall become effective on the date of the enactment of this Act.

(b) EXCEPTION.—If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this Act to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending more than 30 days after the date of the enactment of this Act. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

NATIONAL URBAN LEAGUE, INC.,
New York, NY, July 14, 1986.

DEAR COLLEAGUE: At the invitation of Senator Arlen Specter (R-PA), the National Urban League (NUL) and the Opportunities Industrialization Center of America (OIC) became primary authors to a new legislative initiative designed to better target and coordinate needed employment related services to the long term employed and long term AFDC (Aid to Families with Dependent Children) recipients. On June 19, 1986, this welfare reform initiative was introduced as a package of two bills in both the Senate and House. The bills are entitled: the Opportunities for Employment Preparation Act of 1986 (S. 2578)/(H.R. 5064), and the Aid to Families and Employment Transition Act of 1986 (S. 2579/(H.R. 5065). Senator Specter was joined by Senator Moynihan (D-NY) in introducing the two bills in the Senate, and Congressman Kemp (R-NY) was joined by Congressman Gray (D-PA) in introducing the companion bills on the House side.

REFORM FROM A COMMUNITY BASED PERSPECTIVE

As community based service organizations, the National Urban League and the Opportunities Industrialization Centers of America are well acquainted with the types of barriers (such as lack of education, training, support services) that can prevent individuals and families from establishing a solid base in our country's economic infrastructure. Our organizations share the belief that families and individuals who face multiple roadblocks to economic self sufficiency should benefit from programs that are aimed at reducing barriers to labor market entry. We believe this new legislative initiative will improve the existing capability of the Job Training Partnership Act (JTPA) and the AFDC program in reaching those families and individuals most in need of services, and accelerate their entry into employment.

WHAT YOU CAN DO

The NUL and OIC urge your support of the Opportunities for Employment Preparation Act of 1986 (S. 2578) (H.R. 5064) which has been referred to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor,

and the Aid to Families and Employment Transition Act of 1986 (S. 2579) (H.R. 5065) which has been referred to the Senate Committee on Finance and the House Committee on Ways and Means, respectively. Please contact Senators and Representatives from these committees and inform them of your support.

Activate your national network by contacting your members and urging them to let their respective Senators and Represenatives know of their support for these bills.

Attached, please find a comprehensive information packet on the two bills. For further assistance, please contact Bob McAlpine, Congressional Liaison for the National Urban League at (202) 898-1604, or Maurice Dawkins, Director of OIC Government Relations at (202) 775-8405.

Sincerely,

JOHN E. JACOB,
President and Chief Executive Officer, National Urban League.
REV. LEON H. SULLIVAN,
Chairman, OIC of America.

CHESEBROUGH-POND'S URGES PRIVATE SECTOR SUPPORT FOR WELFARE REFORM LEGISLATION

WASHINGTON, DC, September 25.—Chesebrough-Pond's Inc. today called upon major corporations and business groups to lend their support to federal legislation that would reform the nation's welfare program.

At a breakfast briefing here, Chesebrough executives outlined the objective of legislation introduced by Senators Arlen Specter and Patrick Moynihan and Congressmen Bill Gray and Jack Kemp. The bills target the severely economically disadvantaged and set up a training program supported by welfare benefits to get these people into productive jobs.

In appealing for private sector support, Kenneth R. Lightcap, Vice President of Public Affairs and Investor Relations for Chesebrough, said, "This proposed legislation establishes a plan to put people on payrolls and take them off the welfare roll. To succeed, it will need backing from the business community and that is what we're trying to bring about. Community-based organizations such as the National Urban League and Opportunities Industrialization Centers will play a key role in the program as well," he added.

"It is significant and highly important," Lightcap said, "that these proposals will not cost taxpayers more. The program will not be putting more people on welfare; instead, we will be dealing more effectively in moving current recipients to unsubsidized employment."

A major feature of the legislation removes the disincentive for welfare recipients to take employment. Current benefits, such as food stamps, would be continued for recipients. In addition, aid to families with dependent children would be continued even with an unemployed able-bodied male in the household as long as one parent is involved in the training program.

"To the contrary, current policies promote the disintegration of the family unit by denying these benefits," Lightcap said.

Senators Specter and Moynihan introduced S. 2578 and S. 2579 on June 19 and companion bills were introduced in the House of Representatives by congressmen Kemp and Gray the same day. The bills were referred to committee and are awaiting action.

Chesebrough-Pond's, headquartered in Westport, Connecticut, is a diversified manufacturer and marketer of products for the health an well-being of families throughout the world. Chesebrough's Consumer Products Group includes such popular brand names as Ragu, Prince, Bass, Vaseline, Pond's, Intensive Care, Cutex, Cachet, Wind Song, Aviance, Q-Tips, Aziza and Rave. Chesebrough's Chemical Products Group (Stauffer Chemical Company) manufactures and markets a wide range of agricultural and food products, as well as chemical products and services. Worldwide sales for 1985 were approximately $2.7 billion.

[From the Pittsburgh Post Gazette June 17, 1986]

INCENTIVES—SPECTER'S PLAN OFFERS HAND TO WELFARE RECIPIENTS

(By Daniel Weiss)

WASHINGTON.—Sen. Arlen Specter announced yesterday he will introduce legislation that would offer welfare recipients basic education courses and economic incentives to join job training programs.

The legislation, to be introduced today, targets recipients of Aid to Families with Dependent Children, who the Philadelphia Republican said are discouraged by present regulations from seeking work.

Costs of the bill would be paid by unused funds in the Job Training Partnership Act, the senator said.

The Rev. Leon Sullivan, founder of the Opportunities Industrialization Centers in Philadelphia, an urban assistance group, joined Specter in unveiling the bill, calling it an "ominous program for welfare reform in the country."

The measure would allow AFDC recipients to receive payments through their first year of new employment and would continue Medicaid payments for up to 15 months—until the worker was covered by his employer's health plan.

Pennsylvania's welfare system would change slightly under the bill. The state already offers medical payments for up to nine months to former welfare recipients, said Joe Kintz spokesman for the Pennsylvania Department of Public Welfare.

Also, Pennsylvania requires that welfare recipients who start work lose their payments when their combined incomes and resources exceed the state's economic eligibility criterion. Specter's bill would continue payments for one year regardless of the recipient's income.

Specter also said the measure would strengthen two-parent households in allowing parents to live together and continue receiving AFDC, as long as one parent is in a job training program or working.

Under current law, only households with one parent qualify for AFDC. Pennsylvania and 25 other states already allow the parents to live together and receive payments, as long as their combined earnings and resources are still below the state's poverty level.

In Pennsylvania, a family of four earning $1,339 a month or less qualifies for welfare, Kintz said. In March 1986, there were 193,435 housholds—590,514 individuals—on AFDC in the state.

AFDC, a cost-sharing program between the federal government and the states, costs Pennsylvania more than $29 million a year, while the federal government's share is more than $37 million a year, according to Welfare Department figures.

In addition to providing economic incentives, Specter's bill directs community groups to teach basic skills like reading, writing and mathematics to people before they go into job training programs. The measure also directs the groups to offer child care for working mothers.

By Mr. RIEGLE:

S. 282. A bill to amend the Internal Revenue Code of 1986 to permit individuals to receive tax-free distributions from an individual retirement account or annuity to purchase their first home, and for other purposes; to the Committee on Finance.

FIRST-TIME HOMEBUYER OPPORTUNITY ACT

● Mr. RIEGLE. Mr. President, I am introducing today the First-Time Homebuyer Opportunity Act, which I believe will bring homeownership within the reach of thousands of additional American families. This bill would allow people to use funds in their individual retirement accounts to help them purchase a first home.

The dream of owning their own home has motivated generations of American families. For most Americans, homeownership has been the only realistic way to build family assets and provide a nest egg for their retirement years. I believe homeownership contributes enormously to the quality of our community life and the stability of our society.

A welcome drop in interest rates in recent years has created a new surge in home buying. That is a development we all applaud. Realtors and mortgage lenders have rarely been busier. The homebuilding industry has had reason for new confidence. Thousands of families have taken this opportunity to improve the quality of their housing. All of that is good for homeowners and good for the economy.

The glare of this good news tends to obscure the fact that Americans who don't already own a home remain at a significant disadvantage. And that disadvantage will widen now that interest rates are beginning to raise home prices. Families who sell one home when they go to buy another can use their tax-deferred capital gains to help with the downpayment and other closing costs. But a young family that is seeking to buy their first home often finds that the benefits of lower interest rates are largely offset by higher housing prices, downpayments, and closing costs.

Mr. President, I believe it is in the national interest to bring homeownership within the reach of all American families who want it and are willing to work for it.

Unfortunately, the country's recent performance on homeownership is not as good as it should be or even as good as it has been in the past. Here is some evidence.

First, the rate of homeownership has been declining every year since 1980 after having previously risen

steadily since the end of the Second World War. The percentage of young families between the ages of 25 and 29 who own their own home fell from 43.1 percent in 1975 to 34.3 percent in 1985. For households in the 30 to 34 age group, the homeownership rate fell from 62.3 percent to 53.6 percent during the same period.

Second, families are having to wait longer and longer before they can buy their home, the age of a typical first-time home buyer has been rising at a disturbing rate for several years.

Third, families buying their first home are having to rely more heavily on a second income to make homeownership possible. In 1985, 68.7 percent of all first-time homebuyers relied on a second income, compared to 65.2 percent in 1983.

The U.S. League of Savings Institutions recently found that "in spite of the recent improvements in affordability, home ownership is becoming more difficult to achieve."

Mr. President, enactment of the First-time Homebuyers Act would provide important assistance to thousands of Americans who are still trying to buy their first home. The bill would permit individuals to withdraw funds from their individual retirement accounts or annuities without penalty if the funds are used to buy a principal residence within 90 days of the withdrawal.

This bill is designed to increase savings for homeownership and to provide the kind of assistance that is most important to first-time homebuyers. An individual could not withdraw funds under my bill unless they had been invested in the IRA for at least 12 months. The total amount of homeownership withdrawals for each individual could not exceed $10,000 in the aggregate across all taxable years. An individual's tax basis in a property would be reduced by the amount of any withdrawal. For reasons of administrative feasibility, those who have not had an ownership interest in a principal residence for 3 years would be considered first-time homebuyers.

Impact of new tax bill targeting the benefits on middle income people.

Mr. President, the Riegle bill places no new burden on the U.S. Treasury. Its effect would be to make investment in a first home a permitted form of IRA investment. Individuals already have wide latitude in investing their IRA funds: stocks, bonds, real estate investment trusts, certificates of deposit and other forms of financial assets. It is ironic that investment in a person's own home is not already a permitted form of investment since homeownership has long proven to be one of the best ways for most Americans to build up assets for their retirement years.

The Riegle bill uses a proven incentive to save for home investment. It would give American first-time homebuyers help that has for many years been available to people in Germany, Canada, Japan, France, the United Kingdom and other industrial nations.

Mr. President, I believe the bill I introduced today provides a straightforward, efficient way to enable many more Americans to share in the dream of homeownership. I believe the bill deserves prompt consideration in the Senate, and I invite my colleagues to cosponsor it.●

By Mr. MOYNIHAN:

S. 283. A bill to require the General Accounting Office to conduct a study of the benefits and costs of modifying coverage under the Medicare Program to include different levels of extended care; to the Committee on Governmental Affairs.

MODIFIED COVERAGE OF EXTENDED CARE SERVICES UNDER MEDICARE

● Mr. MOYNIHAN. Mr. President, in the early 20th century, shorter lifespans made unnecessary many of today's specialized institutions for the care of the elderly and chronically ill. In 1900, only about 1 out of every 25 Americans reached the age of 65. Sick or disabled older Americans could usually depend on assistance from family, friends, or religious or charitable organizations.

Today, 11 percent of the Nation's population is over age 65. By the year 2030, the United States is projected to have about 55 million elderly, more than twice as many as today. Among the elderly, the proportion of the "old-old"—age 75 plus—will increase even faster than the "young-old"—aged 65-74. Today, 38 percent of those age 65-plus are also over age 75; more than 9 percent are age 85-plus. By the year 2000, the age 75 group will constitute 45 percent and those age 85-plus will represent 12 percent of those over age 65.

These population shifts will have dramatic implications for future public policy. As the number of older Americans increases, so too, will the cost for long-term care for the elderly, particularly institutional care.

The Medicare Program has been the primary provider of health-care services for the elderly and disabled. However, Medicare is generally not regarded as a program providing significant support for long-term care. Its coverage is focused primarily on acute care, particularly hospital and surgical care. For example part A covers up to 100 days of skilled nursing facility [SNF] services following a hospital stay of at least 3 consecutive days. The benefit is further limited in that the patient must be in need of skilled nursing care on a daily basis for treatment related to a condition for which he or she was hospitalized. The SNF benefit is subject to a daily patient copayment after the 20th day of the care. The program pays for neither intermediate care facility [ICF] services—care less intense than SNF level care—nor custodial care in a nursing home. Medicare does pay for some community-based long-term care services, primarily home health services.

A very limited Medicare SNF benefit coupled with the problem of inappropriate placement in many nursing homes, has reduced the effectiveness of this service to beneficiaries. Conservative estimates are that between 10 and 40 percent of those in institutions are being served at inappropriate levels of care. Usually they do not need the highly skilled level of care provided in a hospital or SNF as opposed to an ICF. Costs associated with keeping long-term care patients occupying a high cost hospital, rather than a lower cost nursing home bed can be very high. Several years ago, two counties on Long Island, NY, with 500 patients a day backlogged in hospitals, figured the annual waste at $25 million.

Despite the fact that many nursing home residents may be inappropriately placed according to medical criteria, most observers feel it would be difficult to deinstitutionalize large numbers of current residents. About 50 percent of nursing home patients are diagnosed as senile; nearly 50 percent of those in institutions lack any family or friends to help them live in the community.

Mr. President, this legislation simply asks the Comptroller General of the United States to conduct a study of the benefits and costs of modifying coverage under the Medicare Program to include different levels of extended care; and to report the results of the study to the Congress prior to December 31, 1987.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 283

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

SECTION 1. STUDY OF MODIFIED COVERAGE OF EXTENDED CARE SERVICES UNDER THE MEDICARE PROGRAM.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the benefits and costs of modifying coverage under the Medicare program to include different levels of extended care. The study shall evaluate—

(1) the benefits and costs of providing coverage for intermediate care facility services and other health-related facility services, taking into account the effect of such coverage on the utilization of other services, the effect on the Medicaid program and social service programs, and the appropriateness of various numbers of days of care to be covered;

(2) the types of patients (by diagnosis, age, and health status) who would benefit from such coverage; and

(3) possible payment methodologies for different levels of extended care, including the effect on possible capitated payment systems for extended care.

(b) REPORTS.—The Comptroller General shall report the results of the study required by subsection (a) to the Congress prior to December 31, 1987.●

By Mr. KENNEDY (for himself, Mr. COHEN, Mr. BYRD, Mr. PACKWOOD, Mr. ADAMS, Mr. BAUCUS, Mr. BIDEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BURDICK, Mr. CHAFEE, Mr. CRANSTON, Mr. DANFORTH, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DURENBERGER, Mr. EVANS, Mr. GLENN, Mr. HARKIN, Mr. HEINZ, Mr. HOLLINGS, Mr. INOUYE, Mr. JOHNSTON, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. MATSUNAGA, Mr. METZENBAUM, Ms. MIKULSKI, Mr. MITCHELL, Mr. MOYNIHAN, Mr. PELL, Mr. PROXMIRE, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, Mr. STAFFORD, Mr. WEICKER, and Mr. WIRTH):

S.J. Res. 1. A joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men; to the Committee on the Judiciary.

EQUAL RIGHTS AMENDMENT

● Mr. KENNEDY. I welcome this opportunity on behalf of myself and 42 other Senators to reintroduce the equal rights amendment, and to reaffirm my strong commitment to making ERA part of the Constitution of the United States.

This year, America commemorates the 200th anniversary of the Constitution. In that document and the Bill of Rights, the Founders established a society based on the goals of individual liberty, equality, and the rule of law. In the two centuries since then, the American people have worked hard to advance the noble values embodied in the Constitution and make them a reality for all Americans. Although we can be proud of the strides we have made toward realizing the goals of the Constitution in these 200 years, it is a national disgrace that equality for women is not yet enshrined in our Constitution.

The ERA is the mandate for the Federal Government and for every State to ensure equality in both the law and the life of this land. The need for a constitutional guarantee of equal rights for all citizens remains compelling. Existing statutory prohibitions against sex discrimination have failed to give women basic educational and employment opportunities equal to men in our society. An unconscionable wage gap between the earnings of men and women persists in our work force. In 1984, the median earnings of year-round, full-time workers were $14,780 for women and $23,218 for men, with women earning approximately 64 cents for every dollar earned by men. Women with college degrees continue to earn less than males who have not completed high school, and most working women are clustered in 20 occupations at the lower end of the pay scale.

In education, the dismantling of the statutory protection against sex discrimination afforded by title IX of the Education Act Amendments of 1972, in the wake of the Supreme Court's decision in Grove City College versus Bell highlights the fragile nature of statutory prohibitions against discrimination. The impact of title IX on the growth and development of women's sports is one of the great success stories of the past decade. In 1972, there were 32,000 women participating in college athletics; by 1983 the number of female college athletes had soared to 150,000. During that same period, expenditures for women's athletic programs at NCAA schools increased from $4 million annually to $116 million.

Significant numbers of American women triumphed in the summer Olympics in Los Angeles—but the Supreme Court in Grove City has now stripped the mandate from the law which provided the opportunities for them to become Olympic champions. Since the Court's decision, the U.S. Department of Education's Office for Civil Rights has closed, limited, or suspended 79 cases of alleged sex discrimination in education and failed to initiate countless others. Nothing less than the broad constitutional prohibition against discrimination in ERA can effectively end the continued bias against women in our society.

Female heads of households continue to dominate the bottom rungs of the economic ladder because of inequities in laws governing the family. In 1984, one in four children was living with a single parent and in 95 percent of those cases, that parent was the mother. The July 1983 census report found that while the poverty rate for married couple families in 1982 was nearly 8 percent, it was almost five times that high for single-parent female-headed families. Studies reveal that in the first year after a divorce, the mother and children's living standard declined by 73 percent, while the father's living standard increased by 42 percent. And only one in four custodial parents, 95 percent of whom are women, receive regular child support payments. Significant numbers of American families will continue to live in poverty until women achieve economic equality in our society.

For older women, the economics of sex discrimination is the most devastating. Seventy-one percent of our Nation's elderly citizens living at or below the poverty level are women. The median annual income of elderly women in American is $5,000. These senior citizens must live their golden years in fear and deprivation. Their plight is a compelling argument for the adoption of the ERA.

The road to ratification will not be easy. But the extraordinary importance of the effort gives us new strength to see the struggle through to the final victory, so that as we begin our third century of constitutional government, the ERA will take its rightful place in the Constitution of the United States. A new Congress begins today—and a new battle to achieve this historic goal begins as well.

Mr. President, I ask unanimous consent that the text of the resolution may be printed in the RECORD.

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

S.J. RES. 1

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SECTION 3. This amendment shall take effect two years after the date of ratification.".●

● Mr. BIDEN. Mr. President, it is my pleasure to rise today to express my support for the equal rights amendment.

Mr. President, in the past few years, opponents of the equal rights amendment have waged an impressive campaign of intimidation in order to insure that the necessary 38 States would not ratify the ERA. A list of possible horrible consequences of the ERA, no matter how farfetched, have been paraded before the public to dissuade them of the ERA's merits.

Opponents of the ERA have even gone so far as to celebrate the so-called death of ERA. They are convinced that the issue of equal rights for women is dead. But Mr. President the equal rights amendment is very much alive, as alive as the ideal it represents: equal justice under law. ERA will remain alive until the inequalities between men and women in this society are redressed.

Mr. President, a number of my colleagues have spoken and will speak on the equal rights amendment, and the

various reasons its passage is so important. But I will be specific, if I may. I will address my comments to the equal rights amendment and the criminal justice system.

In some States a man finding his wife in the act of adultery may kill her on the spot and face a reduced charge of manslaughter. If the situation were reversed, however, and his wife had found him in a similar situation, she would not have the heat of passion defense available to her and would have to face trial on charges of murder.

Several States punish prostitutes but do not punish those who seek out and pay for their services.

The Mann Act prohibits transporting females across State lines for any immoral purpose but does not protect males in the same manner.

Many States have no statutory rape laws protecting young boys.

Many States have no law recognizing the possibility that forcible rape can be committed by a husband against his wife, regardless of the circumstances and the degree of coercion involved.

Many States still mandate intermediate sentences for women, while providing for minimum and maximum sentences for men. This is done in the belief that women are more amenable to rehabilitation than men. What this leads to, however, are situations in which women must serve either much longer or much shorter sentences than men for the same offense.

The U.S. Civil Rights Commission, in a report issued in December 1978, concluded that women in prison generally receive far less vocational training and job placement assistance than men; and that the training offered in women's prisons tends to be sex-stereotyped, tracking women into lower paying, more traditional jobs.

In each of the aforementioned cases, Federal and State laws have the effect of discriminating against one or the other of the sexes. And in each of these cases, the equal rights amendment could result in the elimination of discrimination, sometimes merely by changing one or two words in the law in order to make it "sex-neutral." The Mann Act could be made to hold members of both sexes accountable for their actions by treating both prostitutes and patrons in a sex-neutral manner.

Mr. President, it is simply not enough to claim that existing laws already give sufficient protection against sex discrimination. As we have seen, many existing laws actually embody such discrimination.

Nor is it enough to claim that the Constitution already provides sufficient protection against sex discrimination. In a recent opinion, Mr. Justice Powell wrote: "The Court has never viewed sex as inherently suspect or as comparable to radical or ethnic classification for the purpose of equal protection statutes." Let us further remember, Mr. President, that it took a half century following passage of the 14th amendment to grant women one of the most basic American rights of all: the right to vote. Remember, too, that for years after passage of the 14th amendment, many States still had laws prohibiting women from owning property and from holding certain Federal jobs. The history of the 14th amendment, with regard to equal protection of the sexes is, at best, uneven.

Mr. President, for all these reasons, I am looking forward with great anticipation to Senate action on the ERA. The American people, by an overwhelming majority, want to take positive action on this great commitment to equal justice. Let us listen to the people and take that action.●

● Mr. COHEN. Mr. President, over 60 years ago, in 1923, the first equal rights amendment was introduced in the Congress. The amendment stipulated that "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction."

Today, history will record another introduction of the same idea, that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Once again, we will repeat the words of Elizabeth Cady Stanton and Susan B. Anthony, that "Men, their rights and nothing more; women, their rights and nothing less."

Lord Macauley once described our Constitution as "all sail and no anchor." I disagree with him but I fear that we may find his description applicable to the fight for equal opportunities and equal rights for women. I believe that the Constitution is the anchor to the laws of the land. Perhaps more than that, it is the Constitution that charts when our laws should point. Without the ERA, whatever laws are passed to further the equality of women will be all sail and no anchor.

Since 1972, when Congress first approved the ERA, there have been many changes in the laws of the land, passed by Congress and State legislatures, or mandated by the courts. Yet, there is nothing in the Constitution to secure these laws. A persistent argument against the ERA has been that the amendment is unnecessary, that the rights which it would grant have been or are being granted by judicial decision or statute. Others have argued that expanded interpretations of the 14th amendment would guarantee the rights to women which the ERA would guarantee.

Perhaps the perception of legal necessity for ratification of the ERA has diminished since 1972. Yet what if we discover that the changes made over the last 15 years are like Lord Macauley's sails? Where will they take us when the tack changes? We must remember that despite changes in the law, what we seek through ratification of the ERA is the guarantee of fundamental rights, and the anchor for those laws.

This year marks the 200th anniversary of the Constitution of the United States. In February 1787, Congress authorized a Constitutional Convention to revise the Articles of Confederation. In May, the delegates to the Convention assembled in Philadelphia and began drafting the Constitution.

In one of Abigail Adams' letters to her husband John, she encouraged him to modify the British laws and customs that dictated the near total subordination of a woman's status and identity to that of the man. She asked him to "remember the ladies."

Something happened on the way to the Convention. Neither Adams, nor Jefferson, nor Madison, nor Hamilton seemed to remember the ladies; they were not included in the Constitution, and since then, for the past 200 years, American women have been struggling to secure the basic constitutional rights that are guaranteed to men, ones that we accept as self-evident.

It is written in the Declaration of Independence that "We hold these truths to be self-evident, that all men are created equal." Regrettably, we have learned through the painful experiences of history, including a bloody Civil War, that not all men were created equal in the eyes of the law and it took the 13th and 14th amendments to declare that the color of one's skin was not a rational or fair determination of one's rights.

I submit that the equal rights amendment will be no more redundant for women than the 13th and 14th amendments were for ethnic or racial minorities. The ERA is much more than a symbolic gesture, but if it were only symbolic it would be no less important. Our lives, our values, our social conscience are strongly influenced by symbols.

The heart of the matter is that not just for years, not just for generations, but for centuries, women have been regarded as being less deserving of full and equal rights and responsibilities. Because of their sex, a majority of the citizens in our society, regardless of their physical or intellectual ability, regardless of their potential for social contributions, are granted different rights, are stereotyped, and suffer greater prejudices.

Centuries of discriminatory policies have denied women the right to equal participation and responsibility in our society. Without passage of a constitutional amendment, these inequalities will continue. Women will not achieve equality under the law.

The need for the ERA is no less urgent today than it was over 60 years ago when the first equal rights amendment was introduced in Congress. Women are entitled to nothing less than full equality of rights in the Constitution. It is my fervent hope that we will see the equal rights amendment in place as the 27th amendment to the Constitution in the very near future.●

● Mr. PACKWOOD. Mr. President, we will soon celebrate on January 11, 1987, the birthday of one of this century's foremost fighters for women's equality: Alice Paul. Sixty-four years have passed since Ms. Paul first authored the equal rights amendment in 1923. Ms. Paul saw the ERA introduced in every session of Congress since then until it passed both Houses in 1972. Her own words best describe why Congress should approve the ERA:

A national amendment is the most effective way to establish equality of rights for men and women throughout the country. The amendment would, at one stroke, compel both Federal and State governments to observe the principle of Equal Rights since the Federal Constitution is the supreme law of the land.

Alice Paul spent her entire life fighting to win passage of the ERA. I am proud to carry on that struggle for equality by adding my name as a cosponsor to the very same ERA. There is no doubt in my mind that someday Ms. Paul's dream will be realized. It is a matter of time, not lack of dedication of principle, before the ERA becomes an integral part of the law of our land.

The Equal Rights Amendment is a fundamental statement of our democratic ideals. But, unfortunately, history demonstrates that fundamental rights have often been achieved only by virtue of long-term concerted efforts. The Magna Carta and our Bill of Rights are themselves the result of persistent struggles to guarantee basic rights and freedom from abuse by the Government. The more recent civil rights movement and the struggle for women's suffrage are poignant reminders that equal rights have not been readily granted to blacks or women. Though a difficult course, some goals have been achieved: Sixty years of tenacity and courage by women and men led to the adoption in 1920 of the 19th amendment granting women the right to vote.

The 64 years of struggle to pass the ERA has been just as long but like the struggle to pass the 19th amendment, it has endured and it will be successful. As 1987 marks the beginning of the celebration of the bicentennial of the U.S. Constitution, we must now more than ever continue the struggle with courage, diligence, and persistence until ERA is a reality. Women and men committed to equal justice will not rest until the equal rights amendment is adopted as part of the U.S. Constitution.

Women's roles in our society have changed. The clock will not turn back. The women of this country, and the men who care, will not tolerate a return to the time when women were relegated to the sidelines of our society—when blatant discrimination and barriers to equal opportunities deprived women of the chance to reach their full potential—whether in the home or in a career.

Much progress has been made in recent years toward ending discrimination against women: The Equal Pay and Equal Credit Acts, ensuring parity and pay and credit; the Civil Rights act, forbidding discrimination in employment; and title IX, ensuring equality in education. These are great achievements. But they are a piecemeal approach to an enormous problem. As laws directed to specified subjects, they cannot address comprehensively the many kinds of discrimination women face everyday. A constitutional amendment is the simple statement of equality for all.

The American Bar Association explained the need for ERA this way:

No ordinary statute can provide the bedrock protection assured by a constitutional amendment. No court decision can provide that protection, for the courts can interpret, but they may not amend the Constitution.

ERA is a self-evident principle of simple justice. It would not prevent anyone, man or woman, from living the kind of life they want. It would not force anyone, man or woman, to live according to rules dictated by others. ERA is the only permanent insurance that all of us can have an equal chance.

No time limit can be placed on the pursuit of equality and justice for all Americans. Opponents of ERA must realize that those of us who seek true equality for all people will never allow the equal rights amendment to die. We will not give up the struggle. We will not give in. We will continue until all Americans, and especially the 51.4 percent who are female, are truly "We are the People."●

● Mr. METZENBAUM. Mr. President, once again I am pleased to join as a cosponsor of the equal rights amendment to the U.S. Constitution.

There is no question that an ERA ought to be a part of the Constitution already. Over 50 percent of our population is female. Surely, as a nation committed to equal justice under law, we should include in our Constitution a guarantee against sex discrimination.

The ERA I am cosponsoring is a simple, straightforward assertion of basic human rights. It states:

Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

We cannot, with a clear conscience, continue to deny to over half our citizens this basic legal protection. This time we must be sure that the ERA is not only approved by the 100th Congress, but also ratified by the State legislatures.

We need an ERA. Those who say we don't haven't looked at the evidence.

There are still State and Federal laws which contain gender-based distinctions. Some of these laws have been held constitutional, and others remain on in our laws books. An ERA is necessary to completely eliminate the effect of these laws. An ERA would also require—and encourage legislative reform.

An ERA would also give women clear—and permanent protection against discrimination in public employment. Historically, both Federal and State Governments maintained explicit, gender-based discrimination in public employment. Though most explicit barriers have been stricken, these historical distinctions are perpetuated in informal and subtle ways. Patterns and practices of gender discrimination continue, reinforced and legitimized by past traditions and the stereotyping which has resulted from these traditions. In addition, most State and Federal employment discrimination laws do permit gender distinctions.

The result is that women are not only excluded from certain occupations but their income is diminished as well. Women have achieved some protection against employment discrimination through Federal and State laws, but some gender-based distinctions are permitted by employment discrimination laws. An ERA would outlaw all discrimination in public employment. Women would enjoy more employment opportunities and State and Federal Governments would more fully receive the benefit of their services and talents.

An ERA would also outlaw gender-based discrimination in public education. Historically, Federal, State, and local government required and/or approved explicit, gender-based distinctions in public education. Though few explicit barriers remain, patterns and practices of gender discrimination continue to exist.

Discrimination in education has adversely affected women. It has limited, and continues to limit, the intellectual and developmental possibilities of women. Discrimination in education has limited, and continues to limit, the employment and income opportunities of women and their families. The effects of past and present discrimination in education are manifested in the dramatic sex segregation of many oc-

cupations [1] and the substantially lower wages women receive.[2]

An ERA would make gender-based discrimination in education unlawful. An ERA would also empower Congress to eliminate the present and past effects of discrimination in eduction.

State laws have also restricted the economic and social opportunities of women through the maintenance of gender-based, stereotypical distinctions which have been traditionally embodied in family and marital law. An ERA would outlaw these distinctions as well.

A recent Carnegie Foundation report rejects the view that occupational segregation and income disparities have resulted solely from the free choices women make in an open market. On the contrary, says the report, the evidence "suggests * * * that women face discrimination and institutional barriers in their education, training, and employment. Often the opportunities some encounter * * * constrain their choices to a narrow set of alternatives." [3]

The status of women in our society is due in part to the historical inequality which governments have sponsored and condoned for many years.

An ERA would add to the Constitution a mandate to end sex discrimination, the roots of which reach deeply into every part of the society. A constitutional amendment will provide additional and needed power to eliminate root and branch, past and present sex discrimination from our society.

Some say that we can leave this business of sex equality to the courts. This we cannot do. I would be the first to say that the courts, especially the Supreme Court, have done a great deal to guarantee sex equality under our Constitution. But when I look closely at these decisions, I see a great deal of division over the role of the judiciary in guaranteeing sex equality. The judges are divided over the amount of scrutiny they ought to give gender classifications. As a result, the scope of constitutional protection against sex inequality seems to vary with the circumstances and with the composition of our courts. The passage of an ERA is necessary to clarify our Constitution and to give guidance to the judges. The passage of an ERA is necessary to make it clear that sex inequality is unconstitutional inequality.

The passage of the ERA would not eliminate the role of the courts in guaranteeing sex equality. The courts would be called upon to interpret the ERA, and to decide upon the constitutionality of statutes passed pursuant to the ERA. The courts would be an important partner in the fight to guarantee sex equality. But Congress and the American people must take the lead and enact a clear constitutionally required standard of sex equality.

Others say we ought to let Congress and the States guarantee sex equality by statute. But a statutory approach is simply not adequate.

For a variety of reasons, statutes which include gender-based distinctions remain on the books. States do continue to pass laws which permit gender-based distinctions. Perhaps these phenomena occur because women are not well represented in this legislature. In 1971, women were 2.8 percent of the Members of Congress; in 1986 they are still less than 5 percent. In 1971, women made up only 4.7 percent of the State legislatures, in 1985 they were merely 14.8 percent. But whatever the reason for the persistence of these statutes, an ERA would have a nullifying effect.

We cannot wait for legislatures to eliminate discriminatory statutes or to outlaw discriminatory State policies. Statutes alone are inadequate because the legislative process is affected by the perception that some gender-based distinctions are acceptable under the 14th amendment. As a result, legislators who support gender distinctions as a matter of policy draw comfort and solace from the state of constitutional uncertainty. An ERA would eliminate the perception that sex inequality is constitutionally acceptable. An ERA would require that legislatures set aside their personal feelings and enforce a clear constitutional mandate.

An ERA is also necessary because statutory guarantees currently in effect may be repealed by Congress and State legislatures. The viability of this legislation depends upon shifting legislative majorities while an ERA would embody in our constitution a permanent guarantee of sex equality.

Surely we all agree that women deserve to be equal partners in this constitutional enterprise. We have waited too long to take this giant step toward meaningful equal justice under law. Only a constitutional amendment will suffice.

What better way to celebrate the bicentennial year of our Constitution than to ratify the ERA. All over America we will celebrate our constitution, a constitution which has endured 200 years. We will talk about the giant strides we have made in constitutional governnance, and we will discuss the great strides we have made toward equal justice under law for all people. But what will the women of this country celebrate? A half century struggle to achieve constitutional equality? A half century of uncertain constitutional status? We have waited long enough. It is time that we included women as equal partners in this constitutional enterprise. Let's celebrate this bicentennial year by ratifying the ERA.

Thank you Mr. President.●

By Mr. INOUYE (for himself and Mr. MATSUNAGA):

S.J. Res. 2. Joint resolution to proclaim the month of March 1987 as National Social Work Month; to the Committee on the Judiciary.

NATIONAL SOCIAL WORK MONTH

● Mr. INOUYE. Mr. President, today Senator MATSUNAGA and I are introducing a joint resolution to proclaim the month of March 1987 as National Social Work Month.

Mr. President, our Nation's social workers have a long and proud tradition of reaching out to serve those in our society who are most in need. All too often, we take them for granted and forget the many years of training and the decades of community service which their profession personifies. It is, therefore, with a great deal of pleasure that we introduce this resolution today.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S.J. RES. 2

Whereas it is fitting that Americans express their appreciation to the many thousands of dedicated men and women in all parts of our Nation who have, with creativity, resourcefulness, and true professionalism, devoted their lives to helping those in need;

Whereas social workers stand on the front line in the battle against deprivation, dependency, and disease, providing services to the poor, support to the ill and vulnerable, and treatment to the mentally ill;

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[1] A 1985 Carnegie Report funded by the Department of Education and Department of Labor shows that about 50 percent of all men and women work in jobs which are essentially segregated. Women are still 98.8 percent of the secretaries, 75.4 percent of the elementary school teachers, 89.7 percent of the bookkeepers, 83.5 percent of the cashiers, 88 percent of the waiters, 72.7 percent of the sales workers, 95.9 percent of the registered nurses, and 87.8 percent of the nursing aides. Overall, among the 503 occupations listed in the 1980 census, 275 were greater than 80 percent male or female. New York Times, December 12, 1985, at A20, Col. 1.

[2] Thirteen percent of all families in this country live below the poverty level; 36 percent of all female headed households have income below the poverty level. U.S. Department of Commerce, Bureau of the Census Statistical Abstract of the United States 1985 455(1984).

The 1986 Carnegie Report also states that women still earn about 60 cents to every dollar earned by men. The report noted that in 1981, the median salary for women who worked full time throughout the year was $12,001, compared to a median male salary of $20,260. White women over 18 earned about 60 percent of the salary of white men, while black women earned about 54 percent of the salary of white men. The report states that sex segregation in occupations accounts for much of this disparity.

A Stanford study released this year found that the income of women doubled in the last quarter century, but their average hourly pay was still 50 percent less than that of men. Washington Post, April 18, 1986, at C11, Col. 1. This Stanford University researcher concluded that women's gains have been offset by other factors which contribute to economic well being. ". . . The net result is certainly no improvement over the last 25 years . . . everything that I said goes double for blacks." Id; 232 Science 459 (April 25, 1986).

[3] See footnote 1, supra.

Whereas the profession of social work, born in the turn-of-the-century social activism that spawned child labor laws, humane working environments, and voting rights for women, has evolved into a multifacted profession whose well-trained practitioners serve the public in schools, hospitals, nursing homes, government and private social service agencies, corporations, unions, private practice and other settings;

Whereas the National Association of Social Workers, recognizing that children are America's most important resource and that all our children should have the opportunity they need to succeed, has launched a public service campaign entitled "Children in Poverty—Is a Fair Chance Too Much to Ask?": Therefore be it

Resolved, That, in recognition of the many contributions of the social work profession to the welfare of our society, the Congress, by (Senate/House) joint resolution, authorizes and requests the President to proclaim the month of March 1987, as "National Social Work Month," and urges all Americans to take part in the profession's effort to enable all our children, including the poor, to be productive, contributing members of society.

By Mr. DOLE:

S.J. Res. 3. Joint resolution proposing an amendment to the Constitution relating to a Federal budget and tax limitation; to the Committee on the Judiciary.

FEDERAL BUDGET TAX LIMITATION

Mr. DOLE. Mr. President, at the beginning of this 100th Congress, it is important to focus on the issues that really matter. That's why for this Senator, it is extremely gratifying to have the opportunity to state the case for a balanced budget amendment to the Constitution of the United States. I know my colleagues are aware of my conviction that this constitutional change is essential to the long-term fiscal health of this Nation. I hope at least two-thirds of them will share my conviction: Unfortunately, that was not quite the case in the 99th Congress.

Mr. President, I am reintroducing the balanced budget amendment today in the form I prefer: Putting limits on both deficit spending and the tax burden. But I am open to other formulations, and this language certainly is not written in stone.

At the outset, let me acknowledge the extraordinary efforts of those who have kept this issue on the front burner over the years, led by my good friend STROM THURMOND. Senator THURMOND has worked tirelessly for this kind of fundamental fiscal reform: And he has been a true believer on this issue, literally for decades and he led the good fight for this amendment in the last Congress. The leadership of the distinguished ranking member of the Constitution Subcommittee, ORRIN HATCH, has been equally critical to this struggle. Senator HATCH has been constantly in the trenches on behalf of the balanced budget amendment and has not wavered for one moment from his devotion to this cause. In the 99th Congress together with his colleagues on the Judiciary Committee, DENNIS DECONCINI and HOWELL HEFLIN, Senator HATCH has forged a compromise that should have gained overwhelming bipartisan support; and I am sorry we did not prevail.

A SINGLE PRINCIPLE

Mr. President, the amendment I am introducing embodies a simple principle: In the normal situation, outlays of the Federal Government should not exceed receipts. This amendment just requires that to allow a deficit, Congress must, by three-fifths vote, authorize a specific excess of outlays over receipts. And to preserve a bias in favor of controlling spending we say that increases in the level of taxation cannot be passed except by a majority of all Members of the House and Senate; not just those present and voting.

This amendment presents the Congress with an historic opportunity. This proposed constitutional amendment would restore a proper balance to the way we conduct the fiscal affairs of the Government. It is not a quick fix, a response to a sudden shift in public opinion, or an attempt to evade our assigned duties under the Constitition with regard to decisions on taxing and spending. This is an idea that has been around for quite some time, but that has gained momentum in recent years because of the growing realization that there is something fundamentally wrong with the way we conduct fiscal policy.

Fundamental problems demand fundamental solutions. Those of us who have worked to develop a responsible constitutional amendment over the years have not taken lightly our duty to respect the form and the spirit of the basic law of the land. The language of this amendment is appropriate to the Constitution. It is not premised on any particular economic philosophy, but rather on the belief that Congress ought to make specific decisions on fiscal policy and be held accountable for those decisions. The amendment requires that we follow consistent procedures in setting fiscal policy, and establishes firm parameters to govern those procedures. That is all there is to it, and it is something we very much need.

A POPULAR MANDATE

The American people clearly are convinced that our fiscal house is not in order. Popular concern over runaway budgets is the reason why the drive for a constitutional convention to draft a fiscal restraint amendment is only a few States short of its goal. Polls consistently show that 70 to 80 percent of the American people support a balanced budget amendment. No one should maintain that we ought to take certain steps just because they are popular; but in this case it seems that the people are ahead of the politicians. They understand that congressional spending habits have to be put under a firm limitation, and that only new procedures, externally imposed, can do the job.

Mr. President, for these and many other reasons I urge my colleagues to support this amendment. The language of this proposal has been developed over a number of years. There has been a conscious effort to draft an amendment that could enjoy broad bipartisan support while having sufficient force to make a real difference in our national life. I believe this effort has been successful.

I would also suggest that this amendment, if approved by Congress, is not the end of the story. It is the beginning. Legislative implementation and compliance will be a complex and difficult matter—we should not deceive ourselves on that point. And we are learning from the experience of the Gramm-Rudman-Hollings law that enforcement is not a simple matter. But it can and will be done once we have a clear constitutional obligation to fulfill. We can demonstrate our willingness and ability to follow through on this amendment by moving swiftly to meet the fiscal 1988 targets for Gramm-Rudman.

Serious action on the deficit will convince the American people that we are serious about the budget problem and that this constitutional amendment will be given full force and effect. Our actions on each of these matters will have a major impact now and for years to come. Let us be sure that we make the right choice.

By Mr. D'AMATO (for himself and Mr. RIEGLE):

S.J. Res. 5. A joint resolution designating June 14, 1987, as "Baltic Freedom Day"; to the Committee on the Judiciary.

BALTIC FREEDOM DAY

● Mr. D'AMATO. Mr. President, I rise today to introduce a joint resolution, with the support of the distinguished Senator from Michigan, designating June 14, 1987, as "Baltic Freedom Day." The purpose of this measure is straightforward, and that is to express Congress' continued outrage over the Soviet Union's obdurate subjugation, oppression, and Russification of the Baltic people of Lithuania, Latvia, and Estonia.

June 14, 1987, will mark the 47th anniversary of the United States nonrecognition policy toward the Soviet's illegal occupation of Lithuania, Latvia, and Estonia. The steadfastness of this policy shall not diminish with time. Indeed, it will remain a sensitive issue of United States-Soviet relations until the Soviet Union releases its Red hand from the throats of these Baltic

States. I can only hope that we will continue to be as steadfast in this policy as our Baltic friends have been in their pursuit of freedom.

Lithuania, Latvia, and Estonia each proclaimed their independence in 1918 and for 22 years they nurtured their newly found freedom—a freedom previously denied them by more powerful, more aggressive neighbors. For centuries before 1918, control over the Baltic people had gone back and forth between Germany and Russia. In 1918, the Baltic people, however, took a stand on behalf of their self-determination, and, in 1920, the Soviet Union promised to recognize their independence.

The cultural life of the Baltic people blossomed and their system of education made tremendous strides. These embryonic Republics were developing into strong agrarian societies. Politically, minorities were guaranteed cultural and political rights. They were recognized throughout the world for their religious and lingual tolerance and for their desire to live in peace. The Baltic people loved their newly found freedom.

As time reveals all truths, however, it now is clear to us and to the world that the Soviet Union's promise in 1920, through legitimate peace treaties with each Baltic State, was as hollow as any they have made before or since that time. By signing those peace treaties, the Soviet Union promised to "voluntarily and forever" renounce its sovereign rights over the territories of Lithuania, Latvia, and Estonia and to recognize without reservation their "independence, autonomy, and sovereignty."

In 1940, the Soviet Union began its attempt to smother Baltic freedom. The Red Army stormed into Lithuania, rolled over Latvia, forced its way into Estonia, and seized control of all three nations. The Soviets then established in each nation a puppet regime which unanimously passed a "request" for incorporation into the Soviet Union. Late in 1940, these "requests" were enacted in Moscow.

As we all know, for a state to govern its people, that state needs first to have the consent of its people—or that state will fall. This is part of a democratic foundation. For the time being, the Soviet Union may have control over the people of Lithuania, Latvia, and Estonia. But, without the consent of these freedom-loving people, the Soviet Union inevitably will become the object of its own folly. When that day comes, the Soviet Union will begin to feel the pain and the suffering it has so cruelly inflicted upon the Balts since their illegal and forced incorporation.

The Soviet occupation began with a series of arrests and imprisonments that swelled into the tens of thousands. On the evening of June 14, 1941, with terror gathering momentum, they began a massive deportation program. Between 1944 and 1949, hundreds of thousands of Baltic people were herded into freight cars and exiled to distant parts of the Soviet Union. Those countless native Balts who were considered potential foes of communism were branded "enemies of the people" and were replaced by new settlers from the Soviet Union.

The Soviet Union quickly centralized its governing authorities in each of the Baltic Republics and continued the Russification process according to plan. All private institutions were nationalized, farms were collectivized, and the entire wealth of each of these "would-be" free peoples became State property. The Soviet Union assumed control over the production and distribution of all goods and products, over all means of transportation, over communications, printing, and the press. People were forbidden to leave their countries and were barred from all coastal towns and border areas.

Under Stalin, Khrushchev, Brezhnev, Andropov, Chernenko, and now Gorbachev, thousands of Lithuanians, Latvians, and Estonians have been slaughtered, deported, exiled, and imprisoned in slave-labor camps or committed to psychiatric institutions. These ruthless dictators have pursued a Russification policy which has denied the Baltic people the most basic of human rights. What the Soviets have done clearly flies in the face of the United Nations Universal Declaration on Human Rights and the Helsinki Final Act.

Despite repeated professions of support for the principles embodied in the Final Act, the Soviets have continued to blatantly violate the rights to self-determination guaranteed the Baltic people. As this act affirms, "All people always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development."

In recent years, Soviet disdain for the Helsinki accords has been revealed in their stepped-up repression of Lithuanians, Latvians, and Estonians. Dr. Algirdas Statkevicices, a member of the Lithuanian Helsinki Monitoring Group, has been sentenced to compulsory psychiatric treatment for engaging in "anti-Soviet agitation and propaganda." Fathers Alfonsas Svarinckas and Sigitas Tamkanicias have been persecuted and imprisoned for their defense of believers' rights. In addition, Juris Brimeisters, a Latvian Social Democrat, is serving a 15-year sentence in a strict regime camp for his political convictions. We also must not forget Dr. Yuri Kukk, a courageous Estonian human rights activist, who died of a hunger strike in a transit prison where he had been placed as a result of "anti-Soviet agitation and propaganda."

While great, the degree and depth of Soviet denial of basic human and civil rights is not as deep as the Baltic people's desire for freedom and independence. The Balts' deeply rooted love of freedom and steadfast belief in the principles of independence have enabled them to endure Communist hegemony and suppression. They have lasted through years of Soviet subjugation, oppression, and Russification. Their spirit will not be broken, and their struggle for self-determination will continue.

Mr. President, the departing chairman of the Commission on Security and Cooperation in Europe, I remain deeply concerned about the Soviet Union's continuing human rights violations in Lithuania, Latvia, and Estonia. We, the Congress and the Nation, are all concerned—and rightfully so. As a party to the United Nations Charter and as a signatory of the Helsinki accords, the Soviet Union has pledged its respect for human rights and fundamental freedoms. As much, the Soviet Union must accept the political and legal obligations that these agreements entail.

When we celebrate June 14, 1987, as "Baltic Freedom Day," it is fitting and proper that we remind the Soviet Union of these obligations. I urge my colleagues to join me in support of this resolution to reaffirm our love for freedom and our commitment to the principles of independence for all peoples, for ourselves, and especially for our Baltic friends who have been forced to live their absence.

Mr. President, I ask unanimous consent that the full text of my joint resolution be printed in the RECORD.

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

S.J. Res. 5

Whereas the people of the Baltic Republics of Lithuania, Latvia, and Estonia have cherished the principles of religious and political freedom and independence;

Whereas the Baltic Republics have existed as independent, sovereign nations belonging to and fully recognized by the League of Nations; and

Whereas the people of the Baltic Republics have individual and separate cultures, national traditions, and languages distinctively foreign to those of Russia;

Whereas the Union of the Soviet Socialist Republics (U.S.S.R.) in 1940 did illegally seize and occupy the Baltic Republics and by force incorporate them against their national will and contrary to their desire for independence and sovereignty into the U.S.S.R.;

Whereas the U.S.S.R. since 1940 has systematically removed native Baltic peoples from their homelands by deporting them to Siberia and caused great masses of Russians to relocate in the Baltic Republics, thus threatening the Baltic cultures with extinction;

Whereas the U.S.S.R. has imposed upon the captive people of the Baltic Republics an oppressive political system which has destroyed every vestige of democracy, civil liberties, and religious freedom;

Whereas the people of Estonia, Latvia, and Lithuania find themselves today subjugated by the U.S.S.R., locked into a union they deplore, denied basic human rights, and persecuted for daring to protest;

Whereas the U.S.S.R. refuses to abide by the Helsinki Accords which the U.S.S.R. voluntarily signed;

Whereas the United States stands as a champion of liberty, dedicated to the principles of national self-determination, human rights, and religious freedom, and opposed to oppression and imperialism;

Whereas the United States, as a member of the United Nations, has repeatedly voted with a majority of that international body to uphold the right of other countries of the world, including those in Africa and Asia, to determine their fates and be free of foreign domination; and

Whereas the U.S.S.R. has steadfastly refused to return to the people of the Baltic States of Latvia, Lithuania, and Estonia, the right to exist as independent republics separate and apart from the U.S.S.R. or permit a return of personal, political, and religious freedoms:

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress of the United States recognizes the continuing desire and the right of the people of Lithuania, Latvia, and Estonia for freedom and independence from the domination of the U.S.S.R. deplores the refusal of the U.S.S.R. to recognize the sovereignty of the Baltic Republics and to yield to their rightful demands for independence from foreign domination and oppression and that the fourteenth day of June 1985, the anniversary of the mass deportation of Baltic peoples from their homelands in 1941, be designated "Baltic Freedom Day" as a symbol of the solidarity of the American people with the aspirations of the enslaved Baltic people and that the President of the United States be authorized and requested to issue a proclamation for the observance of Baltic Freedom Day with appropriate ceremonies and activities.

● Mr. RIEGLE. Mr. President, I am pleased to join my colleague, Senator D'AMATO, in introducing a joint resolution calling for the declaration of June 14, 1987, as Baltic Freedom Day.

As the Senate sponsor of this resolution on two previous occasions, I commend my colleague from New York for his initiative in introducing this important piece of legislation on the first day of the 100th Congress.

June 14, 1987, will mark the 47th year of Soviet occupation of Latvia, Lithuania, and Estonia. The U.S. Government, through its nonrecognition policy, and the American people, through their tireless activism, have consistently rejected Soviet occupation of the Baltic States, and will continue to do so.

We must not permit the past 47 years of Soviet repression in the Baltic States to dull our sensitivity to the injustices imposed upon the citizens of those nations. The leaders in the Kremlin must know that Americans will never accept the status quo, and that we will continue to support the Baltic people in their efforts to secure their fundamental human rights.

The annual commemoration of Baltic Freedom Day, as called for in this resolution, is an important demonstration of American solidarity with the aspiration of the people of Latvia, Lithuania, and Estonia for freedom, and I urge its prompt and unanimous approval by the Senate.●

By Mr. DIXON:

S.J. Res. 6. A joint resolution proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations; to the Committee on the Judiciary.

PRESIDENT MAY DISAPPROVE OR REDUCE CERTAIN APPROPRIATIONS

● Mr. DIXON. Mr. President, I am today reintroducing a joint resolution proposing a constitutional amendment authorizing the President to disapprove or reduce individual items of appropriations, subject to a majority vote override. I am also reintroducing legislation to expand the President's rescission authority because action on the constitutional amendment will necessarily take a substantial period of time, and we need the benefits to be garnered from the item veto now.

I do not propose this constitutional amendment and expanded rescission authority lightly, but I am convinced we need fundamental changes in our budgeting procedures if we are ever to restore fiscal discipline to the Federal Government. Deficits are out of control. Our budget deficit was $220 billion in fiscal 1986. It is likely to be substantially smaller in fiscal year 1987, perhaps as low as $174 billion. Unfortunately, the reduction is not due to fundamental budget reform, however, but rather to budgetary "blue smoke and mirrors." Further, a $175-billion deficit is $30 billion over the fiscal year 1987 Gramm-Rudman-Hollings target of $144 billion, and the prospects for meeting the 1988 target of $108 billion, and balancing the budget by 1991 are even less rosy. Budgetary legerdemain will not solve our ongoing fiscal crisis; fundamental reform of our budget processes is required if Federal deficits are to be controlled over the long run.

Solving our budget problems will require strong action in a number of areas. I am convinced that adding an item veto provision to our Constitution is probably the single most important action we could take if we really want to end the deficit nightmare.

The item veto has a long and distinguished history. It first appeared in the Confederate constitution. In the years since the Civil War it has been included in the constitutions of 43 of the 50 States. The States gave their Governors this authority because it was needed, because it strengthens their budget processes, and because it works. No State that has adopted the item veto has ever repealed it.

While the idea has demonstrated its merit at the State level, however, it has never seriously been considered at the Federal level. Numerous item veto proposals have been introduced in Congress since the first one in 1876. At least seven different Presidents have requested item veto authority. But none of these proposals or requests has ever been sent to the States or been acted on by either the House or the Senate.

Mr. President, it is long past time to change that situation, and act on an item veto provision that helps restore the President's veto power. I say restore because the truth is that the Presidential veto is now a much weaker weapon than it once was.

Under our Constitution, a President can only veto an entire bill. He or she cannot veto individual items of spending within the bill—the veto is an all or nothing proposition. When our Constitution was written, that was a reasonable and workable balance of powers between the legislative and executive branches. Government was smaller and simpler. Over the past two centuries, though, Congress has tipped the balance in its favor and substantially eroded the President's veto power. The growth in Government, together with the increasing use of omnibus legislation, now make it significantly more difficult for a President to play the role envisioned by the Nation's founders.

Increasingly, a President has the choice of either shutting down the Government, or signing into law billions of dollars of spending which he or she does not support. Last year, for example, all Government spending was included in a single omnibus bill instead of the 13 annual appropriation bills that Congress usually acts on to exercise its control over Government spending.

More and more, Congress attaches controversial items to must bills in an effort to make it more difficult for a President to use his veto power. Logrolling, and packaging good and bad programs into a single omnibus bill, have become a way of life.

These practices are near and dear to the hearts of many legislators, but they work to undermine our ability to budget in a fiscally sound and responsible manner. They are clearly wasteful, extravagant, and destructive.

Congress will never resolve the deficit problems, Mr. President, if it continues this business as usual approach. Congress must surrender some of the prerogatives it has accumulated over the years, and allow at least a partial

restoration of the President's veto power.

Many Members, as well as those who benefit from the current way of doing things, may not want to surrender all the power they have gained. To ensure that the proper balance of powers between the legislative and executive branches of Government is maintained—to ensure no possibility of the creation of an imperial Presidency—I am proposing only a partial restoration, giving the President item veto authority, but allowing Congress to override it by a simple constitutional majority.

Under my proposal, a President would have to choose: either veto an entire bill, forcing Congress to attempt to override by two-thirds vote, or use the item veto, recognizing that it would be easier for Congress to override.

Stated another way, it simply allows a President to put the Congress on record, to see whether there is in fact majority support for certain individual items of spending in an omnibus bill. As we all know too well, most Members of Congress have never seen and do not know about many of the literally thousands of individual items in the hundreds of pages of appropriations bills enacted every year. We rely on staff, and the knowledge, character, and ability of the Senators and Representatives that are the subcommittee chairmen and ranking members that handle the bills. Yet all these items are presumed to have majority support because they were included in a major bill that majorities in both the House and the Senate supported.

If a President opposes an item, why shouldn't he or she have the right to ask the Congress to go on record, and to determine whether the majority that is presumed to exist actually exists? In the early days of our Republic, Presidents often effectively had that right because bills were narrower and did not deal with more than one subject. We have now reached the point, however, where a single appropriations bill contains over $558 billion in spending authority, a practice which I believe usurps the President's constitutionally mandated role in the legislative process.

Majority override means that a President could not overturn strong congressional support for a single item through use of the item veto and the support of one-third plus one in either the House or the Senate. Only the veto of an entire bill would take a two-thirds vote to override. An item veto would be sustained if the President commanded majority support, and would be overturned if the item had majority backing.

Mr. President, the Line-Item Rescission Act is based on similar principles. I am introducing this proposal reluctantly because I believe a constitutional amendment is the better way to proceed. Further, some of the past rescission proposals would have given the President unilateral rescission authority, thus effectively giving a President two bites at the same apple. Under these proposals a President could sign a bill and rescind various items of spending. Congress would have to effectively act on a new bill repassing the items to overturn the rescission, and this action would be subject to Presidential veto, requiring a two-thirds vote to override.

My proposal is merely a small expansion of authority already available to Presidents under the Budget Act. It does not give a President unilateral rescission authority. It is designed to make the rescission mechanism as close to a majority override line-item veto constitutional provision as is possible through statutory means while not violating constitutional principles. It can be put into effect far more quickly than a constitutional change, and would provide at least part of the benefits of the constitutional amendment.

The legislation permits a President to defer items of spending contained in an appropriations bill for 60 days while Congress considers rescission resolutions under expedited procedures. Each rescission resolution would cover a single item and would have to be voted on separately, as the veto of an individual item would be.

Both Houses of Congress would have to vote on the resolution or resolutions within 60 days of their transmittal to Congress by a President. If the President had majority support the resolution would pass and the item would be rescinded. If the item had majority support, the spending would go forward without being subject to further Presidential veto.

The rescission resolutions would not be amendable since veto messages are not amendable, and the expedited procedures would guarantee a vote on the resolutions. This provision, of course, is different from the way a veto message is considered. There is no guarantee that a veto message will be voted on at all. However, a veto is effective unless overturned by both Houses of Congress while a rescission is effective only when approved in both Houses. The combination of the limited deferral authority, and the expedited procedures guaranteeing a vote, is necessary to ensure that Congress faces the issues raised by a President's opposition to particular items.

Neither the item veto constitutional amendment nor the Line-Item Veto Rescission Act is a cure-all for the budget problems we are facing, Mr. President. Dealing with the deficit will require action in every area of the budget, action that will be difficult and distasteful. However, either proposal can and will make a real difference. If a Federal item veto with majority override works as well at the Federal level as it does in my own State of Illinois, it could save $27 billion a year or more.

I urge the Senate to consider these proposals very carefully. I am convinced that the result of this fair and reasonable examination will be enactment of a Line-Item Veto Rescission Act and early submission of the constitutional amendment to the States for ratification. I look forward to working with my colleagues toward these objectives. Mr. President, I ask unanimous consent that a copy of the bill and the joint resolution be printed at this point in the RECORD.

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

S.J. RES. 6

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE —

"The President may reduce or disapprove any item of appropriation in any Act or joint resolution, except any item of appropriation for the legislative branch of the Government. If an Act or joint resolution is approved by the President, any item of appropriation contained therein which is not reduced or disapproved shall become law. The President shall return with his objections any item of appropriation reduced or disapproved to the House in which the Act or joint resolution containing such item originated. The Congress may, in the manner prescribed under section 7 of the article I for Acts disapproved by the President, reconsider any item disapproved by the President, reconsider any item disapproved or reduced under this section, except that only a majority vote of each House shall be required to approve an item which has been disapproved or to restore an item which has been reduced by the President to the original amount contained in the Act or joint resolution.".

S. 256

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 "Line-Item Rescission Act of 1985".

SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS.

(a) IN GENERAL.—Part B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by redesignating sections 1013 through 1017 as sections 1014 through 1018, respectively, and inserting after section 1012 the following new section:

"EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS

"SEC. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE.—The President may, on the same calendar day the President approves any ap-

propriation bill, transmit to both Houses of the Congress, for consideration in accordance with this section, one or more special messages proposing to rescind all or part of any item of budget authority provided in the appropriation bill.

"(b) CONTENTS OF SPECIAL MESSAGE.—

"(1) No special message may be considered in accordance with this section if the special message proposes to rescind more than one item of budget authority.

"(2) Each special message transmitted under subsection (a) shall specify, with respect to the item of budget authority (or part thereof) proposed by the message to be rescinded, the matters referred to in paragraphs (1) through (5) of section 1012(a).

"(3) Each special message transmitted under subsection (a) shall be accompanied by a draft bill or joint resolution that would, if enacted, rescind the budget authority proposed to be rescinded.

"(c) PROCEDURES.—

"(1)(A) On the day on which a special message proposing to rescind an item of budget authority is transmitted to the House of Representatives and the Senate under subsection (a), the draft bill or joint resolution accompanying such special message shall be introduced (by request) by the majority leader of the House of the Congress in which the appropriation Act providing the budget authority originated. If such House is not in session on the day on which a special message is transmitted, the draft bill or joint resolution shall be introduced in such House, as provided in the preceding sentence, on the first day thereafter on which such House is in session.

"(B) A draft bill or joint resolution introduced in the House of Representatives or the Senate pursuant to subparagraph (A) shall be referred to the Committee on Appropriations of such House. The committee shall report the bill or joint resolution without substantive revision (and with or without recommendation) not later than 20 calendar days of continuous session of the Congress after the date on which the bill or joint resolution is introduced. A committee failing to report a bill or joint resolution within the 20-day period referred to in the preceding sentence shall be automatically discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

"(C) A vote on final passage of a bill or joint resolution introduced in a House of the Congress pursuant to subparagraph (A) shall be taken on or before the close of the 30th calendar day of continuous session of the Congress after the date of the introduction of the bill or joint resolution in such House. If the bill or joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a bill or joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a bill or joint resolution agreed to in the Senate) shall cause the bill or joint resolution to be engrossed, certified, and transmitted to the other House of the Congress on the same calendar day on which the bill or joint resolution is agreed to.

"(2)(A) A bill or joint resolution transmitted to the House of Representatives or the Senate pursuant to subparagraph (C) of paragraph (1) shall be referred to the Committee on Appropriations of such House. The committee shall report the bill or joint resolution without substantive revision (and with or without recommendation) not later than 20 calendar days of continuous session of the Congress after the bill or joint resolution is transmitted to such House. A committee failing to report the bill or joint resolution within the 20-day period referred to in the preceding sentence shall be automatically discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed upon the appropriate calendar.

"(B) A vote on final passage of a bill or joint resolution transmitted to a House of the Congress pursuant to subparagraph (C) of paragraph (1) shall be taken on or before the close of the 30th calendar day of continuous session of the Congress after the date on which the bill or joint resolution is transmitted to such House. If the bill or joint resolution is agreed to in such House, the Clerk of the House of Representatives (in the case of a bill or joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a bill or joint resolution agreed to in the Senate) shall cause the engrossed bill or joint resolution to be returned to the House in which the bill or joint resolution originated, together with a statement of the action taken by the House acting under this paragraph.

"(3)(A) A motion in the House of Representatives to proceed to the consideration of a bill or joint resolution under this section shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) Debate in the House of Representatives on a bill or joint resolution under this section shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the bill or joint resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a bill or joint resolution under this section or to move to reconsider the vote by which the bill or joint resolution is agreed to or disagreed to.

"(C) Motions to postpone, made in the House of Representatives with respect to the consideration of a bill or joint resolution under this section, and motions to proceed to the consideration of other business, shall be decided without debate.

"(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill or joint resolution under this section shall be decided without debate.

"(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a bill or joint resolution under this section shall be governed by the Rules of the House of Representatives applicable to other bills and joint resolutions in similar circumstances.

"(4)(A) A motion in the Senate to proceed to the consideration of a bill or joint resolution under this section shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) Debate in the Senate on a bill or joint resolution under this section, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(C) Debate in the Senate on any debatable motion or appeal in connection with a bill or joint resolution under this section shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or joint resolution, except that in the event the manager of the bill or joint resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill or joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(D) A motion in the Senate to further limit debate on a bill or joint resolution under this section is not debatable. A motion to recommit a bill or joint resolution under this section is not in order.

"(d) AMENDMENTS PROHIBITED.—No amendment to a bill or joint resolution considered under this section shall be in order in either the House of Representatives or the Senate. No motion to suspend the application of this paragraph shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this paragraph by unanimous consent.

"(e) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION.—Any item of budget authority proposed to be rescinded in a special message transmitted to the Congress in accordance with subsection (a) shall be made available for obligation unless, not more than 60 days after the transmittal of the special message, both Houses of the Congress have agreed to the bill or joint resolution accompanying such special message.

"(f) DEFINITIONS.—For purposes of this section—

"(1) 'item' means any numerically expressed amount of budget authority set forth in an appropriation bill;

"(2) 'appropriation bill' means any general or special appropriation bill, and any bill or joint resolution making supplemental, deficiency, or continuing appropriations; and

"(3) 'appropriation Act' means any appropriation bill that has been approved by the President and becomes law.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1011(5) of the Congressional Budget and Impoundment Control Act of 1974 is amended—

(A) by striking out "1012, and" and inserting in lieu thereof "1012, the 20-day periods referred to in paragraphs (1)(B) and (2)(A) of section 1013(c), the 60-day period referred to in section 1013(e) and";

(B) by striking out "1012 during" and inserting in lieu thereof "1012 or 1013 during";

(C) by striking out "of 45" and inserting in lieu thereof "of the applicable number of"; and

(D) by striking out "45-day period referred to in paragraph (3) of this section and in section 1012" and inserting in lieu thereof "period or periods of time applicable under such section".

(2)(A) Section 1011 of such Act is further amended—

(i) in paragraph (4) by striking out "1013" and inserting in lieu thereof "1014"; and

(ii) in paragraph (5)—

(I) by striking out "1016" and inserting in lieu thereof "1017"; and

(II) by striking out "1017(b)(1)" and inserting in lieu thereof "1018(b)(1)".

(B) Section 1012 of such Act is amended—

(i) by striking out "1012 or 1013" each place it appears and inserting in lieu thereof "1012, 1013, or 1014";

(ii) in subsection (b)(1) by striking out "1012" and inserting in lieu thereof "1012 or 1013";

(iii) in subsection (b)(2) by striking out "1013" and inserting in lieu thereof "1014"; and

(iv) in subsection (e)(2)—

(I) by striking out "and" at the end of subparagraph (A),

(II) by redesignating subparagraph (B) as subparagraph (C),

(III) by striking out "1013" in subparagraph (C) (as so redesignated), and

(IV) by inserting after subparagraph (A) the following new subparagraph:

"(B) he has transmitted a special message under section 1013 with respect to a proposed rescission; and".

(C) Section 1015 of such Act is amended by striking out "1012 or 1013" each place it appears and inserting in lieu thereof "1012, 1013, or 1014".

(D) Section 1016 of such Act is amended by striking out "or 1013(b)" and inserting in lieu thereof ", 1013(e), or 1014(b)".

(E) Section 1012(b) of such Act is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any item of budget authority proposed by the President to be rescinded under this section that the President has also proposed to rescind under section 1013 and with respect to which the 60-day period referred to in subsection (e) of such section has not expired.".

(3) The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended—

(A) by redesignating the items relating to sections 1013 through 1017 as items relating to sections 1014 through 1018; and

(B) by inserting after the item relating to section 1012 the following new item:

"Sec. 1013. Expedited consideration of certain proposed rescissions.".

SEC. 3. APPLICATION.

The amendments made by this section shall apply to items of budget authority (as defined in subsection (f)(1) of section 1013 of the Congressional Budget and Impoundment Control Act of 1974, as added by section 2 of this Act) provided by appropriation Acts (as defined in subsection (f)(3) of such section) that become law after the date of the enactment of this Act.

By Mr. THURMOND (for himself, Mr. HATCH, Mr. NICKLES, Mr. GRAMM, Mr. MCCONNELL, and Mr. HELMS):

S.J. Res. 7. Joint resolution proposing an amendment to the Constitution of the United States relating to voluntary school prayer; to the Committee on the Judiciary.

SCHOOL PRAYER

● Mr. THURMOND. Mr. President, today I am introducing the voluntary school prayer constitutional amendment, a bill identical to S.J. Res. 73, which I introduced in the 98th Congress at the request of the President and reintroduced as S.J. Res. 3 in the 99th Congress. This proposed amendment to the Constitution has received strong support on both sides of the aisle and, as President Reagan has repeatedly emphasized, is of vital importance to our Nation. It would restore the right to pray voluntarily in the public schools—a right which was freely exercised under our Constitution until the 1960's, when the Supreme Court ruled to the contrary.

Until the Engel and Abington School District decisions, the establishment clause of the first amendment was generally understood only to prohibit the Federal Government from officially approving, or holding in special favor, any particular religious faith or denomination. In crafting that clause, our Founding Fathers sought to prevent what had originally caused many colonial Americans to emigrate to this country—an official, State religion. At the same time, they sought, through the free exercise clause, to guarantee to all Americans the freedom to worship God without Government interference or restraint. In their wisdom, they recognized that true religious liberty precludes the Government from both forcing and preventing worship.

As Supreme Court Justice William Douglas once stated: "We are a religious people whose institutions presuppose a Supreme Being." Nearly every President since George Washington has proclaimed a day of public prayer. Moreover, we, as a nation, continue to recognize the Deity in our Pledge of Allegiance by affirming that we are a nation "under God." The coins in our pockets are inscribed with the motto, "In God We Trust." In this body, we begin our workday with the comfort and stimulus of voluntary group prayer—such a practice has been constitutionally upheld recently by the Supreme Court. It is absurd that the opportunity for the same beneficial experience is denied to the boys and girls who attend public schools. This situation simply does not comport with the intentions of the framers of the Constitution and is, in fact, antithetical to the rights of our youngest citizens to freely exercise their respective religions. It should be changed, without further delay.

If ratified by the States, this amendment to the Constitution would clarify that it does not prohibit vocal, voluntary prayer in the public schools and other public institutions. It emphatically states that no person may be required to participate in any prayer. The Government would be precluded from drafting school prayers. This well-crafted amendment meets with the approval of the overwhelming majority of Americans. During the 98th Congress, it fell only 11 votes short of the 67 necessary for approval in the Senate. I strongly urge my colleagues to support prompt consideration and approval of this bill during the 100th Congress.

Mr. President, I ask unanimous consent that a copy of the voluntary school prayer constitutional amendment be printed in the RECORD.●

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

S.J. RES. 7

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein) That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE—

"Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or by any State to participate in prayer. Neither the United States nor any State shall compose the words of any prayer to be said in public schools.".

By Mr. HEFLIN:

S.J. Res. 8. Joint resolution proposing an amendment to the Constitution altering Federal budget procedures; to the Committee on the Judiciary.

FEDERAL BUDGET PROCEDURE ALTERATIONS

● Mr. HEFLIN. Mr. President, once again history is repeating itself. Every Congress since I have been elected as a U.S. Senator, the first bill I have introduced proposed a constitutional amendment to balance the Federal budget. Since that time, I and many of my colleagues have worked to formulate a consensus approach to curb Federal spending. In the 96th Congress, I joined with several Senators on Senate Joint Resolution 126 which was defeated in the Judiciary Committee by a margin of one vote. During the 97th Congress the Senate passed a constitutional amendment to balance the Federal budget, Senate Joint Resolution 58, on August 4, 1982, obtaining 69 votes. Unfortunately, the House failed to pass the amendment.

In the 98th Congress, the Senate Judiciary Committee passed Senate Joint Resolution 5 but the amendment was never considered by the full Senate. In the 99th Congress, the Senate Judiciary Committee reported two separate constitutional amendments to balance the budget. On March 6, the Senate began debate on Senate Joint Resolution 225. March 25 brought yet another historic vote on the constitutional amendment to balance the budget. The final vote was 66 to 34, one vote short of the necessary two-thirds requirement. And today we begin the 100th Congress.

It is with a sense of frustration and urgency that I rise to introduce a Senate joint resolution once again proposing a constitutional amendment to require the Federal Government to

achieve and maintain a balanced budget.

The helter-skelter fiscal irresponsibility demonstrated during the past 25 years have convinced me that the Congress of the United States and the administration do not have the will power to cut Government spending and balance the Federal budget without a constitutional amendment providing the necessary discipline. Just yesterday the President of the United States sent a $1 trillion budget to the Congress. But to say that one branch of Government is any more responsible than another for our Federal deficit is useless rhetoric. The time for fingerpointing and blame is past. Each branch of Government, each elected official, each American citizen must shoulder some part of the responsibility for the Federal deficit because each of us in our own way makes demands upon the Federal Government and upon its limited resources.

At some point, we must say "enough." This is not a time for rhetoric but a time for a harsh taste of reality. Our Nation cannot survive if we continue to maintain our current fiscal policy. We are not only a debtor nation, we are the world's largest debtor nation and it is time to put our fiscal house in order.

For much of the history of this great Nation, a balanced Federal budget was part of our "unwritten constitution." In the first 100 years of this Republic a surplus budget was the norm. On December 31, 1790, during the First Congress, the total debt was $75.5 million. That was a debt incurred in part by our fight for independence. For the years 1789 to 1791 there was a Federal surplus of $150,000 and Federal spending totalled $4.3 million. Today for fiscal year 1987 it is estimated that the Federal Government will spend over $1 trillion. It has been estimated that the Federal deficit will be $173.2 billion at the end of fiscal year 1987 and the estimated gross Federal debt for 1987 is $2,370.9 billion.

In 1789, Thomas Jefferson warned, "The public debt is the greatest of dangers to be feared by a republican government." Somewhere we've lost sight of our forefathers' admonitions.

A brief overview of the past 25 years leaves one shaking his head in amazement. In 1962, Government spending was estimated at $106.8 billion; the Federal deficit was $7.1 billion; the gross Federal debt was $303.3 billion. Five years later in 1967 Government spending had increased to $157.5 billion; the Federal deficit, $8.6 billion; the gross Federal debt, $341.3 billion. Ten years later in 1977, Government spending had increased to $409.2 billion; the Federal deficit had increased to $53.6 billion; and the gross Federal debt was $709.1 billion. Today, as I have mentioned earlier, the Government is estimated to be spending over a trillion dollars a year, amassing a deficit of close to $200 billion a year.

As the debt grows the interest required in paying the principal consumes an ever-increasing share of the Federal budget. The net interest on the national debt for 1987, which is the interest after subtracting the money that the Government owes itself, is estimated between $137 and $157 billion. That is just the yearly interest on the national debt. It takes almost 14 percent of our Federal budget just to pay the net interest on the debt. If you include the interest that the Government owes itself, the interest on the public debt for 1987 is estimated at $191.8 billion.

I know there are those who feel that the Gramm-Rudman-Hollings law enacted by the 99th Congress is sufficient to address our fiscal concerns. But Gramm-Rudman-Hollings, while very worthy legislation and a laudable goal, is a statutory response to a crisis that demands constitutional resolve. Gramm-Rudman-Hollings is a 5-year response to our fiscal past. It requires a zero deficit by the year 1991, but it only requires one balanced budget—in 1991. A constitutional amendment will secure our fiscal future and require a balanced budget as a fiscal norm.

According to the Washington Post of Saturday, January 3, 1987:

> The Congressional Budget Office predicts that the Nation's gross national product will grow in real terms at about an annual rate of 3 percent somewhat higher than in 1986. Inflation, according to the CBO estimates, will rise from the 1986 rate of about 1 percent to 4.4 percent a year from now.
>
> The CBO also estimates that the Federal deficit for the current fiscal year which ends in September will be $74.5 billion, almost $24 billion higher than its forecast last August.
>
> If the CBO estimate is accurate, the fiscal 1987 deficit will be substantially higher than the $144 billion target established by the Gramm-Rudman-Hollings balanced budget law.

I believe there is only one answer: A constitutional amendment. An amendment that requires a two-thirds vote in each House of Congress and most importantly, ratification by three-fourths of the States of this great Nation. A constitutional amendment will truly be a united effort, bringing the Nation together in support of a common goal. Many of my colleagues argue that if we possessed a stronger discipline, then a constitutional amendment would be unnecessary. I do not disagree with the sentiment of this statement, just the reality. The problem is deeper than individual resolve. It is the institutional structure that encourages response to individual need without counting the cost to the greater good.

I cannot promise that the amendment I am offering today is a panacea for the all the economic tragedies plaguing our country, but it is a part of the pledge that I made to the people of Alabama when I came to the U.S. Senate, to bring Federal spending under control. It is a pledge that I have tried to honor during my tenure as a U.S. Senator and it is a pledge that I intend to honor.

The amendment I am offering today is not a perfect amendment and there will be and should be changes to the language, but there must be a beginning point to the discussions and it is my hope that this amendment will be a starting point.

Section 1 of the proposed amendment requires a three-fifths vote of each House of Congress before the Federal Government can engage in deficit spending. This requirement establishes the norm that spending will not exceed receipts in any fiscal year. If the Government is going to spend money, it should and must have the money on hand to pay for the goods and services required. Under this section, Congress would be required to adopt an initial statement in each fiscal year, in which outlays do not exceed receipts.

Section 2 of the amendment addresses the enforcement problem with a constitutional amendment to balance the budget. It provides that there will be no increases in the public debt to fund any excess of outlays over receipts, unless Congress shall by law and by vote of three-fifths of the whole number of each House of Congress provide for such an increase.

Section 3 requires a majority vote of the whole number of each House of Congress any time Congress votes to increase revenues. This puts elected officials on record for any tax increase necessary to support increased Federal spending.

Section 4 provides for the submission by the President of a balanced budget to Congress; or if the President cannot submit a balanced budget, a requirement that the President submit a statement explaining why the budget is unbalanced.

My greatest concern with past constitutional amendments to balance the budget has been the restrictive nature of the provisions allowing for a waiver of the requirements of a balanced budget if a declared war is in effect. While this exception to the rule of a balanced budget is necessary, in my judgment, it does not go far enough.

The United States has engaged in only five declared wars, yet the United States has engaged in hostilities abroad which required no less commitment of human lives or American resources than in declared wars. There have been throughout the history of our Nation approximately 200 instances where the United States has used military forces abroad in situations of conflict to protect or promote U.S. interests. Not all of these would

move Congress to seek a waiver of the requirements for a balanced budget but Congress should at least have the flexibility within the mandates of the constitutional amendment to provide for our Nation's security.

Section 5 automatically waives the provisions for any fiscal year in which a declaration of war is in effect. My amendment also allows Congress to waive the provisions if the United States is engaged in military conflict which causes an imminent and serious military threat to national security, which is declared by joint resolution adopted by a majority of the whole number of each House of Congress. Such joint resolution must be signed by the President and become law.

Mr. President, economic stability is not a partisan issue. Deficit spending cannot be blamed on one branch of government or one political party. It has simply been a way of life that must now be corrected.

But in our attempts to balance the Federal budget, we must remember that these problems did not arise over night, nor can they be solved over night. My legislation offers not a cure-all, but a blueprint for progress and stability.

Today we have a chance to turn our rhetoric into reality and draw upon the potential of the leaders and citizens of this Nation to begin work on a constitutional amendment of which we can all be proud. The States have indicated their willingness to take over this responsibility if we are unsuccessful. Thirty-two States have petitioned Congress under a provision of article five of the Constitution to call a Constitutional Convention to consider a balanced Federal budget. With the addition of two more States, Congress will have abdicated its responsibility to another body, something which has never been occurred in the history of our Nation.

During the debates on the adoption of the Constitution Benjamin Franklin spoke some very profound words: "Much of the strength and efficiency of any Government, in procuring and securing happiness to the people, depends on opinion—on the general opinion of the goodness of the Government as well as the wisdom and integrity of its Governors."

It is time that we let wisdom and integrity once again be the motto of our fiscal policy. Our forefathers protected our future. Our debt to future generations is no less. And in no way should it be any more.

Mr. President, I request that a copy of the joint resolution be printed in the RECORD following my remarks.

There being no objection, the joint resolution ordered to be printed in the RECORD, as follows:

S.J. RES. 8

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

SECTION 1. Prior to each fiscal year, Congress shall adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts. Congress may amend such statement provided revised outlays are no greater than revised receipts. Whenever three-fifths of the whole number of each House of the Congress shall deem it necessary, Congress in such statement may provide for a specific, excess of outlays over receipts by a vote directed solely to that subject. The Congress and the President shall ensure that actual outlays do not exceed the outlays set forth in such statement.

SEC. 2. The public debt of the United States shall not be increased to fund any excess of outlays over receipts for any fiscal year, unless three-fifths of the whole number of each House of Congress shall provide, by law, for such an increase.

SEC. 3. Any bill to increase revenue shall become law only if approved by a majority of the whole number of each House of Congress by rollcall vote.

SEC. 4. Prior to each fiscal year, the President shall submit a proposed budget to Congress for that fiscal year in which total outlays are no greater than total receipts. The President may also recommend an alternative budget in which total outlays exceed total receipts, which shall be accompanied by a detailed explanation of the need for such excess.

SEC. 5. The provisions of this article are automatically waived for any fiscal year in which a declaration of war is in effect.

The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House of Congress, which becomes law. Afterwards any waiver adopted shall be by a joint resolution of like requirements.

SEC. 6. This article shall take effect for the fiscal year 1991 or for the second fiscal year beginning after its ratification, whichever is later.

By Mr. SARBANES (for himself, Mr. GLENN, Mr. GORE, Ms. MIKULSKI, Mr. TRIBLE, and Mr. WARNER):

S.J. Res. 9. Joint resolution to designate the week of March 1, 1987, through March 7, 1987, as "Federal Employees Recognition Week"; to the Committee on the Judiciary.

FEDERAL EMPLOYEES RECOGNITION WEEK

● Mr. SARBANES. Mr. President, today I am introducing a joint resolution requesting the President to proclaim the week beginning March 1, 1987, and ending on March 7, 1987, as "Federal Employees Recognition Week."

I am indeed proud to bring special attention to the dedicated individuals who have chosen public service as a career and through years of hard work have helped to contribute to our Nation's growth and prosperity. As public servants, Federal workers take pride in their work, setting examples for all of America. The men and women who make up the Federal work force have made significant contributions to improve the quality of life and provide essential services for Americans; in the protection and preservation of the environment, in advancements in medical research and space, in highway and air safety, in the defense of our Nation, and through the Combined Federal Campaign, Federal workers contribute to many nonprofit community organizations and charities as well.

Only a year ago, seven public servants who sought to broaden our understanding of science and our environment, suffered a tragic fate abroad the *Challenger II.* The extraordinary risks undertaken by the men and women of the *Challenger* team is characteristic of the individuals who typically chose public service as a career. And, I am pleased today to introduce legislation which recognizes and acknowledges the invaluable contributions to a better world and brighter future that Federal employees have made to our Nation and urge you to join my colleagues; Senators GLENN, GORE, MIKULSKI, TRIBLE, and WARNER in supporting this resolution.●

By Mr. THURMOND (for himself, Mr. NICKLES, Mr. MCCAIN, Mr. KASTEN, Mr. HECHT, Mr. ARMSTRONG, Mr. PROXMIRE, Mr. SIMPSON, Mr. HELMS, Mr. HUMPHREY, Mrs. KASSEBAUM, Mr. GRASSLEY, and Mr. WALLOP):

S.J. Res. 10. Joint resolution disapproving the recommendations of the President relating to rates of certain officers and employees of the Federal Government; to the Committee on Governmental Affairs.

PRESIDENTIAL RECOMMENDATIONS

Mr. THURMOND. Mr. President, today I rise to introduce a resolution that disallows any salary increases for Members of Congress, high-level Federal officials, and Federal judges.

The Commission on Executive, Legislative, and Judicial Salaries has recommended substantial salary increases for these public officials. President Reagan in his budget submission for 1987 has reduced the substantial amounts recommended by the Commission, but has, nevertheless, recommended increases. Unless Congress disapproves the recommendation by a joint resolution within 30 days following transmittal of the President's budget, it will take effect automatically as provided by the omnibus continuing resolution for fiscal 1986.

At present, our national debt exceeds $2 trillion. The Congressional Budget Office estimates that nearly

$170 billion was added to this already huge national debt in the last fiscal year. Gramm-Rudman-Hollings, which passed overwhelmingly in the 99th Congress, was an expression of political will to achieve a balanced budget. This salary proposal is contrary to that policy.

Stated simply, it is not the appropriate time for Members of Congress to vote themselves or any other high-level public servants a pay raise. All current Members of Congress, top level officials and Federal judges were well aware of their salaries when they entered public service. All chose to serve the public with no promise of greater remuneration.

During this critical time when we are trying to cut Government spending, we must not ask those on Social Security, welfare, military retirement, and others to accept less while we take more.

I urge my colleagues to vote in favor of this resolution which will disapprove salary increases for Members of Congress, high-level Federal officials, and Federal judges.

In short, Mr. President, our citizens want Congress to spend more time raising cain about these outrageous deficits and stop thinking about raising our pay. This entire issue could backfire if we are not careful. I would venture to guess that there is a good amount of sentiment in this Nation for a pay cut for Members of Congress if we do not get busy with solving our budgetary crisis.

Mr. President, I ask unanimous consent that Members be allowed to add their names as original cosponsors through Monday, January 12.

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

Mr. THURMOND. Mr. President, I ask unanimous consent that a copy of this resolution be printed in the RECORD.

Mr. HELMS. Mr. President, I'm pleased to join my good friend, the distinguished Senator from South Carolina [Mr. THURMOND], in introducing the joint resolution of disapproval of the President's recommended pay increases for Members of Congress, high-level Federal officials, and Federal judges.

Mr. President, a pay increase for Members of Congress is an exceedingly controversial issue—and rightly so. The vast majority of Americans who will be taxed to pay for this increase make nowhere near as much money as their Senator or Congressman.

Because the issue is so controversial, Congress created a system under which Members of Congress and Federal workers can get an automatic pay raise without a vote in Congress. When their constituents complain, every Member can assert that he or she had nothing to do with that pay increase and would never have voted for such a thing. That's a copout, Mr. President, and Senator THURMOND and I want to give Senators an opportunity to vote on the matter.

Mr. President, Congress has the responsibility for controlling the Nation's purse strings, and Congress should not be allowed to evade that responsibility by placing it in the lap of the President of the United States. That, however, is exactly what has been done. President Reagan has been unfairly placed in the difficult position of taking sole responsibility for proposing a major pay increase for Federal employees while Members of Congress sit here and throw sanctimonious darts at him for failing to reduce the Federal deficit.

While I recognize the compromise that President Reagan has attempted to reach by drastically reducing the pay increases recommended by the Quadrennial Commission, the fact remains that he should not have the responsibility of making that decision in the first place. This pay increase should not be allowed to go into effect automatically.

Mr. President, if Members of Congress are willing to vote themselves a raise, fine. I will not vote with them, but they certainly have the right to do so. It is unconscionable, however, that Senators and other Federal workers could receive a hefty pay raise without even one vote on it in Congress. For that reason, I join Senator THURMOND in introducing this resolution to disapprove of the President's recommendation. Furthermore, I plan to offer legislation that Senator THURMOND and I have introduced in the past to revise the process so that we place accountability for fiscal decisions back where it belongs—on Congress.

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

S.J. RES. 10

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, The recommendations of the President relating to rates of pay for offices and positions within the purview of section 225(f) of the Federal Salary Act of 1967, as included (pursuant to section 225(h) of such Act) in the budget transmitted to the Congress for fiscal year 1988, are disapproved.

By Mr. THURMOND (for himself, Mr. HATCH, Mr. SIMON, Mr. SIMPSON, Mr. GRASSLEY, Mr. JOHNSTON, Mr. SPECTER, Mr. MCCONNELL, Mr. HUMPHREY, Mr. GRAMM, Mr. D'AMATO, Mr. COCHRAN, Mr. LUGAR, Mr. KASTEN, Mr. QUAYLE, Mr. HELMS, Mr. ZORINSKY, Mr. NICKLES, and Mr. BOREN):

S.J. Res. 11. Joint resolution proposing an amendment to the Constitution relating to a Federal balanced budget; to the Committee on the Judiciary.

FEDERAL BALANCED BUDGET

Mr. THURMOND. Mr. President, I send to the desk a bill to provide a balanced budget constitutional amendment to mandate a balanced budget.

I send a series of bills and ask that Members be allowed to become original cosponsors by Monday, as I stated, January 12.

Another one is to establish the intercircuit panel of the U.S. court of appeals.

Another is to allow prayer in public schools.

Another is a resolution creating a new Senate rule for impeachment of convicted felons.

Another one is a bill to allow railroad police and private university college police access to Federal Government criminal identification records.

Another is with reference to the Integrity and Post Employment Act of 1978 which is commonly known as the lobbying bill.

And the last one is a package of criminal bills including the habeas corpus, death penalty and exclusionary rule.

Mr. President, as I said, I request that the Members be allowed to be added as original cosponsors through Monday, January 12, on all of these bills that I have just introduced.

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

Mr. THURMOND. Thank you.

Mr. President, today I am introducing legislation to amend the U.S. Constitution to require the Federal Government to achieve and maintain a balanced budget. This proposal is very similar to Senate Joint Resolution 225 which was considered by the Senate during the 99th Congress.

As all of my colleagues are aware, amendment of our supreme law is a very serious endeavor. It is an action which should be reserved for those instances when it becomes necessary to protect the fundamental rights of our citizens or to ensure the survival or effectiveness of our system of government.

Mr. President, I believe that the effectiveness, indeed, the very survival of our system of government has become jeopardized by an irrational and irresponsible pattern that has developed and become entrenched in Federal fiscal policy over the last half-century. Because of this fiscal policy, those liberties and opportunities of our present and future citizens, which we have come to regard as sacred, are seriously threatened.

For many years, I have believed, as have many other Members of Congress, that the way to reverse the misguided fiscal direction of the Federal Government is by amending the Constitution to mandate, except in extraordinary circumstances, balanced Federal budgets. The threat posed to

our Nation's security by the ever-worsening Federal budgetary condition is, I believe, a distinct danger. It makes appropriate, indeed, necessitates a solution in the form of a constitutional amendment.

In the past we have been told by the opponents of the balanced budget constitutional amendment that self-imposed congressional restraint is what is needed to solve our fiscal woes—not a constitutional amendment. The fact is, however, that in the face of frightening deficits, Congress has not proven that it is capable of such restraint. Regrettably, congressional efforts at self-imposed limitations in the form of statutes or budget resolutions have failed to provide sorely needed fiscal responsibility.

What is needed today—indeed, what is long overdue—is an addition to our most basic and supreme law which establishes balanced budgets as a fiscal norm, rather than a fiscal abnormality.

A balanced budget constitutional amendment is necessary because only such an amendment can exert the sort of external constraint and limitation upon Congress which will enable it to resist those pressures. No Congress could ignore its dictates, reverse its effect, or dodge its intent.

Mr. President, the recent history of the Federal Government is, by now, all too well known:

Congress has balanced the Federal budget only once in the last 26 years.

The level of annual budget deficits has grown enormously over this period of time. Since 1970, the United States has incurred the 12 largest peacetime deficits in the history of the Nation.

In 1985, the total national debt of the United States soared to more than $2 trillion and continues to increase rapidly.

Federal spending, which first surpassed $100 billion in the years of the Kennedy administration 24 years ago, and which first surpassed $200 billion only 15 years ago, now has surpassed $1 trillion annually. It used to be said that Federal deficits were not such a bad thing because "we owed it to ourselves." Some argued that deficits could even be useful by "stimulating" the economy. However, it is clear today to virtually every reasonable observer, of whatever political or philosophical persuasion, that deficit spending has negative consequences—and those consequences are disastrous.

As a result of a quarter century of virtually unchecked deficit spending, this Nation has suffered periods of historically unprecedented levels of unemployment, periods of double digit levels of inflation, periods of catastrophically high interest rates, and periods of declining levels of national investment and productivity.

Mr. President, continued deficit spending by the Federal Government will undoubtedly lead the Nation to new periods of economic stagnation and decline. The tax burdens which today's deficits will place on future generations of American workers is staggering. We must reverse the fiscal course of the Federal Government, and I believe that a constitutional amendment is the best way to do it.

During my early years in the Senate, I introduced several constitutional amendments to require enactment of balanced budgets. None of those proposals were acted on by the Judiciary Committee. In the 96th Congress, I joined with several Senators on Senate Joint Resolution 126, a constitutional amendment to balance the budget which was defeated narrowly by the Judiciary Committee on March 15, 1980, by a vote of 9 to 8.

During the 97th Congress, I introduced, along with a number of cosponsors, Senate Joint Resolution 58, a balanced budget constitutional amendment which was approved by the Senate on August 4, 1982. Less than 2 months later, a similar measure was considered by the full House of Representatives and secured the support of a clear majority of the body, although it fell short of the requisite two-thirds vote.

During the 98th Congress, along with many cosponsors, I introduced Senate Joint Resolution 5, a proposal nearly identical to Senate Joint Resolution 58 which had been approved by the Senate the preceding year. Senate Joint Resolution 5 was reported by the Judiciary Committee, but was not considered by the full Senate.

On January 3, 1985, I introduced Senate Joint Resolution 13, a resolution identical to Senate Joint Resolution 5 from the 98th Congress. On July 11, 1985, the Judiciary Committee voted 11-7 to favorably report a streamlined Senate Joint Resolution 13 to the Senate.

During May, June, and July of 1985, as the Judiciary Committee debated the provisions of Senate Joint Resolution 13, some members of the committee expressed a desire to further simplify the proposed constitutional amendment. On July 11, 1985, in addition to reporting Senate Joint Resolution 13, the committee voted 14-4 to report an alternative resolution which I proposed along with Senators HATCH, DECONCINI, and SIMON. That resolution, Senate Joint Resolution 225, was considered by the Senate in March of 1986 and received 66 of the 67 votes needed for approval.

The provisions of this proposal are not complicated. Its operative section simply states:

> Outlays of the United States for any fiscal year shall not exceed receipts to the United States for that year, unless three-fifths of the whole number of both Houses of Congress shall provide for a specific excess of outlays over receipts.

Mr. President, the balanced budget amendment proposal has been supported by many in this body who hold widely varying political views. Its supporters share an unyielding commitment to restoring sanity to a spending process which is out of control and hurling our Nation headlong toward disaster. I am hopeful that we be successful in fulfilling our commitment by submitting this amendment to the States for ratification.

● Mr. HATCH. Mr. President, today I rise to address perhaps the most important issue facing our Nation—the national debt.

"The public debt is the greatest of dangers to be feared by a republican government."

"Once the budget is balanced and the debts paid off, our population will be relieved from a considerable portion of its present burdens and will find * * * additional means for the display of individual enterprise."

Today I am introducing the balanced budget amendment to the Constitution. But what may be surprising to some is that the two quotations above are not recent statements by current proponents of the proposed amendment. The first statement was made by Thomas Jefferson and the second by Andrew Jackson. The two quotes illustrate an important truth: no concept is more a part of traditional American fiscal policy than that of the balanced budget. Throughout most of the Nation's history, the requirement of budget balancing under normal economic circumstances was considered part of what has been called our "unwritten constitution."

Influenced by individuals such as Adam Smith, David Hume, and David Ricardo, the drafters of the Constitution and their immediate successors at the helm of the new government strongly feared the effects of public debt. Even Alexander Hamilton and Thomas Jefferson, who had widely diverse perspectives on the role of the Federal Government, were in agreement that, whatever debt happened to be accrued by a nation, it ought to be repaid within some prescribed period of time.

Early American Presidents were in virtually unanimous agreement on the dangers of excessive public debt. Consequently, for approximately 150 years of our history—from 1789 to 1932—balanced budgets or surplus budgets were the norm. While budget procedures had little of their present organization, the concept of a balanced budget was accepted widely as the hallmark of fiscal responsibility. Those deficits that did occur—during wartime or during the most severe recessions—normally were compensated for by subsequent surpluses.

Between 1932 and 1960 the rigid rule of annual balanced budgets gave way

to a fiscal policy in which balanced budgets remained an overall objective but in which deficit spending nevertheless was viewed as a tool occasionally useful to effect appropriate economic results. New economic theories had emerged that placed great weight upon the ability of the Federal Government to manage fiscal policy through deficits and surpluses.

However, a real turning point in the history of U.S. fiscal policies occurred during the 1960's. Even the Keynesian objective of balancing surplus years with deficit years succumbed to the idea of regular, annual uncompensated-for deficits.

During the past two decades, the Federal Government has run deficits in all but a single year. The deficits have come during good times and they have come during bad times. They have come from Presidents who have pledged themselves to balanced budgets and they have come from Presidents whose fiscal priorities were elsewhere. They have come from Presidents of both parties.

Even more alarmingly, the magnitude of these deficits has increased enormously. For the seven fiscal years ending in 1967, the total deficit was approximately $91 billion. For the seven fiscal years ending in 1981, the total deficit was approximately $450 billion. The total national debt stands just over $2 trillion, with nearly two-thirds of that total incurred during the past decade alone.

MAGNITUDE OF FEDERAL DEBT

The number 2 trillion is too clean and simple sounding to communicate the implications of our staggering debt. In 1975, before this recent borrowing spree, the Federal debt amounted to approximately $2,500 per person, and the annual interest charges cost roughly $250 per taxpayer. Only 1 year ago, the Federal debt amounted to over $8,000 per person, with annual interest charges exceeding $1,300 per taxpayer. By 1990, according to 1985 Congressional Budget Office projections, the debt could reach $12,000 per person, and annual interest charges of $2,300 per taxpayer. Even if the Government adheres to its newly enacted deficit ceilings for the next 5 years, the debt would still reach $10,000 per person, with interest charges of $2,000 per taxpayer. These last figures—which must be considered optimistic—would mean a fourfold increase in per-capita debt, and an eightfold increase in annual interest charges per taxpayer, since 1975. This gives a better picture of the actual magnitude of the debt. It still does not describe, however, the human implications. The human implications are that our children are being shackled with an insurmountable burden as a result of our largess. Over time, the disproportionate burdens imposed on today's children and their children by a continuing pattern of deficits will include some combination of the following:

First, increased taxes; second, reduced public welfare benefits; third, reduced public pensions; fourth, reduced expenditures on infrastructure and other public investments; fifth, diminished capital formation, job creation, productivity enhancement, and real wage growth in the private economy; sixth, higher interest rates; seventh, higher inflation; eighth, increased indebtedness to and economic dependence on foreign creditors; and ninth, increased risk or default on the Federal debt.

Perhaps the most significant effect of today's unrestrained borrowing, however, will be a reduction in the political choices available to future governments of this Nation. From 1952 through 1975, the interest cost on the Federal debt consumed between 6.7 percent and 8.3 percent of annual revenues. Since then, that percentage has risen steadily. By 1986, interest costs consumed 18 percent of annual revenues.

In 1986, 87 percent of Federal Government expenditures were financed by tax revenues, and the remaining 22 percent by borrowing. Of this situation, one could say that the American people were getting a dollar's worth of government for every 78 cents' worth of taxes. But at what cost? Future taxpayers—including today's children—face the sad prospect of receiving 78 cent's worth of government for every dollar's worth of taxes.

SUMMARY

Efforts to secure a constitutional rule to require a balanced Federal budget and to limit the growth of Federal spending have intensified as the Federal Government's persistent failure to balance its budget has produced debt of over $2.1 trillion and as the Federal share of the economy has continued to increase.

In a large measure, the Nation's economic problems are attributable to these facts. Unacceptable levels of inflation and unemployment, as well as enormous foreign trade imbalances, can be traced directly or indirectly to the fiscal policies and practices of the National Government.

This balanced budget amendment will reestablish constitutional limitations upon Federal spending and deficit practices that existed in earlier years through an array of formal and informal constitutional provisions and which have been eroded over the course of recent years. The abandonment of the "unwritten constitution" requirement of balanced budgets, the passage of the 16th amendment, and the development of new judicial doctrines concerning the Federal spending authority are some of the features that have contributed to the present situation in which there is insufficient external constraint upon the ability of Congress to spend.

Specifically, the proposed amendment addresses a serious spending bias in the present fiscal process arising from the fact that Members of Congress do not have to cast votes in behalf of new taxes in order to accommodate new spending programs. Rather than having to cast such politically disadvantageous votes, Congress has been able to resort to increased levels of deficit spending or to allow the tax system, through "bracket creep," to produce annual, automatic tax increases.

Members of Congress, thus, have been free to respond to the concentrated pressures of spending interest groups—and reap the political advantages of doing so—without having to reap concomitant political disadvantages by reducing spending programs favored by some other spending interests or by expressly raising taxes.

The result is that spending continues inexorably to rise whatever the genuine will of the people. This result is an essentially undemocratic and unresponsive process that enables Members of Congress to avoid ultimate accountability for their spending and taxing decisions. This institutional bias requires a constitutional solution.

The text of the balanced budget amendment follows:

TEXT OF THE BALANCED BUDGET AMENDMENT WITH CONSENSUS TAX AMENDMENT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

ARTICLE —

SECTION. 1. Outlays of the United States for any fiscal year shall not exceed receipts to the United States for that year, unless three fifths of the whole number of both Houses of Congress shall provide for a specific excess of outlays over receipts.

SEC. 2. Any bill to increase revenue shall become law only if approved by a majority of the whole number of both Houses of Congress by rollcall vote.

SEC. 3. The Congress may waive the provisions of this article for any fiscal year in which a declaration for war is in effect.

SEC. 4. This article shall take effect in 1991 or for the second fiscal year beginning after its ratification, whichever is later.

CONCEPTS OF THE BALANCED BUDGET AMENDMENT

The balanced budget amendment proposes to overcome this spending bias by restoring the linkage between Federal spending and taxing decisions. It does not propose to read any specific level of spending or taxing forever into the Constitution and it does not propose to intrude the Constitution into the day-to-day spending and

taxing decisions of the representative branch of the Government. It merely proposes to create a fiscal environment in which the competition between the tax-spenders and the taxpayers is a more equal one—one in which spending decisions will once more be constrained by available revenues.

Section 1 of the amendment would establish a balanced budget as a norm of Federal fiscal policy. It could be overcome, however, by three-fifths votes in both Houses of Congress. Section 2 of the amendment would prohibit Congress from raising taxes and increasing the Federal Government's share of the national economy unless Members of Congress were willing to go on record.

This amendment is not a panacea for the economic problems of the Nation. The amendment is, however, a necessary step toward securing an environment more conducive to honest and accountable fiscal decisionmaking.

The balanced budget amendment represents both responsible economic policy and responsible constitutional policy. Passage of this resolution would constitute an appropriate response by Congress to the pending applications by nearly two-thirds of the States for a Constitutional Convention on this issue.

This amendment is in agreement with President Ronald Reagan who stated in 1980:

> Excessive Federal spending and deficits have become so engrained in Government today that a constitutional amendment is necessary to limit this spending. I shall continue to emphasize the need for such an amendment.

In his most recent State of the Union Address, the President also said:

> Once we've made the hard choices, we should lock in our gains with a balanced budget amendment to the Constitution.

NEED FOR BALANCED BUDGET CONSTITUTIONAL AMENDMENT

The primary purpose of this amendment is to correct a bias in the present political process in behalf of ever-increasing levels of Federal Government spending. Whether such spending is financed by higher taxes or new debt, it has woeful economic consequences. High interest rates, and the resulting decline in investment and productivity, as well as unacceptable levels of unemployment, all follow when the Government uses an excessive share of the Nation's resources, leaving too little for productive use by the private sector. If the Federal Reserve Board attempts to reduce these economic problems by increasing the money supply faster than increases in the supply of goods and services, inflation results.

While it is true that much of the enormous growth in Federal Government spending over the past two decades may be a response to evolving notions of the role of the public sector on the part of the American citizenry—that is, a genuine shift in the will and desire of the people—it is my contention that a substantial part of this growth stems from far less benign factors.

In short, the American political process is defective insofar as it is skewed toward artificially high levels of spending, that is, levels of spending that do not result from a genuine will and desire on the part of the people. It is skewed in this direction because of the characteristics of the fiscal order that have developed in this country in recent decades. It is a fiscal order in which Members of Congress have every political incentive to spend money and almost no incentive to forego such spending. It is a fiscal order in which spending decisions have become increasingly divorced from the availability of revenues.

GRAMM-RUDMAN AND A CONSTITUTIONAL AMENDMENT TO BALANCE THE BUDGET

The enactment of Gramm-Rudman does not diminish the need for a constitutional amendment requiring a balanced budget. Gramm-Rudman does not purport to correct the structural bias in favor of deficit spending that would be offset by a constitutional amendment.

The proposed constitutional amendments to balance the Federal budget correct the inherent structural bias within our political system causing chronic deficit spending. Gramm-Rudman implements that fundamental principle over the next 5 years, but it neither corrects the systemic biases in our political system nor purports to make that policy permanent. Accordingly, even if Congress and the President successfully meet the worthy objectives of the Gramm-Rudman statute over the next few years, the symptoms may have been temporarily relieved, but the cancer will linger to flare up later.

The spending bias in our fiscal processes is caused by the absence of linkage between taxing and spending decisions. Members of Congress, however well intentioned, simply do not have to cast votes in behalf of new taxes in order to accommodate new spending. Rather than casting politically disadvantageous votes, they may either resort to increased levels of deficit spending funded by borrowing or allow the tax system, through bracket creep, to produce annual, automatic tax increases. Over the next 5 years, Gramm-Rudman effectively addresses the deficits caused by these systemic flaws, but a constitutional amendment is necessary to permanently correct the flaws.

In a democracy, constitutions establish the structure of government by imposing restraints on the behavior of those who represent them. For years, the body politic has suffered from the removal of constraints upon Congress imposed explicitly or assumed implicitly by the Framers of the Constitution. Consequently, the Federal Government has run a deficit in 24 of the past 25 years. Since 1970, the United States has incurred the 11 largest peacetime deficits in the history of the Nation with 9 deficits over the past decade in excess of $50 billion. Consequently, Congress had to take the unprecedented steps prescribed by Gramm-Rudman. In this sense, Gramm-Rudman is itself a testament to the need for constitutional restraint. Thus, an amendment to the Constitution would reimpose, explicity, those constraints as only a constitutional amendment can.

Although Gramm-Rudman statutorily mandates a balanced budget, a constitutional amendment is required for the following reasons:

Gramm-Rudman does not purport to correct the structural bias in favor of deficit spending that would be offset by a constitutional amendment.

Gramm-Rudman is only intended to deal with a temporary crisis, whereas a constitutional amendment corrects a bias that has caused deficits in 47 of the past 54 budget cycles. The deficit spending bias is not a problem that has lasted, nor will last, only 5 years. In other words, the system is "broke" and will not be finally "fixed" in 5 years. It demands a permanent constitutional solution. See attached chart for documentation of deficit spending caused by structural bias.

Ultimately no Congress can bind a succeeding Congress by simple statute. Already press accounts and some of our colleagues have suggested spending and taxing pressures could cause Gramm-Rudman to be circumvented or changed. The success of deficit reduction efforts in the next 5 years and beyond may depend on stronger medicine than a statute can supply. Put another way, no statutory measure can contain provisions requiring a greater or more onerous voting rule for its repeal than for its adoption. Any balanced budget statute can be repealed, in whole or in part, by the simple expedient of adopting a new statute. Statutory limitations remain effective only as long as no majority coalition forms to overcome such statutory constraints. The virtue of a constitutional amendment is that it can invoke a stronger rule to overcome the spending bias.

Gramm-Rudman has put the Nation on the road to recovery. In the absence of constitutional underpinnings, however, Gramm-Rudman or any other statutory prescription faces challenges that may compromise enforcement.

By analogy: Several Senators could propose legislation to change statuto-

ry law relating to ratifying treaties, expelling Members of either House of Congress, or proposing constitutional amendments—all of which are current constitutional provisions requiring supermajority votes. This hypothetical legislation could set up elaborate mechanisms to ensure that treaties or constitutional amendment proposals get careful congressional scrutiny or that accused Members of Congress get due process. Even if such legislation were enacted, the new bill would not eliminate the need for the constitutional supermajority requirements in each of these areas. Similarly the current constitutional amendment proposals are intended to endow the voting of an unbalanced budget with the same solemn consideration now required for treaties. Because disconnecting outlays from revenues has consequences at least as sweeping as most treaties, a constitutional supermajority requirement is warranted regardless of current statutory attempts to balance the budget.

CONCENTRATED BENEFITS-DISPERSED COSTS

It is important first to understand what some economists and political scientists have described as the "concentrated benefit-dispersed cost" phenomenon. This describes the fact that the benefits of any given spending program normally are concentrated within a relatively small class of beneficiaries, while the costs of such a program are dispersed throughout a relatively large class of persons, that is, the taxpayers. Thus, those parties who benefit from a particular spending measure stand to benefit greatly while those who bear the costs are affected insignificantly. Authur Burns, former Chairman of the Federal Reserve Board, described it in these terms:

The proximate causes of this governmental bias are quite clear. In general, spending programs are more popular with people than higher taxes. The potential beneficiaries of a spending program are often a numerical minority, but they have a stronger incentive to keep informed, to organize, and to lobby for their favorite program than those who bear the cost have to oppose it. The rising cost of political campaigns and the concurrent proliferation of fundraising committees put intense pressure on legislators to vote for spending programs favored by such groups. We may, in fact, be entering an era in which governmental processes are overwhelmed by the naked demands of increasingly well-organized and effective interest groups. It is this concern that has led me to look with favor on even preemptory devices for offsetting the existing bias toward larger Federal spending and borrowing—AEI Economist, April 1979.

The competition, then, between the tax-spenders and the taxpayers is a highly unequal one; it is not at all surprising that the former should prevail so frequently. It is simply not worth the while of the individual taxpayer to spend as much time and effort to save himself a few cents or a few dollars on some program as it is for spending interests to secure millions or even billions of dollars for themselves. The spending interests tend to be intense and passionate in focusing upon individual spending measures likely to accrue to their benefit, while those who logically would be the most concerned about such spending, the taxpayers, tend to be diffuse and unorganized. Spending interests are politically visible and articulate and able to reward or punish legislators with their organized electoral support or nonsupport. Meanwhile, taxpayers are politically inarticulate, only barely able to perceive their self-interest in the context of isolated pieces of legislation. It is only when the spending programs are aggregated that the taxpayer begins to feel the full impact of such spending. Thus, it is only natural that legislators, however sincerely committed to fiscally responsible public policies, should be sensitive and responsive to the concerns of those who lobby for new or expanded spending initiatives. As Prof. Charles Baird of the University of California at Hayward has observed:

Whenever Government programs are considered one by one, there is a bias toward Government growth. Each program has a well-defined constituency that receives positive benefits therefrom. In many cases, the benefits from a particular program to a particular person represent a large part of that person's total income, while the tax cost to the beneficiary of that program is miniscule. Such direct beneficiaries of program A therefore are strongly motivated to organize work and lobby for the adoption and growth of that program. There is no countervailing incentive for taxpayers in general to organize, work, and lobby against program A in isolation because any individual taxpayer's share of program A is miniscule. Since elected representatives inevitably respond to lobbying efforts, there is a high probability that program A will be adopted even if the sum of the benefits therefrom are less than the sum of the costs.

The purpose of the balanced budget amendment is to create a more equal competition between spending interests and taxpayer interests by reducing the structural bias toward higher spending within the Federal fiscal system that contributes to the current imparity. By reducing the bias, and creating a more neutral environment within which this competition can take place, the representative processes will be more responsible and accountable to the genuine desires and interests of the public at large with respect to levels of public expenditures. As Prof. Allan Meltzer of Carnegie-Mellon University has observed—

Only by changing the ground rules under which spending decisions are made can we expect to obtain the outcome which people desire.

The proposed amendment addresses an important element of the spending bias: The access Members of Congress have to deficit spending. This enables Members of Congress to avoid having to vote new taxes in order to finance new spending.

DEFICIT SPENDING

A principal cause of the spending bias involves the virtually unlimited access that Members of Congress have to deficit spending. As the "unwritten Constitution" requirement of budget balance has been disregarded in recent years, Members of Congress no longer are constrained in their ability to increase spending by the concomitant need to increase ordinary revenues. Permissible levels of spending no longer are defined, as they traditionally have been, by levels of revenue available. In consequence, Members of Congress are free to obtain the resulting political advantages, without having either to: First, reduce spending for some other spending interest and incur the resulting political disadvantages, or second, increase tax revenues and incur the resulting political disadvantages.

Members of Congress do not have to reduce levels of spending for one program in order to accomplish increases in other programs because there is no effective limit as to how much Congress may spend in its budget. Once the traditional linkage has been severed between spending and revenues, there is no need for Members to establish priorities as between alternative spending proposals; each can be satisfied simply by increasing the level of the deficit. The availability of deficit spending enables Members to avoid the hard political decision of having to choose among spending proposals and thereby ensure for themselves some element of political disadvantage as well as political advantage.

Members of Congress do not have to increase revenues in order to accommodate increased spending because levels of spending no longer are related in any meaningful way to levels of revenue. Thus, not only is there no need for Congress to antagonize any other spending interest in the process of supporting a given spending measure, but there is no need to antagonize taxpayers generally by appearing to raise their tax burdens. Again, there is no element of political disadvantage Members of Congress are required to incur in order to reap the political advantages of responding to the spending interests.

In this respect, the availability of unlimited deficit spending allows the political costs of spending measures to be deferred in time, while enabling the political benefits to be enjoyed immediately. While the benefits of the measure usually will be understood immediately by its beneficiaries, the costs—in the form of higher future taxes, higher future inflation, and higher future interest rates—usually will be evident only at some remote

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time. Indeed, there may be no political costs whatsoever unless those who suffer from these economic ills are sophisticated enough to understand the cause-effect relationship between the earlier spending and the later symptoms.

APPROACH OF THE BALANCED BUDGET AMENDMENT

In seeking to reduce the spending bias in our present system—the unlimited availability of deficit spending—the major purpose of the balanced budget amendment is to ensure that, under normal circumstances, votes by Congress for increased spending will be accompanied either by votes: first, to reduce other spending programs or second, to increase taxes to pay for such programs. For the first time since the abandonment of the traditional balanced budget requirement, Congress will be required to cast some politically difficult vote as a precondition for a politically attractive vote to increase spending.

Section 1 of the proposed amendment would address the spending bias—unlimited access by Members of Congress to deficit spending—by requiring a three-fifths vote of each House of Congress before the Federal Government could engage in such spending. Such a procedure would not prohibit deficit spending, but would simply reestablish, as a norm, a budget in balance rather than one in deficit. A consensus greater than a normal majority would be required to violate this norm. Unless such a consensus existed, Congress would be bound in its spending by its available revenues and would be forced to account for new spending in one program area by either reduced spending in another program area or by increased taxes. The political advantages resulting from support for new spending then would be matched, at least to some degree, by countervailing political disadvantages.

Section 2 of the proposed amendment would reinforce section 1 and further link tax spending and tax raising by requiring both Houses of Congress to approve any bill to increase revenues by a constitutional majority. In the absence clear constitutional majority and Presidential consent, a tax increase could not cause the public sector to grow at the expense of the private. Though while section 1 would ensure, as a norm, that Federal spending is matched by Federal revenues, section 2 would ensure that such revenues are not raised without political accountability for Members of Congress. It would also make it less likely that the budget would be regularly balanced at increasingly high levels of taxation. Before Congress could make available to itself greater amounts of revenue for new spending initiatives, it would have to stand up in view of the public and place itself on record in behalf of such increased revenues.

As a result, the amendment effects a subtle, but important, change in the psychology of the budget process. Under the present system, each spending interest, in effect, competes with the taxpayers to raise the total ante in the Federal Treasury. Under a system, however, in which some form of spending ceiling is in effect, these same interests suddenly will be competing with one another in order to ensure themselves a certain proportion of a fixed ante in the Federal Treasury. Not only will spending interests have to convince Congress that their favored programs merit funding at a certain level, but they will, in addition, have to establish the priority of their programs. A spending ceiling comprised of something beyond mere congressional self-restraint will force Members of Congress to view spending requests in terms of relative desirability, not simply in terms of whether or not a program is desirable at all. An element of competition among the spending interests will be introduced into the budget process, undoubtedly to the long-term interests of those who finance the spending programs favored by these interests.

Thus, the proposed amendment would make it easier for well-meaning, but beleaguered, Members of Congress to exercise fiscal responsibility in making their policy decision. There would be an external constraint, something beyond their own ability to resist the importunities of the spending interests, upon which they could rely. As Prof. Roger Freeman of the Hoover Institution has noted:

> It is not that Members of Congress do not wish to produce a balanced budget but that under the circumstances they can only do so at a grave political risk to their survival. They need a defense against excessive demands which allows them to say "no" to a multitude of pressure groups. Such a defense cannot be built by statute because any act of Congress can be amended or repealed by this Congress or the next. Only a constitutional amendment can impose credible and effective spending restraints.

Prof. James Buchanan goes on to elaborate:

> The fault lies not in the bad intentions of elected politicians. The basic causes for the dramatic, and readily observable, shift in U.S. fiscal habits after World War II and notably after 1960 are not hard to identify. Keynesian teachings had succeeded in effectively repealing an important element of the unwritten fiscal Constitution within which American politics had been carrried out throughout almost two centuries of its history.

In summary, the purpose of the balanced budget amendment is to eliminate political process which allows Members to avoid having to vote for higher taxes in order to pay for higher spending and to establish a more genuinely neutral environment within which the budget competition occurs. The proposed amendment does not define what constitutes or what does not constitute a responsible budget, but only defines the institutional framework within which such budgets can be put together. Rather than Federal Government spending increasing inexorably, whatever the desires of the citizenry, the amendment would ensure that such spending is set at levels more reflective of their genuine desires.

Mr. D'AMATO. Mr. President, I am pleased to join my distinguished colleague, the chairman of the Judiciary Committee, Senator THURMOND, and again become an original cosponsor of legislation to establish a constitutional amendment requiring a balanced Federal budget.

The balanced budget amendment passed the Senate in the 97th Congress, but was rejected by the House. In the 98th Congress, the legislation was bottled up in the Senate Judiciary Committee by the foes of budgetary reform, while the House refused to consider the balanced budget amendment. In the 99th Congress, however, the Senate failed to pass Senate Joint Resolution 225 by only a single vote. Hopefully, this will be the Congress during which we finally pass this needed reform through both Houses of Congress.

The immensity of our Federal budget woes is reaching crisis proportions. The fiscal year 1987 budget deficit may still exceed $100 billion. Budgetary reform should be the first order of business. This is why I actively support legislation to establish a constitutional amendment requiring a balanced budget. I strongly believe that a balanced budget amendment is the only means to force Congress to cut spending. We need this club. We must act now.

By Mr. CRANSTON:

S.J. Res. 12. Joint resolution to establish a national policy for the taking of predatory or scavenging mammals and birds on public lands, and for other purposes; to the Committee on Environment and Public Works.

TAKING OF PREDATORY ANIMALS ON PUBLIC LANDS

Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to establish a national policy for the taking of scavenging mammals and birds on public lands, and for other purposes.

The bill I introduce today—as in previous Congresses—addresses three critical issues in national wildlife management, especially management policies as they relate to predators and prey. One is the need to establish, within the broad parameters of wildlife management policies, a clear understanding and recognition of the interdependency of predator and prey;

a second is the need to establish a national policy for the taking of predators or scavengers—mammals or birds—on public lands, a policy that reflects a thorough understanding of these interdependent relationships; and a third is the need to set forth a series of clear, statutory procedures for the taking of predators on public lands. These procedures must be responsive to the right of all Americans to know how wildlife management policies relevant to predators are being carried out on lands that are owned by the public and managed in the national interest.

Predators and scavengers in the environment are indispensable. Every ecosystem has predatory forms of life. Few animal species, except larger predators themselves, are completely free from predation.

We are beginning, through studies in ecology and evolutionary biology, to understand just how important predators are in the ecosystem. We are learning to see predators not just as obstacles to the flourishing of life, but as vital components in the chain of life that includes man. In fact, in this chain, predators have a niche every bit as important to the survival of the Earth's species as any other part of that chain.

Just as the introduction of exotic species can adversely affect the balance of an ecosystem, so can the removal of predators. predators are known to be vital to keeping plant-eating populations from overgrazing consequently disrupting the food chain within an ecosystem. Without predators, prey populations tend to expand beyond the ability of an ecosystem to sustain that population. Predator populations themselves are kept in check by a system of natural controls, including the size of the prey population.

Predators, too, are powerful evolutionary forces on their prey. In fact, as naturalist Stephen Jay Gould points out, natural history to a large extent is a tale of different adaptions to avoid predation.

It's not unusual, for example, to see a squirrel dart almost purposefully in front of a car, often with fatal results for the animal. In its moment of panic, the squirrel holds its bushy tail over its back and zigzags wildly on the road. Actually, the animal is responding the same way it does when fleeing a predator, and while the technique is faulty for escaping cars, a pursuing hawk is likely to either miss the squirrel entirely or grasp only the tail instead of the animal.

The morning dove is one of the commonest bird species in North America. The dove also knows the value of dodging when attempting an escape, and doves play tricks with their tails, too. The morning dove is quite drab in coloration, except that each tail feather is tipped in white. As the bird flees, its outspread tail presents a vibrant semicircle of white spots—a target, in effect, to catch a predator's eye. But to grasp a dove's tail is to receive a loose bunch of feathers instead of a struggling dove.

But escape is not the only way species deal with predation. Another ploy is the phenomenon of predator satiation, where a species will flourish with such speed and in such numbers that the predators' ability to deplete an entire species is simply overwhelmed. Such species expansions occur in relatively short bursts, and then subside, and the theme of nature—balance—reigns once more.

The point is, if predators were suddenly taken from the environment, one very powerful factor would be removed from the ecological balance which nurtures animal and plant life on Earth. Animal species became adapted to survival through all kinds of environmental factors, including natural populations of predators which themselves are continually refining their own adaptations though this same process of evolution. This system accounts for what we see reverse as life on Earth. It is a system that is remarkably effective, and with which we tamper at our peril.

This is not to say that individual predators cannot be removed from the environment. They can be, and sometimes they must be. But the wholesale slaughter of predator species carries with it the long-range threat of impeding the survival-by-adaptation of significant animal species. By implication, we impede human progress. Animal species, of which man is one, are interdependent.

Wildlife managers often attempt to duplicate the quantitative impact of predation through establishing hunting seasons geared to remove the "harvestable surplus" of an animal population. However, wildlife managers cannot duplicate the qualitative impact of predation in any practical sense. For example, a tiger may attempt 30 kills before finally succeeding. Likewise, a falcon may pursue two dozen quarry before making a kill. Each unsuccessful attempt means the adaptations of the prey were sufficient to keep it alive. Each successful kill represents a prey individual that was carrying some fatal disadvantage—physical incapability, age, injury, disease, or some unknown quality which might be generalized as "bad luck." Thus, predators exert consistent pressures on the prey that are beneficial to the health of the prey population. Wildlife professionals are increasingly sensitive to the indispensable presence of natural predator populations.

Mythology about predators still persists. Some people still swear that wolves, cougars, or other predators are capable of obliterating, for example, the deer population in a given region or State. Such assertions are simply not supported by the facts. Predator-prey systems have persisted throughout the millenia, and both predators and prey species have evolved mechanisms which tend to keep the whole system operating as long as favorable environmental conditions persist.

Fluctuations in prey populations can actually be reduced by the presence of predators. As a case in point, the moose population in Isle Royale National Park, an island ecosystem in Lake Superior, persisted, unevenly, for many years in the absence of wolves. The population was observed to rise steeply for a time and then crash abruptly when available browse was exhausted. This cycle was observed at least twice in the early 20th century. Wolves eventually colonized the island by crossing the winter ice. What researching later observed was that both predator and prey populations steadied themselves through their interactions: The moose population neither rose as high nor fell as low in the presence of the wolves, and the wolf population itself held relatively steady year after year.

For the wolf, pack structure is the key to balance between predator and environment. If prey species decline, the wolf pack feels the stress of limited food supplies. Stress is reflected in increased friction between pack members. Eventually, some pack members may be ejected from the pack to face uncertain survival odds on their own.

Even in the best of conditions, the social order of the pack permits only the dominant male and dominant female to mate; each pack produces only one litter of pups in a season. In times of stress, however, the pups are the first to die, thus maximizing the chances of survival of the adult pack unit upon which the wolves depend so heavily. The pack structure is best interpreted as an adaptation which enables the wolf to take prey larger and stronger than a single wolf, which maximizes the survivability of each pack member, and which keeps the wolf from out-eating the available prey.

Many other predators and scavengers show adaptations as sophisticated as those of the wolf. There are predators capable of exploiting almost every form of life. Ospreys dive after fish; black-footed ferrets—now critically endangered—prey on burrowing prairie dogs beneath the Earth; the pine martin races after squirrels in the trees. In every case, the predator is an important component of the ecosystem, and every effort should be made to understand and protect this natural order.

The policies of the Federal Government regarding predators must be viewed in this context.

The Federal Government is charged with stewardship over our 450 million acre public domain heritage. The land is held in trust for all Americans, and is properly administered under multiple-use guidelines.

The traditional framework for wildlife management involving "resident" species, or most wildlife other than migratory birds, involves State fish and wildlife agencies operating under cooperative agreements with the Bureau of Land Management. Eagles and other raptors, wild horses and burros, and marine mammals are administered under Federal law on both State and Federal land.

The State-Federal cooperative agreements have created an acceptable and proper basis for wildlife management activities. The States have done a good job of organizing their wildlife departments and administering wildlife restoration projects, hunting seasons, and research programs.

Where public lands are involved, the Federal Government has the responsibility to respect and uphold the public interest. Public land managers and wildlife managers operating on public land must not lose sight of this fundamental tenent. Further, decisions involving major public land programs must be evaluated in light of the impact on public values. Such an evaluation must involve both the Federal Government and the public.

The bill I introduce today provides an adequate system for review and decision on national predator policies and action. I believe it will provide a comprehensive examination of Federal policy with regard to predators, and that such an examination will help us avoid costly, nonproductive management mistakes—mistakes that derive substantially from a continuing failure to comprehend the essential relationship between predator and prey.

Mr. President, I ask unanimous consent that the text of my resolution and a section-by-section analysis be printed at this point in the RECORD.

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

S.J. RES. 12

Whereas article IV, section 3, clause 2 of the Constitution vests authority in the Federal Government to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," and

Whereas predators and scavengers are indispensable to the health and stability of natural ecosystems and to prey species in particular, and

Whereas the extermination of predators has resulted in dramatic instability of prey populations and attendant habitat deterioration, and

Whereas there is no evidence that nonhuman predation alone is a cause of extinction of prey, and

Whereas organisms tend to be closely adapted to their environment by evolution, whereby their survival ability is greatest, and

Whereas evolution occurs in response to changing environmental parameters, including the living and nonliving components of the ecosystem, and

Whereas a thorough understanding of the interdependent relationship between predator and prey is essential to sound wildlife and land use planning at all levels of government, and furthermore,

Whereas the Convention on International Trade in Endangered Species of Wild Fauna and Flora, as ratified by the United States Senate, stipulates that native species of wildlife should be maintained throughout their range at a level consistent with their role in the ecosystems in which they occur: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all taking of predators or scavengers naturally occurring on public lands for all or part of their life cycles is hereby prohibited unless such taking is approved according to the requirements of sections 3 or 4 of this joint resolution.

SEC. 2. For the purposes of this Act, the following definitions apply:

"Predators" include individuals of any species of bird or mammal that regularly capture or consume other vertebrate species.

"Wildlife" includes all species of the animal kingdom (persisting for all or part of their life cycles on ecosystems of the United States, its coastal waters, or adjacent islands) which are covered by the provisions of this Act.

"Public lands" means any lands belonging to the United States of America on which regulations regarding taking of wildlife covered by this Act are or may become less restrictive than those herein provided.

"Species" includes any subspecies of wildlife covered by this Act and any other group of wildlife covered by this Act of the same species or smaller taxa in common special arrangement that interbreed when mature.

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct, for any purpose, any wolf, predator, or other form of wildlife covered by this Act, excluding taking for subsistence purposes.

"Scavengers" include individuals of any species of bird or mammal that naturally feed upon the remains of dead vertebrate species.

An "ecosystem" is the basis ecological unit including the living organisms, the nonliving environment, and the interactions between individual organisms, between species, and between organisms and the environment.

A "secretary" is the head of a Federal agency having land management responsibilities, including the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, the head of the Tennessee Valley Authority, and others.

SEC. 3. Proposed actions by any person involving the taking of predators or scavengers naturally occurring on public lands of the United States may be carried out (unless prohibited by other statute or regulation) even though the taking can be reasonably expected to have significant impacts on the specific wildlife covered by this Act, other species of wildlife covered by this Act, or the ecosystems of which the wildlife is a part, if proposals for such actions—

(a) are submitted to the Secretary having primary jurisdiction over the public land on which the taking will occur at least one hundred and twenty days prior to the date such taking is to commence; and

(b) are described by notice in the Federal Register, allowing at least sixty days for public comment; and

(c) will, if carried out, maintain that species at a level consistent with its role in the ecosystem in which taking is to occur, protecting and maintaining the indispensable relationship between predator and prey species and the ecosystem, and be in overall public interest; and

(d) are approved in writing by the Secretary after consideration of public comment and consultation with the President's Council on Environmental Quality and with the Director of the United States Fish and Wildlife Service before any taking is carried out.

SEC. 4. The Secretary shall enforce the provisions of this Act and shall, in consultation with the President's Council on Environmental Quality, promulgate such regulations as he deems necessary and appropriate to carry out the provisions, including enforcement, of this Act: *Provided,* That all mammals or birds shot or captured contrary to the provisions of this section, or of any regulation issued hereunder, and all guns, aircraft, and other equipment used to aid in the shooting, attempting to shoot, capturing, or harassing of any mammal or bird in violation of this section or of any regulation issued hereunder shall be subject to forfeiture to the United States: *And provided further,* That the Secretary or head of any Federal agency who has issued a lease, license, permit, or other agreement to any person who is convicted of a violation of this Act or of any regulation issued hereunder may immediately cancel each such lease, license, permit, or other agreement. The United States shall not be liable for the payment of any compensation, reimbursement, or damages in connection with the cancellation of any lease, license, permit, or other agreement pursuant to this section.

SEC. 5. Nothing herein shall be construed in any way to amend or otherwise alter the requirements of the National Environmental Policy Act of 1969, the Marine Mammal Protection Act of 1972, or the Endangered Species Act of 1973, as amended.

SEC. 6. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SECTION-BY-SECTION ANALYSIS

SECTION 1. PREAMBLE

Section 1 of the bill states the intent of the resolution is to establish a national policy for the taking of predatory or scavenging mammals and birds on public lands; set forth findings; and prohibits the taking of predators or scavengers unless pursuant to specified requirements.

SECTION 2. DEFINITIONS

Section 2 of the bill defines the terms used in the Act, including predators, scavengers, and take.

SECTION 3. REQUIREMENTS FOR PERMISSIBLE TAKINGS

Section 3 of the bill sets forth procedures under which the taking of predators or scavengers may be carried out.

SECTION 4. ENFORCEMENT AND REGULATORS

Section 4 calls upon the Secretary of the appropriate Department to promulgate regulations and enforce requirements. Sets forth penalties for violations of the Act.

SECTION 5. RELATION OF THE ACT TO EXISTING LAW

Section 5 of the Act is specified not to amend or alter the National Environmental Policy Act of 1969, the Marine Mammal Protection Act of 1972, or the Endangered Species Act of 1973, as amended.

SECTION 6. AUTHORIZATION

Section 6 provides such sums as may be necessary to carry out the provisions of the Act.

By Mr. SYMMS:

S.J. Res. 13. Joint resolution proposing an amendment to the Constitution of the United States with respect to the English language; to the Committee on the Judiciary.

ENGLISH IS OFFICIAL LANGUAGE

Mr. SYMMS. Mr. President, last November 4, California voters overwhelmingly approved a constitutional amendment, proposition 63, designating English as the State's official language. The lopsided 73- to 27-percent vote came after the citizen initiative qualified for the ballot with the signatures of more than 1 million voters.

California now becomes the eighth State to declare English as its official language. In November 1984, the voters of California passed another citizen initiative by a 71- to 29-percent vote which directed Gov. George Deukmejian to call upon Congress and the President to put an end to bilingual ballots.

Mr. President, today I wish to reintroduce the English language amendment which first came before this body in 1981 through the sponsorship of Senator S.I. Hayakawa. Since that time the American people have enthusiastically embraced this movement. I am sure that most of you in this body have received numerous letters from constituents about the ELA, as it is known. As the English language movement continues to generate momentum, I know you will receive even more inquiries. More than 25 States are expected to act on bills in 1987 that will designate English as their official language.

An analysis of the California vote shows that proposition 63 was approved by a strong bipartisan vote that crossed every ethnic and racial line, and it's easy to understand why.

Americans take considerable pride in their Nation; not just those born in the United States, but those who have immigrated here to start a new life and learn a new culture and language. They know that "opportunity" in their adopted nation is spelled in "English." They, like many native-born Americans, often feel like a stranger in their adopted country because of our confusing language policies.

Mr. President, English is our common language—the tie that binds us all as citizens of one nation. Yet, as Senator Hayakawa recently pointed out, some politicians and ethnic leaders oppose giving English any legal protection. They continue to demand the use of other languages by government: Mandatory bilingual ballots, bilingual education that doesn't emphasize English, and other divisive measures.

The English language amendment will not regulate the use of other languages in private contexts; first amendment rights are still guaranteed. Nor will it discourage foreign languages from being taught as academic subjects, nor their use in diplomacy, circumstances where safety is a consideration, or to obstruct justice.

The intent of the English language amendment is to ensure that English will be the official language of the United States, and that our non-English-speaking citizens will become part of the American mainstream as soon as possible. We seek to ensure that Federal programs, such as bilingual education, do not foster a system of American apartheid, but that they teach English as rapidly as possible.

Mr. President, we have read about the problems which our neighbors to the north in Canada have experienced because of Federal language policies, but few of us are aware of the severe language crisis that has occurred in Belgium. Because of it, last fall Prime Minister Wilfried Martens offered his resignation to the King, and Minister of the Interior Charles-Ferdinand Nothomb actually resigned.

This latest friction between the country's Flemish and French speakers came to a head when the French-speaking mayor of a small city refused to take a test to demonstrate his knowledge of Flemish. Provincial authorities dismissed Mayor Jose Happart, but he appealed to the Council of State. The Council ruled against him, thus precipitating a new crisis in the national coalition government that precariously balances the country's divided language interests.

Similar language disputes twice contributed to the fall of national governments in Belgium in the seventies. The current controversy is considered especially bitter, since it has come to light that Mayor Happart own top honors in Flemish in his high school class.

Mr. President, as elected representatives of this great Nation; we must do all that is within our power to ensure that we do not duplicate the experiences of Canada, Belgium, and numerous other countries with different languages.

Mr. President, the ELA proclaims a broad principle, English is the language of the United States, and enjoys a special status in this country that sets it apart from all other languages.

I invite my colleagues to join me and the American people in securing this basic principle in our Constitution.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 13

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE—

"SEC. 1. The English language shall be the official language of the United States.

"SEC. 2. The Congress shall have the power to enforce this article by appropriate legislation.".

By Mr. HELMS:

S.J. Res. 14. Joint resolution to designate the third week of June of each year as "National Dairy Goat Awareness Week"; to the Committee on the Judiciary

NATIONAL DAIRY GOAT AWARENESS WEEK

● Mr. HELMS. Mr. President, I am today introducing a joint resolution to designate the third week of June of each year as "National Dairy Goat Awareness Week."

For more than 5,000 years, dairy goats have supplied mankind with food and shelter. Dairy goats were an important part of the necessities that the early settlers brought to these shores. As pioneers moved across our land, dairy goats went with them. These animals have always been a part of the typical American farm in every region of the United States. Today there are over 250,000 dairy goats in this country.

The modern dairy goat is ideally suited to today's changing farm scene. A mature female weighs about 150 pounds, yet milks an average of 14 times her body weight in a 305-day lactation. Exports of these efficient, structurally sound animals increase each year.

While goat milk, ice cream, and yogurt are sold in various parts of the United States, the best known goat milk product is goat cheese or Chèvre. During the last decade there has been a tremendous increase in consumer interest in domestic goat cheeses. The number of domestic producers of Chèvre has increased dramatically, and there is an extraordinary array of American-made goat cheeses today.

These facts are well known to dairy goat breeders, but few consumers are aware of the role played by the dairy goat in the American economy. Passage of this resolution designating the second Saturday through the third Saturday of June, National Dairy Month, as "Dairy Goat Awareness Week" will do much to educate the American people to the potential of dairy goats and their products.●

By Mr. RIEGLE:

S.J. Res. 16. Joint resolution to designate the period commencing on April 5, 1987, and ending on April 11, 1987, as "World Health Week," and to designate April 7, 1987, as "World Health Day"; to the Committee on the Judiciary.

WORLD HEALTH WEEK

● Mr. RIEGLE. Mr. President, today I am again privileged to introduce Senate Joint Resolution 16 designating April 7, 1987, as "World Health Day" and the week of April 5, 1987, as "World Health Week."

In the 99th Congress I introduced and the Senate passed Senate Joint Resolution 226, calling for the week of April 6, 1986, to be designated "World Health Week" and the day of April 7, 1986, "World Health Day." This year the American Association for World Health has again requested that we sponsor the week beginning April 5, 1987, as "World Health Week" and April 7, 1987, as "World Health Day." Since 1949, April 7 has been designated "World Health Day" around the world. This day is to promote better health care for all people and to draw attention to the World Health Organization's goal of health for all by the year 2000. Good health is essential for all people to be able to lead socially and economically productive lives.

Mr. President, this joint resolution would help educate many in our society about important world health facts and the actions we must take to reach major health goals in the United States and around the globe. It will call attention to the plight of people in some Third World countries where as many as 4 out of every 5 children die before they reach the end of childhood and to changing lifestyles in the United States that can increase a person's chances of avoiding cancer, heart disease, and lung disorders. The activities of "World Health Week" give voice and support to the basic objectives for healthy living around the world. These objectives include the minimum requirement of safe water and adequate sanitary facilities; immunization against diphtheria, tetanus, poliomyelitis, measles, mumps, rubella, and tuberculosis; and access to local health care for all populations, including the availability of preventative health education and trained health practitioners.

The World Health Organization continues to direct international health activities. The constant surveillance control, and eradication of disease; the collaboration of research; and the collection, dissemination, and exchange of health care data are all directed and supported by the World Health Organization. In this country, the American Association of World Health serves to increase our awareness of these issues surrounding world health care needs and of the special health priorities of the United States. In declaring April 7, 1987, as "World Health Day," and the week of April 5, 1987, as "World Health Week," it is our hope that this resolution will heighten our awareness of what must be done to make ourselves and all other people in the world healthier. One cannot just wish for good health and hope that it happens. To help make health for all a reality by the year 2000, I urge my colleagues to join with me in cosponsoring this resolution.

Mr. President, I ask unanimous consent that this joint resolution be printed in full in the RECORD immediately following my remarks.

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

S.J. RES. 16

Whereas the health of a nation depends upon the health of its people;

Whereas a principle enunciated in the Constitution of the World Health Organization (hereafter in this resolution referred to as "WHO"), and accepted by the United States is, that improvements in the health of the people of our Nation contributes to world health, and world health contributes to the health of our Nation;

Whereas the United States is an active member of the WHO and has both benefited from and contributed to the achievements of such;

Whereas the nations of the world are committed to the WHO goal of "Health For All By The Year 2000";

Whereas primary health care is recognized as a key to the attainment of the WHO goal;

Whereas essential elements of primary health care are health education and awareness, prevention and treatment of common diseases and illnesses, basic sanitation, and adequate nutrition;

Whereas the WHO has established April 7, of each year as World Health Day, to call attention to what individuals and governments can do to further the health of people everywhere, and the American Association of World Health has sponsored and assisted in this endeavor;

Whereas the national theme for World Health Day 1987 is "Healthy Living: Everyone a Winner" which focuses on healthy lifestyles, thus reflecting the growing conviction that greater emphasis should be placed on positive actions that individuals and communities can take to protect and promote health, and

Whereas the global theme for World Health Day 1987 will be "Immunization: A Chance for Every Child" which will emphasize immunization as a first step to healthy living; and

Whereas it has been custom for the President to call attention to World Health Day each year in the form of a public message regarding such: 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 on April 5, 1987, and ending on April 11, 1987, is designated as "World Health Week", and April 7, 1987, is designated as "World Health Day", and the president is authorized and requested to issue a proclamation calling upon the people of the United States to observe the above Week and Day with appropriate programs, ceremonies, and activities.

SENATE CONCURRENT RESOLUTION 1—PROVIDING FOR AN ADJOURNMENT OF THE SENATE AND THE HOUSE OF REPRESENTATIVES

Mr. BYRD submitted the following concurrent resolution which was considered and agreed to:

S. CON. RES. 1

Resolved by the Senate (the House of Representatives concurring), That when the Senate adjourns on Tuesday, January 6, 1987, Wednesday, January 7, 1987, Thursday, January 8, 1987 or Friday, January 9, 1987, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12 o'clock meridian on Monday, January 12, 1987, and that when the House of Representatives adjourns on Thursday, January 8, 1987, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12 o'clock meridian on Tuesday, January 20, 1987, or until 12 o'clock meridan on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House, after consultation with the Minority Leader of the House, shall notify the Members of the House to reassemble whenever, in his opinion, the public interest shall warrant it.

SENATE CONCURRENT RESOLUTION 2—EXPRESSING THE SENSE OF THE CONGRESS REGARDING THE NEED FOR THE NEGOTIATION OF AN INTERNATIONAL AGRICULTURAL CONSERVATION RESERVE TREATY

Mr. PRESSLER submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 2

Whereas worldwide grain supplies are at a record level of 350 million metric tons—almost two years of grain imports;

Whereas world food production has increased at a rate of 2.5 percent during the 1980s world farm output has increased at a rate of over 3 percent annually;

Whereas approximately one fifth of the world's cropland is experiencing an intolerable rate of soil erosion;

Whereas the cost of farm programs is at record levels in many nations;

Whereas agricultural export markets are declining due to increased productivity in food importing nation; and

Whereas other grain exporting nations have expressed a need to limit agricultural production; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), that (a) it is the sense of the Congress that the President should initiate multilateral negotiations with all major agricultural commodity exporting nations to establish an international agricultural conservation reserve to reduce worldwide grain surpluses and control soil erosion.

(b) The basis for such an international agricultural conservation reserve should be:

(1) All signatory nations shall agree not to bring any virgin land into crop production and to return a certain percentage of cropland to its natural state and keep the land out of production for a minimum of 10 years. The amount of land to be taken out of production shall be large enough to bring grain supplies in line with demand while still maintaining an adequate emergency food reserve.

(2) Cropland would have to be taken out of production and sound conservation practices implemented on the land to control soil erosion. Land taken out of production would not have to be classified as highly erodible.

(3) An emergency provision would allow a portion of the land of all signatory nations to be put back in production if stocks fell below the level established for the emergency food reserve.

(4) Individual nations could return a portion of their land to production if their production did not meet domestic consumption.

(5) A coordinated international food aid program could be included.

● Mr. PRESSLER. Mr. President, today I am introducing a sense of the Congress resolution urging the administration to initiate multilateral negotiations with all major agricultural exporting nations to establish an international agricultural conservation reserve to reduce grain surpluses and control soil erosion. The current record grain surpluses, the high cost of farm programs and export subsidies, declining export markets and worldwide soil erosion problems provide a unique opportunity and need to reach such an agreement.

My resolution expresses the sense of the Congress that the administration should initiate multilateral negotiations on an international agricultural conservation reserve program. Such an agreement would require all grain exporting nations to agree not to bring any virgin land into production and to return an equal percentage of their cropland to grass or other natural cover. The land would have to be held out of production for a minimum of 10 years. The agreement should also include a provision for an internationally coordinated food aid program. Each nation would be required to contribute a certain percentage of production for food aid. Emergency provisions would be included to allow land to be brought back into production if a shortage of grain occurred or a nation's production fell below domestic consumption. Such an agreement would benefit all nations. The French Minister of Agriculture recently called for a similar international production control agreement and some Western European political parties have expressed interest in this proposal.

Today, worldwide carryover grain stocks are at a record level of 350 million metric tons. The surplus has resulted from increased production and declining export demand. Historically, agricultural production has increased at a rate of 2.5 percent annually. During the 1980's world farm production has increased at a rate of over 3 percent. Food production has outpaced world food demand. More specifically, in the U.S. farm output has increased annually by 2.4 percent during the past 10 years. During the same time period the U.S. population has grown at a 1-percent annual rate. The result is a 1.4-percent increase in surplus food production annually. This 1.4 percent of food production must either be stockpiled or exported. To export the 1.4-percent annual surplus, agricultural exports would have to increase at an annual rate of 5 percent. A 5-percent growth in exports would not reduce the surplus built up in previous years.

On the other hand, if the United States annually reduced production to compensate for the growth in productivity, an estimated 39 million acres, in addition to current set-aside program acres, would have to be taken out of production. All other major agricultural exporting nations face a similar problem. This does not take into consideration the potential increased production of other nations and possible declines in export demand. For example, in 1983 the United States diverted 83 million acres under the PIK Program while other nations increased production and total world grain production actually increased. This illustrates not only the need for a land diversion program, but also demonstrates that unilateral production controls will be unsuccessful in reducing world grain stocks.

The huge grain surpluses and intense competition for exports has dramatically increased farm program costs in the United States and other grain exporting nations. Last year the United States spent $25.6 billion in farm program payments. The European Economic Community spent $25 billion and Canada recently announced a special grains program which will make an additional $1 billion in income payments to farmers over the next 6 months. None of these countries can afford to continue to subsidize farmers at this rate.

Soil erosion is also a serious worldwide environmental problem. Approximately one-fifth of the world's cropland is experiencing an intolerable rate of soil erosion. Millions of acres of cropland are lost annually to severe soil erosion and the productivity of millions of additional acres continues to deteriorate. All nations have land under cultivation that never should have been plowed or cleared of trees. A 10-year conservation reserve program would make great strides in the control of worldwide soil erosion. The conservation and environmental benefits from such a program would help to assure future generations of an adequate food supply.

Current farm policies throughout the world encourage farmers through subsidies to deplete valuable soil resources to grow crops already in surplus at prices below the cost of production. These policies are forcing farmers out of business and dramatically increasing Government farm support costs. Farmers and taxpayers of grain exporting nations in effect are subsidizing food importing nations. So long as world grain stocks remain at record levels, farm prices will remain depressed and farm program costs will stay high. An international agricultural conservation reserve program is the only effective means of reducing grain production and increasing farm prices. I ask my colleagues to join in support of this resolution to urge the administration to initiate multilateral negotiation of an international agricultural conservation agreement.●

SENATE CONCURRENT RESOLUTION 3—TO ENCOURAGE THE CONGRESS TO ENSURE THAT SUFFICIENT FUNDS ARE PROVIDED UNDER TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS MODIFIED BY CHAPTER 1 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981, TO MEET THE NEEDS OF ALL ELIGIBLE EDUCATIONALLY DISADVANTAGED STUDENTS

Mr. MOYNIHAN submitted the following concurrent resolution; which was referred to the committee on Labor and Human Resources:

S. CON. RES. 3

Whereas only approximately 40 percent of the eligible educationally disadvantaged students nationwide receive services under title I of the Elementary and Secondary Education Act of 1965 as modified by chapter 1 of the Education Consolidation and Improvement Act of 1981; and

Whereas the cost of serving eligible students has increased in recent years; and

Whereas, the original intent of this program was to aid all children with family incomes below the Federal poverty standard; and

Whereas, the value to society of educating our young people cannot be overemphasized: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), It is the sense of the Congress that when reauthorizing ap-

propriations for compensatory education for disadvantaged children under title I of the Elementary and secondary Education Act of 1965, as modified by chapter 1 of the Education Consolidation and Improvement Act of 1981, the Congress should take into account the number of eligible students who are not served by the program authorized by that title and the additional costs of providing services to such students.

● Mr. MOYNIHAN. Mr. President, I rise today to introduce a concurrent resolution which urges the Congress to increase funding for the chapter 1 Compensatory Education Program. One of the important tasks facing this new Congress will be the reauthorization of the Elementary and Secondary Education Act, and within that context will be much debate over the chapter 1 program. Given the anticipated efforts to reauthorize and reform chapter 1, this resolution expresses the sense of the Congress that funding for this program be increased to provide for the thousands of children who are not being served under existing funding levels.

This program provides Federal funds for remedial reading and math classes to educationally disadvantaged children. The original intent of this program—first enacted under the 1965 Elementary and Secondary Education Act—was to aid children with family incomes below the Federal poverty standard, children who showed low academic achievement.

The history is a simple one.

President Kennedy established a task force in the Executive Office to study the issue of poverty and its effect on educational achievement. He proposed general legislation in this area—which later emerged as the outline for the war on poverty declared by President Johnson—which included providing Federal funds to school districts—local educational agencies—to improve the academic skills of educationally disadvantaged students.

This idea was incorporated into the Elementary and Secondary Education Act of 1965 signed into law by President Johnson. He and the Congress undertook to provide additional reading and math courses to children in need of extra help.

But is it working? Is it reaching those that need it most? I think not. Unfortunately, the best estimates show that the program is only reaching approximately 45 percent of those children who are eligible to receive assistance from it. The Senate Committee on Appropriations, in its report for fiscal year 1987, wrote:

> Virtually all parties involved in and knowledgeable about chapter 1, except the Department of Education, estimate that fewer than one-half of those eligible are served.

The committee was obviously concerned that the Department of Education is underestimating the number of children in need of services and consequently underestimating the amount of funds necessary to provide chapter 1 services to all that need them.

In addition to the problems which exist in trying to reach all those children, the Supreme Court decision, Aguilar versus Felton, has presented special problem for those children who are enrolled in parochial schools and are eligible for chapter 1 services. In Felton, the Court held that it was unconstitutional to provide chapter 1 services on parochial school grounds. As a result of this decision, many of these children have been unable to receive extra help in math and reading courses at "neutral sites," as required by the Supreme Court, due to the increased costs of providing such sites.

The effect on my own State of New York has been profound. Before Felton, there were 40,000 students enrolled in parochial schools receiving remedial services under the chapter 1 program. Since the Felton decision took effect—New York City was granted a 1-year delay for compliance until September 1986—almost 12,000 parochial students in New York City are not receiving services for which they are eligible. In the upstate region of New York State, 7,500 out of 15,000 students are not receiving services for which they are eligible.

The increase in funding urged by this resolution is intended to be used to both expand the number of students served in public schools and to cover the new additional costs of providing services to parochial school students. Clearly there is a need for substantial increases in funding; both Congress and the administration recognize it—now we must act upon it.

The value of educating our young people cannot be overemphasized. In addition to the immediate benefit to individual students and their families, our society as a whole is collectively strengthened by an educated work force. For those that claim that such services are too costly, the investment worthless, I would point to the fact that the more poor people who can move out of the ranks of poverty with an education, the less we will bear the costs of supporting these individuals.

If we fail to recognize the need to educate our Nation's children—a need that is not currently being met—we fail in our responsibility as elected officials entrusted with the public wellbeing. The Federal Government must meet this growing demand by authorizing additional funds to serve all eligible children, not half, not two-thirds, but all of them. I urge my colleagues to pass this resolution so that we can accomplish this goal.●

SENATE CONCURRENT RESOLUTION 4—RELATING TO TAX-EXEMPT 501(c)(3) BONDS

Mr. MOYNIHAN submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 4

Whereas private nonprofit colleges, universities, hospitals, and other section 501(c)(3) organizations serve important public functions in the national interest, equivalent to those served by similar public institutions;

Whereas higher education and healthcare have become capital intensive undertakings, requiring significant debt financing;

Whereas the availability of tax-exempt financing to private nonprofit colleges, universities, and hospitals on a parity with their public counterparts has been a longstanding Federal policy which should continue; and

Whereas the Internal Revenue Code has in the past recognized the public purposes served by private nonprofit colleges, universities, and hospitals by classifying such institutions as "exempt persons" for purposes of tax-exempt financing: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the tax-exempt bonds of private nonprofit colleges, universities, hospitals, and other section 501(c)(3) institutions should not be classified as "private activity" bonds in the Internal Revenue Code of 1986.

● Mr. MOYNIHAN. Mr. President, I rise today to introduce a concurrent resolution calling upon Congress to undo what should never have been done in the first place: The classification of tax-exempt bonds of private nonprofit educational institutions and hospitals as "private activity" bonds. The tax-exempt bond provisions of the Tax Reform Act of 1986 imposed this label on bonds issued on behalf of such nonprofit institutions, collectively known as section 501(c)(3) organizations, thereby obscuring the longstanding recognition in the Internal Revenue Code of the public purposes served by these institutions.

Prior law tax-exempt bond provisions treated private nonprofit colleges, universities, and hospitals in large part the same as governmental entities. Governmental units and 501(c)(3) organizations were both classified as "exempt persons"—an explicit recognition in the code of the important public purposes served by the latter.

The 1986 act's elimination of the "exempt person" category and the classification of nonprofit institutions' bonds as "private activity" bonds has changed the status of these bonds, and the resolution I introduce today calls upon Congress to restore their former status. I will soon introduce legislation that would accomplish this end.

Last year's historic tax reform legislation included a substantial revision of the tax-exempt bond provisions of the Internal Revenue Code. This was one aspect of the legislation of particular concern to me, and as a member of the Senate Finance Committee and later the committee on

conference, I worked very hard to preserve one principle in the law of tax-exempt financing: That tax-exempt bonds should remain available to private, nonprofit colleges, universities, and hospitals on a parity with their public counterparts.

This principle had long been embodied in the Tax Code, in recognition of the public purposes served by private educational, charitable, religious, and other nonprofit institutions—known in the Internal Revenue Code as "section 501(c)(3)" organizations, a reference to the code provision granting them tax-exempt status. In 1968, when Congress first enacted provisions designed to limit the use of tax-exempt financing by private, nongovernmental enterprises, a critical distinction was made. The new restrictions were to apply to the activities of everyone except "exempt persons." An exempt person was thereupon defined as: a governmental unit, or an organization described in section 501(c)(3)—section 107(a) of the Revenue Adjustment Act of 1968, amending section 103 of the Internal Revenue Code of 1954.

Now here we had something important. Private educational, charitable, and other nonprofit institutions are said to be imbued with a public purpose such that they were specifically equated for tax-exempt bond purposes with sovereign institutions of government. This was an immunity, if you like, of the largest consequence. And this deemed equivalence of 501(c)(3) organizations and governmental units was preserved in all critical respects in subsequent revisions of the law in this area—perhaps most significantly in 1984, when statewide volume limits were imposed on most nongovernmental tax-exempt bonds.

The Internal Revenue Code's explicit recognition in 1968 of the public purpose served by private nonprofit colleges and hospitals, and the parity in tax-exempt financing that flowed from it, coincided with the elimination of other forms of Federal support for the capital needs of these institutions. The HUD-sponsored College Housing Program, which had provided low-interest loans to private educational institutions to finance capital needs through the 1960's, was being phased out at the end of that decade. Similarly, tax-exempt financing for private nonprofit hospitals has filled the gap left by the termination of the Hill-Burton program of Federal grants and low-interest loans for these institutions.

But the principle of permitting tax-exempt bonds for private nonprofit colleges, universities, and hospitals on a parity with their public counterparts came under attack during the last Congress, starting with the administration's tax reform proposals. Both the initial Treasury Department plan of November 1984 and the revised plan endorsed by the President in May 1985 would have eliminated tax-exempt financing for 501(c)(3) organizations. And the tax reform bill passed by the House of Representatives, though not repealing tax-exempt bonds for 501(c)(3) organizations, would nevertheless have substantially restricted them, while leaving similar public institutions unfettered.

I, along with other like-minded Members of this body, fought to preserve parity between public and private nonprofit educational and health-care facilities. In most crucial respects we were successful. Under the Senate tax reform bill, and the bill ultimately agreed to by the conference committee and enacted into law, both governmental and section 501(c)(3) bonds may be advance refunded on the same basis. Unlike the case with other tax-exempt bonds, the interest on governmental and section 501(c)(3) bonds is excluded from the minimum tax. Finally, governmental and section 501(c)(3) bonds are exempt from the statewide volume limitations—although the new law imposes a "per institution" limit on the amount of bonds that any 501(c)(3) organization that is not a hospital may have outstanding.

Yet the final bill made a very disturbing change in the status of 501(c)(3) institutions for purposes of tax-exempt financing. The "exempt person" status, previously shared by governmental units and section 501(c)(3) organizations, was eliminated, and the bonds of section 501(c)(3) organizations were to be classified henceforth as "private activity" bonds. Thus obliterated was an important symbol of the Tax Code's recognition of the public purposes served by private 501(c)(3) organizations engaged in educational, health care, and similar nonprofit pursuits.

The implications for future restrictions on tax-exempt financing for 501(c)(3) institutions are ominous. Those of us who were concerned about this were successful in getting a disclaimer of sorts added to the final legislation, section 1302 of the Tax Reform Act of 1986, which states that—

> Nothing in the treatment of section 501(c)(3) bonds as private activity bonds under the amendments made by this title shall be construed as indicating how section 501(c)(3) bonds will be treated in future legislation, and any change in future legislation applicable to private activity bonds shall apply to section 501(c)(3) bonds only if expressly provided in such legislation.

The resolution which I introduce today expresses the intent of the Congress to undo the classification of 501(c)(3) bonds as "private activity" bonds. Specific legislation to accomplish this result is currently being drafted, and I will introduce it as soon as it is ready.

The goal of the legislation contemplated by today's resolution is to preserve the level playing field between public and private institutions serving in the fields of education, health care, and medical research. The extent of the private nonprofit sector's contributions in these fields in this country is unique. The beginnings of higher education in America were private sector initiatives. It was almost two centuries before State-sponsored institutions appeared. In time State institutions would enroll the greater proportion of students, but private colleges and universities continue to be vigorous and typically growing institutions. American higher education is unique in the degree to which its major research institutions are "private"—about an even split—and to the extent that the private sector contains so many of the most sought after small undergraduate institutions.

The role of private nonprofit hospitals is also a central one. Private nonprofit institutions constitute 60 percent of our Nation's community hospitals—non-Federal, short-term, general hospitals—and 70 percent of all community hospital beds. Private nonprofit hospitals provide a disproportionate amount of services on the forefront of medical technology, such as organ transplants, open-heart facilities, radiation therapy, and genetic counseling. Moreover, most of our Nation's medical education and research is conducted in nonprofit hospitals.

Preservation of equal access to tax-exempt financing is a critical element in maintaining the vigor of private initiatives in higher education and health care, for both are now "capital intensive" undertakings. A recent National Science Foundation study of the country's private Ph.D.-granting universities estimated that more than 26 percent of these institutions needed capital expansion for research facilities between now and 1991 will have to be financed through tax-exempt bonds. In short, in this era of capital intensive research, to use David A. Spence's term, restricting the financing opportunities of private institutions in relation to their public counterparts could lose us a legacy of two and three centuries over one or two generations.

The future capital needs of private nonprofit hospitals are also extensive. In my own State of New York, nonprofit hospitals will require about $2.5 billion in capital expansion over the next 2 years—for modernization and replacement of facilities, not expansion of bedspace. The comparable figure for public institutions is $1 billion.

The resolution which I introduce today, and the legislation that will shortly follow, will insure that tax-exempt financing remains available to

these most important institutions on a parity with their public counterparts.●

SENATE CONCURRENT RESOLUTION 5—TO REQUEST THE PRESIDENT TO TAKE APPROPRIATE ACTIONS TOWARD THE ESTABLISHMENT OF A COOPERATIVE INTERNATIONAL RESEARCH PROGRAM WITH RESPECT TO THE GREENHOUSE EFFECT

Mr. GORE submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 5

Whereas scientists have documented a continuing increase in the concentration of carbon dioxide and greenhouse gases in the atmosphere of the Earth, which may result in a phenomenon known as the greenhouse effect;

Whereas scientists predict that the greenhouse effect could have many adverse effects on the Earth, including—

(1) changes in climatic patterns which could cause alterations in agricultural productivity and patterns of land use; and

(2) the melting of glacial ice, resulting in a rise in sea levels worldwide;

Whereas human activities, including the burning of fossil fuels, are primarily responsible for the increase in the concentration of carbon dioxide and the release of other greenhouse gases in the atmosphere;

Whereas all nations may be adversely affected if the greenhouse effect occurs, and each nation has an interest in protecting the Earth from this environmental threat; and

Whereas the magnitude of the impact of the occurrence of the greenhouse effect has been investigated by scientists and is only beginning to be understood: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That

(a) The United States should promote and support—

(A) domestic and international research efforts with respect to the greenhouse effect and its impact;

(B) studies of methods to reduce the rate of increase in the concentration of carbon dioxide and greenhouse gases in the atmosphere of the Earth; and

(C) efforts to prevent degradation of the environment of the Earth by the greenhouse effect;

(2) the President is requested to take all appropriate actions, in cooperation with any international organization which the President determines to be appropriate, to establish a long-term study, beginning with a 1-year cooperative international research program, with respect to the greenhouse effect with the purposes of—

(A) increasing the worldwide dissemination of information with respect to the causes of the greenhouse effect and methods to alleviate or avoid the effect;

(B) coordinating the research efforts of the participating nations with respect to the greenhouse effect;

(C) fostering cooperation among nations to develop more extensive research efforts with respect to the greenhouse effect:

(D) preparing a report on the accomplishments of the program;

(E) identifying the potential alternative policies necessary to avoid a buildup of greenhouse gases beyond levels which could have catastrophic results; and

(F) developing a long-term plan for future research efforts with respect to the greenhouse effect;

(3) any such Program established by the President should be started during or before the calendar year 1991, which year shall be known as the "International Year of the Greenhouse Effect"; and

(4) the participation of the United States in any such program established by the President should be planned and coordinated on behalf of the United States by the Chairman of the National Academy of Sciences and the Secretary of Energy.

● Mr. GORE. Mr. President, today I am reintroducing legislation to establish the International Greenhouse Effect Year. The purpose of this measure is to expand and focus scientific research efforts on the greenhouse effect and its consequences for society.

Modern man has acquired the technology to catastrophically alter the fragile atmosphere of our planet. The release of carbon dioxide, from burning fossil fuels, and other greenhouse gases, from high technology applications, could have the insidious long-term effect of warming the globe. The buildup of these gases traps radiation, causing the atmosphere to heat up—a phenomenon known as the greenhouse effect. If today's worst-case scenarios become tomorrow's facts, we may have only a few decades in which to ameliorate the impact—which could range from drought in the Midwest to floods on both coasts.

At first glance, the greenhouse effect may sound more like the plot of a bad science fiction novel than a serious environmental issue deserving immediate public policy review. But given its serious and potentially drastic impacts, Federal research and study efforts must place the highest priority on solving the mysteries surrounding the greenhouse effect. Otherwise future generations may experience a science fiction horror story come true.

I am proposing legislation that would decrease the scientific uncertainties and provide us more information on the greenhouse effect. This concurrent resolution calls for the establishment of an international year of scientific study of the greenhouse effect, and requests the President to take steps to launch a worldwide cooperative program. That would be just the beginning, as many of the studies would continue for years.

The legislation would first, coordinate and promote domestic and international research efforts on both the scientific and policy aspects of this problem; second, identify strategies to reduce the increase of carbon dioxide and other greenhouse gases; third, study ways to minimize the impact of the greenhouse effect; and fourth, establish long-term research plans.

The concept of an international year of study has been used successfully in the past. In fact, the best and most complete collection of data based on atmospheric concentrations of carbon dioxide began in 1957 as a result of the International Geophysical Year. At that time a sampling station was established on Mona Loa, HI. Today scientists are still collecting data from that station.

Mr. President, I believe this bill will significantly improve national and international research coordination and cooperation. In time, it will produce the vital data Congress needs to make the appropriate policy decisions regarding the greenhouse effect. I urge my colleagues to support this legislation.●

SENATE CONCURRENT RESOLUTION 6—EXPRESSING THE SENSE OF THE CONGRESS WITH RESPECT TO THE DENIAL OF HEALTH INSURANCE COVERAGE FOR DISABLED ADOPTED CHILDREN

Mr. HUMPHREY submitted the following concurrent resolution; which was referred to the Committee on Labor and Human Resources:

S. CON. RES. 6

Whereas at least 36,000 children in this country are free for adoption and are living in foster care waiting for a permanent home;

Whereas many of these children are physically, mentally, or emotionally disabled;

Whereas some insurance companies deny health insurance to a disabled adopted child on the basis that the disability of the child is a preexisting condition;

Whereas the actions of these insurance companies impose a significant barrier to the adoption of these children because few prospective adoptive parents can afford to take the risk of adopting a child who will not be covered by health insurance;

Whereas under State law in this country, adoption severs the legal ties between the adopted child and his or her birth parents, and creates a legal relationship with the adoptive parents;

Whereas in every State, State law has established that an adopted child has the same legal status as a biological child for all intents and purposes;

Whereas these insurance companies would cover a biological child with the same disability born to the adoptive parents;

Whereas by denying health insurance coverage to disabled adopted children, the insurers are discriminating against adopted children and establishing a policy contrary to State law on adoption; and

Whereas the barriers to adoption that deny children a permanent home and prevent couples from establishing families should be eliminated: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the Congress—

(1) opposes discrimination in health insurance against adopted children;

(2) urges insurance companies to treat adopted children identically to biological children as mandated by State law; and

(3) calls upon State legislatures to enact legislation that specifically requires health insurance contracts to cover adopted children of the insured, subscriber, or enrollee on the same basis as other dependents, with such coverage to be effective from the date of placement for the purpose of adoption.

● Mr. HUMPHREY. Mr. President, today I am introducing a concurrent resolution expressing the sense of the Congress with respect to the denial of health insurance coverage for disabled adopted children.

For over a year now, I have been actively promoting adoption through specific legislation and through the congressional coalition on adoption. In the course of this effort, I have learned of the numerous barriers to adoption from experts in the adoption field and individuals and couples who have been involved with the adoption process.

One such barrier arises when insurance companies deny health insurance to a disabled adopted child on the basis that the disability, whether it be physical, mental, or emotional, is a preexisting condition. Few prospective parents can afford to take the risk of adopting a child who will not be covered by health insurance.

This past April, at the first hearing of the congressional coalition on adoption, several witnesses on a panel devoted to health care for adoption of children with special needs discussed this problem. One witness, Mrs. Linda Sacra, representing the Texas Council on Adoptable Children, spoke of a case which involved a baby born prematurely who showed a brain mass on a CAT-scan several days after birth. The prospective adoptive parents wanted to proceed with the adoption but, because their insurance company refused to cover any costs associated with the brain mass on the grounds that it was a preexistent condition, the adoption plan was disrupted. I am told there are many cases like this, involving both infants and older children.

A second witness, Mrs. Mary Ann Kuharski, who is both an adoptee and an adoptive parent working on adoption and foster care issues in Minnesota, testified about a Minnesota law which guarantees equal rights for adopted children in health and accident insurance coverage. The Minnesota statute encourages couples to adopt children with disabilities by providing that they will not be denied health insurance coverage for the child from the date of placement in their home. Under this law, if the child would be covered if he or she were a biological child, then the adopted child must also be covered.

Mr. President, that makes good sense to me. Under State law in this country, adoption severs the legal ties between the adoptee and his or her birth parents, and creates a legal relationship with the adoptive parents. In every State except Illinois, by statute, an adopted child has, for all intents and purposes, the same status as a biological child. Illinois cases have established the same law. According to adoptive parents and child advocates, some insurers simply choose to ignore these laws, and in essence discriminate against adopted children by refusing to provide health care coverage for disabilities which existed before the adoption.

According to the best information available, only eight States have statutes specifically dealing with health insurance coverage for adopted children, and some of those may not be strong enough to prevent completely this discrimination. In addition, if the statute does not specify that coverage must be provided from the time of placement, an insurance company may choose to provide coverage from the date of the finalization of the adoption or later. There is little or no case law on this subject in any State.

According to the Department of Health and Human Services, at least 36,000 children are free for adoption and waiting for a permanent home. Many of these children are disabled. Some are eligible for Medicaid and thus their health care would be covered whether they are in a foster home or an adoptive home. For those who are not eligible for Medicaid, financing of their health care may impose a significant barrier to their adoption.

Through adoption laws, all States have said to adoptive parents, "This child is your child, like any other child born to you." As parents we accept and love, and the insurance companies cover, our biological children with any congenital conditions or abnormalities they may have. Since the State law says an adopted child is to be treated identically to a biological child, why should a health insurance plan not cover a disabled adopted child when it would cover a biological child with the same disability? By denying health insurance coverage to disabled adopted children, insurers are discriminating against adopted children and establishing a policy contrary to State law on adoption.

Mr. President, I have no interest in meddling in insurance policy or in encouraging the Federal Government to dictate policy in insurance matters to State legislatures. But Congress has repeatedly recognized the need to encourage special needs adoption, particularly through the Adoption Opportunities Program established by the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Public Law 95-266), and the Adoption Assistance Program established by the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272).

I have been told this problem of obtaining health insurance is pervasive and constitutes a serous barrier to special needs adoption. I believe Congress has a responsibility to point out the inequity in this situation and to encourage the insurance industry and the State legislatures to take steps to solve the problem.

The concurrent resolution I am introducing today makes it clear that Congress first, opposes discrimination in health insurance against adopted children; second, urges insurance companies to treat adopted children identically to biological children as mandated by State law; and third, calls upon State legislatures to enact legislation that specifically requires health insurance contracts to cover adopted children of the insured, subscriber, or enrollee on the same basis as other dependents, with such coverage to be effective from the date of placement for the purpose of adoption.●

SENATE RESOLUTION 1—INFORMING THE PRESIDENT THAT A QUORUM OF EACH HOUSE IS ASSEMBLED

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 1

Resolved, That a committee consisting of two Senators be appointed to join such committee as may be appointed by the House of Representatives to wait upon the President of the United States and inform him that a quorum of each House is assembled and that the Congress is ready to receive any communication he may be pleased to make.

SENATE RESOLUTION 2—INFORMING THE HOUSE THAT A QUORUM OF THE SENATE IS ASSEMBLED

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 2

Resolved, That the Secretary inform the House of Representatives that a quorum of the Senate is assembled and that the Senate is ready to proceed to business.

SENATE RESOLUTION 3—ELECTING SENATOR JOHN C. STENNIS AS PRESIDENT PRO TEMPORE OF THE U.S. SENATE

Mr. BYRD (for himself and Mr. THURMOND) submitted the following resolution; which was considered and agreed to:

S. RES. 3

Resolved, That John C. Stennis, a Senator from the State of Mississippi, be, and he is hereby, elected President of the Senate pro tempore, to hold office during the pleasure of the Senate, in accordance with rule I, paragraph 1, of the Standing Rules of the Senate.

SENATE RESOLUTION 4—NOTIFYING THE PRESIDENT OF THE ELECTION OF A PRESIDENT PRO TEMPORE

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 4

Resolved, That the President of the United States be notified of the election of John C. Stennis, a Senator from the State of Mississippi, as President pro tempore.

SENATE RESOLUTION 5—CONGRATULATING SENATOR JOHN C. STENNIS ON HIS ELECTION AS PRESIDENT PRO TEMPORE

Mr. BYRD (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 5

Resolved, That the Majority Leader and the Minority Leader of the Senate, on behalf of the Senate, congratulate John C. Stennis, a Senator from the State of Mississippi, upon his election as President pro tempore of the United States Senate.

SENATE RESOLUTION 6—NOTIFYING THE HOUSE OF THE ELECTION OF A PRESIDENT PRO TEMPORE

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 6

Resolved, That the House of Representatives be notified of the election of John C. Stennis, a Senator from the State of Mississippi, as President pro tempore.

SENATE RESOLUTION 7—ELECTING WALTER J. STEWART AS SECRETARY OF THE SENATE

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 7

Resolved, That Walter J. Stewart be, and he is hereby, elected Secretary of the Senate, beginning January 6, 1987.

SENATE RESOLUTION 8—NOTIFYING THE PRESIDENT OF THE UNITED STATES OF THE ELECTION OF A SECRETARY OF THE SENATE

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 8

Resolved, That the President of the United States be notified of the election of the Honorable Walter J. Stewart as Secretary of the Senate.

SENATE RESOLUTION 9—NOTIFYING THE HOUSE OF REPRESENTATIVES OF THE ELECTION OF A SECRETARY OF THE SENATE

Mr. BYRD (for himself and Mr. INOUYE) submitted the following resolution; which was considered and agreed to:

S. RES. 9

Resolved, That the House of Representatives be notified of the election of the Honorable Walter J. Stewart as Secretary of the Senate.

SENATE RESOLUTION 10—ELECTING HENRY KUUALOHA GIUGNI AS THE SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

Mr. BYRD (for himself and Mr. INOUYE) submitted the following resolution; which was considered and agreed to:

S. RES. 10

Resolved, That Henry Kuualoha Giugni, of the State of Hawaii, be, and he is hereby, elected Sergeant at Arms and Doorkeeper of the Senate.

SENATE RESOLUTION 11—ELECTING DAVID J. PRATT AS SECRETARY FOR THE MAJORITY OF THE SENATE

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 11

Resolved, That David J. Pratt be, and he is hereby, elected Secretary for the Majority of the Senate.

SENATE RESOLUTION 12—ELECTING HOWARD GREENE AS SECRETARY FOR THE MINORITY OF THE SENATE

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 12

Resolved, That Howard Greene be, and he is hereby, elected Secretary for the Minority of the Senate.

SENATE RESOLUTION 13—FIXING THE HOUR OF DAILY MEETING OF THE SENATE

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 13

Resolved, That the hour of daily meeting of the Senate be 12 o'clock meridian unless otherwise ordered.

SENATE RESOLUTION 14—TO AMEND PARAGRAPHS 2 AND 3 OF RULE XXV

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 14

Resolved, That Rule XXV, paragraph 2, of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Agriculture, Nutrition, and Forestry" and insert in lieu thereof "18";

Strike the figure after "Armed Services" and insert in lieu thereof "20";

Strike the figure after "Banking, Housing, and Urban Affairs" and insert in lieu thereof "18";

Strike the figure after "Commerce, Science, and Transportation" and insert in lieu thereof "20";

Strike the figure after "Energy and Natural Resources" and insert in lieu thereof "19";

Strike the figure after "Environment and Public Works" and insert in lieu thereof "16";

Strike the figure after "Foreign Relations" and insert in lieu thereof "20";

Strike the figure after "Governmental Affairs" and insert in lieu thereof "14";

Strike the figure after "Judiciary" and insert in lieu thereof "14";

SEC. 2. Paragraph 3(a) of rule XXV of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Budget" and insert in lieu thereof "24";

Strike the figure after "Rules and Administration" and insert in lieu thereof "16";

Strike the figure after "Veterans Affairs" and insert in lieu thereof "11";

Strike the figure after "Small Business" and insert in lieu thereof "18".

SEC. 3. Paragraph 3(c) of Rule XXV of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Indian Affairs" and insert in lieu thereof "8".

SENATE RESOLUTION 15—TO AMEND PARAGRAPH 4 OF RULE XXV OF THE STANDING RULES OF THE SENATE

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 15

Resolved, That paragraph 4 of Rule XXV is amended by striking all after subparagraph (g) and inserting in lieu thereof the following:

"(h)(1) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services and the Committee on Energy and Natural Resources may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(2) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Rules and Administration may, during the Hundredth Congress, also serve as a member of the

Committee on Veterans Affairs and the Committee on Intelligence so long as his service as a member of each of such committees is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 3(a) and 3(b).

"(h)(3)(A) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Banking, Housing and Urban Affairs and the Committee on Foreign Relations may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(3)(B) A Senator who during the Hundredth Congress may serve as a member on those committees listed in subparagraph (a), as well as a member on the Special Committee on Aging, may, during the Hundredth Congress, also serve as a member of the Committee on the Budget so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3.

"(h)(4) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations and the Committee on Agriculture, Nutrition and Forestry may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may be serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(5)(A) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services and the Committee on the Judiciary may, during the Hundredth Congress, also serve as a member of the Committee on labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(5)(B) A Senator who during the Hundredth Congress serves on the Committee on Armed Services, the Committee on the Judiciary, and the Committee on Labor and Human Resources, and who serves as chairman of a committee listed in paragraph 2, may serve as chairman of two subcommittees of all committees listed in paragraph 2 of which he is a member.

"(h)(6)(A) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition, and Forestry and the Committee on Appropriations may, during the Hundredth Congress, also serve as a member of the Committee on the Judiciary so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(6)(B) A Senator who during the Hundredth Congress serves on the Committee on Agriculture, Nutrition and Forestry, the Committee on Appropriations, and the Committee on the Judiciary, and who serves as chairman of a committee listed in paragraph 2, may serve as chairman of two subcommittees of all committees listed in paragraph 2 of which he is a member.

"(h)(7) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Energy and Natural Resources and the Committee on the Judiciary may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(8) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Environment and Public Works and the Committee on Finance may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(9) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition and Forestry and the Committee on Finance may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(10) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Banking, Housing and Urban Affairs and the Committee on Commerce, Science and Transportation may, during the Hundredth Congress, also serve as a member of the Committee on Finance so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(11)(A) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations and the Committee on Banking, Housing and Urban Affairs, may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(11)(B) A Senator who during the Hundredth Congress may serve as a member on those committees listed in subparagraph (a), as well as a member of the Committee on the Budget, may, during the Hundredth Congress, also serve as a member of the Committee on Small Business so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(12) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on the Judiciary and the Committee on Labor and Human Resources may, during the Hundredth Congress, also serve as a member of the Committee on Foreign Relations so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(14) A Senator whose term begins on January 3, 1987 may serve as a member of the Committee on Commerce, Science and Transportation and the Committee on Foreign Relations and may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(14) A Senator whose term begins on January 3, 1987 may serve as a member of the Committee on Appropriations and the Committee on Environment and Public Works and may, during the Hundredth Congress, also serve as a member of the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2."

SENATE RESOLUTION 16—TO AMEND PARAGRAPH 4 OF RULE XXV OF THE STANDING RULES OF THE SENATE

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 16

Resolved, That paragraph 4 of Rule XXV is amended by adding at the end of paragraph (h) the following:

"(h)(15) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on the Judiciary, the Committee on Labor and Human Resources, the Committee on Armed Services, and the Committee on Veterans Affairs may, during the Hundredth Congress, serve as a member of the Committee on the Judiciary, the Committee on Labor and Human Resources, the Committee on Armed Services, and the Committee on Veterans Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(16) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Commerce, Science and Transportation, the Committee on Governmental Affairs, and the Committee on Rules and Administration may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Commerce, Science and Transportation, the Committee on Governmental Affairs, and the Committee on Rules and Administration so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(17) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Finance, the Committee on Governmental Affairs, and the Select Committee on Intelligence may, during the Hundredth Congress, also serve as a member of the Joint Economic Com-

mittee so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraphs 3(a) and 3(b).

"(h)(18) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Energy and Natural Resources, the Committee on Labor and Human Resources, and the Committee on Small Business may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Energy and Natural Resources, the Committee on Labor and Human Resources, and the Committee on Small Business so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(19) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Environment and Public Works, the Committee on Energy and Natural Resources, and the Committee on the Budget may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on the Budget, the Committee on Energy and Natural Resources, and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(20) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Environment and Public Works and the Committee on Finance may, during the Hundredth Congress, also serve as a member of the Committee on Banking, Housing and Urban Affairs and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(21) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Banking, Housing and Urban Affairs, the Committee on Finance, and the Special Committee on Aging may, during the Hundredth Congress, also serve as a member of the Committee on Governmental Affairs so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(22) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Environment and Public Works, the Committee on Finance, the Committee on Governmental Affairs, the Select Committee on Intelligence may, during the Hundredth Congress, serve as a member of the Committee on Environment and Public Works, the Committee on Finance, the Committee on Governmental Affairs, and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(23) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition and Forestry, the Committee on Appropriations, and the Committee on Government Affairs may, during the Hundredth Congress, serve as a member of the Committee on Agriculture, Nutrition and Forestry, the Committee on Appropriations, and the Committee on Labor and Human Resources so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(24) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition and Forestry, the Committee on Foreign Relations, the Committee on the Budget and the Committee on Veterans Affairs may, during the Hundredth Congress, also serve as a member of the Select Committee on Small Business so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(25) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Environment and Public Works, the Committee on the Judiciary, and the Committee on Veterans Affairs may, during the Hundredth Congress, also serve as a member of the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(26) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services and the Committee on Energy and Natural Resources may, during the Hundredth Congress, serve as a member of the Committee on Armed Services, the Committee on Environment and Public Works, the Committee on Rules and Administration, and the Select Committee on Intelligence so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(27) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services, the Committee on Government Affairs, and the Select Committee on Intelligence may, during the Hundredth Congress, also serve as a member of the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(28) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Commerce, Science and Transportation, the Committee on Foreign Relations, the Committee on Small Business, and the Special Committee on Aging may, during the Hundredth Congress, serve as a member of the Committee on Commerce, Science and Transportation, the Committee on Foreign Relations, the Committee on Environment and Public Works, the Committee on Small Business, and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2, or as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(29) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Armed Services and the Committee on Environment and Public Works may, during the Hundredth Congress, serve as a member of the Committee on Armed Services, the Committee on Labor and Human Resources, and the Committee on the Judiciary so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2.

"(h)(30) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Budget, the Committee on Environment and Public Works, the Committee on Finance and the Joint Economic Committee may, during the Hundredth Congress, serve as a member of the Committee on Armed Services, the Committee on Environment and Public Works, the Committee on the Budget, and the Joint Economic Committee so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(31) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Finance, the Committee on the Judiciary, the Committee on Labor and Human Resources, the Special Committee on Aging and the Committee on the Budget may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on the Judiciary, the Committee on the Budget, and the Special Committee on Aging so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(32) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Commerce, Science and Transportation, the Committee on the Budget, and the Committee on Small Business may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Commerce, Science and Transportation, the Committee on the Budget, and the Committee on Small Business so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than two committees listed in paragraph 3(a) and 3(b).

"(h)(33) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Banking, Housing and Urban Affairs, the Committee on Small Business, and the Joint Economic Committee may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Banking, Housing and Urban Affairs, the Committee on Small Business, and the Joint Economic Committee so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more

than two committees listed in paragraph 3(a) and 3(b).

"(h)(34) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Energy and Natural Resources, the Committee on Foreign Relations, the Committee on Veterans' Affairs, and the Select Committee on Intelligence may, during the Hundredth Congress, serve as a member of the Committee on Energy and Natural Resources, the Committee on Foreign Relations, the Committee on Veterans' Affairs, and the Select Committee on Intelligence so long as his service as a member of each of such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 3(a) and 3(b).

"(h)(35) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Appropriations, the Committee on Governmental Affairs, and the Committee on Small Business may, during the Hundredth Congress, serve as a member of the Committee on Appropriations, the Committee on Governmental Affairs, the Committee on Small Business, and the Committee on the Budget so long as his service as a member of each of such committees is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 3(a) and 3(b).

"(h)(36) A Senator who on the last day of the Ninety-ninth Congress was serving as a member of the Committee on Agriculture, Nutrition and Forestry, the Committee on Armed Services, the Special Committee on Aging and the Joint Economic Committee may, during the Hundredth Congress, serve as a member of the Committee on Agriculture, Nutrition and Forestry, the Committee on Armed Services, the Committee on Commerce, Science and Transportation, the Special Committee on Aging, and the Joint Economic Committee so long as his service as a member of each such committee is continuous, but in no event may he serve, by reason of this subdivision, as a member of more than three committees listed in paragraph 2, and as a member of more than two committees listed in paragraph 3(a) and 3(b)."

SENATE RESOLUTION 17—MAKING MAJORITY PARTY APPOINTMENTS TO SENATE COMMITTEES FOR THE 100TH CONGRESS

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 17

Resolved, That the following shall constitute the majority party's membership on the standing committees for the 100th Congress, or until their successors are chosen:

Committee on Agriculture, Nutrition, and Forestry: Mr. Leahy (Chairman), Mr. Zorinsky, Mr. Melcher, Mr. Pryor, Mr. Boren, Mr. Heflin, Mr. Harkin, Mr. Conrad, Mr. Fowler, and Mr. Daschle.

Committee on Appropriations: Mr. Stennis (Chairman), Mr. Byrd, Mr. Proxmire, Mr. Inouye, Mr. Hollings, Mr. Chiles, Mr. Johnston, Mr. Burdick, Mr. Leahy, Mr. Sasser, Mr. DeConcini, Mr. Bumpers, Mr. Lautenberg, Mr. Harkin, Ms. Mikulski, and Mr. Reid.

Committee on Armed Services: Mr. Nunn (Chairman), Mr. Stennis, Mr. Exon, Mr. Levin, Mr. Kennedy, Mr. Bingaman, Mr. Dixon, Mr. Glenn, Mr. Gore, Mr. Wirth, and Mr. Shelby.

Committee on Banking, Housing, and Urban Affairs: Mr. Proxmire (Chairman), Mr. Cranston, Mr. Riegle, Mr. Sarbanes, Mr. Dodd, Mr. Dixon, Mr. Sasser, Mr. Sanford, Mr. Shelby, and Mr. Graham.

Committee on Commerce, Science, and Transportation: Mr. Hollings (Chairman), Mr. Inouye, Mr. Ford, Mr. Riegle, Mr. Exon, Mr. Gore, Mr. Rockefeller, Mr. Bentsen, Mr. Kerry, Mr. Breaux, Mr. Adams.

Committee on Energy and Natural Resources: Mr. Johnston (Chairman), Mr. Bumpers, Mr. Ford, Mr. Metzenbaum, Mr. Melcher, Mr. Bradley, Mr. Bingaman, Mr. Wirth, Mr. Fowler, and Mr. Conrad.

Committee on Environment and Public Works: Mr. Burdick (Chairman), Mr. Moynihan, Mr. Mitchell, Mr. Baucus, Mr. Lautenberg, Mr. Breaux, Ms. Mikulski, Mr. Reid, and Mr. Graham.

Committee on Finance: Mr. Bentsen (Chairman), Mr. Matsunaga, Mr. Moynihan, Mr. Baucus, Mr. Boren, Mr. Bradley, Mr. Mitchell, Mr. Pryor, Mr. Riegle, Mr. Rockefeller, and Mr. Daschle.

Committee on Foreign Relations: Mr. Pell (Chairman), Mr. Biden, Mr. Sarbanes, Mr. Zorinsky, Mr. Cranston, Mr. Dodd, Mr. Kerry, Mr. Simon, Mr. Sanford, Mr. Adams, and Mr. Moynihan.

Committee on Governmental Affairs: Mr. Glenn (Chairman), Mr. Chiles, Mr. Nunn, Mr. Levin, Mr. Sasser, Mr. Pryor, Mr. Mitchell, and Mr. Bingaman.

Committee on the Judiciary: Mr. Biden (Chairman), Mr. Kennedy, Mr. Byrd, Mr. Metzenbaum, Mr. DeConcini, Mr. Leahy, Mr. Heflin, and Mr. Simon.

Committee on Labor and Human Resources: Mr. Kennedy (Chairman), Mr. Pell, Mr. Metzenbaum, Mr. Matsunaga, Mr. Dodd, Mr. Simon, Mr. Harkin, Mr. Adams, and Ms. Mikulski.

SENATE RESOLUTION 18—MAKING MINORITY PARTY APPOINTMENTS TO SENATE COMMITTEES FOR THE 100TH CONGRESS

Mr. DOLE submitted the following resolution which was considered and agreed to:

S. RES. 18

Resolved, That the following shall constitute the minority party's membership on the standing committees for the 100th Congress, or until their successors are chosen:

Committee on Agriculture, Nutrition, and Forestry: Mr. Helms, Mr. Dole, Mr. Lugar, Mr. Cochran, Mr. Boschwitz, Mr. McConnell, Mr. Bond, and Mr. Wilson.

Committee on Appropriations: Mr. Hatfield, Mr. Stevens, Mr. Weicker, Mr. McClure, Mr. Garn, Mr. Cochran, Mr. Kasten, Mr. D'Amato, Mr. Rudman, Mr. Specter, Mr. Domenici, Mr. Grassley, and Mr. Nickles.

Committee on Armed Services: Mr. Warner, Mr. Thurmond, Mr. Humphrey, Mr. Cohen, Mr. Quayle, Mr. Wilson, Mr. Gramm, Mr. Symms, and Mr. McCain.

Committee on Banking, Housing, and Urban Affairs: Mr. Garn, Mr. Heinz, Mr. Armstrong, Mr. D'Amato, Mr. Hecht, Mr. Gramm, Mr. Bond, and Mr. Chafee.

Committee on Commerce, Science, and Transportation: Mr. Danforth, Mr. Packwood, Mrs. Kassebaum, Mr. Pressler, Mr. Stevens, Mr. Kasten, Mr. Trible, Mr. Wilson, and Mr. McCain.

Committee on Energy and Natural Resources: Mr. McClure, Mr. Hatfield, Mr. Weicker, Mr. Domenici, Mr. Wallop, Mr. Murkowski, Mr. Nickles, Mr. Hecht, and Mr. Evans.

Committee on Environment and Public Works: Mr. Stafford, Mr. Chafee, Mr. Simpson, Mr. Symms, Mr. Durenberger, Mr. Warner, and Mr. Pressler.

Committee on Finance: Mr. Packwood, Mr. Dole, Mr. Roth, Mr. Danforth, Mr. Chafee, Mr. Heinz, Mr. Wallop, Mr. Durenberger, and Mr. Armstrong.

Committee on Foreign Relations: Mr. Lugar, Mr. Helms, Mrs. Kassebaum, Mr. Boschwitz, Mr. Pressler, Mr. Murkowski, Mr. Trible, Mr. Evans, and Mr. McConnell.

Committee on Governmental Affairs: Mr. Roth, Mr. Stevens, Mr. Cohen, Mr. Rudman, Mr. Heinz, and Mr. Durenberger.

Committee on the Judiciary: Mr. Thurmond, Mr. Hatch, Mr. Simpson, Mr. Grassley, Mr. Specter, and Mr. Humphrey.

Committee on Labor and Human Resources: Mr. Hatch, Mr. Stafford, Mr. Quayle, Mr. Thurmond, Mr. Weicker, Mr. Cochran, and Mr. Humphrey.

SENATE RESOLUTION 19—MAKING MAJORITY PARTY APPOINTMENTS TO SENATE COMMITTEES IN PARAGRAPH 3(a), (b), AND (c) OF RULE XXV

Mr. BYRD submitted the following resolution; which was considered and agreed to:

S. RES. 19

Resolved, that the following shall constitute the majority party's membership on the committees named in paragraph 3(a), (b), and (c) of Rule XXV for the 100th Congress, or until their successors are appointed:

Committee on the Budget: Mr. Chiles (Chairman), Mr. Hollings, Mr. Johnston, Mr. Sasser, Mr. Riegle, Mr. Exon, Mr. Lautenberg, Mr. Simon, Mr. Sanford, Mr. Wirth, Mr. Fowler, Mr. Conrad, and Mr. Dodd.

Committee on Rules and Administration: Mr. Ford (Chairman), Mr. Pell, Mr. Byrd, Mr. Inouye, Mr. DeConcini, Mr. Gore, Mr. Moynihan, Mr. Dodd, and Mr. Adams.

Committee on Small Business: Mr. Bumpers (Chairman), Mr. Nunn, Mr. Sasser, Mr. Baucus, Mr. Levin, Mr. Dixon, Mr. Boren, Mr. Harkin, Mr. Kerry, and Ms. Mikulski.

Committee on Veterans Affairs: Mr. Cranston (Chairman), Mr. Matsunaga, Mr. DeConcini, Mr. Mitchell, Mr. Rockefeller, and Mr. Graham.

Select Committee on Ethics: Mr. Heflin (Chairman), Mr. Pryor, and Mr. Sanford.

Select Committee on Indian Affairs: Mr. Inouye (Chairman), Mr. Melcher, Mr. DeConcini, Mr. Burdick, and Mr. Daschle.

Special Committee on Aging: Mr. Melcher (Chairman), Mr. Glenn, Mr. Chiles, Mr. Pryor, Mr. Bradley, Mr. Burdick, Mr. Johnston, Mr. Breaux, Mr. Shelby, and Mr. Reid.

SENATE RESOLUTION 20—MAKING MINORITY PARTY APPOINTMENTS TO SENATE COMMITTEES FOR THE 100TH CONGRESS AND DESIGNATING RANKING MEMBERS OF SUCH COMMITTEES

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 20

Resolved, That the following shall constitute the minority party's membership on those Senate committees listed below for the 100th Congress, or until their successors are appointed:

Budget: Mr. Domenici (ranking member), Mr. Armstrong, Mrs. Kassebaum, Mr. Boschwitz, Mr. Symms, Mr. Grassley, Mr. Kasten, Mr. Quayle, Mr. Danforth, Mr. Nickles, and Mr. Rudman.

Rules and Administration: Mr. Stevens (ranking member), Mr. Hatfield, Mr. McClure, Mr. Helms, Mr. Warner, Mr. Dole, and Mr. Garn.

Small Business: Mr. Weicker (ranking member), Mr. Boschwitz, Mr. Rudman, Mr. D'Amato, Mr. Kasten, Mr. Pressler, Mr. Wallop, and Mr. Bond.

Veterans Affairs: Mr. Murkowski (ranking member), Mr. Simpson, Mr. Thurmond, Mr. Stafford, and Mr. Specter.

Select Committee on Ethics: Mr. Rudman (ranking member), Mr. Helms, and Mrs. Kassebaum.

Special Committee on Aging: Mr. Heinz (ranking member), Mr. Cohen, Mr. Pressler, Mr. Grassley, Mr. Wilson, Mr. Domenici, Mr. Chafee, Mr. Durenberger, and Mr. Simpson.

Select Committee on Indian Affairs: Mr. Evans (ranking member), Mr. Murkowski, and Mr. McCain.

SENATE RESOLUTION 21—EXPRESSING THE SENATE'S GRATITUDE FOR THE PRESIDENT'S EXCELLENT HEALTH AND BEST WISHES FOR HIS SPEEDY RECOVERY

Mr. BYRD (for himself, Mr. DOLE, and Mr. GLENN) submitted the following resolution; which was considered and agreed to:

S. RES. 21

Whereas President Ronald Reagan underwent an operation to correct a painful prostate condition at the National Naval Medical Center in Bethesda, Maryland yesterday as well as the removal of four small intestinal growths found during a routine colonscopic examination;

Whereas all medical reports available at this moment indicate that the President is in excellent health and unfailing good humor; and

Whereas the President has alleviated our concerns and relieved the anxieties of our whole nation by his openness and candor with respect to the medical procedures to be performed and the results following the completion of the medical procedures; Now, therefore, be it

Resolved, That the United States Senate expresses its heartfelt thanks for the continued excellent health of our President and our best wishes for his continued excellent health in the years to come.

SENATE RESOLUTION 22—COMMENDING THE COMMUNITY OF CHASE, MD FOR ITS ASSISTANCE TO THE RESCUE WORKERS AND THE SURVIVORS OF THE AMTRAK TRAIN ACCIDENT OF JANUARY 4, 1987

Mr. BYRD (for himself, Mr. DOLE, Mr. SARBANES, and Ms. MIKULSKI) submitted the following resolution; which was considered and agreed to:

S. RES. 22

Whereas a tragic Amtrak train accident occurred in Chase, Maryland, on Sunday, January 4, 1987;

Whereas the impact at nearly 100 miles per hour of the passenger train and a Conrail freight train resulted in the deaths of 15 passengers and injuries to at least 170 others;

Whereas the people of Chase, Maryland, without hesitation mobilized to provide aid and comfort to the injured;

Whereas residents scaled the fence separating them from the railroad tracks and assisted passengers in their escape from the burning wreckage;

Whereas other residents opened their homes to the survivors, providing clothes and allowing phone calls to concerned relatives in such far away places as Australia, Trinidad and Tobago;

Whereas the local community building was immediately transformed into a center providing food and shelter to the passengers and rescue workers; Now, therefore, be it

Resolved: That the United States Senate hereby commends the community of Chase, Maryland, for its spontaneous outpouring of assistance to the rescue workers and the passengers of the ill-fated Amtrak train.

SENATE RESOLUTION 23—ESTABLISHING A SELECT COMMITTEE TO INVESTIGATE AND STUDY ACTIVITIES WITH RESPECT TO THE DIRECT OR INDIRECT SHIPMENT OR PROVISION OF ARMS TO IRAN AND THE USE OF THE PROCEEDS OF ANY SUCH TRANSACTION

Mr. BYRD (for himself, Mr. DOLE, Mr. INOUYE, and Mr. RUDMAN) submitted the following resolution; which was considered and agreed to:

S. RES. 23

Resolved,

ESTABLISHMENT OF THE SELECT COMMITTEE

SECTION 1. (a) There is established a select committee of the Senate to be known as the Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition (hereafter in this resolution referred to as the "select committee").

(b) The purpose of the select committee is—

(1) to conduct an investigation into, and study of, all matters which have any tendency to reveal the full facts about—

(A) any activity of—

(i) the National Security Council or of any member or staff thereof,

(ii) any other department, agency, or entity of the United States Government or of any officer or employee thereof,

(iii) any foreign government, or of any agency or instrumentality thereof, or of any officer or employee thereof, or

(iv) any other individual, group, corporation,

which relates to—

(I) the direct or indirect sale, shipment, or other provision of arms, or the direct or indirect provision of materiel, funds, or other assistance, to Iran,

(II) the use of the proceeds from any transaction described in subclause (I) to provide assistance to any faction or insurgency in Nicaragua or in any other foreign country, or to further any political purpose or activity within the United States, or to further any other purpose of any nature whatsoever,

(III) the generation and use of any other money, item of value, or service to provide assistance to the Nicaraguan democratic resistance, or

(IV) the provision or coordination of support for persons or entities engaged as insurgents in armed conflict with the Government of Nicaragua,

in order to determine whether any such activity was illegal, improper, unauthorized, or unethical;

(B) any other activity, circumstance, material, or transaction having a tendency to prove or disprove that any official of the United States Government, or any other person, acting either individually or in combination with others, engaged in any activity which was illegal, improper, unauthorized, or unethical, in connection with any activity described in subclause (I), (II), (III), or (IV) of clause (A) or in connection with the operations described in clause (C); and

(C) the suitability of the structure and operations of the National Security Council, and persons serving as staff, consultants, or agents thereto, for any function related to the formulation, implementation, or conduct of American national security policy; and

(2)(A) to make such findings of fact as are warranted and appropriate;

(B) to make such recommendations, including recommendations for new legislation and amendments to existing laws and any administrative or other actions, as the select committee may determine to be necessary or desirable; and

(C) to fulfill the Constitutional oversight and informing function of the Congress with respect to the matters described in this section.

(c) For purposes of this section, the term "Iran" includes the Government of Iran, any agency or instrumentality thereof, any officer or employee thereof, or any person purporting to represent the Government of Iran or any agency or instrumentality thereof, any national of Iran, or any person located in Iran.

MEMBERSHIP AND ORGANIZATION OF THE SELECT COMMITTEE

SEC. 2. (a)(1) The select committee shall consist of eleven members of the Senate, six of whom shall be appointed by the President pro tempore of the Senate from the majority party of the Senate upon the recommendation of the Majority Leader of the Senate, and five of whom shall be appointed by the President pro tempore of the Senate from the minority party of the Senate upon the recommendation of the Minority Leader of the Senate.

(2) Vacancies in the membership of the select committee shall not affect the authority of the remaining members to execute the functions of the select committee and shall be filled in the same manner as original appointments to it are made.

(3) For the purpose of paragraph 4 of rule XXV of the Standing Rules of the Senate, service of a Senator as a member, chairman, or vice chairman of the select committee shall not be taken into account.

(b)(1) The chairman of the select committee shall be selected by the Majority Leader of the Senate and the vice chairman of the select committee shall be selected by the Minority Leader of the Senate. The vice chairman shall discharge such responsibilities as the select committee or the chairman may assign.

(2) A majority of the voting members of the select committee shall constitute a quorum for reporting a matter or recommendation to the Senate except that the select committee may fix a lesser number as a quorum for the purpose of taking testimony before the select committee or for conducting the other business of the select committee.

(c)(1) The select committee shall promptly adopt rules and procedures not inconsistent with the rules and procedures of the Senate.

(2) The rules and procedures of the select committee shall—

(A) govern the proceedings of the select committee; and

(B) consistent with section 6 of this resolution—

(i) provide for the security of the records of the select committee and the protection of classified information and materials; and

(ii) prevent the unauthorized disclosure of information and materials obtained by the select committee in the course of its investigation and study.

STAFF OF THE SELECT COMMITTEE

SEC. 3. (a)(1) to assist the select committee in its investigation and study, the chairman, after consultation with the vice chairman and the approval of the select committee, shall appoint the committee staff.

(2) All staff shall work for the select committee as a whole, shall report to the chairman and vice chairman and, except as otherwise provided by the select committee, shall be under the direction of the chairman.

(b) To assist the select committee in its investigation and study, the Senate Legal Counsel and Deputy Senate Legal Counsel shall work with and under the jurisdiction and authority of the select committee.

(c) The Majority and Minority Leaders of the Senate may each designate one staff person to serve on the staff of the select committee to serve as their liaison to the select committee.

(d) The Comptroller General of the United States is requested to provide from the General Accounting Office whatever personnel, investigatory, material, or other appropriate assistance may be required by the select committee.

PUBLIC ACTIVITIES OF THE COMMITTEE

SEC. 4. (a) Consistent with—

(1) the rights of persons subject to investigation and inquiry,

(2) considerations of national security, including the protection of sources and methods of intelligence gathering and analysis, and

(3) the interests of the relationship of the United States with other nations,

the select committee shall make every effort to fulfill the right of the public and the Congress to know the essential facts and implications of the activities of officials of the United States Government and other persons and entities with respect to the matters under investigation and study as described in section 1.

(b) In furtherance of the public's and Congress' right to know, the select committee—

(1) shall hold, as it considers appropriate, open hearings;

(2) may make interim reports to the Senate as it considers appropriate; and

(3) shall make a final comprehensive public report to the Senate which contains a description of all relevant factual determinations consistent with subsection (a) of this section and section 1(b)(2) and which contains recommendations for new legislation and other actions pursuant to the goal of an open, lawful, and effective conduct of American national security policy and, when necessary, lawful intelligence activities in support of American national security policy.

(c) The decision as to what matters shall be heard in closed or open session shall be determined by the select committee in accordance with paragraph 5(b) of rule XXVI of the Standing Rules of the Senate.

POWERS OF THE SELECT COMMITTEE

SEC. 5. (a) The select committee shall do everything necessary and appropriate under the laws and Constitution of the United States to make the investigation and study specified in section 1.

(b) The select committee is authorized to issue subpoenas for obtaining testimony and for the production of documentary or physical evidence. A subpoena may be authorized and issued by the select committee, acting through the chairman or any other member designated by the chairman, and may be served by any person designated by such chairman or other member anywhere within or without the borders of the United States to the full extent permitted by law. The chairman of the select committee, or any other member thereof, is authorized to administer oaths to any witnesses appearing before the committee.

(c) The select committee may exercise the powers conferred upon committees of the Senate by sections 6002 and 6005 of title 18, United States Code.

(d) The select committee is authorized to do the following:

(1) To employ and fix the compensation of such clerical, investigatory, legal, technical, and other assistants as the select committee considers necessary or appropriate.

(2) To sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate.

(3) To hold hearings for taking testimony under oath or to receive documentary or physical evidence relating to the matters and questions it is authorized to investigate or study.

(4) To require by subpoena or order the attendance, as witnesses before the select committee or at depositions, of any person who may have knowledge or information concerning any of the matters the select committee is authorized to investigate and study.

(5) To take depositions and other testimony under oath anywhere within the United States or in any other country, to issue orders by the chairman or any other member designated by the chairman which require witnesses to answer written interrogatories under oath, to make appliclation for issuance of letters rogatory, and to request, through appropriate channels, other means of international assistance, as appropriate.

(6) To issue commissions and to notice depositions for staff members to examine witnesses and to receive evidence under oath administered by an individual authorized by local law to administer oaths. The select committee, acting through the chairman, may authorize and issue, and may delegate to designated staff members the power to authorize and issue, commissions and deposition notices.

(7) To require by subpoena or order—

(A) any department, agency, entity, officer, or employee of the United States Government,

(B) any person or entity purporting to act under color or authority of State or local law, or

(C) any private person, firm, corporation, partnership, or other organization,

to produce for its consideration or for use as evidence in the investigation or study of the select committee any book, check, canceled check, correspondence, communication, document, financial record, paper, physical evidence, photograph, record, recording, tape, or any other material relating to any of the matters or questions such committee is authorized to investigate and study which they or any of them may have in their custody or under their control.

(8) To make to the Senate any recommendations, including recommendations for criminal or civil enforcement, which the select committee may consider appropriate with respect to—

(A) the willful failure or refusal of any person to appear before it, or at a deposition, or to answer interrogatories, in obedience to a subpoena or order;

(B) the willful failure or refusal of any person to answer questions or give testimony during his appearance as a witness before such committee, or at a deposition, or in response to interrogatories; or

(C) the willful failure or refusal of—

(i) any officer or employee of the United States Government,

(ii) any person or entity purporting to act under color or authority of State or local law, or

(iii) any private person, partnership, firm, corporation, or organization,

to produce before the committee, or at a deposition, or at any time or place designated by the committee, any book, check, canceled check, correspondence, communication, document, financial record, paper, physical evidence, photograph, record, recording, tape, or any other material in obedience to any subpoena or order.

(9) To procure the temporary or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(10) To use on a reimbursable basis, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration of the Senate, the services of personnel of such department or agency.

(11) To use, with the prior consent of the chairman of any other Senate committee or the chairman of any subcommittee of any committee of the Senate, the facilities or services of any members of the staff of such other Senate committee whenever the select committee or its chairman considers that such action is necessary or appropriate to enable the select committee to make the in-

vestigation and study provided for in this resolution.

(12) To have access through the agency of any members of the select committee, staff director, chief counsel, or any of its investigatory assistants designated by the chairman, to any data, evidence, information, report, analysis, document, or paper—

(A) which relates to any of the matters or questions which the select committee is authorized to investigate or study;

(B) which is in the custody or under the control of any department, agency, entity, officer, or employee of the United States Government, including those which have—

(i) the power under the laws of the United States to investigate any alleged criminal activities or to prosecute persons charged with crimes against the United States; or

(ii) the authority to, or which in fact has, conducted intelligence gathering or intelligence activities,

without regard to the juridiction or authority of any other Senate committee; and

(C) which will aid the select committee to prepare for or conduct the investigation and study authorized and directed by this resolution.

(13) To report violations of any law to the appropriate Federal, State, or local authorities.

(14) To expend, to the extent the select committee determines necessary and appropriate, any moneys made available to such committee by the Senate to make the investigation, study, and reports authorized by this resolution.

(e) The level of compensation payable to any employee of the select committee shall not be subject to any limitation on compensation otherwise applicable to an employee of the Senate.

PROTECTION OF CONFIDENTIAL AND CLASSIFIED INFORMATION

SEC. 6. (a)(1) Before being given access to any classified information, any member of the staff of, or consultant to, the select committee shall have the appropriate security clearance and a need to know such information. The chairman of the select committee shall decide which select committee staff members and consultants are required to have security clearances.

(2) All staff members and consultants shall, as a condition of employment, agree in writing to abide by the conditions of an appropriate nondisclosure agreement promulgated by the select committee.

(3) The case of any Senator who violates the security procedures of the select committee may be referred to the Select Committee on Ethics of the Senate for the imposition of sanctions in accordance with the rules of the Senate. Any staff member or consultant who violates the security procedures of the select committee shall immediately be subject to removal from office or employment with the select committee or shall be subject to such other sanction as may be provided in the rules of the select committee.

(b)(1) Any classified information obtained by the select committee either directly from the Executive branch of the United States Government, through the Select Committee on Intelligence of the Senate, or by other means, shall be disclosed only in the same manner in which such information may be disclosed under the provisions of section 8 of Senate Resolution 400 (Ninety-fourth Congress, second session), except that references to the Select Committee on Intelligence in such section shall be deemed to be references to the select committee established under this resolution.

(2) The select committee shall make suitable arrangements, in consultation with the Select Committee on Intelligence of the Senate, for the physical protection and storage of classified information provided to the select committee.

(3) Upon the termination of the select committee pursuant to section 9 of this resolution, all records, files, documents, and other materials in the possession, custody, or control of the select committee, under appropriate conditions established by such committee, under appropriate conditions established by such committee, shall be transferred to the Select Committee on Intelligence of the Senate.

RELATION TO OTHER INVESTIGATIONS

SEC. 7. (a) In order to—

(1) expedite the thorough conduct of the investigation and study authorized by this resolution,

(2) promote efficiency among all the various investigations underway in all branches of the United States Government, and

(3) engender a high degree of confidence on the part of the public regarding the conduct of such investigation,

the select committee is encouraged—

(A) to seek the full cooperation of all relevant investigatory bodies, and

(B) to seek access to all information which is acquired and developed by such bodies.

(1) The Select Committee on Intelligence is hereby directed to prepare and provide to the select committee, in closed session, a report of its investigation into matters described in section 1 of this resolution, which report shall include a summary of the testimony and chronology of events developed by the Select Committee on Intelligence, together with a listing of unresolved questions and issues which it recommends be pursued by the select committee as soon as possible, and the select committee may release as much of the information in such report to the public as it deems advisable, consistent with the interest of the public and national security, and is deemed by the committee to be in the public interest after a determination by such committee that the public interest would be served by such disclosure.

(2) The select committee, through its members and appropriate staff, shall be provided full access to all records, files, documents and other materials in the possession, custody, or control of the Select Committee on Intelligence of the Senate, obtained or produced by the Select Committee on Intelligence of the Senate with respect to any matter described in section 1 of this resolution.

(3) All subpoenas issued by the Select Committee on Intelligence of the Senate on any matter described in section 1 of this resolution shall continue in force and may be enforced by the select committee as if issued by the select committee.

(c) The Senate requests that any independent counsel appointed pursuant to chapter 39 of title 28, United States Code, to investigate any matter related to a matter described in section 1 of this resolution, make available to the select committee, as expeditiously as possible, all documents and information which may assist the select committee in its investigation and study.

SALARIES AND EXPENSES

SEC. 8. Such sums as are necessary shall be available from the contingent fund of the Senate out of the Account for Expenses for Inquiries and Investigation for payment of salaries and other expenses of the select committee under this resolution, which shall include sums which shall be available for the procurement of the services of individual consultants or organizations thereof, in accordance with section 5(d)(9). Payment of expenses shall be disbursed upon vouchers approved by the chairman of the select committee, except that vouchers shall not be required for the disbursement of salaries paid at an annual rate.

REPORTS; TERMINATION

SEC. 9. (a)(1) The select committee shall make a final public report to the Senate of the results of the investigation and study conducted by such committee pursuant to this resolution, together with its findings and any recommendations at the earliest practicable date, but not later than August 1, 1987, provided that on or before August 1, 1987 a privileged motion made by the Majority Leader to be debatable no more than 1 hour, in the usual forum, shall be in order, namely, "I move that the time be extended from August 1, 1987 to October 30, 1987 for reinvestigation by and final report of the select committee." The select committee shall also submit to the Senate such interim reports as its considers appropriate.

(2) The final report of the select committee may be accompanied by whatever classified or confidential annexes are necessary to protect classified or confidential information, particularly intelligence sources and methods.

(b) After submission of its final report, the select committee shall conclude its business and close out its affairs as expeditiously as practicable.

SENATE RESOLUTION 24—TO PROVIDE THAT SUBSTITUTE AMENDMENTS BE CONSIDERED AS FIRST DEGREE AMENDMENTS UNDER CLOTURE

Mr. BYRD submitted the following resolution, which was ordered to lie over under the rule:

S. RES. 24

Resolved, That the third paragraph of paragraph 2 of Rule XXII of the Standing Rules of the Senate is amended by inserting the following immediately after the words "first degree" in the second sentence—", which under cloture an amendment in the nature of a substitute shall be considered as an amendment in the first degree".

SENATE RESOLUTION 25—TO ESTABLISH A PROCEDURE IN ORDER TO OVERTURN THE CHAIR ON QUESTIONS OF GERMANENESS UNDER CLOTURE

Mr. BYRD submitted the following resolution, which was ordered to lie over under the rule:

S. RES. 25

Resolved, That the third paragraph of paragraph 2 of Rule XXII of the Standing Rules of the Senate is amended by adding the following new sentence:

"Whenever an appeal is taken under this rule from a decision of the Presiding Officer on the question of germaneness of an amendment, the vote necessary to overturn the decision of the Presiding Officer shall be three-fifths of the Senators duly chosen and sworn—except on a measure or motion

to amend the Senate rules, in which case the necessary vote shall be two-thirds of the Senators present and voting.".

SENATE RESOLUTION 26—TO LIMIT LEGISLATIVE AMENDMENTS TO GENERAL APPROPRIATIONS BILLS

Mr. BYRD submitted the following resolution, which was ordered to lie over under the rule:

S. RES. 26

Resolved, That Rule XVI, paragraph 4, of the Standing Rules of the Senate is amended—

(1) by inserting "(a)" after "4"; and

(2) by adding at the end of such paragraph the following new subparagraph:

"(b) If a point of order is made by any Senator against an amendment to a general appropriations bill on the ground that such amendment proposes general legislation or proposes a limitation or restriction not authorized by law and is to take effect or cease to be effective upon the happening of a contingency, it shall not be in order to raise the defense of germaneness unless there is House legislative language to which that amendment could be germane remaining in the bill.

SENATE RESOLUTION 27—TO PROVIDE FOR GERMANENESS OR RELEVANCY OF AMENDMENTS

Mr. BYRD submitted the following resolution; which was considered and ordered to lie over under the rule:

S. RES. 27

Resolved, That Rule XV of the Standing Rules of the Senate is amended—

(1) by inserting after "MOTIONS" in the caption a semicolon and the following: "GERMANENESS";

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

"6. (a) At any time during the consideration of a bill or resolution, it shall twice be in order during a calendar day to move that no amendment, other than the reported committee amendments, which is not germane or relevant to the subject matter of the bill or resolution or to the subject matter of an amendment proposed by the committee which reported the bill or resolution, shall thereafter be in order. The motion shall be privileged and shall be decided after one hour of debate, without any intervening action, to be equally divided and controlled by the Majority Leader and the Minority Leader or their designees.

"(b) If a motion made under subparagraph (a) is agreed to by an affirmative vote of three-fifths of the Senators present and voting, then any floor amendment not already agreed to (except amendments proposed by the Committee which reported the bill or resolution) which is not germane or relevant to the subject matter of the bill or resolution, or the subject matter of an amendment proposed by the Committee which reported the bill or resolution, shall not be in order.

"(c) When a motion made under subparagraph (a) has been agreed to as provided in subparagraph (b) with respect to a bill or resolution, points of order with respect to questions of germaneness or relevancy of amendments shall be decided without debate, except that the Presiding Officer may entertain debate for his own guidance prior to ruling on the point of order. Appeals from the decision of the Presiding Officer on such points of order shal be decided without debate.

"(d) Whenever an appeal is taken from a decision of the Presiding Officer on the question of germaneness of an amendment, or whenever the Presiding Officer submits the question of germaneness or relevancy of an amendment to the Senate, the vote necessary to overturn the decision of the Presiding Officer or hold the amendment germane or relevant shall be three-fifths of the Senators present and voting. No amendment proposing sense of the Senate or sense of the Congress language that does not directly relate to the measure or matter before the Senate shall be considered germane.".

SENATE RESOLUTION 28—TO WAIVE READING OF AMENDMENTS UNDER CLOTURE

Mr. BYRD submitted the following resolution; which was considered and ordered to lie over under the rule:

S. RES. 28

Resolved, That rule XII of the Standing Rules of the Senate is amended by striking the last sentence of paragraph 2 and inserting in lieu thereof the following:

"After cloture is invoked, the reading of any amendment, including House amendments, shall be dispensed with.".

SENATE RESOLUTION 29—TO PROVIDE FOR ELECTRONIC VOTING IN THE SENATE

Mr. BYRD submitted the following resolution; which was considered and ordered to lie over under the rule:

S. RES. 29

Resolved, That rule XII of the Standing Rules of the Senate is amended—

(1) by striking the first clause of paragraph 1 and inserting in lieu thereof the following: "Except as provided in paragraph 5 of this rule, when the yeas and nays are ordered,".

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

"5. Whenever the Majority Leader, with concurrence of the Minority Leader, shall determine, the names of Senators voting upon any roll call shall be recorded by electronic device. Senators shall have not more than fifteen minutes from the beginning of the roll call to have their vote recorded.

"6. The Majority Leader, with concurrence of the Minority Leader, may announce that any recorded vote that is scheduled to or does occur immediately after another recorded vote shall be no longer than five minutes in duration.".

SENATE RESOLUTION 30—TO REAUTHORIZE AND REDESIGNATE THE SENATE ARMS CONTROL OBSERVER GROUP

Mr. BYRD (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 30

Resolved, That the bipartisan group of Senators designated by S. Res. 86, 99th Congress (agreed to February 18, 1985) is hereby redesignated and reauthorized to act during the 100th Congress as official observers on the United States delegation to any formal arms reduction or control negotiations to which the United States is a party (which group shall hereinafter be referred to as the "Senate Observer Group") and S. Res. 86, 99th Congress is hereby amended. The Group shall be headed by four Senators, serving as Co-Chairmen, two from the Majority party, to be appointed by the Majority Leader, Robert C. Byrd, and two from the Minority party, to be appointed by the Minority Leader, Robert Dole, one from each party to be appointed as Administrative Co-Chairman. The Majority and Minority Leaders shall serve on the Group in an ex officio capacity, and shall each appoint, in addition three other Senators to serve as members of the Group. The appointments shall be made in writing to the President pro tempore of the Senate.

Only Senators appointed as members of the Group may participate in official travel and activities of the Group. In the event that either the Majority Leader or the Minority Leader does not travel on an official trip of the Observer Group, he may designate one other Senator not a member of the Group to travel and participate in the activities of the Group in his stead. Any vacancy occurring in the Senate Arms Control Observer Group shall be filled in the same manner in which the original appointment was made.".

SEC. 2. (a) The Senate Observer Group is authorized, from funds made available under section 3, to employ such staff (including consultants at a daily rate of pay) in the manner and at a rate not to exceed that allowed for employees of a standing committee of the Senate under paragraph (3) of section 105(e) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(e)), and incur such expenses as may be necessary or appropriate to carry out its duties and functions. Payments made under this section for receptions, meals, and food-related expenses shall be authorized, however, only for those actual expenses incurred by the Senate Observer Group in the course of conducting its official duties and functions, provided, that notwithstanding any other provision of this Resolution, such amounts received as reimbursement for such expenses shall not exceed $6,000 in any fiscal year. Amounts received as reimbursement for such food expenses shall not be reported as income, and the expenses so reimbursed shall not be allowed as a deduction under title 26 of the United States Code. This provision is effective with respect to expenditures incurred on or after February 28, 1985.

(b) Each Co-Chairman of the Senate Observer Group is authorized to designate a professional staff member. The designated Group staff shall also include, a secretary selected by, and responsible to, the Majority, and a secretary selected by, and responsible to, the Minority. The funds necessary to compensate any such staff member who is an employee of a Senator or of a Senate Committee, who has been designated to perform service for the Senate Observer Group, such staff member shall continue to be paid by such Senator or such Committee, as the case may be, but the account from which such staff member is paid shall be reimbursed for his services (including agency contributions when appropriate) out of funds made available under section 3(a) of this resolution. The four professional staff members, authorized by this subsection,

shall serve all the members of the Senate Observer Group, and carry out such other functions as their respective Co-Chairmen may specify.

(c) The Majority and Minority Leaders may each designate one staff member to serve the Observer Group. Funds necessary to compensate leadership staff shall be transferred from the funds made available under section 3(b) of this resolution to the perspective account from which such designated staff member is paid.

"(d) All foreign travel of the Group shall be authorized solely by the Majority and Minority Leaders, upon the recommendation of the Administrative Co-Chairmen. Participation by staff members in authorized foreign travel by the Group, access to all official activities and functions of the Group during such travel, and access to all classified briefings and information made available to the Group during such travel, shall be limited exclusively to delegation members with appropriate clearances. No travel or other funding shall be authorized by any Committee of the Senate for the use of staff, other than delegation staff, in regard to above mentioned activities, without the written authorization of the Majority Leader and the Minority Leader to the Chairman of such Committee.".

SEC. 3. (a) The expenses of the Senate Observer Group shall be paid from the contingent fund of the Senate, out of the account of Miscellaneous Items, upon vouchers approved jointly by the Chairmen for Administrative purposes (except that vouchers shall not be required for the disbursement of salaries of employees who are paid at an annual rate). For any fiscal year, not more than $400,000 shall be expended for staff (including consultants) and for expenses (excepting expenses incurred for foreign travel).

(b) In addition to the amount referred to in section 3(a), for any fiscal year, not more than $150,000 shall be expended from the contingent fund of the Senate, out of the account for Miscellaneous Items, for Leadership staff as designated in section 2(c) for salaries and expenses (excepting expenses incurred for foreign travel).

(c)(1) Of the amount authorized in section 3(a), an amount not to exceed $50,000 may be spent by the Senate Observer Group, with the prior approval of the Committee on Rules and Administration, to procure the temporary services (not in excess of one year) or intermittent services, including related and necessary expenses, of individual consultants, or organizations thereof, to make studies or advise the Senate Observer Group.

(2) Such services in the cases of individuals or organizations may be procured by contract as independent contractors, or in the case of individuals by employment at daily rates of compensaton not in excess of the per diem equivalent to the highest gross rate of compensation which may be paid to a regular employee of a standing committee of the Senate. Such contracts shall not be subject to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provisions of law requiring advertising.

(3) Any such consultant shall be selected by the Administrative co-chairman acting jointly. The Senate Observer Group shall submit to the Committee on Rules and Administration information bearing on the qualifications of each consultant whose services are procured pursuant to this subsection, including organizations, and such information shall be retained by the Senate Observer Group and shall be made available for public inspection upon request.

SENATE RESOLUTION 33—TO PROVIDE FOR THE PAYMENT OF SEVERANCE PAY TO CERTAIN DISPLACED SENATE COMMITTEE EMPLOYEES AND TO AUTHORIZE PAYMENT FOR ACCUMULATED LEAVE TO CERTAIN TERMINATED EMPLOYEES IN OFFICES OF SENATORS WHO HAVE CEASED TO SERVE AS MEMBERS OF THE SENATE

Mr. BYRD (for himself, Mr. DOLE, Mr. FORD, and Mr. STEVENS) submitted the following resolution; which was considered and agreed to:

S. RES. 33

Resolved, That (a) for purposes of this resolution:

(1) The term "committee" means a standing, select, joint, special committee, or commission of the Senate, whose funds are disbursed by the Secretary of the Senate.

(2) Except as otherwise specifically provided in this resolution, the terms "committee' chairman" and "ranking minority member" mean the chairman and ranking minority member of a committee as of the beginning of the One Hundredth Congress.

(3) The term "eligible staff member" means an individual who—

(A) was a member of a staff of a committee, or subcommittee thereof, on January 2, 1987, and

(B) during the calendar year 1986, was an employee of the Senate for at least one hundred and eighty-three days (whether or not his service was continuous).

(4) The term "displaced staff member" means an eligible staff member whose service as an employee of the Senate is terminated on or after January 2, 1987, solely and directly as a result of the reorganization of the staff of a committee caused by the transition to a Senate in which a majority of Senators are members of the Democratic Party, and who is certified as a displaced staff member by the committee chairman and ranking minority member of such committee.

(b)(1) The committee chairman and ranking minority member of each committee shall certify to the Committee on Rules and Administration the name of each displaced staff member of such committee before the later of—

(A) January 16, 1987, or

(B) the tenth day after the date on which the displaced staff member's service is terminated.

(2) A certification under this subsection shall be made no later than February 28, 1987.

(c) Under regulations prescribed by the Committee on Rules and Administration, and subject to the succeeding provisions of this resolution, each displaced staff member shall be entitled, upon application to the Secretary of the Senate and approval by the Committee on Rules and Administration, to be paid severance pay in one lump-sum payment in an amount equal to one month's basis pay.

(d) Severance pay under this resolution shall be paid from any available funds in the appropriation account entitled "Miscellaneous Items" within the contingent fund of the Senate.

(e) In the event of the death of a displaced staff member, any unpaid severance pay to which the displaced staff member is entitled shall be paid to the widow or widower of the displaced staff member on, if there is no widow or widower of such deceased displaced staff member, to the heirs at law or next of kin of such deceased displaced staff member.

(f) Severance pay paid under this resolution shall not be treated as compensation for purposes of any provision of title 5, United States Code, or of any other law relating to benefits accruing from employment by the United States, and the period of entitlement to such pay shall not be treated as a period of employment for purposes of any such provision or law.

(g) For purposes of this resolution, the Office of the Secretary of the Senate and the Office of the Sergeant at Arms and Doorkeeper of the Senate, with respect to funds appropriated under the heading, "Salaries, Officers, and Employees", shall be considered a committee.

(h) For purposes of the preceding provisions of this resolution, the term "displaced staff member" also includes an eligible staff member (as defined in subsection (a)(3)) whose service as an employee of the Senate is terminated on or after January 2, 1987, as a result of reorganizations (or consolidations) of committees of the Senate or of the cessation of service by a Senator who on November 4, 1986, was serving as chairman or ranking minority member of a committee or a subcommittee thereof, and who is certified as a displaced staff member by the committee chairman and ranking minority member of such committee.

(i)(1) Subject to the succeeding provisions of this resolution, whenever the service of an individual who is an employee in a Senator's office or in the President pro tempore of the Senate's office is terminated because the Senator's service as a Member of the Senate ceases or the President pro tempore's service ceases (as the case may be), such individual shall be entitled to be paid in a lump sum for such accumulated leave, not in excess of thirty days, as the Senator in whose office he was employed shall certify to the Secretary of the Senate to be due to such individual, or (in the case of an individual who is an employee in the President pro tempore's office) as the President pro tempore shall certify to the Secretary of the Senate to be due to such individual.

(2) No employee shall be entitled to a lump-sum payment under this subsection unless—

(A) he was an employee in a Senator's office or in the President pro tempore's office on or after November 1, 1986,

(B) his position in such office was terminated after such date and prior to January 6, 1987, and

(C) he was an employee of the Senate for at least one hundred and eighty-three days during calendar year 1986 (whether or not such service was continuous).

(3) The provisions of this subsection shall not apply to any individual who, at the time his service was terminated, was an employee in the office of a Senator who was appointed to fill an unexpired term.

(4) The amount payable to any individual under this subsection shall be paid from any available funds in the appropriation account entitled "Miscellaneous Items" within the contingent fund of the Senate.

(j) The amount of any payment to which an individual is entitled under this resolu-

tion shall be reduced (but not below zero) by an amount equal to the product of—

(1) the daily rate of basic pay of the individual on which such payment is based, multiplied by

(2) the number of days on which the individual is employed by the United States Government or the District of Columbia during the period beginning on the date of separation from service with respect to which the payment is being made and ending on the last day of the period for which the payment is being computed.

(k) Any payment under this resolution shall be made on the basis of the rate of basic pay of the individual on which such payment is based as of—

(1) November 1, 1986, or

(2) if such individual was not employed by the Senate on such date, on the first day preceding such date on which such individual was employed by the Senate.

(l)(1) Any application for a payment under this resolution shall be made before April 30, 1987.

(2) In the case of an employee of the Office of the Secretary of the Senate or of the Office of the Sergeant at Arms and Doorkeeper of the Senate who is separated from employment (and certified) after February 28, 1987, and before August 1, 1987, any application under this resolution shall be made before September 12, 1987.

SENATE RESOLUTION 34—RELATING TO LEGISLATIVE ASSISTANCE FOR SENATORS

Mr. BYRD (for himself, Mr. DOLE, Mr. FORD, and Mr. STEVENS) submitted the following resolution; which was considered and agreed to:

S. RES. 34

Resolved, That subsection (b) of section 111 of the Legislative Branch Appropriation Act, 1978 (P.L. 95-94) shall not be effective during the 100th Congress.

SENATE RESOLUTION 35—THE REAPPOINTMENT OF MICHAEL DAVIDSON AS SENATE LEGAL COUNSEL

Mr. BYRD (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 35

Resolved, That the reappointment of Michael Davidson to be Senate Legal Counsel made by the President pro tempore of the Senate this day is effective as of January 3, 1987, and the term of service of the appointee shall expire at the end of the One Hundred First Congress.

SENATE RESOLUTION 36—TO REFER S. 108 ENTITLED "A BILL FOR THE RELIEF OF WALTER CHANG" TO THE CHIEF JUDGE OF THE U.S. CLAIMS COURT FOR A REPORT THEREON

Mr. INOUYE submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 36

Resolved, That the bill (S. 108) entitled "A bill for the relief of Walter Chang" now pending in the Senate, together with all the accompanying papers, is referred to the Chief Judge of the United States Claims Court. The Chief Judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due the claimant from the United States.

SENATE RESOLUTION 37—EXPRESSING THE SENSE OF THE SENATE THAT THE PRESIDENT SHOULD ENCOURAGE FOREIGN GOVERNMENTS TO RATIFY, ACCEPT, OR APPROVE THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIALS

Mr. GLENN submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 37

Whereas the Convention on the Physical Protection of Nuclear Materials, opened for signature at Vienna and New York on March 3, 1980 (hereafter in this preamble referred to as the "Convention"), by its own terms requires the deposit of 21 instruments of ratification, acceptance, or approval before the Convention may enter into force;

Whereas the Convention has not entered into force for lack of the requisite number of ratifications, acceptances, or approvals; and

Whereas the Convention represents an important step toward international cooperation to prevent nuclear terrorism: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should make vigorous efforts to encourage the governments of signatory countries to ratify, accept, or approve the Convention on the Physical Protection of Nuclear Materials, which was opened for signature at Vienna and New York on March 3, 1980.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. GLENN. Mr. President, as I said in a statement on the floor of the Senate last October, we all know that terrorism is a growing and increasingly significant factor in the international system. The growth of terrorism, coupled with the proliferation of nuclear facilities and nuclear weapons, adds up to the most frightening and potentially destabilizing threat of modern times—nuclear terrorism. The thought of terrorists or revolutionaries acquiring the capability to develop nuclear explosive devices or to obtain and disperse radioactive materials is deeply sobering but must be confronted.

All nations in the international community, particularly the developed nations of the West, must be concerned with the rising specter of nuclear terrorism. In modern societies in which government monopolizes both the organized use of force and the control of nuclear weapons and nuclear materials, the citizenry must look to the state to prevent and combat the threat of nuclear terrorism.

The thought of nuclear weaponry or materials in the hands of individuals such as Mu'ammar Qadhafi is staggering. It would be wrong to think that terrorists could not bring themselves to use such weapons of mass destruction. Technological knowledge, such as that needed to create a nuclear explosive device, is a free good that spreads with the number of states that acquire such knowledge. The next several decades are likely to see a proliferation of nations acquiring nuclear capability. With the growth of nuclear proliferation will come the increased likelihood that these nuclear nations will lose their nuclear weapons, materials, or knowledge to terrorists or unstable revolutionary groups. It is highly unlikely that terrorism and the threat of nuclear terrorism is merely a passing phenomenon. The trend toward the politicization of religion, the increase in ethnic and nationalistic sentiments, and the increasing dichotomy between the haves and have nots in the world point toward its increase as a means of political protest and persuasion.

While terrorist access to nuclear materials represents the most obvious harbinger of nuclear terrorism, several additional factors point to the increased possibility of nuclear terrorism.

As has already been mentioned, the fanaticism which seems to grip terrorists would not preclude their willingness to use nuclear weaponry or materials. The essence of effective terrorism is the use or threat of using force indiscriminately. It is the randomness of applying violence that makes such acts so terrifying. The extraordinary zeal of Islamic fundamentalists is an excellent modern day example of the fervor that can grip a terrorist or terrorist movement. Islamic zealots, willing to drive a truck full of explosives into the American Embassy in Beirut, Lebanon display how far fanatics are willing to go to destroy a perceived enemy. These terrorists' belief in their cause, combined with their unshakable conviction that God is on their side and that their suicide mission will automatically gain them entry into Paradise is alien to most Americans. But if such terrorists are willing to make such sacrifices to kill so many, it is within the realm of possibility to think they might utilize nuclear terrorism to attain their goals.

Another factor that points to the possibility that terrorists might use nuclear weapons, closely linked to the previous factor, is the terrorist's apparent insensitivity to orthodox deterrence. A terrorist is someone who is unwilling to abide by social norms and

what is generally conceived as being rational behavior. It stands to reason that terrorists gauging the costs and benefits of nuclear terrorism might completely ignore the fear of retaliation against them or the particular cause they espouse. Traditional deterrence, therefore, may have little if any appreciable effect on prospective nuclear terrrorists. This dilemma underscores one of the greatest difficulties in dealing with any form of terrorism—combating the threat of terrorism without resorting to tactics that undermine a free society's institutions.

A third factor that points to the increased possibility of nuclear terrorism is the cooperation and collaboration among terrorist groups. This phenomenon has been primarily evident in the volatile Middle East where Qadhafi's regime encourages and supports numerous terrorist groups around the world and the Popular Front for the Liberation of Palestine [PFLP] which has collaborated with numerous terrorist groups from such diverse areas as Germany, Latin America, and Japan. This interterrorist cooperation has several implications. First, such cooperation among terrorist groups greatly increases the opportunities for terrorists to acquire nuclear weapons and materials. Since cooperation increases opportunities for sharing capital resources and expertise, obtaining nuclear weapons and materials is greatly enhanced when acquisition takes the form of self-development from raw fissionable materials. Second, interterrorist cooperation is likely to encourage the proliferation of nonstate nuclear devices, creating a network whereby such weapons can be spread across national borders. Third, interterrorist cooperation will be likely to increase the benefits to be derived from advanced training in the deployment and use of nuclear weaponry and materials. Finally, cooperation among terrorist groups is likely to foster reciprocal privileges such as safe-havens and forged documents which would be needed for successful nuclear terrorist operations.

The final factor that points to the increased possibility of nuclear terrorism is the increased tolerance and support of terrorism within the international system. States that support terrorism, such as Khomeini's Iran and Qadhafi's Libya, do so with the belief that terrorism serves their national interests. Terrorists are undoubtedly considered as useful tools in the struggle for power and influence in the global system. Terrorism seems to be increasingly viewed by some states as a surrogate for conventional warfare.

The attraction of terrorism to extremist states seems certain to persist and grow.

AMERICA'S SUSCEPTIBILITY TO NUCLEAR TERRORISM

The United States is an ideal target for terrorism. America's extensive communications system provides the terrorist or terrorist group what it desires more than anything else—publicity for its cause. The enormous media coverage that would occur after a nuclear terrorist threat became public would effectively rivet national attention on the terrorists and their espoused cause and the ensuing hysteria could virtually compel the Government to succumb to terrorist demands. America's vast expanses and widespread transportation system would provide the terrorist with numerous safe havens and rapid mobility which would permit escape from apprehension. In particular, the United States is the world's foremost modern, technological society, which makes it especially susceptible to the threat of nuclear terrorism.

America's densely populated cities provide the most vivid example of the vulnerability of a technological society. Some years ago, the entire city of New York lost all power after an upstate power transformer was hit by lightning and a technician failed to make the correct circuit adjustment. The city was virtually incapacitated for the duration of the blackout and crime rose dramatically. It is not difficult to imagine what kind of impact the use or threatened use of nuclear material would have on a large urban area.

America is a free society which justifiably prides itself on its openness and civil liberties. This very aspect of the United States makes it an appealing target for nuclear terrorism. The terrorist would not be subject to the constant surveillance and scrutiny that is evident in more repressive societies that lessen the opportunity to accumulate the knowledge and materials to commit an act of nuclear terrorism. The Iranian hostage crisis also demonstrated the enormous prestige to be derived by a comparatively weak power incapacitating the United States. America stands as a symbol of strength in the international system and to be able to successfully extort demands from the most powerful nation in the world would be considered by many to be a considerable temptation.

Since World War II, it has been established that thousands of pounds of uranium and plutonium, materials needed for the construction of a nuclear device, have not been accounted for in the United States. Most experts agree that it is entirely possible for individuals to construct a crude nuclear device.

The threat of exploding a homemade nuclear device is not the only possibility. Terrorists may explode a crude nuclear weapon without warning in an effort to avoid detection and capture, and even misidentify themselves in the hope of igniting domestic repression or international chaos. One can only imagine the damage to be wrought a 1-kiloton weapon, 20 times less powerful than the Hiroshima bomb, exploded outside the Capitol Building during a State of the Union Message. The U.S. Government would virtually cease to exist.

Another dimension to the threat of terrorism with nuclear weapons is the possibility that a terrorist group would steal a weapon from the U.S. arsenal of over 30,000 nuclear devices stockpiled in more than 100 military installations in the United States and abroad. While there is enormous security surrounding American nuclear weapons around the world, and while most American nuclear devices have highly sophisticated devices to prevent their unauthorized explosion, the possibility still exists that these nuclear weapons could fall into the hands of terrorists and be detonated.

Protection of America's far-flung nuclear arsenal is hampered by their wide dispersal around the globe where American security systems are dependent on the security systems of the host nation which are of varying reliability. Also, the weakness of local law enforcement agencies in most parts of the United States means that they are of little help in assisting Federal authorities in the event of a nuclear weapon theft.

Radiation dispersal devices in the hands of terrorists pose another serious threat to the United States. Radiation dispersal devices, in contrast to nuclear weapons, require less expertise, nuclear material, and production time by a terrorist group. Dispersal of a highly toxic carcinogen such as plutonium could have a devastating effect on the American public. The U.S. Atomic Energy Commission, predecessor of the current Nuclear Regulatory Commission and the Department of Energy, has estimated that the release of 4.4 pounds of plutonium oxide in fine powder form would result in 100 percent probability of developing lung or bone cancer up to 1,800 feet from the area of release, and a 1-percent risk of developing such cancer up to 40 miles downwind.

For the nuclear terrorist, the dispersion of nuclear material would undoubtedly be an attractive means to obtain his political ends. Authorities would be virtually unable to prevent the release of plutonium when it could be effectively dispersed over a wide, dense area by using such a simple device as a leaking container attached to the underside of a vehicle or dropping it from a tall building. Construction of such a dispersal device would require only a basic knowledge of nuclear chemistry and would thereby

lessen the risks inherent in forming a larger terrorist network to design and assemble a nuclear weapon. Also, the enormous social and economic chaos that would certainly result after the announcement of radiation leakages would be tempting to terrorists in possession of plutonium.

The increased production of plutonium is another inducement to terrorists. A 1,000 megawatt light-water nuclear power reactor generates an estimated 440 pounds of plutonium each year—an appealing target to terrorists.

A third possible target for nuclear terrorists in the United States is a nuclear facility itself. While the construction of nuclear power reactors has slowed in the United States in the past decade, it is likely to grow in the future and with that growth is the increased risk that a terrorist group will seek to damage a nuclear facility in order to precipitate a radiation release.

CONFRONTING THE THREAT OF NUCLEAR TERRORISM

Mr. President, some individuals believe that it is essential to eradicate the conditions that spawn terrorism. It is argued that greater attention should be given to the legitimate economic, social, and political grievances of individuals in the United States and throughout the world as a viable means of combating terrorism and thereby reducing the threat of nuclear terrorism.

Undeniably, the injustices of the international system require attention, but to attempt to correct these grievances as the sole means of combating the menace of terrorism and the threat of nuclear terrorism is naive and unrealistic. When a neighborhood is confronted with a rising crime rate, the community does not initiate a study of the reasons for the criminals' behavior, but undertakes a program of increased vigilance and deterrence. The same is true of the nuclear threat to the United States.

As I have discussed, the threat of nuclear terrorism in the United States is real and growing. The American military's protection of the U.S. nuclear arsenal, private enterprise's control of nuclear materials pursuant to the regulations of the Nuclear Regulatory Commission, and the Nuclear Emergency Search Team's ability to trace nuclear terrorist threats all provide considerable security from the threat of nuclear terrorism, yet no safeguard can be considered completely "fail safe."

The United States is not a secure island, but a major force in a highly diverse international system whose members have widely divergent views as to what constitutes acceptable national behavior. As terrorism increases and nuclear knowledge, weapons, and materials spread throughout the world, the United States is increasingly likely to be the site of a nuclear terrorist incident. We must do everything we can to insure that such a catastrophic possibility does not occur.

THE REPORT OF THE INTERNATIONAL TASK FORCE ON THE PREVENTION OF NUCLEAR TERRORISM

Mr. President, on June 25, 1986, the Nuclear Control Institute of Washington, DC, issued a report by the International Task Force on the Prevention of Nuclear Terrorism. I believe that this report contains important suggestions on one of the most serious threats confronting the United States today. The report contains numerous recommendations dealing with, among other things, the protection of nuclear weapons, nuclear materials, and nuclear facilities.

Mr. President, today I rise to offer a resolution that states that it is the sense of the Senate that the President should make vigorous efforts to encourage the governments of signatory countries to ratify, accept, or approve the Convention on the Physical Protection of Nuclear Materials. This is identical to the resolution I introduced toward the end of the 99th Congress.

This treaty, although chiefly directed to shipments of peaceful nuclear materials between nations, does define a large range of nuclear terrorist acts and require parties to make them criminal offenses and to provide for the prosecution or extradition of offenders under domestic law. The convention, which applies to "nuclear material used for peaceful purposes while in international transport," was agreed to in 1980 but has not come into force because only 18 of the required 21 States, including the United States, have ratified it. The Convention on the Physical Protection of Nuclear Materials represents an important step toward international cooperation to prevent nuclear terrorism.

Mr. President, I ask unanimous consent that a copy of the treaty be printed in the RECORD.

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

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

The States Parties to This Convention,

Recognizing, the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Convinced of the need for facilitating international co-operation in the peaceful application of nuclear energy,

Desiring to avert the potential dangers posed by the unlawful taking and use of nuclear material,

Convinced that offenses relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offenses,

Aware of the Need for international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,

Convinced that this Convention should facilitate the safe transfer of nuclear material,

Stressing also the importance of the physical protection of nuclear material in domestic use, storage and transport,

Recognizing, the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,

Have Agreed as follows:

ARTICLE 1

* * * * *

2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.

3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

ARTICLE 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

ARTICLE 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.

3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.

4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.

5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.

6. The responsibility for obtaining assurances referred to in paragraph 1 may be

transferred, by mutual agreement, to the State Party involved in the transport as the importing State.

7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

ARTICLE 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;

(b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:

(i) co-ordinate their efforts through diplomatic and other agreed channels;

(ii) render assistance, if requested;

(iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

ARTICLE 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

ARTICLE 7

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) a threat:

(i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or

(ii) to commit an offense described in subparagraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(f) an attempt to commit any offense described in paragraphs (a), (b) or (c); and

(g) an act which constitutes participation in any offense described in paragraphs (a) to (f) shall be made a punishable offense by each State Party under its national law.

2. Each State Party shall make the offenses described in this article punishable by appropriate penalties which take into account their grave nature.

ARTICLE 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offenses set forth in article 7 in the following cases:

(a) when the offense is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offenses in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the State Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offenses set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

ARTICLE 9

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

ARTICLE 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

ARTICLE 11

1. The offenses in article 7 shall be deemed to be included as extraditable offenses in any extradition treaty existing between States Parties. States Parties undertake to include those offenses as extraditable offenses in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offenses as extraditable offenses between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offenses shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

ARTICLE 12

Any person regarding whom proceedings are being carried out in connection with any of the offenses set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

ARTICLE 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offenses set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

ARTICLE 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.

2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

3. Where an offense involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offense was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offense.

ARTICLE 15

The Annexes constitute an integral part of this Convention.

ARTICLE 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

ARTICLE 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which had made a reservation to that procedure.

4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

ARTICLE 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.

(c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.

(d) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

ARTICLE 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendments shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

ARTICLE 21

1. Any State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

ARTICLE 22

The depositary shall promptly notify all States of:

(a) each signature of this Convention;

(b) each deposit of an instrument of ratification, acceptance, approval or accession;

(c) any reservation or withdrawal in accordance with article 17;

(d) any communication made by an organization in accordance with paragraph 4(c) of article 18;

(e) the entry into force of this Convention;

(f) the entry into force of any amendment to this Convention; and

(g) any denunciation made under article 21.

ARTICLE 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

ANNEX I

LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

(a) For Category III materials, storage within an area to which access is controlled;

(b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;

(c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:

(a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;

(b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;

(c) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of recepit of shipment.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

SENATE RESOLUTION 38—ESTABLISHING A SPECIAL COMMITTEE ON FAMILIES, YOUTH, AND CHILDREN

Mr. MOYNIHAN submitted the following resolution; which was referred to the Committee on Rules and Administration.

S. RES. 38

Whereas the family is the fundamental social unit and family formation and the successful rearing of youth and children may be more difficult than ever before in our nation's history;

Whereas the weakening of the traditional family unit constitutes a sensitive and complex social problem involving intense unhappiness of men, women, and children;

Whereas family instability and deteriorating family relationships are destructive of the physical and mental health and economic well-being, especially of youth and children, but also of many other members of unstable or broken families;

Whereas family instability is substantially associated with the impoverishment of children and increasing rates of teenage alcohol and drug abuse, adolescent pregnancy, teenage suicide, and juvenile delinquency;

Whereas more than one-fifth of the children in the United States today live in poverty as measured by the Census Bureau;

Whereas the poverty rate for children particularly young children under age 6, is far higher than that for any other age group;

Whereas one-third of all children now being born in the United States may expect to be on public assistance before reaching age eighteen;

Whereas the generation long trend toward increasing child dependency on public assistance, child abandonment, child abuse, and child exploitation is to be resisted and reversed;

Whereas it is essential to address the nation's alarming rate of family disintegration and raise the public and governmental levels of understanding of the problems of families, youth, and children;

Whereas it is imperative that government and private policies strengthen families and foster responsibility by addressing the causes of family disintegration, and assisting and encouraging preventive measures;

Whereas commencing with the establishment of the Children's Bureau of 1912, the executive branch has maintained a continuous if not always vigorous concern for the welfare of families, youth, and children;

Whereas policies affecting families, youth, and children are considered and acted upon by several different standing committees; and

Whereas it is necessary to enhance the Senate's ability to conduct comprehensive oversight of Government and congressional activities affecting families, youth, and children: Now, therefore, be it

Resolved, That (a)(1) there is established a special committee of the Senate to be known as the Special Committee on Families, Youth, and Children (hereafter in this resolution referred to as the "special committee"). The special committee shall be composed of eleven members appointed by the President pro tempore from the recommendations of the Minority Leader and the Majority Leader. Six members shall be appointed from the majority party and five members shall be appointed from the minority party.

(2) The President pro tempore shall designate a member of the special committee recommended by the Majority Leader to serve as chairman.

(b)(1) A majority of the members of the special committee shall constitute a quorum for the transaction of business, except that the special committee may fix a lesser number as a quorum for the purpose of taking testimony.

(2) Vacancies in the membership of the special committee shall not affect the authority of the remaining members to execute the functions of the committee, and shall be filled in the same manner as original appointments are made.

(3) The special committee shall adopt rules of procedure not inconsistent with the rules of the Senate governing standing committees of the Senate.

(c) The chairman may establish such subcommittees of the special committee as he considers appropriate, but each such subcommittee shall be composed of not less than four members.

SEC. 2. (a) It shall be the duty of the special committee to—

(1) make a full and complete study of the impact of government policies on families, children and adolescents, including the problems of health, income maintenance, welfare, education, employment, care of dependents of all ages, nutrition, adoption, foster care, and other concerns of children, adolescents, and families generally; and

(2) study the use of practicable means of encouraging the development of public and private programs and policies which will assist families, youth, or children.

(b) The special committee shall submit an annual report, and such other reports as the special committee considers necessary, to the Senate on the results of any investigation and review conducted under subsection (a).

(c) No proposed legislation shall be referred to the special committee, and such committee shall not have the power to report by bill or otherwise have any legislative jurisdiction.

SEC. 3. (a) For the purposes of this resolution, the special committee is authorized to—

(1) make expenditures from the contingent fund of the Senate;

(2) employ personnel;

(3) hold hearings;

(4) sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate;

(5) require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents;

(6) take depositions and other testimony;

(7) procure the services of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946; and

(8) with the prior consent of the department or agency of the Federal Government concerned and the Committee on Rules and Administration, use on a reimbursable basis the services of personnel of any such department or agency.

(b) With the consent of the chairman of any other committee of the Senate, the special committee may utilize the facilities and the services of the staff of such other committee of the Senate, or any subcommittee thereof, whenever the chairman of the special committee determines that such action is necessary and appropriate.

(c) The chairman of the special committee or any member thereof may administer oaths to witnesses.

(d) Subpoenas authorized by the special committee may be issued over the signature of the chairman or any member of the special committee designated by the chairman, and may be served by any person designated by the member signing the subpoena.

SEC. 4. Expenses of the special committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the special committee, except that vouchers shall not be required for the disbursement of salaries of employees paid an annual rate.

SEC. 5. The committee list of paragraph (3)(c) of rule XXV of the Standing Rules of the Senate is amended by inserting at the end thereof the following:

"Special Committee on Families, Youth, and Children ..... 11."

Mr. MOYNIHAN. Mr. President, there is no matter more important to the Nation's future than the condition of its families and the prospects for its youth. This is a simple proposition, and I dare say one with which all of my colleagues would agree.

By a variety of indices, the condition of our families—and more particularly, the prospects for our children—appear increasingly threatened. If we are in agreement upon the importance of such matters, we may agree that they warrant the attention of the Members of this Chamber.

Thus, on this first day of the 100th Congress, I rise to introduce legislation establishing by a Special Committee on Families, Youth, and Children, a committee whose mandate will be to study the issues relating to families and to encourage public and private programs and policies to assist them.

Nearly 20 years ago, in an introduction to a paperback edition of Alva Myrdal's "Nation and Family," I wrote:

> In the nature of modern industrial society no government, however firm might be its wish, can avoid having policies that profoundly influence family relationships. This is not to be avoided. The only option is whether these will be purposeful, intended policies or whether they will be residual, derivative in a sense, concealed ones.

This proposition was clear then as now.

The Senate needs an official focal point for these important matters. Family concerns are no one's concern at present. Our distinguished and recently retired colleague, Senator Mathias, referred eloquently to this need:

> Just about every social, economic and ideological unit in the country has a lobby and a respondent government policy—except our most basic unit, the family.

An example or two illustrates the problem. Last February 5, Budget Director James C. Miller III, a trained economist and a meticulous scholar, appeared before the Senate Budget Committee to present the President's budget for fiscal year 1987. The first fact his testimony called attention to was that "* * * family income is at an all-time high."

Yet, in fact, Dr. Miller had it wrong. Personal income had risen, and various other indices also, but family income had not. Indeed, median family income peaked in 1973; by 1985, it was a mere $399 more than it had been in 1970. Over a 15-year stretch, median family income has remained flat.

Never in our history has there been such a long period with no improvement in family income. In postwar America, we never went 3 years without reaching a new record. That is, until 1973. As astonishing as this trend is, apparently no one at OMB knew or

cared enough to notice the Director's mistake.

An isolated example? I would have hoped so. But some months later, Dr. Janet Norwood, our distinguished Commissioner of Labor Statistics, testified before the Finance Committee. I asked her what we were to make of the fact that family income has been flat for the last 15 years.

Dr. Norwood replied that there were all manner of problems with the statistics, that it might very well be the result of smaller households and more older people, whose lower average incomes tend to pull down the overall trend, and so on.

This response was baffling. Again, in fact, per capita income increased slowly, in real terms, between 1973 and 1984. At the same time, however, mean family income decreased over the same time period and, most noteworthy, families with children fared worst: Between 1973 and 1984, mean real income for all families declined by 8.3 percent—from $32,206 in 1973 to $29,527 in 1984. About 3 percent of that decline came in the 6 years between 1973 and 1979, with the bulk of the decline, over 5 percent, coming in the 5 years from 1979 to 1984.

If some of our most distinguished and competent public officials are unaware of these trends in family well-being, then who is paying attention? At one time, the Government paid closer attention to these matters.

President Theodore Roosevelt created one of the first official forums expressly to explore the problems of children in 1909, when he assembled a special White House Conference on the Care of Dependent Children. Three years later, the Federal Government acting on the recommendation of that conference, established the Children's Bureau in the Department of the Interior. The Bureau was given the charge to "report upon all matters pertaining to the welfare of children and child life," which in those early days included:

> The questions of infant mortality, the birth rate, physical degeneracy, orphanage, juvenile delinquency and juvenile courts, desertion and illegitimacy, dangerous occupations, accidents and diseases of children of the working classes, employment * * * and such other facts as have a bearing upon the health, efficiency, character, and training of children.

Real progress has been achieved in addressing many of these problems over the past 75 years, but many of them—particularly those related to poverty and family disintegration—have actually intensified.

It is chilling to note that over 20 percent of our Nation's children, some 12.8 million, now live below the poverty line. And a number of reliable sources estimate that fully one-third of all American children born in 1980 are likely to be on welfare [AFDC] at some point before reaching age 18.

In contrast—and perhaps owing to the early work of the Senate Special Committee on Aging—poverty among elderly Americans has been vastly reduced. Unhappily, children have taken their place as the poorest age group in our society. Taking into account the value of noncash benefits, elderly poverty in 1984 was about 2.6 percent, compared to 17.5 percent for children under age 6. The startling conclusion: Poverty among the very young in America was seven times greater than that for the old.

Year-to-year increases in the poverty rates of children have been linked to a range of economic factors, including the rapid inflation of 1979-80 and the serious recessions of 1980 and 1981-82. But over the last two decades, rising poverty among children has been principally associated with one particular change in family structure: the rise in female-headed households. In his 1984 Presidential address to the Population Association of America, University of Pennsylvania Prof. Samuel H. Preston spoke of "the earthquake that shuddered through the American family in the past 20 years."

In 1984, for the first time, there were more female-headed families—3.5 million—than married-couple families in poverty. The pattern persisted in 1985, the most recent year for which such data exist. Indeed, the poverty rate for female-headed families is five times as high as that for married-couple families. This dramatic fact has devastating consequences for children: More than half—54 percent—of all children living in female-headed families are poor; two-thirds of black children in female-headed families are poor and three-fourths of children of Spanish-origin in such families are poor. The relationship between poverty and the rise in female-headed homes is such that the Congressional Research Service estimates that if the proportion of children in female-headed households had not increased over the past 25 years, there could have been 3 million fewer children in poverty in 1983.

There is plentiful evidence of the ominous trend in the American family structure. For example, a Census Bureau report released last summer indicates that single-parent families with children now account for more than one-quarter of all family groups, almost double the 1970 proportion of 13 percent. Arthur Norton and Paul Glick forecast that 60 percent of all children born today can expect to live in a one-parent family before reaching age 18. In a 1984 study prepared for the Department of Health and Human Services, Mary Jo Bane and David Ellwood estimate that by 1994, 87 percent of all black youth and 46 percent of all white youth under age 18 will have spent some part of their childhoods in a single-parent family.

Mr. President, I do not claim that a Special Committee on Families, Youth, and Children will solve these problems, but it will help us to better understand them.

In the Senate, responsibility for the legislative issues pertaining to American families and children has long been splintered among numerous different standing committees and subcommittees—by some counts as many as 10 standing Senate committees are involved in one way or another.

Mr. President, I joined Senator Denton last year in offering the legislation of which I speak today. On July 23, 1986 the Committee on Rules and Administration held a lengthy hearing on the resolution, to which we invited scholars, statisticians and family and child care providers. Their testimony provided a code of sorts to an array of issues surrounding American families and our youth. Each witness came forth with facts new to members of the committee, the most notable of which bear repeating.

Dr. Preston, highly regarded demographer at the University of Pennsylvania, described to the committee a demographic trend which most certainly deserves our attention:

> We are bearing, on average, only half as many children per woman as we were 30 years ago. The fertility rate has been below the replacement level for 14 straight years now and has been stuck at a level of 1.8 children per woman for a decade. At this level we either begin declining in population size or accept more immigrants.

The distinguished Urie Bronfenbrenner of Cornell also appeared before the committee to plead the case for attention to the subject of family. Our divorce rate is the highest in the world: 1½ times that of our nearest competitor, the U.S.S.R. Our rate of teenage pregnancy is not only the highest in the world, but "in contrast to every other modern nation, is now no longer being reduced." His testimony, stocked with fascinating and little known bits of data in which the Senate most assuredly should take an interest, left off:

> Mr. Chairman, many persons today no longer read, and hence cannot recall those prophetic words from the Book on which our civilization is based; I quote from Exodus 21:5: "The sins of the fathers shall be visited upon the children even unto the third and fourth generation."

Each witness, some representing his own views and others speaking on behalf of large membership organizations, stressed one overarching theme: The Senate must begin to more carefully evaluate the effects of legislative policy on American families; and it should establish a committee mandated specifically to do so.

The idea to create a special committee is not new to the Congress. A similar committee has been operating, most effectively, in the House for 4

years now, providing that body and its Members with valuable research and analysis of all matters pertaining to American families and children.

Like the House committee, the Senate special committee which I propose would have no legislative jurisdiction. It would function as an oversight committee, studying and evaluating the entire range of problems and Government policies that affect families and children.

It is time that the U.S. Senate—whose individual Members are deeply concerned with the problems facing American families and children today—make an institutional commitment to the study of these issues and to an examination of possible remedies.

In the rush of business at the end of the 99th Congress, the Rules Committee failed to report the resolution to the full Senate. In offering it again today, I am confident the initiative will enjoy the broad bipartisan support it had last year and will receive favorable action by the full Senate early in the 100th Congress.

SENATE RESOLUTION 39—ESTABLISHING A SPECIAL COMMITTEE ON YOUNG AMERICANS AND FAMILIES

Mr. DODD (for himself and Mr. SPECTER) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 39

Whereas children now constitute the poorest age-group in this country, with one out of every four children under the age of six and more than one out of every five children under the age of eighteen living in poverty;

Whereas childhood poverty results in a greater risk of abuse and neglect, injury, malnourishment, poor health, and even death;

Whereas poor children who survive face a greater risk of dropping out of school, becoming teen parents, and remaining economically disadvantaged;

Whereas the greatest risk to health, safety, and well-being of some 14,000,000 children nationwide is poverty;

Whereas a significant number of children and adolescents living in families with incomes above the poverty line are also at risk of being left during the day or after school without adult supervision, becoming the victims of abuse and neglect, experiencing health and mental health problems, running away from home, dropping out of school, abusing drugs and alcohol, attempting suicide, committing juvenile offenses, parenting children themselves, and ending up unemployed.

Whereas the future development and security of this nation depends upon the one out of every three Americans who is a child under the age of eighteen;

Whereas Federal policies have not kept pace with the economic, demographic, and social changes affecting the families in which close to 64,000,000 American children live;

Whereas one of the biggest changes since 1970 has been the movement of women into the workforce out of economic necessity, such that two out of every three women working outside of the home now provide the sole support or critical economic support for their families;

Whereas more than 24,000,000 children under the age of 13 now live in families where the mothers work outside of the home and close to half of all mothers with infants under the age of one are in the workforce;

Whereas given such numbers are expected to continue to rise, policies are needed to integrate work and family life and to address both the skyrocketing demand for quality, affordable childcare and for parental leave which enables parents to incorporate infants and adopted children into their families;

Whereas any Federal focus on the special needs of children and youth must recognize families as an irreplaceable part of the solution and priority must be given to cost-effective, preventive strategies aimed at providing and improving public and private family supports;

Whereas addressing the needs of American children also entails giving priority to those who have no parents because of death or disease, who must be removed from their families because of abuse or neglect, who are rejected by their families because of economic, physical or emotional handicaps and those without families who are eligible for adoption;

Whereas policies affecting children and their families are under the jurisdiction of several, different standing committees in the Senate; and

Whereas it is essential to improve the Senate's ability to conduct comprehensive oversight of Federal, State, and local government and congressional activities affecting young Americans and families: Now, therefore, be it

Resolved.

SECTION 1. ESTABLISHMENT OF THE SPECIAL COMMITTEE.

(a)(1) There is established a special committee of the Senate to be known as the Special Committee on Young Americans and Families (hereafter in this resolution referred to as the "special committee"). The special committee shall be composed of eleven members appointed by the President pro tempore from the recommendations of the Majority Leader and the Minority Leader. Six members shall be appointed from the majority party and five members shall be appointed from the minority party.

(2) The President pro tempore shall designate a member of the special committee recommended by the Majority Leader to serve as chairman.

(b)(1) A majority of the members of the special committee shall constitute a quorum for the transaction of business, except that the special committee may fix a lesser number as a quorum for the purpose of taking testimony.

(2) Vacancies in the membership of the special committee shall not affect the authority of the remaining members to execute the functions of the committee, and shall be filled in the same manner as original appointments are made.

(3) The special committee shall adopt rules of procedure not inconsistent with the rules of the Senate governing standing committees of the Senate.

(c) The chairman may establish such subcommittees of the special committee as he considers appropriate, but each such subcommittee shall be composed of not less than four members.

SEC. 2. DUTIES OF THE SPECIAL COMMITTEE.

(a) It shall be the duty of the special committee to make a full and complete study of—

(1) the impact of government policies on families, children, and adolescents and families, including—

(A) the problems of childhood poverty, child care, child abuse and neglect, health and mental health, disabling conditions, education, employment, and child welfare services;

(B) the special needs of minority children; and

(C) other concerns related to the well-being and future well-being of young Americans and families.

(2) the use of practicable means of encouraging the development of public and private policies and programs assisting children, youth or families.

(b) The special committee shall submit an annual report, and such other reports as the special committee considers necessary, to the Senate on the rssults of any investigation and review conducted under subsection (a).

(c) No proposed legislation shall be referred to the special committee, and such committee shall not have the power to report by bill or otherwise have any legislative jurisdiction.

SEC. 3. POWERS OF SPECIAL COMMITTEE

(a) For the purposes of this resolution, the special committee is authorized to—

(1) make expenditures from the contingent fund of the Senate;

(2) employ personnel;

(3) hold hearings;

(4) sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate;

(5) require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents;

(6) take depositions and other testimony;

(7) procure the services of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946; and

(8) with the prior consent of the department or agency of the Federal Government concerned and the Committee on Rules and Administration, use on a reimbursable basis the services of personnel of any such department or agency.

(b) With the consent of the chairman of any other committee of the Senate, the special committee may utilize the facilities and the services of the staff of such other committee of the Senate, or any subcommittee thereof, whenever the chairman of the special committee determines that such action is necessary and appropriate.

(c) The chairman of the special committee or any member thereof may administer oaths to witnesses.

(d) Subpoenas authorized by the special committee may be issued over the signature of the chairman or any member of the special committee designated by the chairman, and may be served by any person designated by the member signing the subpoena.

SEC. 4. EXPENSES OF SPECIAL COMMITTEE

Expenses of the special committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the special

committee, except that vouchers shall not be required for the disbursement of salaries of employees paid an annual rate.

SEC. 5. AMENDMENT TO THE STANDING RULES OF THE SENATE

The committee list of paragraph (3)(c) of rule XXV of the Standing Rules of the Senate is amended by inserting at the end thereof the following:

"Special Committee on Families, Youth, and Children

SENATE RESOLUTION 39—ESTABLISHING A SPECIAL COMMITTEE ON YOUNG AMERICANS AND FAMILIES

Mr. DODD (for himself and Mr. SPECTER) submitted the following resolution; which was considered and agreed to:

S. RES. 39

Mr. DODD. The future development and security of this Nation depends upon the 64 million Americans who are children under the age of 18. I am therefore introducing today a resolution to establish a Special Committee on Young Americans and Families within the Senate. I am pleased to have Senator SPECTER join me in sponsoring this legislation.

The need for a comprehensive review of congressional activities and Federal, State, and local government policies and programs relating to the 1 out of every 3 Americans who is a child was developed during the past two sessions of Congress by the Senate children's caucus. Cochaired by Senator SPECTER and myself, this bipartisan caucus of 34 Members held hearings on a wide range of issues affecting children and families, including the first comprehensive hearings on latchkey children, childhood injuries, and child sexual abuse. In addition, the caucus held hearings during the 98th and 99th sessions of Congress on gifted and talented children, high school dropouts, teenage parenthood, children in poverty, child welfare services, and children at risk. As a direct result of many of these hearings, Members went back to their authorizing and appropriating committees and passed important legislation, from child care initiatives to new measures to prevent and treat child abuse.

In short, the record established by the Senate children's caucus highlights the value of conducting comprehensive oversight of Federal, State, and local government and congressional activities affecting the children and families who will determine the future of this Nation. Such oversight should include coordinated studies of the problems of childhood poverty, child care, child abuse and neglect, health and mental health, disabling conditions, education, employment, child welfare services, the special needs of minority children, and other concerns related to the well-being of children and families. I therefore urge my colleagues to join me in sponsoring this legislation to establish a Special Committee on Youth Americans and Families to carry out such oversight.

I ask unanimous consent that the text of this legislation be printed in the RECORD in its entirety.

SENATE RESOLUTION 40—TO PROVIDE FOR ELECTRONIC VOTING IN THE SENATE

Mr. BYRD submitted the following resolution; which was referred to the Committee on Rules and Administration

S. RES. 40

Resolved, That Rule XII of the Standing Rules of the Senate is amended—

(1) by striking the first clause of paragraph 1 and inserting in lieu thereof the following: "Except as provided in paragraph 5 of this rule, when the yeas and nays are ordered,".

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

"5. Whenever the Majority Leader, with concurrence of the Minority Leader, shall determine, the names of Senators voting upon any roll call shall be recorded by electronic device. Senators shall have not more than fifteen minutes from the beginning of the roll call to have their vote recorded.

"6. The Majority Leader, with concurrence of the Minority Leader, may announce that any recorded vote that is scheduled to or does occur immediately after another recorded vote shall be no longer than five minutes in duration.".

SENATE RESOLUTION 41—TO PROVIDE FOR GERMANENESS OR RELEVANCY OF AMENDMENTS

Mr. BYRD submitted the following resolution; which was referred to the Committee on Rules and Administration.

S. RES. 41

Resolved, That Rule XV of the Standing Rules of the Senate is amended—

(1) by inserting after "motions" in the caption a semicolon and the following: "germaneness";

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

"6. (a) At any time during the consideration of a bill or resolution, it shall twice be in order during a calendar day to move that no amendment, other than the reported committee amendments, which is not germane or relevant to the subject matter of the bill or resolution or to the subject matter of an amendment proposed by the committee which reported the bill or resolution, shall thereafter be in order. The motion shall be priviledged and shall be decided after one hour of debate, without any intervening action, to be equally divided and controlled by the Majority Leader and the Minority Leader or their designees.

"(b) If a motion made under subparagraph (a) is agreed to by an affirmative vote of three-fifths of the Senators present and voting, then any floor amendment not already agreed to (except amendments proposed by the Committee which reported the bill or resolution) which is not germane or relevant to the subject matter of the bill or resolution, or the subject matter of an amendment proposed by the Committee which reported the bill or resolution, shall not be in order.

"(c) When a motion made under subparagraph (a) has been agreed to as provided in subparagraph (b) with respect to a bill or resolution, points of order with respect to questions of germaneness or relevancy of amendments shall be decided without debate, except that the Presiding Officer may entertain debate for his own guidance prior to ruling on the point of order. Appeals from the decision of the Presiding Officer on such points of order shall be decided without debate.

"(d) Whenever an appeal is taken from a decision of the Presiding Officer on the question of germaneness of an amendment, or whenever the Presiding Officer submits the question of germaneness or relevancy of an amendment to the Senate, the vote necessary to overturn the decision of the Presiding Officer or hold the amendment germane or relevant shall be three-fifths of the Senators present and voting. No amendment proposing sense of the Senate or sense of the Congress language that does not directly relate to the measure or matter before the Senate shall be considered germane.".

SENATE RESOLUTION 42—TO LIMIT LEGISLATIVE AMENDMENTS TO GENERAL APPROPRIATIONS BILLS

Mr. BYRD submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 42

Resolved, That Rule XVI, paragraph 4, of the Standing Rules of the Senate is amended—

(1) by inserting "(a)" after "4"; and

(2) by adding at the end of such paragraph the following new subparagraph:

"(b) If a point of order is made by any Senator against an amendment to a general appropriations bill on the ground that such amendment proposes general legislation or proposes a limitation or restriction not authorized by law and is to take effect or cease to be effective upon the happening of a contingency, it shall not be in order to raise the defense of germaneness unless there is House legislative language to which that amendment could be germane remaining in the bill.

SENATE RESOLUTION 43—TO ESTABLISH A PROCEDURE IN ORDER TO OVERTURN THE CHAIR ON QUESTIONS OF GERMANENESS UNDER CLOTURE

Mr. BYRD submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 43

Resolved, That the third paragraph of paragraph 2 of Rule XXII of the Standing Rules of the Senate is amended by adding the following new sentence:

"Whenever an appeal is taken under this rule from a decision of the Presiding Officer on the question of germaneness of an amendment, the vote necessary to overturn the decision of the Presiding Officer shall

be three-fifths of the Senators duly chosen and sworn—except on a measure or motion to amend the Senate rules, in which case the necessary vote shall be two-thirds of the Senators present and voting.".

SENATE RESOLUTION 44—TO PROVIDE THAT SUBSTITUTE AMENDMENTS BE CONSIDERED AS FIRST DEGREE AMENDMENTS UNDER CLOTURE

Mr. BYRD submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 44

Resolved, That the third paragraph of paragraph 2 of Rule XXII of the Standing Rules of the Senate is amended by inserting the following immediately after the words "first degree" in the second sentence—", which under cloture an amendment in the nature of a substitute shall be considered as an amendment in the first degree".

SENATE RESOLUTION 45—TO WAIVE READING OF AMENDMENTS UNDER CLOTURE

Mr. BYRD submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 45

Resolved, That rule XXII of the Standing Rules of the Senate is amended by striking the last sentence of paragraph 2 and inserting in lieu thereof the following:

"After cloture is invoked, the reading of any amendment, including House amendments, shall be dispensed with.".

SENATE RESOLUTION 46—EXPRESSING THE SENSE OF THE SENATE REGARDING TAX RATES

Mr. DOLE (for himself, Mr. WALLOP, Mr. GRASSLEY, Mr. QUAYLE, Mr. ROTH, Mr. DURENBERGER, Mr. KASTEN, Mr. SYMMS, Mr. RUDMAN, Mr. HATCH, Mr. TRIBLE, Mr. BOND, Mr. GRAMM, Mr. HECHT, Mr. ARMSTRONG, Mr. WILSON, Mr. STEVENS, Mr. D'AMATO, Mr. THURMOND, Mr. SIMPSON, Mr. NICKLES, Mr. COCHRAN, Mr. DOMENICI, and Mrs. KASSEBAUM) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 46

Whereas, the Tax Reform Act of 1986 was enacted only after nearly two years of Congressional study and deliberation, and

Whereas, the most fundamental principle of tax reform has been the reduction or elimination of special tax benefits in order to reduce tax rates for all taxpayers, and

Whereas, taxpayers have a right to expect Congress to hold to its promise to reduce tax rates in return for elimination of special tax benefits, rather than to use tax reform as a disguised effort to raise taxes: Now, therefore, be it

Resolved, That it is the sense of the Senate that the income tax rates provided in the Tax Reform Act of 1986 should not be raised or delayed.

Mr. DOLE. Mr. President, today I am introducing a resolution expressing the sense of the Senate that the tax rates reduced by the Tax Reform Act of 1986 should not be increased, or delayed.

It seems a little strange that a resolution of this nature should be necessary. The Senate twice voted overwhelmingly in favor of the Tax Reform Act. And the House agreed to the conference report by a lopsided margin, as well. However, the suggestions keep on coming that we can solve the deficit problem, or somehow make the Tax Code more fair, by raising rates.

Mr. President, I am confident that those suggestions do not represent the view of the Senate; and this resolution will give us an opportunity to express what our position really is.

This resolution is not just a political document. It is an effective way to let the American people know that the policy concerns which drove the tax reform legislation still are the policy of the new Senate.

RATE REDUCTION WAS FUNDAMENTAL TO THE TAX REFORM ACT

The fundamental concept behind the Tax Reform Act is that special tax breaks for some taxpayers should be sacrificed in order that all taxpayers could benefit from lower rates. This concept was central to tax reform right from the beginning. It was included in the original Treasury Department report to the President. It was the major feature of both the President's proposal and the House tax reform bill.

But the importance of rate reduction was dramatized best in the Senate. At one point, many people thought tax reform was dead in the Senate. It may well have been if the Finance Committee had not reported out a bill with tax rates which were even lower than those proposed by the President. That rate structure passed the Senate by a vote of 97 to 3. Without those rates, I believe tax reform would have been in serious jeopardy.

Evidence for this point of view is found in the Senate vote on the conference report. The rates in the conference report were one point higher than those contained in the Senate bill. Yet the Senate agreed to the conference report by a vote of 74 to 23. This was still an impressive, bipartisan endorsement, but it was a major change, considering the one-point difference in the rates.

TAXPAYERS CONSIDER RATE REDUCTION AN ESSENTIAL PART OF TAX REFORM

In many people's minds, this trade-off of base-broadening for lower rates is tax reform. Nobody wanted to give up a tax break he or she was using to reduce tax liability. As we all know, the discussion about what tax breaks should be curtailed occupied most of the debate in both Houses. But most taxpayers, and most of us, thought it would be real reform if we were able to reduce rates dramatically in return for repealing or limiting special tax breaks.

THE SENATE'S PROMISE

However, with the talk of raising rates, it is not surprising that taxpayers might be a little cynical. I remember some of the letters I received from constituents who feared that Congress would quickly raise rates soon after tax reform was signed into law. I told those who asked me that I supported a revenue neutral tax reform bill. I am sure that many of my colleagues told their constituents the same thing. It would be a breach of faith if we reneged on our promises that tax reform would be revenue neutral just by doing it in two steps. We would not deserve the trust of the American taxpayer if we ignored last year's promises when the first opportunity arose.

Mr. President, I urge my colleagues to join in this resolution and give the Americans assurance that we will not raise tax rates just as they begin to be phased in this year.

SENATE RESOLUTION 47—REGARDING S. 262

Mr. FORD submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 47

Resolved, That the bill (S. 262) entitled for the relief of the grantors of certain lands in Henderson, Union, and Webster Counties, Kentucky, to the United States and their heirs now pending in the Senate, together with all accompanying papers, is referred to the Chief Commissioner of the United States Court of Claims. The Chief Commissioner of Sections 1492 and 2509 of title 28, United States Code, and report back to the Senate, at the earliest practicable date, giving such findings of fact and conclusions that are sufficient to inform Congress of the amount, if any, legally or equitably due to the United States to the claimants individually.

SENATE RESOLUTION 48—FOR IMPEACHMENT OF CONVICTED FELONS

Mr. THURMOND submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 48

Resolved, At the end of the Rules of Procedure and Practice in the Senate when sitting on Impeachment Trials add the following new rule:

XXVII, Whenever articles of impeachment are exhibited in the Senate against any person who has been convicted of a felony in the State or Federal courts of the United States, the Presiding Officer shall designate, with the approval of the Senate, a time for the yeas and nays to be taken on the articles of impeachment against such person: *Provided, however,* That prior to such vote, there shall be six hours of consideration of the articles; two hours of which

shall be reserved for the managers of the impeachment, two hours of which shall be reserved for the accused or the representative of the accused, and two hours of which shall be reserved for deliberation and debate by members. If the impeachment is not sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused of such a felony conviction should be convicted by two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of the Senate.

Mr. THURMOND. Mr. President, just a few months ago, Members of the Senate were painfully reminded that at this time, under current constitutional law, it is possible for certain officers of the United States who are appointed by the President with the advice and consent of the Senate to continue to receive a salary after being convicted of a felony. In order to remove these officers from the Federal payroll, if they are unwilling to resign, it is necessary that they be impeached—a process which can occupy valuable time and resources of the Congress.

The Congress now has the power to impeach officers of the Government who have committed treason, bribery, or other high crimes and misdemeanors. However, when the courts of the Nation have found an official guilty of a serious crime, it should not be necessary for Congress to retry the official prior to his removal from the Federal payroll.

Mr. President, one way to address this intolerable situation would be by amending the Constitution. However, at hearings conducted late in the 99th Congress, several distinguished witnesses expressed the view that a satisfactory remedy to this problem might exist short of amendment of the Constitution. Primarily, their suggestion was that Congress, through the impeachment process, provide for an expedited impeachment procedure in the case of an accused who has been convicted of a felony. I believe this may be an appropriate alternative means of addressing this dilemma. It was, in fact, an approach which I proposed to several of my colleagues with regard to the impeachment proceeding of Judge Harry Claiborne and which I introduced as a proposed Senate rule late in the last Congress.

Today, therefore, I am reintroducing a resolution which would add a new Senate rule to provide for expedited impeachment proceedings when the accused has been convicted of a felony. I am hopeful that it will receive the careful consideration of my colleagues.

SENATE RESOLUTION 49—TO ESTABLISH A COMMISSION ON SENATE OPERATIONS AND FISCAL PROCEDURES TO MAKE RECOMMENDATIONS FOR IMPROVING THE BUDGET PROCESS.

Mr. MOYNIHAN submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 49

Whereas in the course of the past two decades Congress has faced a succession of political or fiscal crises involving issues of constitutional prerogatives and institutional arrangements;

Whereas the content of specific questions has ranged from the Presidential right to impound appropriated funds to Congressional responsibility to provide revenues adequate to fund mandated activities;

Whereas the Senate has initiated a succession of major institutional innovations, including the Congressional Budget and Impoundment Control Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985;

Whereas an effect of the Congressional Budget and Impoundment Control Act of 1974 has been to add a third level of committee consideration of budget matters, with the inevitable atrophy of the authorization committees where the process once began;

Whereas an effect of the Balanced Budget and Emergency Deficit Control Act of 1985 would be to deprive Congress altogether of its most precious power and solemn responsibility to lay taxes and direct expenditures;

Whereas these successive responses have not resolved difficulties and may indeed have compounded them;

Whereas the annual budget cycle has become an exercise in crisis management rather than fiscal policy, with individual appropriations bills a thing of the past and continuing resolutions increasingly incomprehensible and often enacted after the start of the relevant fiscal year;

Whereas necessary increases in the debt ceiling have become occasions on which the Senate has adopted ever more complex devices for accomplishing fiscal policy goals, in part due to the threat of inaction which would plunge the nation into bankruptcy;

Whereas one day this threat may not work and the government will cease operations;

Whereas what in other contexts has been called a crisis of the regime could truly be approaching the United States even as we commence to celebrate two hundred years of unparalleled constitutional stability;

Whereas preoccupation with the ever multiplying profusion of dates certain whereby the various budget procedures must absolutely be completed, but which never are completed, has succeeded only in ensuring that serious sustained consideration of issues of foreign and domestic policy has all but atrophied in the Senate;

Whereas various reforms in Senate procedure have been suggested as corrective measures;

Whereas an organized inquiry into our present incapacity might stimulate a more general debate; and,

Whereas it is a long established practice to create Senate, House, or Joint commissions to deal with special occasions or special issues, some sixty-four having been established over the past twenty-five Congresses, many with a mix of public and private members; Now, therefore, be it

Resolved, That (a)(1) there is established a commission of the Senate to be known as the Commission on Senate Operations and Fiscal Procedures (hereafter in this resolution referred to as the "commission"). The commission shall be composed of fifteen members appointed by the President pro tempore from the recommendations of the Majority Leader and the Minority Leader. Eight members shall be sitting Senators, four members shall be former Senators, and three members shall be distinguished lay persons, including former Senate staff members.

(2) The President pro tempore shall designate a member of the commission recommended by the Majority Leader to serve as chairman.

SEC. 2. (a) It shall be the duty of the commission to—

(1) inquire into the causes of the recent breakdown of the budget process; and

(2) study the alternatives for improving the budget process

(b) The commission shall submit a report to the Senate including its findings and recommendations not later than December 31, 1987.

Mr. THURMOND. Mr. President, I rise today to introduce Senate Resolution 49, a resolution to establish a Commission on Senate Operations and Fiscal Procedures.

My purpose: To have a group of Senators, former Senators, and lay persons investigate the causes of the recent breakdown of the budget process, study alternatives for improving the budget process, and submit to the Senate a report including its findings and recommendations by the end of 1987.

The need for such a study is clear. Last year all 13 individual appropriations bills were lumped together into one continuing resolution. That is evidence enough that something has gone wrong with the process envisioned when Congress approved the Congressional Budget and Impoundment Control Act of 1974. At that time, it was thought that the Budget Committees would focus on the Federal fisc, and the authorizing and appropriating committees would work within the overall budgetary limits set by Congress in first one, and then a second budget resolution for each fiscal year. Appropriations bills were, of course, expected to be passed prior to the start of the new fiscal year.

By fiscal year 1980, Congress routinely failed to meet the timetable established by the 1974 Budget Act. The first budget resolution could not be agreed to by May 15, and passsage of the second budget resolution slipped from September 15 into November. Starting with consideration of the fiscal year 1983 budget resolution, Congress gave up altogether the practice of passing a second budget resolution—by tradition, the first was made

binding if a second resolution was not approved.

According to the Congressional Research Service, Congress is becoming less successful at having its appropriations bills enacted prior to the start of the fiscal year. In fiscal year 1977, all 13 regular appropriations bills had been enacted. The numbers proceed to drop off to nine in fiscal year 1978, five in fiscal year 1979, three in fiscal year 1980, one in fiscal year 1981, none in fiscal year 1982, one in fiscal year 1983, four in fiscal year 1984, four in fiscal year 1985, three in fiscal year 1986, and none in fiscal year 1987.

In 1985, Congress radically altered the budget process by passing the Gramm-Rudman-Hollings law. Congress gave up. Rather than evaluate the economy, and the budget throughout each budget cycle, economic assumptions about growth, inflation, interest rates, unemployment, oil prices, and such were made an implicit part of the law through the specific deficit targets. If Congress and the President could not agree on a way in which to meet the deficit targets, Congress had provided an automatic mechanism make the cuts. All programs subject to cuts would be treated equally, with the priorities of the past becoming the priorities of the future.

We ought to examine how we got to the point where Congress passed a major revision of the budget process without so much as one committee hearing. We should investigate why the process broke down to the point that Congress voted overwhelmingly to give up its constitutional responsibility and right to make choices about how to spend the moneys it raises.

There have been several suggestions made about how best to remedy the failure of the process. Some propose a biennial budget cycle; others propose making the concurrent resolution on the budget into a joint resolution, requiring the President's signature. Still others would abolish the existing framework and start anew. We ought to have a rational debate about such alternatives, and that is what this resolution seeks to obtain.

SENATE RESOLUTION 50—IN SUPPORT OF CANADIAN-AMERICAN COMPREHENSIVE TRADE NEGOTIATIONS

Mr. MOYNIHAN submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 50

Whereas,

(1) The United States-Canada bilateral trade relationship is of vital importance to both countries since:

(a) the U.S.-Canadian trade relationship is the largest in the world, with bilateral merchandise trade exceeding $100 billion;

(b) Canada and the U.S. are each other's largest export market;

(c) approximately 2 million jobs in each country depend on exports to the other country;

(d) more than three-quarters of Canada's exports—representing one-third of her GNP—are sent to the U.S.;

(e) more than one-fifth of United States' exports are sent to Canada and approximately 85 percent of these are manufactured goods;

(f) More than 75% of direct foreign investment in Canada is by the United States while Canadian direct investment in the U.S. is the third largest source of foreign investment funds.

(2) Although trade between the U.S. and Canada is relatively free, both countries could benefit from expanded trade in goods and services.

(3) A comprehensive bilateral trade agreement encompassing tariff and non-tariff matters presents the best opportunity of resolving trade problems which threaten expanded trade between the two countries:

(a) although by 1987, when the Tokyo Round Tariff reductions have been fully implemented, approximately 80 percent of Canada's exports to the U.S. and 65 percent of U.S. exports to Canada will enter duty free, further reductions in remaining Canadian tariffs (on average 9 percent) and U.S. tariffs (on average 4-5 percent) could further promote trade;

(b) an agreement could also address Canadian non-tariff barriers such as government procurement policies, state monopolies, technical standards, and processing requirements, as well as restrictions on investment and services, product subsidization and failure to protect intellectual property rights; and

(c) an agreement could also address Canadian concerns with securing access to the U.S. market which may be denied as a result of the imposition of import limitations or government policies on procurement or investment, as well as developing more predictable rules under which bilateral trade is conducted and future disputes might be settled.

(4) On September 26, 1985, Canadian Prime Minister Brian Mulronery announced his decision to pursue a comprehensive trade agreement "involving the broadest possible package of mutually beneficial reductions in tariff and nontariff barriers" to trade in goods and services and President Reagan immediately welcomed Mulroney's proposal for the negotiation of a comprehensive trade agreement.

(5) Informal discussions between representatives of the two countries occurred through May 1986 and formal negotiations were begun in June 1986.

(6) Representatives of the two countries have met for discussions six times and, while progress has been made, further discussion is required and resolution of the issues remains elusive.

(7) Expressions of support for the negotiation of an agreement would be helpful in expediting the process. Now therefore be it

Resolved, That it is the sense of the Senate that the representatives of the United States should proceed on an expedited and priority basis to conclude the negotiation of a mutually beneficial comprehensive bilateral trade agreement between the United States and Canada.

Mr. MOYNIHAN. Mr. President, today I introduce a resolution to express the sense of the Senate that the United States representatives currently discussing a comprehensive trade agreement with their Canadian counterparts proceed on an expedited and priority basis to achieve a mutually beneficial agreement. Formal negotiations between the United States and Canada began in June 1986, and representatives of the two countries have met for discussions six times. While progress has been made, further discussion is necessary to address the many unresolved issues.

My simple hope is that the resolution will provide much needed support for the negotiation of an agreement that holds the promise of promoting trade between the two countries and of resolving outstanding trade problems.

Our trade relationship with our friends to the north long has been insufficiently appreciated. The United States-Canada bilateral relationship is the largest in the world, reaching $117 billion in 1985 and approximately that level in 1986. We are each other's largest export markets, and approximately 2 million jobs in each country depend on exports to the other country. These are relations which surpass the problem of the day or year such as lumber or corn. And so it is with great interest that I follow and support efforts by our two countries to strengthen and expand that trading relationship.

At the March 18, 1985, summit meeting in Quebec City between President Reagan and Canadian Prime Minister Brian Mulroney, the two leaders pledged to explore all possible ways to reduce and eliminate barriers to trade between the two countries.

Six months later, on September 26, 1985, Canadian Prime Minister Mulroney informed the House of Commons of his decision to pursue a new comprehensive trade agreement with the United States "involving the broadest possible package of mutually beneficial reductions in tariff and nontariff barriers" to trade in goods and services.

President Reagan welcomed Prime Minister Mulroney's proposal for a bilateral trade agreement and on October 28, 1985, Secretary of State Schultz met with Canadian Foreign Minister Joe Clark to tell him of the administration's desire to begin formal bilateral negotiations early in 1986.

The President then notified Congress of his intention to negotiate an agreement and sought "fast-track" authority for legislation to implement any agreement. Under existing law, if neither the Senate Finance Committee or the House Ways and Means Committee disapproves of the negotiations, then the President is authorized to submit to Congress legislation implementing such an agreement under "fast track" procedures that prohibit amendment and set strict deadlines for congressional review and action.

The House Ways and Means Committee never voted on the question of granting fast-track authority, so the question of disapproval was never put forth. The Senate Finance Committee, however, did vote on April 23, 1986. By a 10-to-10 vote, the committee defeated a resolution to disapprove of fast-track authority.

So, while the Senate Finance Committee approved fast-track authority, it does so by the barest of margins. And this, I fear, may have contributed to the lack of progress being made in those negotiations.

As an early and ardent supporter of the negotiations, this was most distressing. I have said often that such an agreement not only offers the prospect of expanded trade benefiting both countries, but it is also perhaps the best way of resolving many outstanding and serious trade problems.

I do believe, however, that the committee's vote last April was at least as much a referendum on the administration's trade nonpolicy as on the desirability of an agreement. While I quite agree that we should disagree with the administration's failure to take serious action to address our trade problem, I do not think it wise to hold progress in our bilateral negotiations hostage to such a reversal in the administration's policy.

Therefore, I ask my colleagues to support this resolution so that we might send a strong signal to the United States and Canadian negotiators that the Congress supports the process, and to provide a much needed lift to a lagging negotiation that is vital to the economic welfare of both the United States and Canada.

SENATE RESOLUTION 51—IN SUPPORT OF JAPANESE-AMERICAN "MOSS" AUTO PARTS NEGOTIATIONS

Mr. MOYNIHAN submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 51

Whereas:

(1) serious inequity now exists with respect to the procurement of automobile parts by American and Japanese automobile manufacturers;

(2) if US markets are to remain open, American automobile parts manufacturers must be given a fair and equal opportunity to make sales to Japanese automobile manufacturers located in Japan and in the US;

(3) the current bilateral market-oriented, sector specific ("MOSS") talks concerning trade in automobile parts represent an opportunity to address closed procurement policies by the Japanese without the need for unilateral trade action by the US: Now, therefore, be it *Resolved*, That it is the Sense of the Senate, that:

(1) any agreement should provide US automobile parts manufacturers with the opportunity to:

(a) compete on an equal basis in the face of traditional Japanese automobile manufacturer-supplier relationships by requiring the Government of Japan to support import development progams for US suppliers;

(b) compete on an equal basis for the after-market in replacement and repair parts for Japanese cars, including freedom from formal or informal government barriers; and

(c) obtain the same information at the same time that is available to Japanese automobile parts manufacturers about automobile parts purchasing by Japanese auto manufacturers on a company and product category basis; and

(2) the success of the agreement will be measured by the increase in sales of US automobile parts.

Mr. MOYNIHAN. Mr. President, today I introduce a resolution to express the sense of the Senate in support of a current trade negotiation of vital importance—the auto parts talks under the auspices of the market-oriented, sector-specific process.

Auto parts production is a major U.S. industry employing 621,000 in about 2,000 firms in 1984. There are over 160 firms in New York State alone.

Unfortunately, however, the auto parts industry has declined in the last 8 years or so. From 1978 to 1984 employment in the industry fell 15 percent and the real value of shipments fell 14 percent.

Like many troubled United States industries, the decline in the auto parts industry is attributable to international flows of auto parts, specifically from Japan. The total United States balance of trade in auto parts moved from a surplus of $2.2 billion in 1978 to a deficit of $2.8 billion in 1985. The deficit just from January 1978–85, the United States trade deficit in auto parts with Japan—by far our largest—increased 225 percent, from $860 million to $2.8 billion. Our auto parts trade deficit with Japan alone through August 1986 is $2.4 billion.

We are consuming more Japanese auto parts for primarily three reasons: The increase of imported Japanese cars containing mostly Japanese parts; the establishment of Japanese auto and auto parts plants in the United States; and foreign sourcing by United States auto makers.

However, there is an important difference between the United States auto parts industry and many other troubled United States industries—the United States auto parts industry is competitive in price and quality with Japanese producers. A study conducted for the Commerce Department by Booz, Allen & Hamilton, Inc., based on interviews with 95 supplier executives, finds that "cost and product quality are not the issues which suppliers identify as major impediments" to the Japanese auto parts market. So what then impedes United States sales of auto parts?

The primary impediment to sales by United States parts producers to Japanese vehicle manufacturers is the long-term "family like" traditional suppliers. This relationship—known as "keiretsu" in Japan—has resulted in impenetrable and noncompetitive commerce between Japanese assembly plants and their suppliers.

The Booz, Allen study finds that—

> The major barriers affecting United States automotive suppliers attempting to sell to Japanese OEM's [original equipment markets] are cultural understanding, nationalism, pre-sourcing practices and their effect conditions.

In addition, the 1986 report of foreign trade barriers issued by the U.S. Trade Representative reports:

> The prerequisite for selling most functional auto parts to Japanese auto makers is to become, in effect, part of their "family" of suppliers.

As a result, United States auto parts manufacturers supply less than 1 percent of the original equipment market in Japan, and less than 20 percent of the parts used for Japanese auto production in the United States. Similar problems exist for United States access to the Japanese after-market—the market for automotive replacement parts.

Naturally, the U.S. Government has been concerned about this situation and is currently engaged in negotiations with Japan concerning the use of American-made auto parts in Japanese assembly plants in the United States and Japan.

These negotiations are part of the market-oriented, sector-selective [MOSS] process under the category of transportation issues. The talks began on August 20, 1986, in Tokyo.

Unfortunately, although some progress has been made in these talks, United States negotiators report that Japan is resistant to taking meaningful action. Specifically, Japan will not acknowledge that "family like" business relationships hinder United States auto parts sales and Japan will not agree that the success of the talks should be measured by increased sales of American parts.

The resolution I introduce today would simply convey to Japan the concern of the Senate on this important matter, and express its support for the negotiations already underway.

The bill would express the sense of the Senate that: A serious inequity exists in the area of auto parts trade; if U.S. markets are to remain open, U.S. parts manufacturers must be given fair and equal opportunity to sell their products; the MOSS talks represent an opportunity to address these problems; and the success of pursuing this goal can only be measured by the degree to which sales of American made auto parts increase.

I am confident that the U.S. auto parts industry can grow and prosper if it is allowed fair access to international markets. A Japanese market domi-

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nated by closed procurement is not acceptable, and I urge my colleagues to support me in expressing to the Japanese Government and automotive industry the concern of the Senate on this matter.

SENATE RESOLUTION 52—TO EXPRESS THE SENSE OF THE SENATE REGARDING THE URBAN DEVELOPMENT ACTION GRANT PROGRAM

Mr. LAUTENBERG (for himself, Mr. DODD, and Mr. DIXON) submitted the following resolution; which was referred to the Committee on Appropriations:

S. RES. 52

Whereas the economic development of urban communities large and small is an essential national objective;

Whereas Congress has appropriated $225 million for the Urban Development Action Grant Program in Fiscal Year 1987;

Whereas the Urban Development Action Grant Program provides jobs, tax revenues and economic revitalization to areas of the nation with high unemployment, particularly among minorities; and

Whereas the Urban Development Action Grant Program leverages private sector investment in our nation's urban communities;

Now, Therefore, be it Resolved, That

(1) the proposed rescission of 205.4 million of the Fiscal Year 1987 appropriations for the Urban Development Action Grant Program is rejected.

SENATE RESOLUTION 53—TO EXPRESS THE SENSE OF THE SENATE REGARDING THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Mr. LAUTENBERG (for himself, Mr. DODD, and Mr. DIXON) submitted the following resolution; which was referred to the Committee on Appropriations:

S. RES. 53

Whereas local and community development is a matter of national concern and a national priority;

Whereas Congress has appropriated $3 billion for fiscal year 1987 for community development block grants to units of general local government and states to fund local community development programs;

Whereas the Community Development Block Grant program has become an essential component of local governments' efforts to maintain and develop their communities;

Whereas local governments have assumed the current appropriation for these grants as part of their budget planning;

Whereas local governments have been forced to make significant adjustments as a result of the termination of the General Revenue Sharing program and reductions in other forms of federal assistance;

Now, therefore be it Resolved, That

(1) The proposed rescission of $375.2 million of the Fiscal Year 1987 appropriation for community development block grants is rejected.

Mr. LAUTENBERG. Mr. President, today I am introducing two sense of the Senate resolutions in opposition to the proposed rescission of fiscal year 1987 funding for the Urban Development Action Grant and Community Development Block Grant Programs. I am joined by my distinguished colleagues from Connecticut [Mr. DODD] and Illinois [Mr. DIXON].

The Congress faces many difficult choices this year as we seek to reduce the Federal budget deficit. Many vital domestic programs will face drastic reductions, while others are threatened with rescissions of spending already agreed to by Congress.

The administration's budget strikes at the heart of Federal programs which have been essential to local government. The administration would rescind $375 million in funds from the CDBG Program and $205 million from the UDAG Program. These include funds that are already a part of the budget plans of our cities. They are funds that have been committed to provide public services and rebuild economies.

Mr. President, we successfully defeated a similar proposal by the administration in its fiscal year 1986 budget request. Again, we are faced with a retreat from a commitment made by the Federal Government to the cities. The proposed rescission says that the Federal Government will no longer be a partner in rebuilding urban America.

I oppose this disastrous dismantling of the Federal-local partnership, a partnership which has been fashioned over the years on a bipartisan basis. I oppose the consequences which will follow from this action—the termination of housing initiatives, the reduction in police and fire personnel, the reduction in street maintenance. Congress intended for these programs to be funded at a level which will allow revitalization of our cities to continue. I intend to see that these benefits are realized.

Mr. President, I oppose these rescissions and I urge my colleagues to join in an effort to reject this ill-conceived policy.

NOTICE OF MEETING OF COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I wish to announce that the Committee on Rules and Administration will meet to organize on Thursday, January 15, 1987, at 9:30 a.m., in SR-301. At this meeting, the committee plans to adopt its rules of procedure and to select members for the Joint Committee on Printing and the Joint Committee of Congress on the Library.

The committee will also be considering legislative and administrative items currently pending on its agenda, including an original resolution athorizing expenditures by the Committee on Rules and Administration for fiscal year 1987.

For further information regarding this meeting, please contact Carole Blessington of the Rules Committee staff on 224-0278.

ADDITIONAL STATEMENTS

PRIVATE ENFORCEMENT OF UNFAIR COMPETITION STATUTES

● Mr. D'AMATO. Mr. President, I am pleased again to be an original cosponsor of legislation which provides for private enforcement of U.S. unfair competition statutes in an attempt to fend off the ever-increasing problem of predatory trade practices utilized by many of our trading partners. This needed legislation, introduced by my distinguished colleague from Pennsylvania, will create a private right of action for victims of unfair trade practices.

Mr. President, I was dismayed and shocked as I heard witnesses describe to me the illegal and unfair practices of our trading partners at Joint Economic Committee hearings I chaired on international trade relations during the 99th Congress. These practices include foreign nations subsidizing targeted industries, dumping their products in the U.S. marketplace, and using fraudulent methods to circumvent U.S. customs laws. The use of these methods continues to be detrimental to U.S. businesses as these foreign nations capture an ever larger share of our market.

U.S. companies neither discourage, nor fear competition; but they must not be forced to compete against those who insist upon using illegal methods of competition. For this reason alone, we need to strengthen our present trade laws to provide U.S. companies a swift and viable remedy to correct these injustices.

Mr. President, I believe that this legislation will be a significant step forward in correcting these unfair trade practices. The creation of a private right of action will allow private parties to immediately file suit in Federal district court or the Court of International Trade and seek a speedy remedy, namely an injunction.

Mr. President, a look at our spiraling trade deficit—which most likely will exceed $170 billion for 1986—should serve as a constant reminder that we need the type of action that this legislation offers. I urge my colleagues to expeditiously act on this important legislation before it is too late.●

A PLEA ON BEHALF OF NAUM MEIMAN

● Mr. SIMON. Mr. President, recently, our former colleague Gary Hart returned from Moscow with wonderful news. He was informed by Soviet officials that Inna Meiman, who is suffering from inoperable cancer, would be allowed to travel to the West for treatment.

For nearly a year I have been formally asking the Soviet Government to let Inna and her husband, Naum Meiman, leave Moscow so Inna would have a chance to live. Soviet doctors have said there is nothing more they can do for her.

Daily, I have been inserting statements in the CONGRESSIONAL RECORD on her behalf.

I was delighted to hear the news that Inna is being allowed to leave. But I urge the Soviets to allow Naum to travel with her, which Soviet officials have yet to permit.

The Kremlin has said that Naum cannot leave, claiming his former position as a scientist makes him a security risk. Naum says his work was done more than 30 years ago, making that charge ridiculous.

Inna is weak and critically ill. She needs the loving support of her husband to make the trip.

It is not too much to ask.●

STARS AND STRIPES FOREVER

● Mr. WILSON. Mr. President, while the rest of official Washington concerns itself with the ship of state, I would like to pay tribute to another kind of sailing vessel. Every Californian knows that the future begins in our home State. In less than a month, that future will include the greatest trophy in the world of competitive sailing. The America's Cup will soon be California's proudest ornament.

Why am I so confident in my forecast? Well, I am from San Diego. And San Diegans who may not have heard of PETE WILSON know all about Dennis Conner. And not just from his American Express ads. Fact is, millions of people who may not be able to distinguish between a spinnaker and a line drive are rooting for Dennis and the crew of the *Stars and Stripes* to bring the Auld Mug back where it belongs. For more than 3 years, California's nautical favorite son has steered a steady course. His already impressive credentials have been enhanced by a tough series of races against a dozen other challengers—including two superb contenders from California, San Francisco's *U.S.A.* and the *Eagle*, which nested in Newport Beach.

When the semifinal series began last week, just 12 races stood between *Stars and Stripes* and racing immortality. As of today, it is four down, eight to go. So bring on the *Kiwis*, with their "plastic fantastick." There is nothing plastic about the *Stars and Stripes*.

On January 31, the world's attention will be focused Down Under. That is when we will all discover that an Aussie and his Cup are soon parted. In the meantime, I want to extend my personal congratulations to that not so old salt—Dennis Conner. I would like to invite Americans everywhere to join in support of this patriotic endeavor. And finally, I would like to issue an open invitation to San Diego—future home of the America's Cup and site of the 1990 Cup races.●

J. WILLIAM BELANGER

● Mr. KERRY. Mr. President, over the holidays Massachusetts lost one of its most effective advocates for workers and one of our most able leaders of organized labor—Mr. J. William Belanger.

Bill Belanger was the first president of the Massachusetts AFL-CIO, the Director of Employment Security for the Commonwealth of Massachusetts, and the Federal Director for Unemployment Insurance for New England. But the citizens of Massachusetts will remember Bill Belanger as the competent, compassionate, and constant champion of the working men and women of our State. Whether the issue was worker safety, fair unemployment benefits, equal employment opportunity, help in educating workers' children or housing our families, Bill was there to craft a well conceived programmatic and political strategy and to deliver its benefits to the workers who he always represented.

Bill Belanger will be missed by all of us. He was a citizen who never forgot his roots or abandoned his values. His legacy is a quality of working life in Massachusetts that is a little better for all our people because he came our way and cared so deeply.

Mr. President, I ask that the Boston Globe obituary of December 14, 1986, commemorating Mr. Belanger's death be printed at this point in the RECORD.

The article follows:

[From the Boston Sunday Globe, Dec. 14, 1986]

J. WILLIAM BELANGER, PRESIDENT OF MASSACHUSETTS AFL-CIO FROM 1958-64

J. William Belanger, 79, of Naples, Fla., the first president of the Massachusetts AFL-CIO and a former Boston resident, died Friday in Naples Community Hospital of natural causes.

Mr. Belanger became the first president of the Massachusetts American Federation of Labor and Congress of Industrial Organizations in 1958. He remained in the position until 1964, when he became director of employment securities for Massachusetts.

He was chairman of the Massachusetts CIO Political Action Committee from 1948 until the CIO merged with the AFL 10 years later.

Mr. Belanger was also active in civic and political activities. He was a delegate to the national conference of the International Labor Organization in Geneva in 1958 and was a supporter and adviser to Presidents Kennedy and Truman. He supported political leaders such as former U.S. House Speaker John McCormack and Sen. Edward M. Kennedy.

Mr. Belanger was a Massachusetts delegate to the Democratic national conventions in 1952, 1956 and 1960.

He was an adviser to the U.S. Commission on Civil Rights and to the Massachusetts Commission on Discrimination in Housing during the early 1960s.

During World War II, he was a member of the New England regional office of the War Labor Board, the Wage Stabilization Board and the War Manpower Commission from 1942 to 1946.

Mr. Belanger was a member of the Truman Library Committee and vice chairman of the United Fund of Greater Boston.

Born in Newmarket, NH, he lived in the Rhode Island and in the Boston area for many years. He had moved to Naples only two months ago.

Said Harvey Friedman, a former colleague at the AFL-CIO: "He got his education by working, like all the people he represented. He didn't need a formal university education."

He leaves his wife, Bernice (Fledrick) of Naples; two sons, J. William Jr. of South Dartmouth, Mass., and Roger Belanger of Fort Myers, Fla.; four sisters, Amanda Patry, Florida Montminy, Anna Belanger and Alma Sylvester, all of Rhode Island; three grandchildren and several nieces and nephews.

A memorial service will be held Monday, Dec. 15, at 11 a.m. in Naples Memorial Gardens, Naples.●

APPLIANCE EFFICIENCY STANDARDS

● Mr. WEICKER. Mr. President, I rise today in support of the National Appliance Energy Conservation Act of 1987. This act is the same as the legislation passed unanimously last year by both Houses of the Congress except that two nongermane sections of last year's legislation, regarding issues under consideration by the Federal Energy Regulatory Commission, have been dropped from the bill.

It was with great disappointment that I learned of the President's pocket veto of last year's bill despite unanimous congressional approval, a recommendation for enactment by the Department of Energy and broad support for the bill by the appliance industry, environmental and consumer groups, and the States.

In the President's Memorandum of Disapproval he pointed out that current law already provides for Federal appliance efficiency standards and he stated that "I think current law is preferable." However, the memorandum fails to recognize two problems with the current law.

First, the President failed to point out that under current law appliance standards were to have been promulgated over 5 years ago. The current law, which the President would prefer, is the same law that this administra-

tion has successfully avoided implementing for those 5 years—it is not any wonder that he prefers it over this act, which would be self-implementing.

Second, the Memorandum of Disapproval states that the Federal standards to be imposed under current law "would preempt existing State law." This is simply not correct. Under current law the administration may grant States waivers from Federal preemption and, in fact, the administration has granted such waivers to every State which has requested one. This policy has led to a growing patchwork of conflicting State-by-State appliance efficiency regulations which are making it impossible for appliance manufacturers to plan, produce and market their products. The National Appliance Energy Conservation Act would solve this problem with the current law by requiring Federal preemption of State appliance standards.

Mr. President, this legislation achieves two broad objectives, either of which continue to be compelling reasons for its enactment.

First, this bill would establish uniform national appliance energy efficiency standards which would preempt the growing number of separate and conflicting State standards. Such preemption greatly reduces the regulatory burdens that separate State standards place on the appliance industry.

Second, this bill would significantly reduce the Nation's demand for electricity. Such a reduction in energy demand will assist the Nation in meeting future energy needs and in reducing our growing dependence on foreign energy resources.

How soon we forget the energy crisis of the seventies. We should not kid ourselves, the energy crisis is still out there and it is certain to be a chronic national problem. This legislation is the single largest step we are now in a position to take to prepare ourselves to meet that challenge. I sincerely hope that this administration will not continue to bury its head in the sand, but will recognize that energy efficiency standards are a valid and essential part of a national energy policy.

The history of appliance efficiency standards goes back to 1975, when Congress passed the Energy Policy and Conservation Act [EPCA]. EPCA directed the Department of Energy to consider the establishment of appliance energy efficiency standards in response to the energy crisis which the Nation then faced.

In 1978, the Congress amended EPCA to require the Department of Energy to establish appliance energy efficiency standards. However, in 1983 the Department ruled that no standards were economically justified. This "no-standard" standard was challenged in court and in July 1985, the D.C. District Court of Appeals ruled against the Department and ordered that substantive standards must be issued. Unfortunately, it will be at least 2 years before the Department can promulgate new standards. In the meantime, the court ruling and current DOE practice allow the 50 States to establish their own State regulations regarding appliance energy efficiency. States are continuing to enact their own regulations which result in a growing patchwork of separate and conflicting regulations. This patchwork of State-by-State regulations has made a nightmare of the design, production, and marketing plans of the Nation's appliance manufacturers.

One excellent example of the problems which have resulted from this patchwork of regulations is a small but growing traffic in "smuggled" appliances; particularly in my region of the country. Appliance retailers have already found that customers are willing to drive to other States in order to purchase cheaper and less efficient appliances. It is obvious that uniform national standards would substantially reduce the current regulatory burden on the appliance industry.

It was in an effort to develop such National standards that representatives of the appliance industry began negotiations with representatives of the environmental community in early 1986. The National Appliance Energy Conservation Act embodies the agreement reached in those negotiations.

The interest of the environmental community in these negotiations was to assure that EPCA would provide for actual energy conservation and that there would be no further delay in the implementation of standards.

It is currently estimated that approximately 18 percent of the Nation's energy is consumed by major home appliances. Although it is difficult to specifically quantify how much energy would actually be saved by enactment of this measure, because the legislation would require efficiency improvements on the order of 20 percent for many appliances, it is clear that energy savings would be significant.

I have often stated my concern that the Nation has failed to develop an energy policy capable of dealing with the Nation's pressing energy problems. Energy conservation must remain and be strengthened as an integral part of our national energy policy. This act is a long overdue addition to that policy.

Mr. President, this legislation continues to have broad support from industry, environmental, and consumer groups, utilities, and the States. It was passed unanimously by both Houses of Congress last year and was recommended by the Department of Energy for enactment. The reasons for enacting the National Appliance Energy Conservation Act remain compelling and I urge my colleagues to, once again, pass it swiftly and unanimously.●

SALARY RECOMMENDATION FOR FEDERAL EXECUTIVE OFFICEHOLDERS

● Mr. SYMMS. Mr. President, recently President Reagan announced his salary recommendations for top-level officeholders in the Federal Government. While the President's recommendation is a substantial cut in the salary increases recommended by the Commission on Executive, Legislative, and Judicial Salaries, I believe Congress should vote to disapprove this salary increase.

At a time when American workers are being retrained for a new job market and accepting lower wages to make American industry more competitive on the world market, I believe it would be intolerable for Congress to approve salary increases for top Federal officeholders. The American people want their representatives to set an example of fiscal austerity that will lead us toward a balanced Federal budget.

I ask that Donald Lambro's article on this subject, which appeared in the December 12, 1986 edition of the Washington Times, be printed in the RECORD following my remarks.

The article follows:

[From the Washington Times, Dec. 22, 1986]

NOT THE BEST TIME TO UP THOSE SALARIES

(By Donald Lambro)

A federal commission wants the government, which just ended the fiscal year $221 billion in the red, to raise the salaries of members of Congress and executive-level officials by up to 80 percent.

The proposal by the Commission on Executive, Legislative, and Judicial Salaries came as no surprise to anyone. This panel has been recommending gigantic pay increases for as long as anyone can remember, peddling the dubious theory that better pay equals better government.

What is surprising, though, is that a panel of presumably well-educated people can recommend full-throttle pay raises totaling $150 million at a time when the government is in its worst fiscal mess in decades.

Not only has the U.S. Treasury compiled the highest one-year deficit in its history, it faces a string of deficits for at least the next four years, even under the best of circumstances.

The pay-raise recommendation also comes at a time when the government's board of directors—the Congress—is calling on the country to endure substantial sacrifices in key social welfare programs in order to cut the deficit.

Imagine, if you will, a corporation that had not balanced its budget in more than a quarter of a century and was facing an ocean of red ink in the coming years. Imagine that this company was proposing the sale of some of its assets and closing down or deeply cutting dozens of its subsidiaries to improve its balance sheet. Now imagine that this firm hired some consultants to advise the company on future pay scales

and they proposed that the board of directors and top executives grant themselves massive pay raises.

Obviously, no business in its right mind would even think of doing such a thing. If they did, the stockholders would likely vote the entire crew out of office.

Yet not only is this the same situation facing our government, it is precisely what is being recommended by the quadrennial pay commission.

The panel proposes, among other things, that the salaries of Cabinet secretaries be raised from $88,800 to $160,000, an 80.2 percent increase; that members of Congress be raised from $77,400 to $135,000, or 74.4 percent; that Appeals Court judges be raised from $85,700 to $135,000, or 57.5 percent; and that District Court judges be raised from $81,100 to $130,000, or 60.3 percent.

In support of its proposals the commission argues that top officials must make excessive "financial sacrifices" to take Cabinet and sub-Cabinet posts in the executive branch.

In fact, most Cabinet officials are people who have already achieved upper-income levels in their respective careers and are obviously willing to make such "sacrifices" to take prestigious government posts that will either cap or further advance their careers.

For persons accepting lower-level undersecretary and assistant secretary posts, these jobs very often represent a pay increase or a career advancement.

In virtually all of these appointed posts the officials find their value in the private sector is measurably enhanced because of their government service.

As for the judiciary, despite the 67 judges who have supposedly resigned from the bench for economic reasons since 1969, there's still a long line of highly qualified candidates hungry for judicial appointments. Not only are circuit and district judges relatively well-paid, they have their jobs and their salaries for life.

Some members of Congress may complain that it's tough getting by on $77,400 a year, but the pay—which jumps to nearly $80,000 next year—is pretty good when you consider that Congress is out on some recess or holiday for several months each year.

Moreover, most members supplement their salaries through speaking honorariums and other income; and their inflation-protected pension plan is considered "the luxury liner" of government pensions.

All this, of course, doesn't rule out the reasonable proposition that men and women who are running multibillion-dollar bureaucracies should be paid something more than they're getting now. And perhaps there is need for modest adjustment among other top government officials, too.

But this is not the time to be fattening the salaries of top government officials. Let's get Uncle Sam's fiscal house in order first, then we'll talk about pay raises.●

LAND AND WATER CONSERVATION FUND

● Mr. BINGAMAN. Mr. President, I rise to speak about a matter that is of great importance to all Americans who want to preserve and protect our unique natural resources. As we gradually deplete our nonrenewable resources, I believe it is imperative that we conserve a portion of our valuable land and water resources. Therefore, I take great pride in joining my distinguished colleague from Louisiana, Senator JOHNSTON, in the introduction of a bill to renew authorization for the land and water conservation fund, and commend him for his efforts in the past as the Senate's leading advocate for the land and water conservation fund. I look forward to working with him as chairman of the Energy and Natural Resources Committee, as we seek reauthorization of the fund.

As a result of the leadership and foresight of former New Mexico Senator, Clinton P. Anderson, and the efforts of the Conservation Congress, the land and water conservation fund was first created in 1964 to provide a source of funds for land acquisition, planning and development of recreation facilities. Through the fund, money is available at the Federal level—to the National Park Service, Bureau of Land Management, Forest Service, and Fish and Wildlife Service—and 50/50 matching grants are provided to State and local governments. More specifically, the land and water conservation fund provides for protection of lands and water for public outdoor recreation, including acquisition of new areas and additions to already established parks, forests, wildlife areas, and other areas. The types of resources eligible for acquisition include, but are not limited to, those providing water-based recreation, areas that provide special recreation opportunities such as flood plains and wetlands, natural areas, and outstanding scenic areas, urban day-use recreation areas and general parklands. The act also authorizes the development of outdoor recreation resources through the construction of trails, aquatic facilities, campgrounds, general recreation resources, sanitary facilities and a wide range of other projects. The fund also provides support for the required statewide comprehensive outdoor recreation planning process which guides outdoor recreation programs in each State.

The land and water conservation fund is supported by revenue from Federal surplus property sales, motorboat fuel taxes, Federal entrance and user fees, and, most importantly, lease and royalty receipts from Outer Continental Shelf mineral development. One of the major philosophies behind this fund was that as the Nation depleted its finite oil and gas reserves, a portion of the income from that extraction should be reinvested for public benefit by purchasing and preserving other natural and cultural resources. The National Park Service administers the land and water conservation fund and reports annually to Congress on the status of the program and on State funding priorities. The Park Service also provides guidance and program coordination.

Authorization for the addition of funds to the land and water conservation fund is set to expire in 1989. Until then $900 million will be credited to the fund each fiscal year. This is a small portion of the $5.3 billion total revenue expected from offshore mineral leasing in fiscal year 1987.

The land and water conservation fund money is made available through an annual appropriation by Congress. Unfortunately in recent years administration requests and congressional appropriations have lagged far behind the authorized amount in the fund, leaving a substantial unappropriated balance. This balance currently exceeds $4 billion.

The land and water conservation fund has proven extremely successful and represents the best in public policy. It has resulted in the preservation of many areas of natural and historical significance. Almost 3 million acres of Federal land have been acquired with $3 billion since the origin of the fund. In addition, almost $3 billion has been appropriated and matched by the States for planning, development and acquisition designed to improve the quantity and quality of outdoor recreation in this country. During the past two decades, land and water conservation fund State assistance grants have made possible completion of more than 32,000 conservation or outdoor recreation projects nationwide and resulted in the protection of more than 2 million acres of State and local open space lands for conservation and recreation proposed. According to the National Park Service, 63 percent of the total stateside funds obligated have gone to locally sponsored projects which provide close-to-home recreational opportunities.

In light of the remaining needs for acquisition, I would urge my colleagues to give careful consideration to this legislation. The environmental integrity and multiple use capacity of our public lands should not be compromised. We must strike a balance between the various interest groups so that land and water preservation is not sacrificed. I believe that through careful management of a land and water conservation program, our most valuable environmental resources can be preserved for the benefit of future generations.

With the land and water conservation fund set to expire in 1989, it is clearly time to take effective action. I am pleased that the President's Commission on America's Outdoors recognized the importance of the land and water conservation fund by recommending the establishment of a permanent trust fund. Converting the land and water conservation fund to a trust fund could eventually make it entirely self sufficient on interest income, thereby eliminating the need for Federal or royalty appropriation. I

believe that this concept should be thoroughly discussed so that an efficient means of preserving valuable environmental and recreational land can be achieved.

Reauthorization is an important first step toward creation of a permanent land and water conservation fund. I encourage my colleagues to support this legislation.●

NEW MEXICO STATEHOOD

● Mr. BINGAMAN. Mr. President, on this date in 1912 statehood was granted to New Mexico. Repeated attempts to deny its entry into the Union had failed and New Mexico became the 47th State.

In its territorial days, New Mexico had a Governor who once lamented: "Poor New Mexico; so far from heaven, so close to Texas." On this anniversary of statehood, I am happy to contradict that territorial Governor and say that while we are very close to Texas, it is a proximity we enjoy; and, as for being far from heaven goes, he was wrong about that, too.

Geographically interesting, rich in history, culture, and natural resources, home of many distinguished citizens, New Mexico is a vigorous contributor to the fabric of this Nation. Those of us who call it home love it. In her classic novel, "Death Comes for the Archbishop," Willa Cather expressed what is for many of us the essence of the beauty and spirit of New Mexico. "He had noticed," wrote Miss Cather, "that this peculiar quality in the air of new countries vanished after they were tamed by man and made to bear harvests * * * that lightness, that dry aromatic odor * * * one could breathe that only on the bright edges of the world, on the great grass plains or the sagebrush desert * * *. Something soft and wild and free; something that whispered to the ear on the pillow, lightened the heart, softly, softly picked the lock, slid the bolts, and released the prisoned spirit of man into the wind, into the blue and gold, into the morning, into the morning!"

As Miss Cather discerned, it is a special place. On this special day I am pleased to join my fellow New Mexicans in saluting those who made statehood possible and those who make it such a fine place to call home.●

ORDERS FOR MONDAY

Mr. BYRD. Mr. President, I ask unanimous consent that on Monday, following the prayer and the recognition of the two leaders under the standing order which has now been entered, Mr. PROXMIRE be recognized for 5 minutes; that there then be a period for the transaction of routine morning business for not to exceed the period for the morning hour, that no resolutions come over under the rule; that the call of the Calendar Rule 8 be waived; that Senators be permitted to speak during the period for the transaction of routine morning business for not to exceed 5 minutes each; and that at the conclusion of the morning hour the Senate stand in recess until the hour of 5 p.m.

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

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

Mr. BYRD. Mr. President, it would not be my intention to proceed under rule VII on Monday to make any motions to proceed so there will not be a nondebatable motion to proceed to take up anything on Monday during the morning hour or during morning business.

The PRESIDING OFFICER. The RECORD shall so show.

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

Let me indicate that I think we have had a good first day. There has been a lot of things accomplished.

I thank Members on this side of the aisle for their cooperation on working out the differences on the select committee and also for the cooperation of certainly the distinguished majority leader and others.

I was also listening to the statements of both the distinguished senior Senator from Oklahoma, Senator BOREN, and the majority leader on campaign finance reform.

I would only indicate at this time that it is a matter that I feel should be addressed. There are a number of concerns that many Americans have and there are a number of concerns that contributors have. There are a number of concerns that candidates have.

There is a perception of special interest influence in political campaigns, regardless of party and regardless of candidate.

I do not believe there will be any effort to stall any such legislation.

Again, if we proceed as I hope we can on issues of this kind that affect all of us, we who might be candidates and who have been candidates and who are in public office, if there is a willingness to try to work it out together, we can. We actually came quite close last year, as the distinguished Senator from Oklahoma pointed out earlier. There was a lot of discussions and a lot of debate. We had some votes.

The distinguished Senator from Minnesota, Senator BOSCHWITZ, and the distinguished Senator from Pennsylvania, Senator HEINZ, had some good proposals and many proposals came from the Democratic side.

So I want the RECORD to reflect that there is not an inclination on this side that this Senator knows of to say, "Well, we don't want campaign finance reform." I think there does need to be hearings, need to be discussions, need to be debates and, hopefully, some agreement on areas that should be addressed and hopefully they can be addressed in the next year or at least this session.

I thank the distinguished majority leader.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader.

NOTIFICATION TO THE PRESIDENT

Mr. BYRD. Mr. President, the distinguished minority leader and I, in accordance with the order of the Senate earlier today, talked to the President and informed the President that the Senate was in session, that a quorum had been established and that the Senate was ready to do business. The President expressed a desire to work with and cooperate with the Congress. He stated that he had sent his budget to us, fulfilling his promise that he would send the budget up on January 6th rather than early February as had earlier been planned by the administration. He stated his belief in his budget.

Mr. DOLE and I indicated that we were ready to cooperate and we would go to work immediately on the budget. We stated that Mr. CHILES, the chairman of the Budget Committee, and Mr. DOMENICI, the ranking member, are proceeding with hearings on the budget tomorrow.

The President was in excellent spirits, seemingly. Mr. DOLE and I expressed our happiness that the reports concerning his health and his operations have been positive and good. Both of us expressed our good wishes concerning his early return to full strength. I think it was a very positive and fine exchange, brief though it was.

Mr. President, does the distinguished Republican leader wish to add anything concerning our discussion with the President?

Mr. DOLE. Only to the extent that I think, as we observed meeting with the press, that the President seemed strong and vibrant and alert. I think it was an indication that he feels as good as he can right now. It is a painful operation, I am informed. But he expects to be back in action in the next few days.

Mr. BYRD. As I stated after our discussion, Mr. President, I hope that I feel as well 30 years from now.

SENATE'S ACCOMPLISHMENTS ON THE FIRST DAY OF THE 100TH CONGRESS

Mr. BYRD. Mr. President, today the

Senate has created a select committee to investigate the arms shipment to Iran and other matters.

The Senate adopted a resolution calling attention to the continuing Soviet occupation of Afghanistan, the continuing efforts to subjugate a brave and courageous people in that country of Afghanistan, and calling on the Soviet Union to permit the world press to come into Afghanistan to observe just what is going on so that the outside world can know the truth as to what is happening in Afghanistan even in fuller measure than we already know what is going on.

The Senate adopted a resolution extending the life of the arms control observer group that has been doing a good job in attending the arms control negotiations in Geneva and elsewhere.

The campaign finance reform bill has been introduced. Several other bills and resolutions have been introduced today and several resolutions having to do with rules changes have been introduced and are on the Calendar of Motions and Resolutions Over, Under the Rule.

The bill to clean up the Nation's water has been reintroduced carrying the same phraseology and verbiage that were included in the conference report on the clean water bill late last year, a bill which was vetoed by the President. The distinguished Republican leader has also advanced a clean water bill. Both of those bills are on the Calendar. I would expect the Senate to reach those bills next week, very early in the week, hopefully.

We have had two rollcall votes. The attendance was good today. The newly elected Senators were sworn in and the President pro tempore for the 100th Congress, Mr. JOHN C. STENNIS of Mississippi, presided over the Senate with great dignity and skill.

We were honored by the presence of the Vice President in opening the Senate today.

The Senate elected a Secretary of the Senate, a secretary for the majority, a secretary for the minority, and a Sergeant at Arms. All in all, I think it has been a good day.

I wish to express my gratitude to the distinguished Republican leader for his cooperation today and for his support, without which the progress that has been made would not have been made.

ADDING SENATOR MATSUNAGA AS A COSPONSOR OF SENATE RESOLUTION 10

Mr. BYRD. Mr. President, I ask unanimous consent that Mr. MATSUNAGA, who presently presides over this body with a degree of skill, dignity, poise, good humor and courtesy so "rare as a day in June", have his name added, at his request, as a cosponsor of the resolution, Senate Resolution 10, electing the Sergeant at Arms, Mr. Henry Giugni, who comes from the great State of Hawaii.

The PRESIDING OFFICER. Without objection, the request is granted.

ADJOURNMENT UNTIL MONDAY, JANUARY 12, 1987

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the provisions of Senate Concurrent Resolution 1, that the Senate stand in adjournment until 12 noon on Monday next.

The motion was agreed to; and at 7:48 p.m., the Senate adjourned until Monday, January 12, 1987, at 12 noon.