MESSAGES FROM THE HOUSE

At 11:43 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 665. An act to control crime by mandatory victim restitution.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 665. An act to control crime by mandatory victim restitution; to the Committee on the Judiciary.

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–391. A communication from the chief of Legislative Affairs, Department of the Navy, transmitting, pursuant to law, notice relative to a lease with the Government of Brazil; to the Committee on Armed Services.

EC–392. A communication from the Deputy Assistant Secretary of Defense (Installations), transmitting, pursuant to law, a report entitled ''The Performance of Department of Defense Commercial Activities''; to the Committee on Armed Services.

EC–393. A communication from the Secretary of Housing and Urban Development's Designee to the Federal Housing Finance Board, transmitting, pursuant to law, the annual report on enforcement for calendar year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–394. A communication from Secretary of Transportation, transmitting, pursuant to law, the report of recommendations from the National Transportation Safety Board; to the Committee on Commerce, Science, and Transportation.

EC–395. A communication from the Administrator of the Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report entitled ''Train Dispatchers Follow-up Review''; to the Committee on Commerce, Science, and Transportation.

EC–396. A communication from the Chief of the Forest Service, Department of Agriculture, transmitting, pursuant to law, the report of the official boundary for the Clarks Fork Wild and Scenic River; to the Committee on Energy and Natural Resources.

EC–397. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–398. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the annual report of activities under the requirements of the Architectural Barriers Act; to the Committee on Environment and Public Works.

EC–399. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report on implementation of the Support for East European Democracy Act for fiscal year 1994; to the Committee on Foreign Relations.

EC–400. A communication from Director of the Office of Personnel Management, transmitting, pursuant to law, the report on locality pay for officers of the Secret Service Uniformed Division; to the Committee on Governmental Affairs.

EC–401. A communication from the Special Assistant to the President for Management and Administration, Director of the Office of Administration, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–402. A communication from the Executive Director of the National Capital Planning Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–403. A communication from the Vice Chairman and Chief Financial Officer of the Potomac Power Company, transmitting, pursuant to law, the report of the uniform system of accounts for calendar year 1994; to the Committee on Governmental Affairs.

EC–404. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–405. A communication from the Secretary of Labor, transmitting, pursuant to law, the report on the administration and enforcement of the Job Training Partnership Act for the period July 1, 1993 through June 30, 1994; to the Committee on Labor and Human Resources.

EC–406. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, the report on the American Red Cross for the period July 1, 1993 through June 30, 1994; to the Committee on Labor and Human Resources.

EC–407. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, a report of proposed regulations; to the Committee on Rules and Administration.

EC–408. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, a report of recommendations for legislative action; to the Committee on Rules and Administration.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HEFLIN:

S. 369. A bill to designate the Federal Courthouse in Decatur, Alabama, as the ''Seybourn H. Lynne Federal Courthouse'', and for other purposes; to the Committee on Environment and Public Works.

S. 370. A bill to provide guidelines for the membership of committees making recommendations on the rules of procedure appointed by the Judicial Conference, and for other purposes; to the Committee on the Judiciary.

S. 371. A bill to make administrative and jurisdictional amendments pertaining to the United States Court of Federal Claims and the judges thereof in order to promote efficiency and fairness, and for other purposes; to the Committee on the Judiciary.

S. 372. A bill to provide for making a temporary judgeship for the northern district of Alabama permanent, and creating a new judgeship for the middle district of Alabama; to the Committee on the Judiciary.

By Mr. BREAUX:

S. 373. A bill to amend the Solid Waste Disposal Act to provide for State management of solid waste, to reduce and regulate the interstate transportation of solid wastes, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KOHL:

S. 374. A bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes; to the Committee on the Judiciary.

By Mr. ABRAHAM:

S. 375. A bill to impose a moratorium on sanctions under the Clean Air Act with respect to marginal and moderate ozone nonattainment areas and with respect to enhanced vehicle inspection and maintenance programs, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KENNEDY:

S. 376. A bill to resolve the current labor dispute involving major league baseball, and for other purposes; read the first time.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEFLIN:

S. 369. A bill to designate the Federal Courthouse in Decatur, AL, as the ''Seybourn H. Lynne Federal Courthouse,'' and for other purposes; to the Committee on Environment and Public Works.

SEYBOURN H. LYNNE FEDERAL COURTHOUSE

Mr. HEFLIN. Mr. President, I rise today to introduce legislation designating the Federal courthouse in Decatur, AL, as the ''Seybourn H. Lynne Federal Courthouse.'' Judge Seybourn Harris Lynne was appointed to the Federal bench by President Harry S. Truman in 1946, and he is the most senior judge in the Federal court system. He has dedicated over 53 years of distinguished service to the judicial system, with 46 of those years spent on the U.S. District Court for the Northern District of Alabama.

Judge Lynne is a native of Decatur, AL, and Auburn University—at that time known as the Alabama Polytechnic Institute—where he graduated with highest distinction. He earned his law degree from the University of Alabama in 1930. While in law school, he served as track coach and assistant football coach at the university. Upon graduation from law school, Judge Lynne practiced law in a partnership formed with his father, Mr. Seybourn Arthur Lynne.

In 1934, Seybourn Lynne was elected judge of Morgan County court. He remained in that position until January 1941, when he took over the duties of judge of the Eighth Judicial Circuit of Alabama. In December 1942, he resigned from the bench to voluntarily enter the military. After earning the rank of lieutenant colonel, he was relieved of active duty in November 1945 and

awarded the Bronze Star Medal for gallant service against the enemy.

When an opening occurred on the Federal bench, Alabama Senators Lister Hill and John Bankhead were called up to recommend an appropriate individual to be considered by the White House for judgeship. In January 1946, President Truman appointed Judge Lynne to the U.S. District Court for the Northern District of Alabama. In 1953, he became the chief judge, and in 1973, the senior judge.

As chief judge for the northern district of Alabama, Judge Lynne has been known as an outstanding leader. His knowledge and management skills ensured a solid, working relationship between the Federal bench and the bar. The northern district has not been burdened with a stale and over-ripe docket, and the court's caseload was kept timely and current, thanks to the Judge Lynne's leadership.

In addition to his leadership responsibilities, Judge Lynne worked hard and carried a full caseload. In fact, even in senior status, he continues to work long hours and keeps a complete docket of cases. Over the years, Judge Lynne has been recognized as an outstanding mediator who often was able to reconcile competing interests in order to forge a thoughtful compromise. A number of businesses and individuals in Alabama are growing and thriving today due to his abilities as an arbiter who was able to settle complex and difficult disputes.

The judge has also been a notable community leader, serving in church, civic, and professional activities. He is a lifetime deacon, Bible class teacher, and a trustee of Southside Baptist Church. He has served both the crippled children's clinic of Birmingham and the Eye Foundation Hospital of Birmingham as trustee. In 1967, he served as the president of the University of Alabama's Alumni Association.

Mr. President, it is indeed fitting to honor Judge Lynne for his many years of tireless work on behalf of the State and Federal benches. He shines as a living example of the late President Truman's rich legacy, and designating the Federal courthouse in Decatur, AL in his honor will remain generations to come of his service to our country.

By Mr. HEFLIN:

S. 370. A bill to provide guidelines for the membership of committees making recommendations on the rules of procedure appointed by the Judicial Conference, and for other purposes; to the Committee on the Judiciary.

U.S. JUDICIAL CONFERENCE LEGISLATION

Mr. HEFLIN. Mr. President, sections 2071 through 2077 of title 28 of the United States Code are the cluster of statutory provisions authorizing the Supreme Court to issue the rules under which the various Federal courts function. While there have been many amendments to these sections over the years, the group is commonly referred to as the Rules Enabling Act. The original act, adopted in 1934, did not provide for committees to aid the Supreme Court in exercising this responsibility, but Chief Justice Hughes decided to appoint an advisory committee, whose original membership consisted of 13 members. Former Attorney General William Mitchell chaired the committee, which contained four law professors and eight very distinguished lawyers, including the president of the American Bar Association and the president of the American Law Institute. Between 1935 and the final promulgation of the rules in 1938, there were some changes in the personnel. Four practicing lawyers, two professors, and one district court judge became members of the committee. For the stupendous impact on the legal system of America, no subsequent rules have had the dynamic quality of those original rules.

Over time, Congress has refined the system. The assistance of the committees is now regularized by statute—see 28 U.S.C. section 2073(a)(2)—and this section of the statute provides that the various committees, like the early committee, ''shall consist of members of the bench and the professional bar and trial and appellate judges.'' The members are appointed by the Chief Justice of the United States.

The rulemaking system, as spread over the various branches of the court system with rules of civil, criminal, appeals, evidence, bankruptcy, and so forth, has on the whole worked fairly well. Suffice it to say that today the rules pass from advisory committees to a central standing committee, and from there go to the Judicial Conference of the United States, which does in fact exercise a meaningful supervisory function. For example, last year the conference deleted a rule which had been recommended to it by the committee structure in the civil field. After the conference approves a rule, it then passes to the Supreme Court of the United States, whose members have somewhat differing views as to what function they can be expected actually to perform; there is some sentiment for letting the process stop with the Judicial Conference. Next, the rules pass to Congress, and if it does not disapprove them within 180 days, they become effective.

I turn now to the exact matter at issue. I can most easily do so by quoting from a statement by the American Bar Association, dated March 28, 1994, to the relevant committee of the Judicial Conference:

> In 1935, when work was begun on the Federal rules, the advisory committee that did the drafting was comprised of nine lawyers and four academics; there were no judges involved. In 1960, when the advisory committee was reconstituted, a majority of its members were practicing lawyers. As late as 1981, 40 percent of the advisory committee were practitioners. Today, no more than 4 members of the key panel of 13 civil rules drafters are trial lawyers. While the inclusion of judges in the process has had undoubted benefit, the near-total exclusion of practicing trial lawyers has skewed the process and its product. We are not confident, as a consequence, that the process has produced rules that respond to the concerns of litigants and the lawyers who represent them in court. This trend must be reversed and lawyers restored to a position of real responsibility in the rules drafting process. In order to do this most effectively, and to benefit from the positive and valuable contributions of practicing lawyers to the rules process, the membership on all the advisory committees should be expanded to include more bar representation.

I believe this position is well taken. Clearly a gulf has arisen between the rulemakers and the bar, which must live under those rules. In connection with the civil rules of last year, the Judiciary Subcommittee on Courts and Administrative Practice, which I chair, held hearings on the proposed rules changes, and we were overwhelmed by representatives of the bar strenuously objecting to several of the proposed rule changes. Both the House and Senate relevant committees concluded that the bar protests should be honored and that the rules should be changed; however, tangles in our own procedures prevented the more objectionable proposals from being deleted and all of the proposed changes went into effect on December 1, 1993.

The bill I offer today will restore the composition of these committees which existed from the original rules in 1935 until approximately 1980 and which have been altered only in very recent times.

This bill provides that a majority of all the rules committees shall be drawn from the practicing bar. It by no means diminishes the valuable role of academics and of judges, but it would restore to the bar a voice of responsibility.

At the present time, under our statutes, the rules committees conduct extensive hearings. These become so crowded that individual presentations are necessarily brief, but they are balanced in the sense of giving broad scope to those who may participate. What is presented at those hearings, what is developed by the committee reporters and staff, and what is proposed by the various committee members themselves are all put into a mix which must be finally shaped by the committee itself. In my judgment, those committees are seriously lacking in balance. Their work product goes to the Judicial Conference, by definition composed entirely of judges; and assuming that the Supreme Court stays in the process, then to that body which is of course composed entirely of judges. Somewhere in the process, making rules under which the courts shall function and the bar of the country shall do its business, there should be more room for the effective voice of the bar itself.

My proposal does not limit the broad discretion of the Chief Justice of the United States, who will continue to select the membership of the various

committees subject only to the restriction that a majority should be members of the bar. I comfortably leave it to his good judgment as to how to achieve balanced committees.

I offer this bill, to provide that the majority of the various committees shall be composed of practicing lawyers, in order to restore that balance, and I urge its consideration by my colleagues in the Senate. Mr. President, I request unanimous consent that the text of the bill be included in the RECORD.

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

S. 370

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

SECTION 1. MEMBERSHIP OF COMMITTEES MAKING RECOMMENDATIONS ON RULES OF PROCEDURE.

Section 2073(a)(2) of title 28, United States Code, is amended by striking out the second sentence and inserting in lieu thereof ''Each such committee shall have a majority of members of the practicing bar, and also shall have members of the bench (including trial and appellate judges) and academics.''.

By Mr. HEFLIN:

S. 371. A bill to make administrative and jurisdictional amendments pertaining to the United States Court of Federal Claims and the judges thereof in order to promote efficiency and fairness, and for other purposes; to the Committee on the Judiciary.

FEDERAL CLAIMS ADMINISTRATION ACT

Mr. HEFLIN. Mr. President, I rise today to introduce legislation to amend title 28 of the United States Code to improve the Federal Claims litigation process before the United States Court of Federal Claims and to assist the court in providing complete justice in cases that come before it. This legislation will also insure fair treatment for the regular and senior judges of the court by providing certain benefits equivalent to those available to other Federal trial judges. Enactment of this bill will provide the citizens of the United States with a more fair and complete remedy and the United States with a more effective forum for the resolution of claims against the Government.

The Court of Federal Claims is the Nation's primary forum for monetary claims against the Federal Government. The court has jurisdiction to entertain suits for money against the United States that are founded upon the Constitution, an act of Congress, an Executive order, a regulation of an executive department, or contract with the United States and that do not sound in tort. The court hears major patent cases, Government contract suits, tax refund suits, fifth amendment takings cases and Indian claims, among other types of lawsuits. This national court and its judges hear cases in every State and territory of the United States for the convenience of the litigants, the witnesses and the Government. This benefits our judicial system and Nation by making the promise of fair dealing a reality.

The legislation that I am introducing today will make administrative and jurisdictional changes with the result that the court's resources are preserved and utilized to the maximum extent and the jurisdiction of the court is clarified for the benefit of all. The ultimate result will be a more user-friendly forum which gets to the merits of controversies faster. In a moment, I will comment on all of the various sections of the bill, but first I would like to take this opportunity to comment on the need for the jurisdictional provisions of the bill.

A potential litigant should be able to examine chapter 91 of title 28, United States Code, which commences with the Tucker Act, section 1491, and to determine whether the court has jurisdiction of his claim and what relief is available. Of course, there are miscellaneous other provisions extending jurisdiction to the Court of Federal Claims, for example, 28 U.S.C. section 1346(a)(1), tax refund suits; 42 U.S.C. section 300aa–11, Vaccine-injury compensation cases; and 50 U.S.C. app. section 1989b-4(h), Japanese internment compensation appeals.

Chapter 91 of title 28 should be sufficiently clear so that even lawyers throughout the country who rarely handle claims against the Government could consult the code and find reliable answers. Regrettably, this is not the current situation. Instead, a typical claimant is met with a barrage of assertions that the court lacks jurisdiction to address the claim and/or lacks power to award relief requested even in those cases where jurisdiction is conceded.

The amendments relating to jurisdiction in section 8 of the bill will result in clarity that will make access to the courts less costly by permitting the court to get to the real merits of the cases, rather than waste resources dealing with preliminary and peripheral issues, and these changes will result in real civil justice reform.

The legislation that I am introducing today will repeal 28 U.S.C. 1500, which has heretofore denied Court of Federal Claims jurisdiction over any claim with respect to which the plaintiff has pending a suit in any other court. Although, on its face, section 1500 may appear to prevent wasteful duplication, in practice it has had precisely the opposite effect. Elimination of this jurisdictional bar to suits related to cases in other courts will eliminate much wasteful litigation over nonmerits issues and will leave the court free to deal with potential duplication through the discretionary means of staying arguable duplicative litigation, if the matter is being addressed in another forum, or of proceeding with the case, if the matter appears to be stalled in the other forum.

As currently construed section 1500 does not permit duplication of suits even if the Court of Federal Claims action was filed first and has received concentrated attention over a number of years. This situation can result in a major waste of resources by litigants and the court. Repeal of section 1500 will also allow the plaintiff to protect itself against the running of the statue of limitations by the wrong initial choice in this confusing area.

In this day of electronic communication, computer tracking of cases and centralized docket control by the justice department, the Government will always know if a related claim is pending in two different courts and can request exercise of discretion by one or both courts to prevent duplicative litigation. Repeal of section 1500 would save untold wasted effort litigating over such marginal issues as whether a claim in the district court really is the same as one in the Court of Federal Claims.

Further, in cases which constitute review of administrative agency action, the potential litigant should be able to know with absolute certainty what standard of review will be applied. In the proposed bill, the standard of review in the Administrative Procedure Act of 1946 will be made explicitly applicable. Although one would naturally assume from the face of 5 U.S.C. section 706 that these standards already apply in the Court of Federal Claims, there is some doubt and confusion over precisely which standards apply and the source of such standards. The proposed bill will end this confusion so that potential and actual litigants can know with certainty which standards will apply and where to find them.

No legitimate interests are served by having the parties guess and litigate about the extent of the court's jurisdiction and powers or over the standard of review applicable in agency-review cases. Enactment of this bill will end such waste and keep everyone's focus on the merits of a given case and effective steps toward resolution of controversy. It will instill confidence that in the Court of Federal Claims, and every litigant, including the Government, will receive prompt and efficient justice.

Let me provide a brief summary of my bill:

Section 1 states that this act shall be cited as the ''Court of Federal Claims Administration Act.''

Section 2 will provide that in the event a judge is not reappointed, the judge will nonetheless remain in regular active status until his or her successor is appointed and takes office, thus insuring that the court will always have a full compliment of regular active judges.

Section 3 will provide that judges of the Court of Federal Claims shall have authority to serve on the territorial courts when, and only when, their services are needed and are requested by or on behalf of such courts.

Section 4 will simply clarify what is already assumed by all concerning the official duty station of retired judges on senior status. It will provide that the place where a retired judge of the Court of Federal Claims maintains his or her actual residence shall be deemed to be his or her official duty station. This is consistent with the current provision applicable to other Federal trial courts.

Section 5 will provide for Court of Federal Claims membership on the Judicial Conference of the United States. Currently, there is no Court of Federal Claims representation on the judicial conference, even though the court is within the jurisdiction of the conference and derives its funding and administrative support from the administrative office of the U.S. courts which in turn operates under the supervision and direction of the judicial conference.

Section 6 will provide that the chief judge of the Court of Federal Claims may call periodic judicial conferences, which will include active participation of the bar, to consider the business of the court and improvements in the administration of justice in the court. This will make explicit the authority which has traditionally been assumed and exercised by the court in conducting its business.

Section 7 will amend section 797 of title 28 to provide that the chief judge of the Court of Federal Claims is authorized to recall a formerly disabled judge who retires under the disability provisions of court's judicial retirement system if there is adequate demonstration of recovery from disability. This provision will match one currently applicable to formerly disabled judges of other Federal courts and will ensure maximum use of all available resources to deal with the court's caseload.

Section 8 makes several modifications to statutory provisions pertaining to Court of Federal Claims jurisdiction in order to save recurring litigation regarding where claims should be filed, to define what judicial powers the court may exercise, and to specify what standards of review will apply in certain cases. Together, these changes will save untold resources of litigants and the court, and will make the court a more efficient forum for lawyers and parties to litigate their monetary claims against the Government.

In addition, this section would extend to the court ancillary jurisdiction under the Federal Tort Claims Act when such a claim is directly related to one otherwise plainly within the subject-matter jurisdiction of the court. This will avoid wasteful and duplicative litigation by authorizing the Federal Claims Court to address and dispose of the entire controversy in cases within its jurisdiction when a related claim, although sounding in tort, may fairly be deemed to arise from the same operative facts as the primary claim within the court's jurisdiction.

Section 9 will ensure that Court of Federal Claims judges over age 65 who are on senior status will receive the same treatment as other Federal trial judges on senior status insofar as Social Security taxes and payments are concerned.

Section 10 amends title 28 to clarify that the judges of the Court of Federal Claims are judicial officers eligible for coverage under annuity, insurance, and other programs available under title 5 of the United States Code and will extend to those judges the opportunity to continue Federal life insurance coverage after retirement in the same manner as all other Federal trial judges in the judicial branch.

In summary, this bill will make the Court of Federal Claims more efficient and productive, resulting in benefits to the litigating public, the Government and the country as a whole. The United States Court of Federal Claims is an important part of the Federal court system. The creation of this court by the Congress responds to a very basic democratic imperative—fair dealing by the Government in disputes between the Government and the private citizen. As Abraham Lincoln noted: ''It is as much the duty of the Government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals.'' These amendments will allow it to better comply with its mandate and assist it in providing improved service to litigants and to the entire country.

I urge my colleagues to support this legislation.

Mr. President, I request unanimous consent that the text of the bill be included in the RECORD.

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

S. 371

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 ''Court of Federal Claims Administration Act of 1995''.

SEC. 2. EXTENDED SERVICE.

Section 172(a) of title 28, United States Code, is amended by adding at the end thereof of the following new sentence: ''If a judge is not reappointed, such judge may continue in office until a successor is appointed and takes office.''.

SEC. 3. SERVICE ON TERRITORIAL COURTS.

Section 174 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

''(c) Upon request by or on behalf of a territorial court and with the concurrence of the chief judge of the Court of Federal Claims and the chief judge of the judicial circuit involved based upon a finding of need, judges of the Court of Federal Claims shall have authority to conduct proceedings in the district courts of territories to the same extent as duly appointed judges of those courts.''.

SEC. 4. RESIDENCE OF RETIRED JUDGES.

Section 175 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

''(c) Retired judges of the Court of Federal Claims are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which such judge customarily lives shall be deemed to be the judge's official duty station for the purposes of section 456 of this title.''.

SEC. 5. JUDICIAL CONFERENCE PARTICIPATION.

Section 331 of title 28, United States Code, is amended—

(1) by inserting in the first sentence of the first undesignated paragraph ''the chief judge of the United States Court of Federal Claims,'' after ''Court of International Trade,'';

(2) by inserting in the first sentence of the third undesignated paragraph ''the chief judge of the United States Court of Federal Claims,'' after ''the chief judge of the Court of International Trade,''; and

(3) by inserting in the first sentence of the third undesignated paragraph ''or United States Court of Federal Claims,'' after ''any other judge of the Court of International Trade,''.

SEC. 6. COURT OF FEDERAL CLAIMS JUDICIAL CONFERENCE.

(a) IN GENERAL.—Chapter 15 of title 28, United States Code, is amended by adding at the end thereof the following new section:

''§ 336. Judicial Conference of the Court of Federal Claims

''(a) The chief judge of the Court of Federal Claims is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court.

''(b) The Court of Federal Claims shall provide by its rules or by general order for representation and active participation at such conference by members of the bar.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections of chapter 15 is amended by adding the following new item:

''336. Judicial Conference of the Court of Federal Claims.''.

SEC. 7. RECALL OF JUDGES ON DISABILITY STATUS.

Section 797(a) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(a)''; and

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

''(2) Any judge of the Court of Federal Claims receiving an annuity pursuant to section 178(c) of this title (relating to disability) who, in the estimation of the chief judge, has recovered sufficiently to render judicial service, shall be known and designated as a senior judge and may perform duties as a judge when recalled pursuant to subsection (b) of this section.''.

SEC. 8. JURISDICTION.

(a) CLAIMS AGAINST THE UNITED STATES GENERALLY.—Section 1491(a) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ''for monetary relief'' after ''any claim against the United States''; and

(B) by striking out ''or for liquidated or unliquidated damages'';

(2) in paragraph (2)—

(A) by inserting ''(A) In any case within its jurisdiction, the Court of Federal Claims shall have the power to grant injunctive and declaratory relief when appropriate.'' after ''(2)'';

(B) by striking out the last sentence; and

(C) by adding at the end thereof the following new subparagraph:

''(B) The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of

the Contract Disputes Act of 1978 (41 U.S.C. 609(a)(1)), including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act (41 U.S.C. 605).''; and

(3) by adding at the end thereof the following new paragraphs:

''(4) In cases otherwise within its jurisdiction, the Court of Federal Claims shall also have ancillary jurisdiction, concurrent with the courts designated in section 1346(b) of this title, to render judgment upon any related tort claim authorized by section 2674 of this title.

''(5) In cases within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action, the provisions of section 706 of title 5 shall apply.''.

(b) PENDING CLAIMS.—(1) Section 1500 of title 28, United States Code, is repealed.

(2) The table of sections for chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1500.

SEC. 9. SENIOR STATUS PROVISION.

Section 178 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

''(m) For the purposes of applying section 3121(i)(5) of the Internal Revenue Code of 1986 and section 209(h) of the Social Security Act (42 U.S.C. 409(h)), the annuity of a Court of Federal Claims judge on senior status after age 65 shall be deemed to be an amount paid under section 371(b) of this title for performing services under the provisions of section 294 of this title.''.

SEC. 10. MISCELLANEOUS PROVISION.

(a) IN GENERAL.—Chapter 7 of title 28, United States Code, is amended by adding after section 178 the following new section:

''§ 179. Court of Federal Claims judges as officers of the United States

''(a) For the purpose of applying the provisions of title 5, a judge of the United States Court of Federal Claims shall be deemed to be an ''officer'' as defined under section 2104(a) of title 5.

''(b) For the purpose of applying chapter 87 of title 5, a judge of the United States Court of Federal Claims who is retired under section 178 of this title shall be deemed to be a judge of the United States as defined under section 8701(a)(5)(ii) of title 5.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new item:

''179. Court of Federal Claims judges as officers of the United States.''.

SEC. 11. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

By Mr. HEFLIN:

S. 372. A bill to provide for making a temporary judgeship for the northern district of Alabama permanent, and creating a new judgeship for the middle district of Alabama; to the Committee on the Judiciary.

JUDGESHIPS FOR U.S. DISTRICT COURTS LEGISLATION

Mr. HEFLIN. Mr. President, I rise today to offer a bill to provide for making a temporary judgeship for the northern district of Alabama permanent, and creating a new judgeship for the middle district of Alabama. The need for these judgeships has arisen pursuant to an increase in cases filed in both of these districts, as well as the filings as projected in the future. Further, the need is intensified by the judges, who are currently in a senior status in these districts, reducing their caseloads as they move toward full retirement.

Currently the 2 districts are served by 10 permanent district judges; 7 in the northern district and 3 in the middle district. The bill I am introducing would make permanent a temporary judgeship, authorized in 1990, in the northern district. This conversion from a temporary judgeship to a permanent position was approved by the Judicial Conference in September 1994. The addition of one more permanent position to the middle district of Alabama's district court is warranted, among other factors, due to the increased case filings which have been experienced in that district over the past several years.

In the past few years the increasing case filings and caseloads of all of the district court judges has been managed well by the courts using their available judicial resources. As the senior judges take on less cases, the remaining judges find themselves in situations in which they find it more and more difficult to manage their growing dockets in a timely manner. This not only affects the day-to-day operations of the court, but it also will inevitably affect litigants, by lengthening the time for disposition of a case, from what is now one of the fastest disposition periods in the Nation to a significantly slower pace.

I would like to identify several factors which are similar in both districts and will result in loss of judicial expediency unless addressed. First, the reduced role of senior judges has increased the actual volume of cases which each district judge must handle; each district judge will have less time available to spend on each assigned case. Second, the increasing number of case filings will further reduce the capacity of the judges to devote time and attention to each case. And finally, both districts forecast an increase in the total number of criminal felony cases as well as the number of multi-defendant criminal felony cases. To maintain the outstanding case management that litigants have come to expect in these courts, and rightly deserve in the all Federal courts, the factors stated above can be dealt with by making permanent the position in the northern district and by creating one new position for the middle district.

Although these two districts have many concerns which are similar, they also are facing problems unique to each respective court. In the northern district of Alabama, we are asking that the temporary judgeship, authorized in 1990, be made permanent. This district had the highest pending cases per judge, according to the latest official data. Furthermore, it had the highest civil filings in the Nation for the 12-month period ending in September 1993. This high number of case filings along with the previous caseloads, actually support a request for a ninth judgeship, but we believe that the conversion of the temporary judgeship to the eight permanent judgeships will enable the district to competently handle its caseload.

The middle district faces substantial problems in caseloads per judge. For the year ending June 30, 1994, the weighted case filing per judge had increased to 556, representing a 12.5-percent increase over a 5-year period. Weighted case filings of 556 cases per judge places that court second within the eleventh circuit and ninth in the Nation. During the statistical year ending June 30, 1994, the judges of the middle district averaged 650 case terminations per judge, which places that court first in the circuit and first in the Nation. With only three full-time judges and the near full retirement of the two senior judges the middle district may soon face dire consequences.

The judges in both the middle and northern districts of Alabama have proven, that even with what some court would consider impossible caseloads, they have had the ability to dispose of cases in periods equal or better than the national average. To allow these district courts to continue their work and avoid substantial impairment in their ability to deliver justice we need to be assured that they have the necessary judicial resources. My bill, which provides for a fourth judgeship in the middle district and conversion of the northern district's temporary judgeship to a permanent position, supplies these resources.

By Mr. BREAUX:

S. 373. A bill to amend the Solid Waste Disposal Act to provide for State management of solid waste, to reduce and regulate the interstate transportation of solid wastes, and for other purposes; to the Committee on Environment and Public Works.

THE STATE REGULATION AND MANAGEMENT OF SOLID WASTE ACT OF 1995

• Mr. BREAUX. Mr. President, I am today introducing—for the fourth Congress in a row—legislation that would grant States the authority to regulate the flow of solid waste across their borders and meet the environmental objectives of increased recycling and waste reduction.

In 1978, the U.S. Supreme Court ruled that the shipment of garbage across State lines for the purposes of disposal is a form of commerce and thus entitled to protection under the commerce clause of the Constitution. Due to the fact that States cannot control shipments of imported garbage, the States have no ability to plan for the disposal of solid waste generated within their own borders or to preserve landfill capacity for their own future needs. The only way for States to regulate the flow of garbage is for Congress to explicitly grant them that authority.

That is what the legislation I am introducing today would do.

For years now, the United States overall landfill capacity has been shrinking. From 1988 to 1991 the number of operating landfills dropped from 8,000 to 5,812, a 27-percent decrease. At the same time, the amount of solid waste that is shipped across State borders for disposal has grown. The more heavily populated regions of the country produce more solid waste and have less capacity for additional landfill sties. These States have been shipping solid wastes out of their own jurisdictions and into landfills in States, like my State of Louisiana, which, for the moment, have some capacity to receive it. However, this capacity will continue to disappear so long as States have no ability to control the amount of waste that comes into their territory for disposal.

My State of Louisiana has had some experiences of its own related to the interstate shipment of municipal wastes. The most infamous incident was that of the so-called poo poo choo choo that brought 63 carloads of municipal waste—in this case stinking sewage sludge—from Baltimore to railroad sidings near Shriever, Labadieville, and Donaldsonville, LA in 1989. These 63 open cars full of rehydrated sludge were to be disposed of in a landfill. Instead, they sat on sidings near these towns for weeks. Finally, the private landfill operator in question found an alternative disposal site and the train cars headed out of town.

The legislation I am introducing today would provide States with the authority they need to regulate incoming shipments of garbage in return for a commitment by the States to plan for the disposal of their own wastes and a commitment to increased recycling and waste reduction efforts. Each State would be required to develop a solid waste management plan that would include a 20-year projection of how solid wastes generated within their own borders would be managed. The plan must demonstrate that solid waste will be managed in accordance with the following priorities; First, States must take steps to reduce the amount of waste generated within their own borders; second, States must encourage recycling, energy and resource recovery. Only as a third and final option should States consider landfills, incinerators and other options of disposal.

Each State will be required to demonstrate that is complies with this waste management hierarchy and has issued all appropriate permits for capacity sufficient to manage their own solid wastes for a rolling period of 5 years.

The Federal Government, working with the States, will be required to provide technical and financial assistance to local communities to meet the requirements of the plan. Any out-of-State wastes must be managed in accordance with State plans and may not impede the ability of States to manage their own solid waste.

Only after a State has an approved plan in place, will it be granted the authority to refuse to accept waste from out-of-State sources and to charge higher disposal fees for a load of garbage based on its State of origin. Half of the proceeds from high out-of-State fees will go the locality where the garbage is being disposed of and may only be used for solid waste management activities.

Mr. President, a number of similar bills have been introduced on this same subject over the last several years. Most of these measures did not adequately address all of the issues surrounding the disposal of solid waste and shipments across State borders. I strongly believe that a planning process and the priorization of waste reduction, recycling and disposal options on a State-by-State basis should be a part of the solution to the ongoing controversy over interstate garbage shipments.

I hope that we will be able to finally dispose of this issue this year. I encourage my colleagues to address it in the comprehensive manner outlined in this legislation. I ask unanimous consent that a copy of the bill appear in the RECORD.

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

S. 373

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 ''State Regulation and Management of Solid Waste Act of 1995''.

TITLE I—GENERAL AMENDMENTS

SEC. 101. FINDINGS.

(a) SOLID WASTE.—Section 1002(a)(4) of the Solid Waste Disposal Act (42 U.S.C. 6901(a)) is amended to read as follows:

''(4) that while the collection and disposal of solid waste should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal described in this subsection have become a matter national in scope and in concern and necessitate Federal action by—

''(A) requiring that each State develop a program for the management and disposal of solid waste generated within each State by the year 2015;

''(B) authorizing each State to restrict the importation of solid waste from a State of origin for purposes of solid waste management other than transportation; and

''(C) providing financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the quantity of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.''.

(b) ENVIRONMENT AND HEALTH.—Section 1002(b) of the Solid Waste Disposal Act (42 U.S.C. 6901(b)) is amended—

(1) by striking ''and'' at the end of paragraph (7);

(2) by striking paragraph (8) and inserting the following:

''(8) alternatives to existing methods of land disposal must be developed, because it is estimated that 80 percent of all permitted landfills will close by the year 2015; and''; and

(3) by adding at the end the following new paragraph:

''(9) the transportation of solid waste long distances across country for purposes of solid waste management and, in some cases, in the same vehicles that carry consumer goods is harmful to the public health and measures should be adopted to ensure public health is protected when the goods are transported in the same vehicles as solid waste is transported.''.

SEC. 102. OBJECTIVES AND NATIONAL POLICY.

(a) OBJECTIVES.—Section 1003(a) of the Solid Waste Disposal Act (42 U.S.C. 6902(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) ensuring that each State has a program to manage solid waste generated within its borders and providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including recycling, resource recovery, and resource conservation systems) that will promote improved solid waste management techniques (including more effective organization arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;'';

(2) by striking ''and'' at the end of paragraph (10);

(3) by striking the period at the end of paragraph (11) and inserting a semicolon; and

(4) by adding at the end the following new paragraphs:

''(12) promoting the use of regional and interstate agreements for economically efficient and environmentally sound solid waste management practices, and for construction and operation of solid waste recycling and resource recovery facilities; and

''(13) promoting recycling and resource recovery of solid waste through the development of markets for recycled products and recovered resources.''.

SEC. 103. DEFINITIONS.

Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903) is amended—

(1) by striking paragraph (12) and inserting the following:

''(12) The term 'manifest' means the form used for identifying the quantity, composition, and the origin, routing, and destination of solid and hazardous waste during its transportation from the point of generation to the point of disposal, treatment, storage, recycling, and resource recovery.'';

(2) in paragraph (28), by inserting ''recycling, resource recovery,'' before ''treatment,'';

(3) in paragraph (29)(C), by inserting ''recycling,'' before ''treatment'';

(4) in paragraph (32)—

(A) by striking ''means any'' and inserting ''means—

''(A) any'';

(B) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(B) refuse (or refuse-derived fuel) collected from the general public more than 30 percent of which consists of paper, wood, yard wastes, food waste, plastics, leather, rubber, and other combustible materials and noncombustible materials such as glass and metal including household wastes, sludge and waste from institutional, commercial, and industrial sources, but does not include industrial process waste, medical waste, hazardous waste, or 'hazardous substance', as those terms are defined in section 1004 or in section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901).''; and

(5) by adding at the end the following new paragraphs:

''(42) The term 'recycling' means any use, reuse or reclamation of a solid waste.

''(43) The term 'State of final destination' means a State that authorizes a person to transport solid waste from a State of origin into the State for purposes of solid waste management other than transportation.

''(44) The term 'State of origin' means a State that authorizes a person to transport solid waste generated within its borders to a State of final destination for purposes of solid waste management other than transportation.''.

TITLE II—STATE SOLID WASTE MANAGEMENT PLANS

SEC. 201. OBJECTIVES OF SUBTITLE D.

Section 4001 of the Solid Waste Disposal Act (42 U.S.C. 6941) is amended to read as follows:

''SEC. 4001. OBJECTIVES OF SUBTITLE.

''(a) IN GENERAL.—The objectives of this subtitle are to reduce to the maximum extent practicable the quantity of solid waste generated and disposed of prior to the year 2015 by requiring each State to develop a program that—

''(1) meets the objectives set out in section 102;

''(2) reduces the quantity of solid waste generated in the State and encourages resource conservation; and

''(3) facilitates the recycling of solid waste and the utilization of valuable resources, including energy and materials that are recoverable from solid waste.

''(b) MEANS.—The objectives stated in subsection (a) are to be accomplished through—

''(1) Federal guidelines and technical and financial assistance to States;

''(2) encouragement of cooperation among Federal, State, and local governments and private individuals and industry;

''(3) encouragement of States to enter into interstate or regional agreements to facilitate environmentally sound and efficient solid waste management; and

''(4) approval and oversight of the implementation of solid waste management plans.''.

SEC. 202. STATE SOLID WASTE MANAGEMENT PLANS.

(a) MINIMUM REQUIREMENTS.—Section 4003 of the Solid Waste Disposal Act (42 U.S.C. 6943) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''each State plan must comply with the following minimum requirements—'' and inserting ''each State Solid Waste Management Plan must comply with the following minimum requirements:'';

(B) by striking paragraphs (5) and (6) and inserting the following:

''(5) The plan shall identify the quantities, types, sources, and characteristics of solid wastes that are reasonably expected to be generated within the State or transported to the State from a State of origin during each of the 20 years following the year 1995 and that are reasonably expected to be managed within the State during each of those years.

''(6) The plan shall provide that the State acting directly, through authorized persons, or through interstate or regional agreements, will ensure the availability of solid waste management capacity to manage the solid waste described in paragraph (5) in a manner that is environmentally sound and that meets the objectives of this subtitle.''; and

(C) by adding at the end the following new paragraphs:

''(7) When identifying the quantity of solid waste management capacity necessary to manage the solid waste described in paragraph (5), the State shall take into account solid waste management agreements in effect upon the date of enactment of this paragraph that exist between a person operating within the State and any person in a State or States contiguous with the State.

''(8) The plan shall provide for the identification and annual certification to the Administrator concerning—

''(A) how the State has met the objectives of this subtitle;

''(B) whether the State has issued permits consistent with all the requirements of this Act for capacity sufficient to manage the solid waste described in paragraph (5) for an ensuing 5-year period; and

''(C) identification and approval by the State of the sites for capacity described in paragraph (5) for an ensuing 8-year period.

''(9) The plan shall provide that all solid waste management facilities located in the State meet all applicable Federal and State laws and for the enactment of such State and local laws as may be necessary to fulfill the purposes of this Act.

''(10)(A) The plan shall provide for a program that requires all solid waste management facilities located or operating in the State to register with the State and that only registered facilities may manage solid waste described in paragraph (5).

''(B) Registration of facilities for the purpose of subparagraph (A) shall at a minimum include—

''(i) the name and address of the owner and operator of the facility;

''(ii) the address of the solid waste management facility;

''(iii) the type of solid waste management used at the facility; and

''(iv) the quantities, types, and sources of waste to be managed by the facility.

''(11) The plan shall provide for technical and financial assistance to local communities to meet the requirement of the plan.

''(12) The plan shall—

''(A) specify the conditions under which the State will authorize a person to accept solid waste from a State of origin for purposes of solid waste management other than transportation; and

''(B) ensure that the waste is managed in accordance with the plan and that acceptance of the waste will not impede the ability of the State of final destination to manage solid waste generated within its borders.''; and

(2) by adding at the end the following new subsection:

''(e) PROHIBITION.—Upon the expiration of 180 days after the date of approval of a State's Solid Waste Management Plan required by this section or on the date on which a State plan becomes effective pursuant to section 4007(d), it shall be unlawful for a person to manage solid waste within that State, to transport solid waste generated in that State to a State of final destination, and to accept solid waste from a State of origin for purposes of solid waste management other than transportation unless the activities are authorized and conducted pursuant to the approved plan.''.

(b) PROCEDURE.—Section 4006 of the Solid Waste Disposal Act (42 U.S.C. 6946) is amended by adding at the end the following new subsection:

''(d) SUBMISSION OF PLANS.—Not later than 4 years after the date of enactment of this subsection, each State shall, after consultation with the public, other interested parties, and local governments, submit to the Administrator for approval a plan that complies with the requirements of section 4003(a).''.

(c) APPROVAL.—Section 4007 of the Solid Waste Disposal Act (42 U.S.C. 6947) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

''(1) it meets the requirements of section 4003(a);''.

(B) by striking the period at the end of paragraph (2) and inserting ''; and'';

(C) by inserting after paragraph (2) the following new paragraph:

''(3) it furthers the objectives of section 4001.''; and

(D) by striking the third sentence and inserting the following: ''Upon receipt of each State's certification required by section 4003(a)(8), the Administrator shall determine whether the approved plan is in compliance with section 4003, and if the Administrator determines that revision or corrections are necessary to bring the plan into compliance with the minimum requirements promulgated under section 4003 (including new or revised requirements), the Administrator shall, after notice and opportunity for public hearing, withhold approval of the plan.''; and

(2) by adding at the end the following new subsection:

''(d) FAILURE OF THE ADMINISTRATOR TO ACT ON A STATE PLAN.—If the Administrator fails to approve or disapprove a plan within 18 months after a State plan has been submitted for approval, the State plan as submitted shall go into effect at the expiration of 18 months after the plan was submitted, subject to review by the Administrator and revision in accordance with section 4007(a).''.

TITLE III—INTERSTATE TRANSPORT OF WASTE

SEC. 301. AUTHORITY OF STATES TO CONTROL INTERSTATE SHIPMENT OF SOLID WASTE.

Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new sections:

''SEC. 4011. AUTHORITY TO RESTRICT INTERSTATE TRANSPORT OF SOLID WASTE.

(a) IN GENERAL.—Upon the expiration of 180 days after the date on which the Administrator approves a Solid Waste Management Plan required by section 4003 or after the date a State plan becomes effective in accordance with section 4007(d), a State with an approved or effective State plan may prohibit or restrict a person from importing solid waste from a State of origin for purposes of solid waste management (other than transportation).

''(b) LIMITATION.—A State may authorize a person to import solid waste from a State of origin for purposes of solid waste management (other than transportation) only in accordance with section 4003(a)(12).

''SEC. 4012. FEES.

''(a) IN GENERAL.—A State may levy fees on solid waste that differentiate rates or other aspects of payment on the basis of solid waste origin.

''(b) ALLOCATION.—At least 50 percent of the revenues received from the fees collected shall be allocated by the State to the local government of the jurisdictions in which the solid waste will be managed. The fees shall be used by local governments for the purpose of carrying out an approved plan.''.

TITLE IV—FINANCIAL ASSISTANCE

SEC. 401. FEDERAL ASSISTANCE.

Section 4008(a) of the Solid Waste Disposal Act (42 U.S.C. 6948) is amended—

(1) in paragraph (1), by striking ''appropriated'' and all that follows through ''1988'' and inserting ''appropriated $100,000,000 for each of fiscal years 1996, 1997, and 1998''; and

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

''(E) There are authorized to be appropriated $25,000,000 for each of fiscal years 1996

through 1998 for the purposes of providing grants to States for the encouragement of recycling, resource recovery, and resource conservation activities. The activities shall include licensing and construction of recycling, resource recovery, and resource conservation facilities within the State and the development of markets for recycled products.''.

SEC. 402. RURAL COMMUNITIES ASSISTANCE.

Section 4009(d) of the Solid Waste Disposal Act (42 U.S.C. 6949) is amended—

(1) in subsection (a), by striking ''section 4005'' and inserting ''sections 4004 and 4005''; and

(2) by striking subsection (d) and inserting the following:

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 1996, 1997, and 1998.''.●

By Mr. KOHL:

S. 374. A bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes; to the Committee on the Judiciary.

THE COURT SECRECY ACT OF 1995

Mr. KOHL. Mr. President, I rise to introduce legislation that I first presented in the last Congress, legislation that addresses the troubling use of secrecy in our courts, which we have been studying in the Judiciary Committee since 1990.

Far too often, the court system allows vital information that is discovered in litigation, and which directly bears on public health and safety, to be covered up: to be shielded from mothers, fathers, and children whose lives are potentially at stake, and from the public officials we have appointed to protect our health and safety.

This happens because of the use of so-called protective orders—really gag orders issued by courts—that are designed to keep information discovered in the course of litigation secret and undisclosed.

Mr. President, these secrecy arrangements are far from benign. Last year, the manufacturers of silicon breast implants agreed to a record $4 billion settlement of product liability claims. Most Americans do not know that studies indicating the hazards of breast implants were uncovered as early as 1984 in litigation. But the sad truth is that because of a protective order that was issued when that case was settled, in the mid 1980's this critical knowledge remained buried, hidden from public view, and from the FDA.

Ultimately, it wasn't until 1992—more than 7 years and literally tens of thousands of victims later—that the real story about silicon implants came out. How can anyone tell the countless thousands of breast implant victims that court secrecy isn't a real problem that demands our attention?

And there are other unfortunate examples of court secrecy. For over a decade, Miracle Recreation, A U.S. playground equipment company, marketed a merry-go-round that caused serious injuries to scores of small children, including severed fingers and feet.

Lawsuits brought against the manufacturer were confidentially settled, preventing the public and the Consumer Products Safety Commission from learning about the hazard. It took more than a decade for regulators to discover the defeat, and for the company to recall the merry-go-round.

There are yet more cases which we have detailed in past hearings. But perhaps the more troubling question is, What other secrets, currently held under lock and key, could be saving lives if they were made public?

Having said all this, we must in fairness recognize that there is another side to this problem. Privacy is a cherished possession, and business information is an important commodity. For this reason, the courts must, in some cases, keep trade secrets and other business information confidential.

But, in my opinion, today's balance of these interests is entirely inadequate. Our legislation will ensure that courts do not carelessly and automatically sanction secrecy when the health and safety of the American public is at stake. At the same time, the bill will allow defendants to obtain secrecy orders when the need for privacy is significant and substantial.

The thrust of our legislation is straightforward. In cases affecting public health and safety, courts would be required to apply a balancing test: They could permit secrecy only if the need for privacy outweighs the public need to know about potential health or safety hazards.

Moreover, courts could not, under the measure, issue protective orders that would prevent disclosures to regulatory agencies. In this way, our bill will bring crucial information out of the darkness and into the light.

I should note that we have made progress in this issue in the past year. A majority of members of the Judiciary Committee voted last year for a court secrecy proposal that was essentially identical to the bill we introduce today. And even the Federal judiciary has attempted to tackle the problem, through the proposal they are now advancing is, in my view, an incomplete solution.

To attack the problem of excessive court secrecy is not to attack the business community. Most of the time, businesses seek protective orders for legitimate reasons. And although some critics may dispute that businesses care about public health and safety, as a former businessman, I know that they do.

In closing, Mr. President, let me note that we in the country take pride in our judicial system for many good reasons. Our courts are among the finest, and the fairest in the world. But the time has come for us to ask: Fair to whom?

Yes, the courts must be fair to defendants, and that is why I support product liability reform. But because the courts as public institutions, and because justice is a public good, our court system must also do its part to help protect the public when appropriate, and not just individual plaintiffs and defendants.

The bill we introduce today helps achieve this important goal; it helps ensure that the public and regulators will learn about hazardous and defective products.

So I look forward to the support of my colleagues—on both sides of the aisle—who believe, as I do, that when health and safety are at stake, there must be reasonable limit to the use of secrecy in our courts.

By Mr. ABRAHAM:

S. 375. A bill to impose a moratorium on sanctions under the Clean Air Act with respect to marginal and moderate ozone nonattainment areas and with respect to enhanced vehicle inspection and maintenance programs, and for other purposes; to the Committee on Environment and Public Works.

CLEAN AIR ACT SANCTIONS MORATORIUM LEGISLATION

Mr. ABRAHAM. Mr. President, today I am introducing a bill that provides a much needed respite for the States from the onerous and inappropriate sanctions of the Clean Air Act. In its bureaucratic fervor to implement regulations and administrative procedures, the EPA has shown a near complete disregard of the States' interests or the actual facts of the situation at hand. This bill prohibits the implementation of these draconian sanctions and will give us time to analyze more fully the Clean Air Act and the method of its implementation.

The Clean Air Act is a well-intentioned attempt to resolve the competing interests of ecological preservation and economic growth. But as is usually the case with complex and patronizing Federal attempts to solve local problems from Washington, it misses the mark. Throughout this country communities are revolting against the EPA's enforcement of the Clean Air Act and their edicts that States and localities must implement a series of centralized automobile tailpipe testing procedures. Unfortunately, the EPA has allowed its enforcement bureaucrats concentrate solely on the means of this act rather than the ends.

A particularly egregious example of this lock of regulatory good sense occurred in my State of Michigan. Three western Michigan counties were previously found by EPA to exceed the national ambient air quality standards for ozone, which is a product of chemical reactions between volatile organic compounds such as petroleum vapors, and oxygenated nitrogen, with summer sun and heat acting as the catalyst. Now I am heartened by EPA Administrator Browner's decision last night to redesignate these counties as in attainment. But I believe it was only the threat of legislative action like this

that forced the EPA to revisit its strategy of enforcement.

Because of these ozone levels, the EPA previously directed Michigan to implement by July 1995 an ozone reduction plan that would reduce by at least 15 percent the ozone producing volatile organic compound emissions. As part of this reduction plan, the EPA determined that only centralized automobile tailpipe exhaust inspection and maintenance procedures—otherwise known as IM240 tests, because the test takes 240 seconds to administer—are 100 percent effective in reducing emissions. These tests require the local citizens to travel as far as 50 miles to testing facilities, then to another facility to repair the exhaust system determined by this test to be defective, and then back to the first testing facility for another test, possibly to start the whole process again.

The EPA unilaterally decided that any State's testing procedure that allows for testing and repair at the same facility is only 50 percent as effective as test-only facility procedures. Their decision was based upon the idea that test-and-repair facilities are rife with corruption and therefore pass automobiles which have defective exhaust systems. But the evidence shows otherwise. In Georgia, where both test-and-repair and test-only facilities operate, the two procedures were shown to have nearly identical rates of properly identifying vehicles with faulty exhaust systems, tampered exhaust systems, and that the test-and-repair facilities effectively discovered tampered vehicles. Furthermore, the General Accounting Office reported in 1992 that 25 percent of the vehicles tested by EPA using the IM240 procedures failed an initial emissions test but passed a second, even though no repairs were made to the vehicles. This phenomenon of flipper vehicles, where the same vehicle can have radically differing emission levels at different times, contributes as much as 20 percent of overall tailpipe emissions. As Douglas Lawson of the Desert Research Institute has determined through exhaustive analysis of I&M procedures, "As long as there are vehicles with emissions variability on the road, an I/M program that relies upon scheduled testing is likely not be very effective." Which brings me to the critical point of analysis which EPA consistently missed: how much do test-only facility procedures actually reduce emissions over test-and-repair facility procedures?

The answer is "not much." In fact, Mr. Lawson's previous comment is consistently supported by the evidence at hand, including a very comprehensive policy analysis by the Rand Corp. It states:

Existing national data, limited as it is, suggest little difference in measures of effectiveness between centralized and decentralized I/M programs. There is no empirical basis to choose between different program types. And, no single component, be it centralized IM240 or remote sensing technology is likely to be the "silver bullet" that lowers emission levels for a significant faction of gross polluting vehicles.

It goes on to point out: "The centralized/decentralized debate is less significant than a serious effort to rethink the entire Smog Check system and more generally, all programs to enhance Inspection and Maintenance." It is not an issue of test-and-repair facilities versus test-only facilities, but rather an issue of the whole inspection and maintenance process mentality.

The EPA nevertheless stuck doggedly by its centralized test-only procedures. When my staff requested a summary of EPA's analysis of this issue, EPA sent 28 pages of data analyzing the differing rates of tampering detection and testing efficiency between centralized and decentralized programs. Only one-half page, however, examined the crucial issue of whether test-only procedures reduced overall emissions. EPA's analysis compared Arizona's emission levels under test-only procedures to Indiana's emission levels with no I&M procedures at all. From the data that Arizona has lower emission levels, the EPA concludes test-only is superior to test-and-repair. These leaps of logic, although convenient for pressing forth undesirable regulations, make for poor public policy.

Such serious breaks in logic highlight the EPA's inability to view this issue in its totality. It is apparently paralyzed in its analysis by an overwhelming desire to implement centralized I&M procedures. Assistant EPA Administrator for Air Mary Nichols said as much before my senior Michigan colleague's hearing on this issue last fall. She stated:

. . . anybody who has bothered to buy a car that meets current emissions standards is owed an opportunity to have a good inspection test done to make sure that car is maintaining the emissions that it was designed to meet, because if it is not, it should be getting repaired, and if it is repaired, they are likely to experience better performance and better fuel economy.

To the EPA, the only way to create such an opportunity is for the Federal Government to force all car owners to have their cars tested and repaired, so that they can rest assured their cars are operating properly. Once again, members of the Clinton administration are out of touch and are missing the point. We must protect our constituencies and take the action necessary to stop this patronizing and intrusive behavior in the future.

As a result of this convoluted logic, States are forced to adopt centralized test-only programs because the EPA halves the emission reduction credits for decentralized test-and-repair programs within the State's emission reduction programs. If they do not adopt these centralized procedures, the EPA will reject their emission reduction plan and place sanctions on the State. These sanctions include the withholding of millions in Federal highway funds and Federal pollution reduction program grants, Federal takeovers of State emission reduction plans, and two-for-one emission offset requirements where no new emission producing facilities can be constructed unless the expected new emissions are offset by two times that level of emissions at other facilities in the area. I assume no facility operates and produces emissions unless it does so at a profit, so I seriously doubt any facility will be shut down to make way for new facilities. These offsets would have effectively halted industrial growth in the area, and all because EPA wrongly wanted cars tested and repaired at separate facilities.

This situation may even have seemed reasonable, given the existing law, if these areas were at fault for their allegedly high levels of ozone, but that was not the case. Because the emissions that chemically react to create ozone can travel in the air stream, the ozone levels experienced in one area may be the result of emissions from hundreds of miles away. Such was the case with the three counties in western Michigan. The three western Michigan counties of Kent, Ottawa, and Muskegon were all found by EPA to have ozone levels above the national ambient air quality standard of 120 parts per billion. The ozone contributions from the northern Indiana, northern Illinois, and Wisconsin, however, provided over 98 percent of the ozone that resulted in nonattainment. In fact, even if these three counties were to reduce their emission levels to zero, the ozone levels would actually increase as the overwhelming ozone transport from the West drifted into the region. Furthermore, even though the EPA claimed reducing western Michigan emissions would reduce ozone levels in northern Indiana during that four per cent of the year when winds are from the northeast, such emissions are irrelevant to that area. The Lake Michigan Air Directors Consortium executive director Stephen Gerritson told my colleague Senator LEVIN in hearings last fall that western Michigan emissions did not cause ozone nonattainment in northern Indiana. In fact, the area impacted by these very infrequent western Michigan transported emissions is currently in attainment. The regulatory actions of the EPA, in their misguided attempt to solve western Michigan's supposed ozone problem, would have actually made it worse.

In light of this action, the Governor of Michigan halted the further implementation of such an unnecessary program last month. In the face of similarly bold exercises of States' rights, the EPA's Administrator reached out to the Governors in what I believe was an attempt to save the Clean Air Act from full congressional review. The EPA knows it is in trouble. When our loyal opposition held control of the Congress, the EPA would brook no complaints from the States that the EPA's tyrannical regulatory measures were unnecessary or ineffective. Instead, the EPA marched forward with

an agenda to impinge States' rights, halt economic growth and force the citizenry to abide by their ideas as to what was in the citizenry's collective best interest.

We must review the Clean Air Act in it totality. It is based upon bad science, bad procedures, and focuses on the wrong issues. The technology of emission detection, control, and abatement advances exponentially, and any legislation that attempts to protect our environment through invasive command and control techniques favored by anti-industrialist, anti-growth, anti-business forces in the EPA is bound to fail. Such a review, however, will not be quick. The Clean Air Act is the longest, most complex piece of legislation ever passed, and took years to develop. It will take time to develop feasible replacements. Furthermore, as I have stated on this floor before, environmental legislation such as the Clean Air Act is one of the most notorious examples of an unfunded mandate. We must establish a window in which we can review this act and know that our constituents will be safe from egregious EPA action.

This bill establishes such a window. Upon its enactment, the EPA will be prohibited, for 2 years, from imposing sanctions under sections 110(m) or 179 of the Clean Air Act, withhold pollution abatement grants section 105, or federalize a State's program under section 110(c). I explained the sanctions and enforcement actions before, but quickly, the section 100(m) and 179 sanctions include the loss of Federal highway funds and two-for-one emission offsets. These moratoria will apply to actions taken in response to a State's failure to submit or implement a pollution reduction plan in response to marginal or moderate ozone non-attainment. It will also prohibit both the EPA and the Highway Administration from taking similarly adverse action, such as withholding Federal highway funds, for failure to implement enhanced automobile inspection and maintenance procedures. The moratoria would exist for 2 years from enactment but would not apply to sanctions already applied. While these moratoria are in effect, we will have the time and liberty to analyze closely the Clean Air Act, and secure the assurances that our States will not be subject to these outrageous sanctions and actions. Last month, a bipartisan group of 33 State environmental directors, working through the National Association of Governors, called for such a moratorium while the States work with the EPA to define a more workable solution. Governor Engler of Michigan has fully supported such a moratorium.

Although the EPA rectified the problem for my constituents last night, it still remains for other areas, such as in Virginia, Texas, and Rhode Island. Furthermore, there is no assurance that the EPA could not just as easily reverse this decision and put my constituents back in exactly the same quandary as before. I recommend that my colleagues join with me in preventing such a thing from happening.

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. 376

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

SECTION 1. OZONE NONATTAINMENT AREAS.

(a) IN GENERAL.—During the 2-year period beginning on the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall take no enforcement action with respect to an area designated nonattainment for ozone that is classified as a Marginal Area or Moderate Area under section 181 of the Clean Air Act (42 U.S.C. 7511).

(b) DEFINITION.—In this section, the term ''enforcement action'' means—

(1) the withholding of a grant under section 105 of the Clean Air Act (42 U.S.C. 7405);

(2) the promulgation of a Federal implementation plan under section 110(c) of the Clean Air Act (42 U.S.C. 7410); and

(3) the imposition of a sanction under section 110(m) or 179 of the Clean Air Act (42 U.S.C. 7410(m), 7509).

(c) APPLICABILITY.—Subsection (a) does not preclude the continued application of a sanction that was imposed prior to the date of enactment of this Act.

SEC. 2. ENHANCED VEHICLE INSPECTION AND MAINTENANCE PROGRAMS.

During the 2-year period beginning on the date of enactment of this Act, the Administrator of the Environmental Protection Agency and the Administrator of the Federal Highway Administration of the Department of Transportation may not take any adverse action, against a State with respect to a failure of an enhanced vehicle inspection and maintenance program under section 182(c)(3) of the Clean Air Act (42 U.S.C. 7511a(c)(3)), under—

(1) section 176 of the Clean Air Act (42 U.S.C. 7506);

(2) chapter 53 of title 49, United States Code;

(3) subpart T of part 51, or subpart A of part 93, of title 40, Code of Federal Regulations (commonly known as the ''transportation conformity rule''); or

(4) part 6, 51, or 93 of title 40, Code of Federal Regulations (commonly known as the ''general conformity rule'').

By Mr. KENNEDY:

S. 376. A bill to resolve the current labor dispute involving major league baseball, and for other purposes; read the first time.

BASEBALL STRIKE LEGISLATION

Mr. KENNEDY. Mr. President, President Clinton has submitted legislation to Congress to resolve the baseball strike by establishing a fair and equitable procedure for binding arbitration of the dispute.

The legislation would establish a National Baseball Dispute Resolution Panel composed of three impartial individuals, appointed by the President, with expertise in the resolution of labor-management disputes. The panel would be empowered to take testimony, conduct hearings and compel the production of relevant financial information from all parties. At the conclusion of that process, the panel would issue a decision setting forth the terms of an agreement that would be binding on both sides of this dispute.

Under the terms of the proposed legislation, the panel would be required, in making its decision, to take into account a number of factors, including the history of collective bargaining agreements between the parties, the owners' ability to pay, the impact on communities that benefit from major league baseball, the unique status of major league baseball, and the best interests of the game.

President Clinton and his special baseball mediator, William J. Usery, deserve great credit for the efforts they have made in recent months, and especially in recent days, to achieve a satisfactory resolution of this long and bitter controversy.

Clearly, at this moment in time, Members of Congress are divided about whether legislation is appropriate. A great deal will turn on developments in coming days, especially whether baseball fans across the country feel that action by Congress is needed.

All of us hope that a way can still be found for the parties to resolve this controversy themselves. It is too early to tell whether the events of recent days have given enough new impetus to the parties to reach such a resolution.

If not, then I believe Congress should act, and I look forward to working with others in the Senate and House to achieve the goal that all of us share—to save the 1995 baseball season, to do so in a way that is fair to owners and players alike, and do so in time for opening day—on schedule. Red Sox fans want baseball to begin on opening day as fans do all around the country. We should do all we can to make sure America's pastime goes on as scheduled.

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. BREAUX, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 104

At the request of Mr. D'AMATO, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 104, a bill to establish the position of Coordinator for Counter-Terrorism within the office of the Secretary of State.

S. 198

At the request of Mr. CHAFEE, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 198, a bill to amend title XVIII of the Social Security Act to permit medicare select policies to be offered in all States, and for other purposes.