STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM (for himself, Mr. MACK, Mr. LOTT, Mr. BRADLEY, Ms. MOSELEY-BRAUN, Mr. HATCH, and Mr. GRASSLEY):

S. 529. A bill to provide, temporarily, tariff and quota treatment equivalent to that accorded to members of the North American Free-Trade Agreement [NAFTA] to Caribbean Basin beneficiary countries; to the Committee on Finance.

THE CARIBBEAN BASIN TRADE SECURITY ACT

Mr. GRAHAM. Mr. President, today with my colleagues Senators MACK, LOTT, BRADLEY, MOSELEY-BRAUN, HATCH, and GRASSLEY, I am introducing the Caribbean Basin Trade Security Act, a bill which will improve the economic and political security of the nations of the Caribbean Basin and the United States of America.

In the last decade, the United States has supported and encouraged the extension of democracy in the Caribbean and Central America through enhanced trade and investment. Today, democracy rules in all of the nations of the Caribbean Basin, with the notable exception of Cuba. This year alone, eight nations in the region are holding free elections.

For many nations political stability is by no means guaranteed. As we saw in the painful lesson of Haiti, economic and political instability in the Caribbean region can have tragic consequences for the people and enormous costs to the United States.

It is of vital interest to America to see the Caribbean Basin grow economically. Continued economic expansion will help maintain political stability in the region. By improving economic conditions, we can deter illegal immigration, which taxes our resources and hurts those nations which lose some of their youngest and brightest citizens. Economic stability in the Caribbean Basin strengthens our defense against the trafficking of illegal drugs. An economically stable Caribbean Basin is a rich expanding market for United States goods.

Yet at a time when economic growth is increasingly critical to the region, members of the Caribbean Basin Initiative [CBI] have faced a challenging climatic change in the area of trade. Since the implementation of the North American Free-Trade Agreement [NAFTA], lowered tariffs on Mexican imports have left the Caribbean Basin at a competitive disadvantage to Mexico. As an example, apparel assembly has been the most rapidly expanding job generator in the CBI region. Over 77 percent of Central American and Caribbean textile and apparel exports to the United States are assembled, in whole or in part, from U.S. components. For an apparel item produced in a CBI country with materials from the United States, a 20-percent duty is charged on the value added by the off-shore assembly. Under NAFTA, this same item can be imported from Mexico duty-free.

As a result of this disparity, the growth in apparel imports from Caribbean Basin nations has slowed markedly. There has been a virtual halt in new investment in the apparel sector in the CBI countries and the closing of over 100 plants during the last year alone, at an estimated loss of 15,000 jobs. Before NAFTA, the growth rates for apparel imports from Mexico and CBI nations were roughly equivalent at 25 percent. But by 1994, the CBI growth rate dropped to 14.6 percent, while Mexico's surged to 48.8 percent.

All signs indicate that this inequality will continue to expand if parity is not granted to the CBI nations. With the recent devaluation of the Mexican peso, labor and production costs in Mexico have decreased, and as a result, apparel companies have an added incentive to close shop in CBI nations and relocate to Mexico.

As past Caribbean trade agreements have shown, the United States stands to be a the chief beneficiary of lowering trade barriers between the Caribbean Basin and the United States. The United States' trade balance with Caribbean Basin countries shifted dramatically following the implementation of the 1983 Caribbean Basin Initiative, from a deficit of $700 million in 1985. This has grown to a surplus of $2 billion in 1993. From a $700 million deficit to a $2 billion surplus on a per capita basis, our surplus with the Caribbean has consistently outpaced our surplus with any other region of the world.

This bill covers those manufactured products for which Mexico was granted preferential tariff levels, such as textiles and apparel. Currently, a large portion of U.S. textile and apparel imports are produced in the Far East, where few U.S. materials are used in the production process. U.S. manufacturers and workers stand to benefit from increased production of these items in the Caribbean Basin; new facilities will be more likely to utilize American materials, components, and machinery than does production in the Pacific rim. The American Apparel Manufacturers Association estimates that 15 jobs are created in the United States for every 100 apparel jobs created in CBI production facilities which use U.S. materials.

Mr. President, at the Summit of the Americas in Miami this past December, Vice President GORE reiterated the administration's commitment to the realization of hemisphericwide free trade. The administration supports the goal of bringing CBI nations into NAFTA-type free-trade agreements. The Caribbean Trade Security Act which we introduce today paves the way for the gradual association of the CBI nations into a closer bilateral or multilateral trade agreement with the United States. This legislation calls for a 6-year program after which the CBI nations will be allowed the opportunity to negotiate accession to NAFTA or to enter into independent free-trade agreements with the United States. The U.S. Trade Representative's office would make an assessment of the reforms made in each of the beneficiary countries and of the ability of each country to fulfill the obligations of the NAFTA. This checklist would include, among many criteria, the extent to which a country's markets are accessible, progress on macroeconomic reforms, and the protection of intellectual property rights.

Mr. President, there is no region in the world with which the United States has a stronger and more mutually beneficial relationship than with our Caribbean and Central American neighbors. This bill will enhance our trading relationship with our neighbors and will strongly benefit the United States. I urge my colleagues in the Senate to consider and support this legislation as a demonstration of our commitment to encouraging economic stability and the principles of free markets and free enterprise. From those, the principles of democratic government and personal freedom will continue to strengthen.

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. 529

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 ''Caribbean Basin Trade Security Act''.

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that—

(1) the Caribbean Basin Economic Recovery Act represents a permanent commitment by the United States to encourage the development of strong democratic governments and revitalized economies in neighboring countries in the Caribbean Basin;

(2) the economic security of the countries in the Caribbean Basin is potentially threatened by the diversion of investment to Mexico as a result of the North American Free Trade Agreement;

(3) to preserve the United States commitment to Caribbean Basin beneficiary countries and to help further their economic development, it is necessary to offer temporary benefits equivalent to the trade treatment accorded to products of NAFTA members;

(4) offering NAFTA equivalent benefits to Caribbean Basin beneficiary countries, pending their eventual accession to the NAFTA, will promote the growth of free enterprise and economic opportunity in the region, and thereby enhance the national security interests of the United States; and

(5) increased trade and economic activity between the United States and Caribbean Basin beneficiary countries will create expanding export opportunities for United States businesses and workers.

(b) POLICY.—It is therefore the policy of the United States to offer to the products of Caribbean Basin beneficiary countries tariff and quota treatment equivalent to that accorded to products of NAFTA countries, and to seek the accession of these beneficiary countries to the NAFTA at the earliest possible date, with the goal of achieving full

participation in the NAFTA by all beneficiary countries by not later than January 1, 2005.

SEC. 3. DEFINITIONS.

As used in this title:

(1) BENEFICIARY COUNTRY.—The term ''beneficiary country'' means a beneficiary country as defined in section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)).

(2) NAFTA.—The term ''NAFTA'' means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(3) TRADE REPRESENTATIVE.—The term ''Trade Representative'' means the United States Trade Representative.

(4) WTO AND WTO MEMBER.—The terms ''WTO'' and ''WTO member'' have the meanings given such terms in section 2 of the Uruguay Round Agreements Act.

TITLE I—RELATIONSHIP OF NAFTA IMPLEMENTATION TO THE OPERATION OF THE CARIBBEAN BASIN INITIATIVE

SEC. 101. TEMPORARY PROVISIONS TO PROVIDE NAFTA PARITY TO BENEFICIARY COUNTRY ECONOMIES.

(a) TEMPORARY PROVISIONS.—Section 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)) is amended to read as follows:

''(b) IMPORT-SENSITIVE ARTICLES.—

''(1) IN GENERAL.—Subject to paragraphs (2) through (5), the duty-free treatment provided under this title does not apply to—

''(A) textile and apparel articles which are subject to textile agreements;

''(B) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

''(C) tuna, prepared or preserved in any manner, in airtight containers;

''(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

''(E) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or

''(F) articles to which reduced rates of duty apply under subsection (h).

''(2) NAFTA TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.—

''(A) EQUIVALENT TARIFF AND QUOTA TREATMENT.—During the transition period—

''(i) the tariff treatment accorded at any time to any textile or apparel article that originates in the territory of a beneficiary country shall be identical to the tariff treatment that is accorded during such time under section 2 of the Annex to a like article that originates in the territory of Mexico and is imported into the United States;

''(ii) duty-free treatment under this title shall apply to any textile or apparel article of a beneficiary country that is imported into the United States and that—

''(I) meets the same requirements (other than assembly in Mexico) as those specified in Appendix 2.4 of the Annex (relating to goods assembled from fabric wholly formed and cut in the United States) for the duty free entry of a like article assembled in Mexico, or

''(II) is identified under subparagraph (C) as a handloomed, handmade, or folklore article of such country and is certified as such by the competent authority of such country; and

''(iii) no quantitative restriction or consultation level may be applied to the importation into the United States of any textile or apparel article that—

''(I) originates in the territory of a beneficiary country,

''(II) meets the same requirements (other than assembly in Mexico) as those specified in Appendix 3.1.B.10 of the Annex (relating to goods assembled from fabric wholly formed and cut in the United States) for the exemption of a like article assembled in Mexico from United States quantitative restrictions and consultation levels, or

''(III) qualifies for duty-free treatment under clause (ii)(II).

''(B) NAFTA TRANSITION PERIOD TREATMENT OF NONORIGINATING TEXTILE AND APPAREL ARTICLES.—

''(i) PREFERENTIAL TARIFF TREATMENT.—Subject to clause (ii), the United States Trade Representative may place in effect at any time during the transition period with respect to any textile or apparel article that—

''(I) is a product of a beneficiary country, but

''(II) does not qualify as a good that originates in the territory of that country,

tariff treatment that is identical to the preferential tariff treatment that is accorded during such time under Appendix 6.B of the Annex to a like article that is a product of Mexico and imported into the United States.

''(ii) PRIOR CONSULTATION.—The United States Trade Representative may implement the preferential tariff treatment described in clause (i) only after consultation with representatives of the United States textile and apparel industry and other interested parties regarding—

''(I) the specific articles to which such treatment will be extended,

''(II) the annual quantity levels to be applied under such treatment and any adjustment to such levels,

''(III) the allocation of such annual quantities among the beneficiary countries that export the articles concerned to the United States, and

''(IV) any other applicable provision.

''(iii) ADJUSTMENT OF CERTAIN BILATERAL TEXTILE AGREEMENTS.—The United States Trade Representative shall undertake negotiations for purposes of seeking appropriate reductions in the quantities of textile and apparel articles that are permitted to be imported into the United States under bilateral agreements with beneficiary countries in order to reflect the quantities of textile and apparel articles of each respective country that are exempt from quota treatment by reason of paragraph (2)(A)(iii).

''(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (A), the United States Trade Representative shall consult with representatives of the beneficiary country for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3 (a), (b), or (c) or Appendix 3.1.B.11 of the Annex.

''(D) BILATERAL EMERGENCY ACTIONS.—The President may take—

''(i) bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any textile or apparel article imported from a beneficiary country if the application of tariff treatment under subparagraph (A) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article that is a product of Mexico; or

''(ii) bilateral emergency quantitative restriction actions of a kind described in section 5 of the Annex with respect to imports of any textile or apparel article described in subparagraph (B)(i) (I) and (II) if the importation of such article into the United States results in conditions that would be cause for the taking of such actions under such section 5 with respect to a like article that is a product of Mexico.

''(3) NAFTA TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES.—

''(A) EQUIVALENT TARIFF TREATMENT.—

''(i) IN GENERAL.—Subject to clause (ii), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that originates in the territory of a beneficiary country shall be identical to the tariff treatment that is accorded during such time under Annex 302.2 of the NAFTA to a like article that originates in the territory of Mexico and is imported into the United States. Such articles shall be subject to the provisions for emergency action under chapter 8 of part two of the NAFTA to the same extent as if such articles were imported from Mexico.

''(ii) EXCEPTION.—Clause (i) does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

''(B) RELATIONSHIP TO SUBSECTION (h) DUTY REDUCTIONS.—If at any time during he transition period the rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period) apply with respect to any article under subsection (h) is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

''(4) CUSTOMS PROCEDURES.—The provisions of chapter 5 of part two of the NAFTA regarding customs procedures apply to importations of articles from beneficiary countries under paragraphs (2) and (3).

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) The term 'the Annex' means Annex 300–B of the NAFTA.

''(B) The term 'NAFTA' means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

''(C) The term 'textile or apparel article' means any article referred to in paragraph (1)(A) that is a good listed in Appendix 1.1 of the Annex.

''(D) The term 'transition period' means, with respect to a beneficiary country, the period that begins on the date of the enactment of the Caribbean Basin Trade Security Act and ends on the earlier of—

''(i) the date that is the 6th anniversary of such date of enactment; or

''(ii) the date on which—

''(I) the beneficiary country accedes to the NAFTA, or

''(II) there enters into force with respect to the United States and the beneficiary country a free trade agreement comparable to the NAFTA that makes substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of the North American Free Trade Agreement Implementation Act.

''(E) An article shall be treated as having originated in the territory of a beneficiary country if the article meets the rules of origin for a good set forth in chapter 4 of part two of the NAFTA or in Appendix 6.A of the Annex. In applying such chapter 4 or Appendix 6.A with respect to a beneficiary country for purposes of this subsection, no countries other than the United States and beneficiary countries may be treated as being Parties to the NAFTA.''.

(b) CONFORMING AMENDMENTS.—The Caribbean Basin Economic Recovery Act is amended—

(1) by amending section 212(e)(1)(B) to read as follows:

''(B) withdraw, suspend, or limit the application of the duty-free treatment under this subtitle, and the tariff and preferential tariff treatment under section 213(b) (2) and (3), to any article of any country,''; and

(2) by inserting ''and except as provided in section 213(b) (2) and (3),'' after ''Tax Reform Act of 1986,'' in section 213(a)(1).

SEC. 102. EFFECT OF NAFTA ON SUGAR IMPORTS FROM BENEFICIARY COUNTRIES.

The President shall monitor the effects, if any, that the implementation of the NAFTA has on the access of beneficiary countries under the Caribbean Basin Economic Recovery Act to the United States market for sugars, syrups, and molasses. If the President considers that the implementation of the NAFTA is affecting, or will likely affect, in an adverse manner the access of such countries to the United States market, the President shall promptly—

(1) take such actions, after consulting with interested parties and with the appropriate committees of the House of Representatives and the Senate, or

(2) propose to the Congress such legislative actions,

as may be necessary or appropriate to ameliorate such adverse effect.

SEC. 103. DUTY-FREE TREATMENT FOR CERTAIN BEVERAGES MADE WITH CARIBBEAN RUM.

Section 213(a) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)) is amended—

(1) in paragraph (5), by striking ''chapter'' and inserting ''title''; and

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

''(6) Notwithstanding paragraph (1), the duty-free treatment provided under this title shall apply to liqueurs and spirituous beverages produced in the territory of Canada from rum if—

''(A) such rum is the growth, product, or manufacture of a beneficiary country or of the Virgin Islands of the United States;

''(B) such rum is imported directly from a beneficiary country or the Virgin Islands of the United States into the territory of Canada, and such liqueurs and spirituous beverages are imported directly from the territory of Canada into the customs territory of the United States;

''(C) when imported into the customs territory of the Untied States, such liqueurs and spirituous beverages are classified in subheading 2208.90 or 2208.40 of the HTS; and

''(D) such rum accounts for at least 90 percent by volume of the alcoholic content of such liqueurs and spirituous beverages.''.

TITLE II—RELATED PROVISIONS

SEC. 201. MEETINGS OF TRADE MINISTERS AND USTR.

(a) SCHEDULE OF MEETINGS.—The President shall take the necessary steps to convene a meeting with the trade ministers of the beneficiary countries in order to establish a schedule of regular meetings, to commence as soon as is practicable, of the trade ministers and the Trade Representative, for the purpose set forth in subsection (b).

(b) PURPOSE.—The purpose of the meetings scheduled under subsection (a) is to reach agreement between the United States and beneficiary countries on the likely timing and procedures for initiating negotiations for beneficiary countries to accede to the NAFTA, or to enter into mutually advantageous free trade agreements with the United States that contain provisions comparable to those in the NAFTA and would make substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)).

SEC. 202. REPORT ON ECONOMIC DEVELOPMENTS AND MARKET ORIENTED REFORMS IN THE CARIBBEAN.

(a) IN GENERAL.—The Trade Representative shall make an assessment of the economic development efforts and market oriented reforms in each beneficiary country and the ability of each such country, on the basis of such efforts and reforms, to undertake the obligations of the NAFTA. The Trade Representative shall, not later than July 1, 1996, submit to the President and to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on that assessment.

(b) ACCESSION TO NAFTA.—

(1) ABILITY OF COUNTRIES TO IMPLEMENT NAFTA.—The Trade Representative shall include in the report under subsection (a) a discussion of possible timetables and procedures pursuant to which beneficiary countries can complete the economic reforms necessary to enable them to negotiate accession to the NAFTA. The Trade Representative shall also include an assessment of the potential phase-in periods that may be necessary for those beneficiary countries with less developed economies to implement the obligations of the NAFTA.

(2) FACTORS IN ASSESSING ABILITY TO IMPLEMENT NAFTA.—In assessment the ability of each beneficiary country to undertake the obligations of the NAFTA, the Trade Representative should consider, among other factors—

(A) whether the country has joined the WTO;

(B) the extent to which the country provides equitable access to the markets of that country;

(C) the degree to which the country uses export subsidies or imposes export performance requirements or local content requirements;

(D) macroeconomic reforms in the country such as the abolition of price controls on traded goods and fiscal discipline;

(E) progress the country has made in the protection of intellectual property rights;

(F) progress the country has made in the elimination of barriers to trade in services;

(G) whether the country provides national treatment to foreign direct investment;

(H) the level of tariffs bound by the country under the WTO (if the country is a WTO member);

(I) the extent to which the country has taken other trade liberalization measures; and

(J) the extent which the country works to accommodate market access objectives of the United States.

(c) PARITY REVIEW IN THE EVENT A NEW COUNTRY ACCEDES TO NAFTA.—If—

(1) a country or group of countries accedes to the NAFTA, or

(2) the United States negotiates a comparable free trade agreement with another country or group of countries.

the Trade Representative shall provide to the committees referred to in subsection (a) a separate report on the economic impact of the new trade relationship on beneficiary countries. The report shall include any measures the Trade Representative proposes to minimize the potential for the diversion of investment from beneficiary countries to the new NAFTA member or free trade agreement partner.

By Mr. GREGG:

S. 530. A bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes; to the Committee on Labor and Human Resources.

THE STATE AND LOCAL VOLUNTEER PRESERVATION ACT OF 1995

● Mr. GREGG. Mr. President, it is my belief that the U.S. Government needs to foster voluntarism and philanthropy whenever it can. This is not how the system is currently working. On the contrary, overzealous regulation and oppressive Government agencies, such as the Department of Labor , stifle the efforts of citizens who want to volunteer some of their spare time to their community.

For example: In a small town in New Hampshire a police officer was using his free time at night to train women in self-defense. He volunteered to teach this course and did so gladly. The Labor Department came onto the scene, however, and told the police department that they must either pay the officer for overtime or cancel the program. The program was canceled for lack of funds. The women in this small town no longer have the option of free classes in order to learn to protect themselves.

This is a familiar story, not only to police departments across the country, but also to many other types of State and local agencies whose employees want to serve their community but are forbidden to by the Department of Labor. These incidents occurred because of the manner in which the Labor Department has decided to apply the Fair Labor Standards Act to those who willingly and gladly volunteer some of their spare time to public service. Such regulatory overreaching typifies what has gone wrong with the Federal Government, when public spirit and common sense lose out to narrow and misguided bureaucratic objectives.

It is for these reasons that I am introducing the State and Local Volunteer Preservation Act of 1995, which amends the Fair Labor Standards Act to allow State and local public servants to volunteer their time to their employers if they choose to do so. This bill will extend to town clerks who want to help count ballots on election night; firefighters who want to help put out fires in their districts even if they are not on duty; police officers who want to work with police dogs or train women in self-defense; and many other public employees who want to volunteer their free time to their communities. We must act now to stop this encroachment on local voluntarism and allow our civic-minded citizens to volunteer their time to their community, no matter what their occupation.

I am pleased to announce that the International Association of Chiefs of Police [IACP] have endorsed this legislation. It is from police officers in New Hampshire that I first heard of this

problem, and it is from IACP that I learned that these regulations were causing difficulties not only in New Hampshire, but around the country.

I hope my colleagues will join me in supporting this important measure. Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 530

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 and Local Volunteer Preservation Act''.

SEC. 2. WAIVER OF OVERTIME COMPENSATION.

Section 7(o) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(o)) is amended—

(1) by redesigning paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5), the following new paragraph:

''(5) A public agency which is a State, political subdivision of a State, or an interstate governmental organization shall not be required to pay an employee overtime compensation or provide compensatory time under this section for any period during which the employee—

''(A) volunteered to perform services for the public agency; and

''(B) signed a legally binding waiver of such compensation or compensatory time.''.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE,
Alexandria, VA, March 8, 1995.

Hon. JUDD GREGG,
U.S. Senate,
Washington, DC.

DEAR SENATOR GREGG: The International Association of Chiefs of Police (IACP) has long been in support of amendments to the Fair Labor Standards Act. Applying laws and regulations initially designed for the private sector, to public sector employers and employees has created difficulties that can only be curbed by federal legislation. While IACP believes that other additional amendments would be helpful, we certainly support and endorse your proposed bill that would clarify the compensation status of reserve officers who wish to volunteer for public safety activities.

If we can be of further assistance, please do not hesitate to call.

Sincerely,

JOHN T. WHETSEL,
President. ●

By Mr. HATCH:

S. 531. A bill to authorize a circuit judge who has taken part in an in banc hearing of a case to continue to participate in that case after taking senior status, and for other purposes; to the Committee on the Judiciary.

S. 532. A bill to clarify the rules governing venue, and for other purposes; to the Committee on the Judiciary.

S. 533. A bill to clarify the rules governing removal of cases to Federal court, and for other purposes; to the Committee on the Judiciary.

TITLE 28 CORRECTION LEGISLATION

Mr. HATCH. Mr. President, I am today introducing three bills, each of which would correct an inadvertent glitch in title 28 of the United States Code. I believe that all my colleagues will find these bills to be uncontroversial and nonpartisan. But they are nonetheless important, for they clean up problems that have surfaced in existing provisions.

Let me briefly describe the three bills.

My first bill would modify section 46(c) of title 28 to authorize a circuit judge who has taken part in an en banc hearing of a case to continue to participate in that case after taking senior status. Section 46(c) currently sets forth a general rule with one exception: it provides that only circuit judges in regular active service may sit on the en banc court, except that a senior circuit judge who was a member of the panel whose decision is being reviewed en banc may also be eligible to sit on the en banc court. This general rule makes good sense, for it ensures that it is the judges in regular active service who determine the law of the circuit. The exception also makes good sense, since it enables the court to avoid wasting the already-expended efforts of a judge.

The current language of section 46(c), however, inadvertently creates a problem, for it appears to require a circuit judge in regular active service who has heard argument in an en banc case to cease participating in that case when that judge takes senior status. Courts of appeals have regarded themselves as bound to so construe the statute. See, e.g., *United States* v. *Hudspeth*, No. 93–1352—7th Cir. Oct. 28, 1994. This result is problematic, for it means that at the time of argument in an en banc case, it may be unclear who will be eligible to vote on the final disposition. Worse, there is the possibility that a judge might delay—or might be perceived as delaying—the release of an opinion until a member of the court takes senior status, in order to affect the outcome. As the seventh circuit's discussion in Hudspeth makes clear, there is every reason to believe that this consequence was inadvertently produced by Congress. The Judicial Council of the seventh circuit has written to me recommending that this provision be reconsidered. Other courts have also faced difficulties with this provision. My bill would correct this problem.

My second bill adopts a proposal by the Judicial Conference of the United States to correct a flaw in a venue provision, section 1391(a) of title 28. Section 1391(a) governs venue in diversity cases. Like section 1391(b), which governs venue in Federal question cases, section 1391(a) has a fallback provision—subsection (3)—that comes into play if neither of the other subsections confers venue in a particular case. See C. Wright, Law of Federal Courts 262—5th ed. 1994—Specifically, subsection (3) provides that venue lies in ''a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.''

The defect in this fallback provision is that it may be read to mean that all defendants must be subject to personal jurisdiction in a district in order for venue to be lie. Under this reading, there would be cases in which there would be no proper venue. In short, the fallback provision would not always work. Such a result is undesirable and appears to be the inadvertent product of a rather tortuous drafting history. See C. Wright, supra, at 262 n. 35.

My bill would eliminate the ambiguity in subsection (3) by specifying that venue would be proper under this fallback provision in a district in which any defendant is subject to personal jurisdiction. This language would track the language in the parallel fallback provision in section 1391(b). Again, I note that the Judicial Conference has endorsed this change.

My third bill would remedy a problem that has arisen in the procedures governing remand to State court of cases that have been removed to Federal court. Section 1447(c) of title 28 provides that a motion to remand a case on the basis of any defect in removal procedure must be made within 30 days of the filing of the notice of removal. It appears clearly to have been the intent of Congress that the phrase ''any defect in removal procedure'' would encompass any defect other than lack of subject matter jurisdiction. Section 1447(c) specifies that no time limit applies to motions to remand based on lack of subject matter jurisdiction. But a few courts have taken a more narrow reading, and a circuit split exists. See C. Wright, supra, at 249–250 and nn. 3–6. My bill would make clear that a 30-day limit applies to all motions to remand except those based on lack of subject matter jurisdiction.

By Mr. SMITH (for himself and Mr. CHAFEE):

S. 534. A bill to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste, and for other purposes; to the Committee on Environment and Public Works.

INTERSTATE WASTE AND FLOW CONTROL LEGISLATION

Mr. SMITH. Mr. President, I am today introducing legislation that I believe will solve the longstanding problem of the interstate disposal of solid waste, as well as address the more recent issue involving the use of flow control measures to control the disposal of these materials.

For those of my colleagues who are not familiar with the issue, the controversy surrounding the interstate transportation of solid waste is one that the Senate has been considering since before 1990. Today, 47 States export approximately 14 to 15 million tons of solid waste per year for disposal in other States. While short distance waste exports have been occurring for

some time, the development of a longhaul waste transport market has been a more recent development. With tipping fees of $140 per ton in some large cities, compared with a national average of between $30 and $50, there is an incentive for municipalities to transport these wastes by truck and rail to distant States for permanent disposal.

Those States that have recently been the recipients of large amounts of long-haul wastes have raised a concern that their limited capacity for solid waste disposal is being filled, and that they have become the dumping ground for someone else's waste problems. Over the last few years, 37 States have passed laws to prohibit, limit, or severely tax waste that enters their jurisdiction. However, almost all of these laws have been stuck down for violating the commerce clause of the Constitution. While there has been some recent easing of disposal capacity nationwide, there are still significant concerns about the future consequences of the long-haul system.

To address these concerns Congress, as well as the Environment and Public Works Committee, in particular, have been attempting to strike a balance between importing and exporting States. Last year, the Committee on Environment and Public Works, of which I am a member, unanimously reported S. 2345 to address this problem. A number of Members, both on and off the committee, including Senators COATS, SPECTER, LAUTENBERG, MOYNIHAN, and others, took a very active role in attempting to develop a compromise that importing and exporting States could live with. While the Senate easily passed this compromise by voice vote on September 30, 1994, time ran out before this issue could be finally resolved.

Today I am offering legislation that is cosponsored by Senator CHAFEE, the chairman of the Environment and Public Works Committee, that will address both interstate waste and flow control. Title I of our bill, which pertains to interstate waste, is essentially the same package that the Senate overwhelmingly supported last year. There was no opposition that I was aware of. It is our hope that we will have similar support for this legislation so that we can quickly lay this issue to rest.

The issue of flow control is another trashrelated concern that has been brought before Congress as a result of Supreme Court action. In essence, flow control is a mechanism that has been utilized by a variety of towns and cities to mandate that solid waste be disposed of at facilities designated by that entity. In May 1994, the Supreme Court, in the decision of Carbone versus Clarkstown, struck down a New York flow control ordinance as a violation of the commerce clause. For better or worse—depending on your point of view—the Carbone decision essentially halted efforts nationwide to enact flow control measures. Cities and towns that utilized flow control authority prior to Carbone assert that it allowed them to create integrated waste control systems, including activities such as recycling, composting, and hazardous waste collection—that would not have been possible without this authority.

Since 1980, over $20 billion in municipal bonds have been issued to pay for the construction of solid waste facilities utilizing flow control. In the wake of Carbone, there has been a strong concern raised that without prompt action by the Congress to authorize some flow control, many cities and towns that let these bonds are in danger of having these investments downgraded—some say even turned into junk bonds. This concern was underscored by a recent decision of Moody's Investors Service to downgrade the waste bond rating of five New Jersey counties to below investment grade status. In addition to bond-related concerns, the proponents also assert that the failure of Congress to provide flow control authority will leave State and local governments defenseless in their efforts to control the export of interstate waste.

It must be noted, however, that flow control does not have universal support. It does not really have this Senator's support. A number of mayors and local officials, such as Bret Schundler, the mayor of Jersey City, NJ, have gone on record in strong opposition to the use of flow control. They argue essentially that flow control limits the ability of local government to find low-cost, environmentally sound disposal alternatives, and results in exorbitant and unnecessarily high tipping fees.

In addition to these arguments, a recently released EPA report entitled ''Flow Controls and Municipal Solid Waste,'' concludes that not only is there ''no empirical data showing that flow control provides more or less protection'' to human health and environment. The report then goes on to say that there is no evidence that ''flow controls are essential either for the development of new solid waste capacity or for the long-term achievement of State and local goals for source reduction, reuse, and recycling.''

So, last week, the Environmental and Public Works Subcommittee on Superfund, Waste Control and Risk Assessment, which I chair, of course, held an extensive hearing that focused on two issues: Both flow control and interstate waste. During that hearing, we heard testimony from New Jersey Governor Christine Todd Whitman and others, including Congressman CHRIS SMITH of New Jersey, who called for the enactment of very broad flow control authority for municipalities in States well into the future. Others, including the Natural Resources Defense Council and Competitive Enterprise Institute requested that the Senate enact no flow control whatever.

My subcommittee also heard from the Public Securities Association which outlined the domino effect that might occur if Congress were to fail to authorize any flow control for those municipalities that have already let bonds under the presumption that they had the authority to flow control. They assert that not only would a failure to enact this authority affect the value of the existing flow control bonds, but it would also have a detrimental effect on the ability of the municipalities to let any bonds in the future.

So, the language that Senator CHAFEE and I are today introducing will protect those municipalities that impose flow control pursuant to a law, ordinance, regulation, or any other legally binding provision prior to May 15, 1994, prior to the Carbone decision, and which implemented flow control by designating a flow control facility prior to that date. In addition, this bill will protect those municipalities that imposed flow control prior to May 15, 1994, but which were in the midst of constructing such a flow control facility. Thus, in other words, if the municipality had its permits to construct and had signed contracts to build the facilities, had let revenue bonds, or had received its operating permit prior to May 15, 1994, it would also be able to take advantage of the grandfather provision and the protection that we are providing in our bill.

Our bill also provides sufficient flexibility so that the facilities that need to retrofit or modify their equipment to meet environmental or safety requirements, or if the facility needs to expand on the land that they own and that it is covered by their permit, they will be allowed to do so.

But it does not stop there Mr. President. Our bill is intended to provide a sense of finality to this issue. Precisely 30 years after this legislation is adopted, no further flow control measures will be allowed. Zero, none.

I want to be clear: I am opposed to flow control. I think the interstate commerce clause is exactly correct and the court's ruling was correct. I am not convinced that communities need to have broad flow control authority in order to ensure the proper disposal of their solid wastes. Nonetheless, I am aware of and I am sympathetic to and understand the position of those cities and towns that need this grandfathering so they can pay off the bonds that were let, based on the presumption that they had this authority. They thought they had the authority, they let the bonds, and they are kind of in the middle in a whipsaw, what to do. And nothing has been done since May 15, 1994, except the bonds have been going down in value.

So, under our bill, those municipalities that took action on this presumption will be protected. It is a grandfather protection. It ends in 30 years. Why 30 years? Because that is as long as any bonds that we know of are out there. It is a compromise.

Frankly, it is not my philosophical view. I do not believe that there ought to be flow control, but I do understand that things happen. Sometimes people believe they are doing the right thing, think they have the authority to do the right thing, and they get caught in the middle.

I believe this legislation strikes a fair balance in accommodating those who are strong proponents of States' rights and those who are strong proponents of the free market system.

Now, there are some who will probably try to amend this legislation, perhaps here on the floor or in committee, who will take the position that the States should have the total right to enact flow control any way they want to do that. But that is not the free market system. I am surprised, somewhat, by some of my colleagues who take that position who claim to be free marketeers.

So, in essence, what I tried to do in order to help those people who immediately need the help, is to craft this compromise, to grandfather the situations where there is an urgency here, where there has been some money expended, through the processes that I indicated, letting the bonds, or permitting, or construction work, or contracts, allow that to be grandfathered, and then at the end of that period of time, we go back to no flow control, we go back to interstate commerce.

Now, I am not convinced that the free market could not fully address this issue of disposing of our Nation's solid waste, but I am willing to make this accommodation.

Now, again, let me repeat, so that there is no misunderstanding, I do not support systemwide flow control, and I am strongly opposed to any prospective flow control. I feel that our bill has struck the balance, and I do not feel we need to go any further. Grandfathering is there. It ends in 30 years from the date of the enactment of the legislation.

Those municipalities that are in danger of having their bonds downgraded have requested that we move quickly to resolve this issue. That is exactly what I have been doing. It is the first piece of legislation that we worked on and marked up. There are many other pieces of legislation out there that are very critical, that are very high priority to me and to the Senate, including Superfund. We put this first in order to accommodate these communities, these municipalities, who have this problem.

I would hope that those people who might have a stronger view that we ought to have total flow control would understand that I have done this in an effort to help those communities and not get this thing into an extended debate, an extended controversy, to try to go all the way over to systemwide flow control and allow what I believe to be a reasonable compromise to pass.

I hope that my colleagues will support this legislation. It is very carefully thought out. Senator CHAFEE was immensely helpful and supportive. Senator COATS did a lot of work on interstate transfer of waste. He was very helpful, of course, and others. I hope that we will get support for this legislation, that it will pass quickly, as we do have kind of an emergency situation out there with these municipalities.

But I would just say to my colleagues, if we wind up in a huge floor fight, either out here on the floor or perhaps a fight in committee which delays this, then I think we are making a serious mistake in not helping those communities who really need the help.

Again, this is a big step for me because I believe that there should not be flow control, as I indicated. And had this situation not developed where we had these municipalities who had let these bonds, we would be out here with legislation that basically says there would be no flow control.

So I am doing this as a compromise to help those communities and municipalities in need. Hopefully, people will understand that and this legislation will be promptly passed by the Senate, sent to the House and signed by the President and become law.

Mr. CHAFEE. Mr. President, today I join the Senator from New Hampshire [Mr. SMITH] in introducing legislation dealing with interstate waste and flow control authority. I want to acknowledge the Senator's effort. As the chairman of the Environment Committee's Superfund, Waste Control, and Risk Assessment Subcommittee, the Senator from New Hampshire has taken the lead in drafting this legislation, targeting issues that went unresolved last year.

As you may recall, at the close of the last session of Congress, a so-called compromise on interstate waste and flow control was approved by the House and sent to the Senate on the last day of the session. I had real concerns with the bill. We could have approved that bill if there had been time for debate and an opportunity to consider amendments. But that was not the case. It was a take-it-or-leave-it proposition, and for a number of reasons, I could not take it.

The legislation was broad in scope, both on interstate and flow control. In my view, unlike the Senate-passed bill on interstate waste—which was a fair accommodation of importing and exporting States' interests—the House-passed bill tilted the scales out of balance in favor of importing States. Rhode Island, I might add, is a waste exporter. On flow control—which was not addressed in the Senate bill—the House bill favored local governments to the detriment of consumers and small business.

My major concerns with the House-passed bill revolved around three key issues, one on interstate and two on flow control.

On interstate, the primary problem was the inclusion of language creating a statutory presumption against the lawful shipment of waste across the State lines. On flow control, the House-passed bill granted authority not only to existing facilities with outstanding bond debt—the Public Securities Association's primary concern—but also to facilities with little or no financial exposure. In addition, the language would have resurrected Rhode Island's flow control authority—even though a Federal district court blocked that law in 1992, and the State has no need for the authority.

Now, to the legislation. For the record, Senator SMITH chaired a Waste Control Subcommittee hearing on March 1, 1995, to solicit testimony on interstate waste and flow control from the various interest groups, including the National Association of Counties, the National Federation of Independent Business, the Natural Resources Defense Council, and waste haulers. In addition, Senators COATS and COHEN as well as Representative CHRIS SMITH and Gov. Christine Todd Whitman testified before the committee. There is great interest in moving this legislation early in the session, and we intend to do so.

The legislation is straightforward. Title I deals exclusively with the interstate transport of waste. Title II focuses on the issue of flow control.

Let me turn to title I. On interstate shipments, this bill we are introducing is similar to S. 2345, legislation that was approved unanimously by the Senate last year. I want to make it clear that the bill before us deals exclusively with the transport, across State borders, of municipal solid waste—commonly known as garbage or trash. It purposely avoids imposing restrictions on the interstate transport of hazardous waste, industrial waste, or even construction and demolition debris, which create a different set of problems, and would require markedly different approaches.

The interstate conflict is a symptom of a larger solid waste problem. Our society is generating more and more waste. We are a throw-away society. As a result, our landfills have become precious resources. What's more, communities all across the country are finding it exceedingly difficult to site new capacity, even for waste generated within their borders.

Listen to these statistics. In the United States, we generate about 180 million tons of municipal waste each year. Forty-three States ship some 15 million tons out of State each year. Forty-two States also import some waste. Nearly every State relies on at least one other State to handle some portion of their waste. The vast majority of these shipments are noncontroversial, so-called border waste which has been traveling short distances over State lines for years. We do not want to upset these arrangements unnecessarily.

The real problem arises when some States, such as Pennsylvania, Indiana, and Ohio are forced to accept far more

waste than they want. We need a three-part strategy to solve this problem. First, we must reduce the amount of waste we produce. Second, we need to recycle more of the waste that is produced. And third, States and localities must be given some additional authority to control the disposal of waste in a safe and environmentally sound manner.

Toward this end, the bill we are considering would give States limited authority to impose restrictions on municipal wastes that are imported from other States. Subject to certain exceptions, this legislation allows a Governor to prohibit shipments of out-of-State waste if the affected local government submits a request to the Governor. In addition, a Governor could unilaterally freeze out-of-State waste at 1993 levels at certain landfills and incinerators.

The legislation, I must admit, is complicated because it attempts to accommodate the interests of many Members and because it recognizes that interstate waste is not an issue in just one or two States. In developing this bill, the chairman has struggled to provide States some control over imported garbage without unduly limiting interstate commerce.

In addressing the problem, the chairman has tried to find a solution that will reduce unwanted imports, and yet give exporting States some time to reduce the amount of waste generated, to increase recycling, and to site new, in-State capacity. I believe the legislation we are considering, while far from perfect, is equitable, and will provide a responsible solution to the problem.

To be sure, our work on this issue, as well as on flow control, has just begun. Senator SMITH and I are ready to work with the committee and other interested Members of the Senate to craft a bill that can be approved by both Senate and House.

Now to title II on flow control. Flow control is the method used to route a community's solid waste to designated, often publicly financed, disposal facilities, with little or no competition from the private sector. Flow control laws, because of their potential interference in interstate commerce, have been overturned in several Federal courts, most recently last May at the Supreme Court in Carbone versus Clarkstown. The issue is controversial both for the private waste market and the many communities that have financed waste facilities in reliance upon flow control.

The implications of congressional action on flow control have the potential to resonate throughout the economy. Flow control laws have been widely used in recent years, often as a tool to guarantee that projected amounts of waste and revenues will be received at waste management facilities funded by revenue bonds. In fact, since 1980, over $24 billion in municipal bonds have been issued to pay for the construction of solid waste facilities.

In the overwhelming majority of cases, investors were assured that the projected amounts of waste would be delivered to the facility because flow control laws were in place. In some cases, the local government agreed to bear the risk that flow control laws would be found to be unconstitutional. They have enforceable put-or-pay contracts. Now, unless a solution is developed, affected governments' bond ratings may be at risk, and local residents will have to pay for services they are not receiving.

In developing a solution, however, we must take into consideration not only the interests of local taxpayers and bondholders but also consumers and small business who may get a better deal in the absence of flow control laws. Furthermore, I have great concern generally with the anticompetitive nature of flow control.

The bill we are introducing today strikes a balance, protecting past community investments based on flow control without perpetuating an anticompetitive market going forward. Under our bill, each State and each political subdivision may exercise flow control authority if that authority is imposed pursuant to law or other legally binding provision and has been implemented by designating facilities that were constructed after the effective date of the provision and prior to May 15, 1994. In addition, the bill provides a grandfather provision, for communities that have made a substantial commitment toward the designation of a waste management facility, although not yet constructed, prior to May 15, 1994. Finally, the bill includes a flow control authority sunset provision effective 30 years after date of enactment.

Mr. President, I believe this legislation represents a good faith effort to bring the various parties together on the issues of interstate waste and flow control. It provides additional authority to waste importers without overriding the needs of waste exporting States—it protects past community financial investments and yet provides opportunities for the private sector. So, I commend the Senator from New Hampshire and look forward to working with him and the other members of the committee to report this legislation in an expeditious fashion.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 537. A bill to amend the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS ACT OF 1995

● Mr. MURKOWSKI. Mr. President, I am pleased to introduce a bill to amend the Alaska Native Claims Settlement Act of 1971. This legislation is noncontroversial and fully supported by the Alaska Federation of Natives. The bill was passed by the House of Representatives last Congress. The Senate Energy Committee held hearings and approved a similar bill. Unfortunately, it did not pass the full Senate last year because of an issue unrelated to this legislation.

The enactment of the Alaska Native Claim Settlement Act [ANCSA] was a landmark event in Alaska's history. The land grants and compensation provided to Alaska Natives under ANCSA was unprecedented and has proven to be a successful alternative to the reservation system in the lower 48 States. ANCSA created business corporations based on existing Alaska Native communities and the corporations are responsible for investing and managing assets provided under ANCSA for the benefit of the all-Native shareholders. ANCSA created a system that allows Alaska Natives to become self-sufficient.

While I am happy to say that the system created under ANCSA is working, there are some changes that are sometimes necessary to make sure the intent of ANCSA is carried out. This bill corrects existing technical problems with ANCSA and the Alaska National Interest Lands Conservation Act [ANILCA]. An identical bill was introduced in the House by my colleague from Alaska.

The legislation is designed to resolve specific problems, for example one section of the bill will make it possible for the Caswell and Montana Creek Native groups to receive lands approved by a February 1976 agreement and finally fulfill their land entitlement under ANCSA. Another provision would allow Chugach Native Corp. to select a specific tract of land at the edge of their own current boundaries. Included in this bill there are eight technical amendments to resolve specific issues. Another section would make certain veterans from the Vietnam era eligible for land allotments under ANCSA.

Mr. President, it is my hope that the committee which last year agreed that all of these items were noncontroversial will retain their spirit of cooperation so that this legislation will be able to move early in this session.●

By Mr. HATFIELD:

S. 538. A bill to reinstate the permit for, and extend the deadline under the Federal Power Act applicable to the construction of, a hydroelectric project in Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

TALENT IRRIGATION DISTRICT LICENSE EXTENSION

● Mr. HATFIELD. Mr. President, today I am introducing legislation which allows the Federal Energy Regulatory Commission to grant Talent Irrigation District, in Jackson County, OR, an extension of its hydro project construction commencement deadline.

The project is a 2.4-megawatt powerhouse, planned as an attachment to the existing Emigrant Dam, on the Emigrant River in southern Oregon. Low water conditions in the Emigrant

River, resulting from 8 years of continuous drought in Oregon, have caused the irrigation district to reevaluate the operating plan of the project. I believe granting an extension in this case will enable local officials to better configure this project to maximize power production and fish enhancement in light of the reduced water flows in the Emigrant River.

Construction of the existing Emigrant Dam was completed in 1959. It has a structural height of 176 feet and impounds 39,000 acre feet of water, which is delivered to about 8,000 users, irrigating approximately 30,000 acres.

On May 24, 1989, FERC issued a construction license to the Talent Irrigation District for the hydro project extension at Emigrant Dam. The license required construction to commence within 2 years—by May 24, 1991. In January 1991, the district requested and received a 2-year extension of the construction commencement deadline, until May 24, 1993, citing the need to consult further with the Bureau of Reclamation and continue negotiating a power sales agreement.

All negotiations were completed by April 1992, but the low flow conditions in the Emigrant River caused the Talent Irrigation District to postpone the commencement of construction and reevaluate the hydro project's proposed operating plan. When the 2-year extension expired on May 24, 1993, FERC canceled the license.

In order to commence with this project, the district needs its license reinstated and additional time to carefully evaluate the operating plan for the Emigrant hydro project and adjust it to perform better under low water conditions, both for power production and fish enhancement. The Federal Power Act, however, only allows FERC to grant one 2-year extension to the district, which it granted in 1991. Therefore, legislation is required to authorize FERC to extend the deadline further.

The legislation I am introducing today reinstates the Talent Irrigation District license and grants the district up to 4 years to begin construction.

I look forward to working with members of the Senate Energy and Natural Resources Committee to ensure that this proposal receives prompt and thorough attention.

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. 538

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

SECTION 1. REINSTATEMENT OF PERMIT EXTENSION DEADLINE.

Notwithstanding the expiration of the permit and notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 7829, the Commission shall, at the request of the licensee for the project, reinstate the permit effective May 23, 1993, and extend the time period during which the licensee is required to commence the construction of the project to the date that is 4 years after the date of enactment of this Act.●

By Mr. COCHRAN:

S. 539. A bill to amend the Internal Revenue Code of 1986 to provide a tax exemption for health risk pools; to the Committee on Finance.

THE HEALTH RISK POOLS ACT OF 1995

● Mr. COCHRAN. Mr. President, today I am introducing legislation to grant Federal tax exemption to State health risk pools. The purpose of a health risk pool is to provide health and accident insurance coverage to individuals who, because of health conditions, would otherwise not be able to secure health insurance coverage.

Since 1976, 28 States have enacted legislation establishing a health insurance pool aimed at protecting uninsurable and high-risk individuals. Most of the pools were established in the last 4 years.

For example, the Comprehensive Health Insurance Risk Pool Association Act was enacted by the Mississippi State Legislature during the 1991 legislative session and became effective April 15, 1991. At that time Mississippi became the 25th State to enact such legislation.

The Comprehensive Health Insurance Risk Pool Association was created to implement such a health insurance program. Members of the association include insurance companies and nonprofit health care organizations which are authorized to write direct health insurance policies and contracts supplemental to health insurance policies in Mississippi. The association also includes third party administrators who are paying and processing health insurance claims for Mississippi residents.

Over the past 3 years, the association has issued medical insurance policies to approximately 900 Mississippians. The association is funded by premiums paid by policyholders and quarterly assessments against members of the association. There is no public funding—State or Federal—involved.

Currently, about 120,000 individuals nationwide are a member of a State pool. Nationally, there are an additional 1 to 3 million people who are uninsured and uninsurable, and who could be eligible for inclusion in a State pool.

Unfortunately, several State health risk pools have applied for, and have been denied, exemption from Federal taxation under International Revenue Code sections 501(c)(4) and/or 501(c)(6). Generally, the Internal Revenue Service's [IRS] rationale for such denial has been that the sole activity of the health risk pools is the provision of health insurance for individual policyholders. The IRS perceives, incorrectly in my view, health risk pools as a regular business ordinarily carried on for profit, which primarily provide commercial type insurance. Moreover, the IRS takes the position that health risk pools are primarily serving the private interests of its members and not the common interest of the community as a whole.

In its decision to deny the State of Mississippi's Comprehensive Health Insurance Risk Pool Association exemption from Federal income tax, the Internal Revenue Service in a letter dated August 16, 1993, states:

> For purposes of section 501(c)(6) of the Internal Revenue Code, an organization providing insurance for its members or other individuals, except in very limited instances, either is considered to be engaged in an activity that is an economy or convenience in the conduct of members' businesses because it relieves the members of obtaining insurance on an individual basis, or is a regular business of a kind ordinarily carried on for profit. In either case, the activity of providing insurance is not considered to be an exempt activity under section 501(c)(6) and, if it is the primary activity of the organizations, exemption under section 501(c)(6) is precluded pursuant to section 1.501(c)(6)–1 of the regulations.

However, health risk pools have been created by statute in several States to serve a public function of relieving the hardship of those who, for health reasons, are unable to obtain health insurance coverage. These pools do not carry on an activity ordinarily carried on by insurance companies and are not designed to make a profit. Further, they are established by State statute and none of the net earnings benefits any private shareholder, member, or individual.

The Federal Government should serve as an impetus for, not an impediment to, State health care reform. We should do all we can to increase the ability of States to help the uninsured. The Senate Finance Committee recognized the value of health risk pools and included a version of this bill in their health care reform legislation last year.

In order to allow States real flexibility in designing effective health care plans, State health risk pools should be exempt from taxation. By passing this legislation, we will promote State-based health care reform by expressly granting Federal tax exemption to State health risk pools, notwithstanding the IRS's current position. While future national health care reform may eliminate the need for State health risk pools, until such reform is implemented, these entities will remain the only source of medical insurance for many of our citizens.

I urge my colleagues to support this legislation.

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. 539

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) subsection (c) of section 501 of the Internal Revenue Code

of 1986 (relating to list of exempt organizations) is amended by adding at the end thereof the following new paragraph:

''(26) Any corporation, association, or similar legal entity which is created by any State or political subdivision thereof to establish a risk pool to provide health insurance coverage to any person unable to obtain health insurance coverage in the private insurance market because of health conditions and no part of the net earnings of which inures to the benefit of any private shareholder, member, or individual.''

(b) The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1989.●

By Mr. GLENN (for himself, Mr. DEWINE, and Mr. LEVIN):

S. 540. A bill to amend the Federal Water Pollution Control Act to require the Administrator of the Environmental Protection Agency to conduct at least three demonstration projects involving promising technologies and practices to remedy contaminated sediments in the Great Lakes system and to authorize the Administrator to provide technical information and assistance on technologies and practices for remediation of contaminated sediments, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GLENN (for himself, Mr. DEWINE, Mr. LEVIN, and Mr. FEINGOLD):

S. 541. A bill to amend the Federal Water Pollution Control Act to coordinate and promote Great Lakes activities, and for other purposes; to the Committee on Environment and Public Works.

GREAT LAKES RESOURCES LEGISLATION

Mr. GLENN. Mr. President, it is my pleasure to rise today on behalf of myself and my distinguished colleagues, Senator DEWINE and Senator LEVIN to introduce the Assessment and Remediation of Contaminated Sediments [ARCS] Reauthorization Act and on behalf of Senator DEWINE, Senator LEVIN, and Senator FEINGOLD to introduce the Great Lakes Federal Effectiveness Act.

I am honored to be joined by a new Great Lakes Senator, Senator DEWINE. I am pleased that the Senator from my home State, Ohio, has shown such significant leadership on Great Lakes issues so early on in the 104th Congress. Both Senator LEVIN and Senator FEINGOLD's consistent leadership on issues of critical importance to the Great Lakes is exemplary. Furthermore, I am honored that another Ohio colleague, Congressman LATOURETTE, and Congressman QUINN are introducing a House companion bill for the Great Lakes Federal Effectiveness Act with Congressman OBERSTAR joining them on the ARCS Reauthorization Act.

These two bills address the unique water resources in the Great Lakes region, the impact of contaminated sediments on our freshwater resources and the need for coordinated research efforts to efficiently apply science to our efforts to protect and restore the Great Lakes. I am proud to join my colleagues from the Great Lakes region in the introduction of the ARCS Reauthorization Act and the Great Lakes Federal Effectiveness Act.

Sedimentation has created a need to dredge Great Lakes harbors for decades. Industrialization of our region and the nation increased the amount of erosion and storm water runoff which in turn escalates the amount of sediment being deposited on our lake and river bottoms and coastal shores. Unfortunately, recent times have seen dredging become increasingly costly largely due to the contaminants which accompany the silt. Contaminated dredge spoils require special handling for proper disposal which adds to the cost of the dredging.

Contrary to what one might think, the bottom of a water body is not a safe depository for toxics. Resuspension of these toxics may result from both human and natural activity in the water thus acting as a continual discharge of contamination into the water. The contaminants become available to enter the food chain or come in contact with recreational users. Contaminated sediments can result in shellfish contamination, fish advisories and threats to human health by those who consume tainted fish.

The ARCS Program is a demonstration program for innovative technology to address the problem of contaminated sediments. The 5-year ARCS program was originally authorized in the 1987 Clean Water Act. The ARCS Program authorized the implementation of pilot-scale tests of promising sediment remediation technologies to address the water pollution problems in the Great Lakes. Reauthorization of the ARCS Program takes us to the next level: full-scale demonstrations of contaminated sediment remediation. The ARCS Program, coordinated by the Administrator of the EPA, acting through the Great Lakes National Program Office, would implement three sediment remediation demonstration projects and at least one full-scale demonstration of a remediation technology.

The second bill, the Great Lakes Federal Effectiveness Act [GLFEA] is consistent with the current efforts to streamline Government and reduce redundant or outdated programs. The GLFEA will prevent unnecessary duplication of efforts among Federal agencies which undertake Great Lakes research. The act establishes a Great Lakes Council, composed of offices from the Environmental Protection Research Agency, Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal agencies conducting research in the Great Lakes basin. The Council will assess the current status of scientific research capabilities, identify research priorities for the region, make recommendations for integrated data collection and management of Great Lakes resources, and finally develop and disseminate its findings through a biennial report.

The Great Lakes Federal Effectiveness Act does not require any new funding, rather it actually aims to help agencies better manage their research budgets and potentially cut costs through cooperative efforts to set research priorities and avoid unnecessary or duplicative projects. The Great Lakes Council will essentially serve as a clearinghouse for Great Lakes information and research findings and develop a uniform, multimedia, data collection protocol for use across the Great Lakes basin.

The multimedia approach of this legislation allows our experts to share scientific knowledge and address air, water, soil, and wildlife factors in our efforts toward responsible stewardship of the Great Lakes ecosystem. This ecosystem perspective on the natural environment, if incorporated into our Federal environmental policy, promises to fundamentally improve the effectiveness and efficiency of environmental management.

The Great Lakes Federal Effectiveness Act will provide Federal, State, academic and private sector officials with a vehicle through which information can be compiled and ultimately shared among the region's research community. The act will stretch our research dollars and help us to better tap scientific resources within the private sector, the academic community, and Federal agencies. I urge my colleagues of the Senate to endorse this legislation and move toward its timely enactment.

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. DOLE, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 22, a bill to require Federal agencies to prepare private property taking impact analyses.

S. 111

At the request of Mr. DASCHLE, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 111, a bill to amend the Internal Revenue Code of 1986 to make permanent, and to increase to 100 percent, the deduction of self-employed individuals for health insurance costs.

S. 154

At the request of Mr. BUMPERS, the name of the Senator from Illinois [Mr. SIMON] was withdrawn as a cosponsor of S. 154, a bill to prohibit the expenditure of appropriated funds on the Advanced Neutron Source.

S. 240

At the request of Mr. DOMENICI, the names of the Senator from Oklahoma [Mr. NICKLES], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure