measure which was referred to the Committee on the Judiciary:

H.R. 419. An act for the relief of Benchmark Rail Group, Inc.

MEASURE PLACED ON THE CALENDAR

The following measure was read the second time by unanimous consent and placed on the calendar:

S. 1618. A bill to provide uniform standards for the award of punitive damages for volunteer services.

REPORT OF COMMITTEES

The following report of committee was submitted on March 14, 1996:

By Mr. MCCAIN, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 487: A bill to amend the Indian Gaming Regulatory Act, and for other purposes (Rept. No. 104–241).

The following reports of committees were submitted on March 15, 1996:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 1467. A bill to authorize the construction of the Fort Peck Rural County Water Supply System, to authorize assistance to the Fort Peck Rural County Water District, Inc., a nonprofit corporation, for the planning, design, and construction of the water supply system, and for other purposes (Rept. No. 104–242).

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. HATCH:

S. 1619. A bill to amend the provisions of title 17, United States Code, to provide for an exemption of copyright infringement for the performance of nondramatic musical works in small commercial establishments, and for other purposes; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself and Mrs. BOXER):

S. 1620. A bill to amend the Water Resources Development Act of 1986 to provide for the construction, operation, and maintenance of dredged material disposal facilities, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GREGG:

S. 1621. A bill to amend the Silvio O. Conte Fish and Wildlife Refuge Act to provide that the Secretary of the Interior may acquire lands for purposes of that Act only by donation or exchange, or otherwise with the consent of the owner of the lands, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATCH:

S. 1622. A bill to amend the independent counsel statute to permit appointees of an independent counsel to receive travel reimbursements for successive 6-month peroids after 1 year of service; to the Committee on the Judiciary.

By Mr. WARNER:

S. 1623. A bill to establish a National Tourism Board and a National Tourism Organization, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH:

S. 1619. A bill to amend the provisions of title 17, United States Code, to provide for an exemption of copyright infringement for the performance of nondramatic musical works in small commercial establishments, and for other purposes; to the Committee on the Judiciary.

THE MUSIC LICENSING REFORM ACT OF 1996

Mr. HATCH. Mr. President, today I am introducing the Music Licensing Reform Act of 1996: First, to clarify the ''home-style'' exemption provided by the Copyright Act for the public performance of nondramatic musical works; second, to regularize the commercial relations between the performing rights societies, which license such public performances, and their licensees, who are the proprietors of eating, drinking, and retail establishments, and third, to improve in general the oversight of the licensing practices of the two largest performing rights societies, the Association of Songwriters, Composers, Authors, and Publishers [ASCAP] and Broadcast Music, Inc. [BMI].

Music licensing has been a matter of discussion for many years. There are strongly held views among all of those involved. I am committed to trying to resolve this matter, and this bill is a good-faith effort to do so. It is my hope that it can serve as a basis for further discussion.

Commercial establishments, such as restaurants, bars, and retail stores, make money off of the public performance of musical works, whether it be from live performances, from sound recordings, or from radio and television. Commercial establishments play music or turn on radio and TV in order to make the eating, drinking, or shopping experience more pleasant. The ubiquity of these kinds of entertainment itself proves that businesses believe that it increases patronage.

Recognizing that commercial establishments make money off of the creative output of songwriters, the Copyright Act of 1976 provided songwriters with the exclusive right of public performance, so that creators might share in the added value that their product creates. In doing so, the Copyright Act carries out the philosophy of the copyright clause of the Constitution, which sees economic reward as an important incentive to artistic creation.

Mr. President, the Constitution was right. In 1993, the core copyright industries contributed approximately $238.6 billion to the U.S. economy, or 3.74 percent of the total GDP. These same core copyright industries contribute more to the U.S. economy and employ more people than any single manufacturing sector, and the growth rate of these industries continues to outpace the growth of the economy as a whole by a 2-to-1 ratio.

With domestic sales topping $10 billion each year and annual foreign sales totaling over $12 billion, the music industry by itself accounts for a huge percentage of the American economy, and its popularity abroad provides a healthy component of the U.S. balance of trade. It is really not an exaggeration to say that American music dominates the globe. In fact, it is estimated that U.S. recorded music accounts for some 60 percent of the world market. Indeed, the United States is second to none in musical creativity. The prosperity of the music industry and the creative output of American composers and songwriters must be encouraged.

At the same time, Mr. President, the Copyright Act recognizes that obtaining and paying for a license to play music should not be overly burdensome. Some of the burden of obtaining such a license is lessened by the performing rights societies, such as ASCAP, BMI, and SESAC. It would be intolerable for a restaurant, bar or store to monitor all the music that it performs and then search out the individual songwriter, composer, or publisher who owns the copyright in the music. Instead, a proprietor can go to the performing rights societies and purchase a blanket license and not worry about what music it plays, since ASCAP, BMI, and SESAC account for virtually all of the music that is normally played in the United States.

EXEMPTION FOR SMALSL COMMERCIAL ESTABLISHMENTS

The average cost to restaurants and retail establishments of a blanket license from ASCAP for all public performances, whether by radio and TV or live, is $575 per year. BMI charges on the average less than $300 per year for eating and drinking establishments for public performance by radio and TV, and its retail establishment license for these performances ranges from $60 to $480 per year. These are not large sums of money, but they still could be burdensome for some small commercial establishments. So the Copyright Act also provides for an exemption, freeing some proprietors from any obligation to compensate songwriters for the use of their music. This exemption is found in section 110(5) of the Copyright Act and it effectively applies to establishments that turn on radio and TV for their customers' enjoyment. It is known as the ''homestyle'' exemption, because it exempts ''the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes.'' Congress felt—and rightly so—that small commercial establishments that turned on ordinary radio and TV sets would have a de minimis impact on the incentive to create that music licensing fees encourage.

Unfortunately, a certain ambiguity was introduced into the exemption by the language of the House and conference reports of the Copyright Act of 1976, and this ambiguity has been exacerbated by the courts. Although the language of 110(5) only mentions sophistication of equipment, the courts

have also considered such factors as the size of the establishment, and ability to pay for a license.

Mr. President, the time has come to clarify the exemption regarding nondramatic musical works so that proprietors and performing rights societies can determine more precisely whether an establishment is exempt or not without having to engage in costly litigation.

My bill does this by exempting ''small commercial establishment[s].'' This change simply recognizes the existing state of the law. In effect, the courts have looked at a host of relevant factors in order to decide whether an establishment should have the benefit of the exemption. This new bill directs the Register of Copyrights to define ''small commercial establishment'' by regulation, and provides guidance by listing the factors that the courts have considered, as well as other factors that are relevant to the determination.

The register is not confined to these factors, however. In our rapidly changing technological environment, the expertise of the Copyright Office should not be hampered. The sound and video equipment that are common today may be obsolete in the not too distant future. The Copyright Office, unlike Congress, will be able to respond to these changes in the years ahead more quickly, with greater expertise, and with far less cost by engaging in other rulemaking proceedings. If Congress legislates specific equipment and area requirements, as some have suggested, it will have to revisit this issue time and time again.

Changing the language of 110(5) from ''homestyle'' equipment to the more general ''small commercial establishment'' may result in slightly expanding the exemption. The Copyright Office, therefore, must take care that it does not unduly upset the balance between the creative incentive on the one hand and concern for the burden on small businesses on the other.

Furthermore, the Copyright Office must bear in mind our international obligations, especially the Berne Convention. We cannot very well insist that our musical works be protected outside the United States if we cut too deeply into the protection that musical works enjoy within our borders.

Both the Register of Copyrights and the Commissioner of Patents and Trademarks have written to me that another bill dealing with the exemption, S. 1137, introduced by Senators THOMAS and BROWN, would violate the U.S. obligations under the Berne Convention. The bill that I am introducing today prevents this from happening by specifically prohibiting the Copyright Office from expanding the scope of the exemption beyond that permitted under the international treaty obligations of the United States.

COMMERCIAL RELATIONS BETWEEN PROPRIETORS AND PERFORMING RIGHTS SOCIETIES

Mr. President, this legislation addresses two areas of concern in the commercial relations between the proprietors of eating, drinking, and retail establishments who must acquire a license publicly to peform musical works and the peforming rights societies who grant such licenses as agents for composers, songwriters, and publishers.

First, in response to complaints from proprietors that the performing rights societies do not readily disclose information about their licensing fees and in response to complaints from the performing rights societies that proprietors do not readily disclose factual information about their establishments that is essential in charging them the appropriate fee, this bill directs the Register of Copyrights to promulgate regulations to establish a code of conduct, applicable to both sides, to govern their licensing negotiations and practices.

The Copyright Office is in a much better position than Congress is to study the business practices that prevail in order to identify improvements that would make these practices fairer and more efficient. The Copyright Office is also in a better position to modify these regulations as times change.

Second, my legislation directs the Copyright Office to promulgate regulations to ensure that a performing rights society provides reasonable access to its repertoire of songs and other musical compositions. The principle behind this part of the bill is easy to understand: If a person is going to be asked to pay a performing rights society in order to perform a work publicly, the payor should be able easily to verify whether the work is included in the society's repertoire. A buyer, after all, doesn't want to pay for goods that the seller has no right to sell.

Complications arise, however, in determining what is reasonable access. Both ASCAP and BMI, for example, have already made their repertoires available on line. Is this sufficient to meet the needs of their licensees or is some more conventional means also called for? Since the copyright owners of musical compositions can cancel their agency contracts with the performing rights societies, how up-to-date must the repertoire be? What happens when a song has two authors, each of which is represented by a different society?

Finally, what information needs to be supplied? Since almost all licenses are blanket licenses, giving the licensee the right to play all music in a society's repertoire, how important is detailed information on individual compositions? (Indeed, most persons engaged in the business of publicly performing copyrighted music routinely buy blanket licenses from ASCAP, BMI, and SESAC, thereby assuring that virtually all copyrighted music is covered.) It would be unwise to burden the performing rights societies with expensive obligations to provide information that is really not necessary.

Clearly, Mr. President, this problem needs the investigative tools and fine-tuning that Congress is ill-equipped to provide. That is why the Register of Copyrights needs to examine the problem and provide clear and up-to-date regulations, after input from the relevant parties.

GENERAL OVERSIGHT OF THE LICENSING PRACTICES OF ASCAP AND BMI

As I have already pointed out, Mr. President, a blanket license purchased from ASCAP and BMI will give the licensee the right publicly to perform virtually all the most popular music in the United States. For proprietors of eating, drinking, and retail establishments who play radio and TV for their customers, this is the easiest and most cost-effective way to go. This logic also applies to radio and TV broadcasters, who publicly perform countless musical works during their program days.

There are, however, other businesses for whom the blanket license is not as attractive. Religious broadcasters, for example, may play music for a few, select programs, while the rest of their programming is devoted to talk. For these and other broadcasters similarly situated, a per program license seems more attractive.

Now, a per program license is available from ASCAP and BMI; in fact, the antitrust consent decree under which ASCAP and BMI operate requires that they offer a per program license. The religious broadcasters, however, are dissatisfied with the price of the license, which, in some instances, costs more than a blanket license. ASCAP argues, however, that the administrative costs of the per program license are higher because it has to monitor the broadcasters to make sure that its music is used only for licensed programs.

The religious broadcasters would have Congress determine a pricing formula for the per program license and put it in the Copyright Act, as currently provided in S. 1137. But arriving at a formula requires a study of the pricing mechanisms and an inquiry into all the factors that go into them. Again, this is something that Congress is ill-equipped to do. Moreover, it would simply spark demands by other music licensees to do the same for them.

Fortunately, a forum for dealing with this issue already exists in the Rate Court of the U.S. District Court for the Southern District of New York. The Rate Court was set up pursuant to an antitrust consent decree that both ASCAP and BMI are party to, stemming from law suits against these performing rights societies that were brought many years ago.

Indeed, the religious broadcasters are currently arguing the per program license pricing issue before the Rate Court in a suit brought against ASCAP. A decision is expected this year. A previous case involving BMI and the TV broadcasters over the same issue resulted in a decision favorable to the broadcasters. The religious broadcasters, therefore, have a reasonable

expectation that their complaint will be decided in their favor and in the near future.

Mr. President, I question the wisdom of having Congress establish a pricing formula for per program licenses for radio broadcasters.

What Congress should be doing is looking at the overall structure and efficient functioning of the consent decree to make sure that it is working and that it is accessible to those, such as the religious broadcasters, who do not have the resources to engage in expensive, protracted litigation. This is precisely what the bill that I am introducing today proposes to do. It directs the Copyright Office to study the administration of the consent decree so that adjudication under the consent decree may be less time-consuming and more cost-effective, especially for parties with fewer resources. It may very well be, for example, that a system of local or regional arbitration may be more efficient and not too burdensome for the performing rights societies. The Judiciary Committee will consider very seriously the findings and recommendations of the Copyright Office.

Although I disagree with S. 1137, I want to thank my distinguished colleague from Colorado, Senator HANK BROWN, for his indefatigable attention to music licensing issues. Senator BROWN spent several hours trying to work out a compromise that would be acceptable to the proprietors and religious broadcasters on the one hand and to the performing rights societies and the hundreds of composers and songwriters that they represent on the other. I also want to thank my distinguished colleague from South Carolina, Senator STROM THURMOND, who brought the concerns of the religious broadcasters to my attention.

I urge them and all others interested in this issue to support the compromise legislation that I have introduced today, the Music Licensing Reform Act of 1996.

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. 1619

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 ''Music Licensing Reform Act of 1996''.

SEC. 2. EXEMPTION OF COPYRIGHT INFRINGEMENT FOR PERFORMANCE OF NONDRAMATIC MUSICAL WORKS IN SMALL COMMERCIAL ESTABLISHMENTS.

(a) IN GENERAL.—Section 110 of title 17, United States Code, is amended—

(1) in the matter preceding paragraph (1) by inserting ''(a)'' before ''Notwithstanding'';

(2) by amending paragraph (5) to read as follows:

''(5)(A) communication of a transmission embodying a performance or display of a work (except a nondramatic musical work) by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

''(i) a direct charge is made to see or hear the transmission; or

''(ii) the transmission thus received is further transmitted to the public; or

''(B) communication of a transmission embodying a performance or display of a nondramatic musical work by the public reception of the transmission on the premises of a small commercial establishment, unless—

''(i) a direct charge is made to see or hear the transmission; or

''(ii) the transmission thus received is further transmitted to the public;''; and

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

''(b)(1) For purposes of subsection (a)(5)(B), the Register of Copyrights shall define the term 'small commercial establishment' by regulation, which shall include specific, verifiable criteria. Such criteria may relate to—

''(A) the area of the establishment, including whether the establishment is of sufficient size to justify, as a practical matter, a subscription to a commercial background music service;

''(B) the kind, number, and location of equipment used;

''(C) the gross revenue of the establishment;

''(D) the number of employees; and

''(E) other relevant factors.

''(2) The definition of small commercial establishment shall not result in an exemption to the right of public performance or to the right of public display the scope of which exceeds that permitted under the international treaty obligations of the United States.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 1 of title 17, United States Code, is amended—

(1) in section 111(a)(2) by striking out ''section 110'' and inserting in lieu thereof ''section 110(a)'';

(2) in section 112(d) by striking out ''section 110(8)'' each place such term appears and inserting in each such place ''section 110(a)(8)''; and

(3) in section 118(d)(3) by striking out ''section 110'' and inserting in lieu thereof ''section 110(a)''.

SEC. 3. NEGOTIATIONS AND LICENSING BETWEEN PROPRIETORS AND PERFORMING RIGHTS SOCIETIES.

(a) IN GENERAL.—The provisions of title 17, United States Code, are amended by adding after chapter 11 the following new chapter:

''CHAPTER 12—NEGOTIATIONS AND LICENSING BETWEEN PROPRIETORS AND PERFORMING RIGHTS SOCIETIES

''§ 1201. Definitions

''For purposes of this chapter, the term—

''(1) 'performing rights society' means an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.; and

''(2) 'proprietor'—

''(A) means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business in which—

''(i) the public may assemble; and

''(ii) nondramatic musical works may be publicly performed; and

''(B) shall not include any owner or operator of—

''(i) a radio or television station licensed by the Federal Communications Commission;

''(ii) a cable system or satellite carrier;

''(iii) a cable or satellite carrier service or programmer;

''(iv) a commercial subscription music service; or

''(v) any other transmission service.

''§ 1202. Code of conduct

''(a) IN GENERAL.—The Register of Copyrights shall promulgate regulations to establish a code of conduct for the licensing negotiations and practices between a proprietor and a performing rights society. Such regulations shall include reasonable disclosure requirements for proprietors and performing rights societies and the content and form of licensing agreements.

''(b) GENERAL ENFORCEMENT.—(1) A proprietor or performing rights society may file a civil action in any United States district court of appropriate jurisdiction to enforce the code of conduct established under this section.

''(2) For purposes of an action filed under this subsection—

''(A) all parties shall be deemed to have exhausted all administrative remedies; and

''(B) the court shall conduct a trial de novo without an agency record.

''(c) ENFORCEMENT IN ACTIONS INVOLVING LICENSING AGREEMENTS.—(1) This subsection applies to any civil action filed under this section to enforce the code of conduct in which a proprietor and a performing rights society have a licensing agreement.

''(2) If a proprietor violates a provision of the code of conduct, the court shall assess a civil fine against the proprietor, payable to the performing rights society, equal to the cost of the applicable annual license fee.

''(3) If a performing rights society violates a provision of the code of conduct, the court shall order the society to grant a license to the proprietor for the nondramatic public performance of musical works in the repertoire of the society at no fee for a period of 1 year beginning on the date on which judgment is entered.

''§ 1203. Access to repertoire

''(a) IN GENERAL.—(1) The Register of Copyrights shall promulgate regulations to ensure that a performing rights society shall provide reasonable access to its repertoire so that a person engaged in the public performance of a nondramatic musical work may determine with reasonable certainty whether the public performance of a particular work may be licensed by a particular licensor.

''(2) Reasonable access to repertoire under this section shall not include access to works rarely publicly performed.

''(b) ENFORCEMENT.—(1) A proprietor or performing rights society may file a civil action in any United States district court of appropriate jurisdiction to enforce the regulations promulgated under this section.

''(2) For purposes of an action filed under this section—

''(A) all parties shall be deemed to have exhausted all administrative remedies; and

''(B) the court shall conduct a trial de novo without an agency record.

''(c) RESTRICTIONS ON PERFORMING RIGHTS SOCIETY NOT IN COMPLIANCE WITH REGULATIONS.—(1) A performing rights society may not—

''(A) file, be a party, or pay the costs of any party in any civil action alleging the infringement of the copyright in a work described under paragraph (2); or

''(B) charge a fee under any per programming period license for a work described under paragraph (2).

''(2) A work referred to under paragraph (1) is any work in such performing rights society's repertoire that is not identified and documented as required by the regulations promulgated under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by adding after the item relating to chapter 11 the following:

"12. Negotiations and licensing between proprietors and performing rights societies ..... 1201".

SEC. 4. REPORT ON CONSENT DECREE.

(a) IN GENERAL.—No later than 1 year after the date of the enactment of this Act, the Register of Copyrights shall submit a report to the Senate Committee on the Judiciary and the House of Representatives Committee on the Judiciary on the administration by the United States District Court for the Southern District of New York of the consent decree of March 14, 1950, in *United States* v. *American Society of Composers, Authors, and Publishers*, 1950 Trade Cas. T62,595 (S.D.N.Y. 1950) and the consent decree of December 29, 1966, in *United States* v. *Broadcast Music, Inc.*, 1966 Trade Cas. T71,941 (S.D.N.Y. 1966).

(b) CONTENTS.—The report under this section shall include—

(1) any recommendation for improvements so that adjudication under the consent decree may be less time-consuming and more cost-effective, especially for parties with fewer resources; and

(2) a determination whether a system of local or regional arbitration should be implemented.

SEC. 5. STATE COPYRIGHT LICENSING LAWS PREEMPTED.

Section 301 of title 17, United States Code, is amended by adding at the end the following:

''(g)(1) Any law, statute, or regulation of any State or local government which requires a performing rights society to license copyrighted musical compositions to a proprietor in a particular manner not required by this title, or to conduct such society's business in any manner not applicable to all businesses as a general manner, shall be deemed to be preempted by subsection (a) and of no force or effect.

''(2) For purposes of this subsection, the terms 'proprietor' and 'performing rights society' have the same meanings as such terms are defined under section 1201.''.

SEC. 6. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to relieve any performing rights society of any obligation under any consent decree or other court order governing the operation of such society, as such decree or order—

(1) is in effect on the date of the enactment of this Act;

(2) may be amended after such date; or

(3) may be issued or agreed to after such date.

SEC. 7. EFFECTIVE DATE.

This Act shall take effect 90 days after the date of the enactment of this Act.

By Mr. LAUTENBERG (for himself and Mrs. BOXER):

S. 1620. A bill to amend the Water Resources Development Act of 1986 to provide for the construction, operation, and maintenance of dredged material disposal facilities, and for other purposes; to the Committee on Environment and Public Works.

THE ENVIRONMENTAL DREDGE DISPOSAL ACT OF 1996

Mr. LAUTENBERG. Mr. President, today I am joined by Senator BOXER in introducing the Environmental Dredge Disposal Act of 1996, a bill to establish a fair cost-sharing formula for the disposal of dredged material.

Mr. President, under existing law, the Federal Government helps assume the cost of the disposal or dumping at sea of dredged material associated with operation and maintenance of Federal channels. However, the Federal Government does not provide similar assistance for other methods of disposal, even when these other methods are more beneficial for the environment. This inconsistency makes no sense, and threatens the economic viability of large and small ports throughout the country.

My bill proposes to eliminate this inconsistency, and would ensure that the Federal cost-sharing formula related to disposal of dredged material applies regardless of where the dredged material is disposed. More technically, the bill amends the Water Resources Development Act of 1986 to make upland, aquatic, and confined aquatic dredged material disposal facilities associated with the construction, operation, and maintenance of a Federal navigation project for a harbor or inland harbor a general navigation feature of a project for the purpose of cost sharing. The bill includes safeguards to ensure that no single port receives a competitive advantage as a result of this bill.

Mr. President, in 1824, Congress assigned responsibility for improving navigation in the still-young Nation's waterways to the Federal Government. Federal maintenance of a channel system has always been important for interstate and foreign commerce, and for national security. That remains true today. Approximately 95 percent of the Nation's import-export cargo travels on ships through American ports.

Mr. President, dredging the channels of our Nation's ports, particularly the major load centers, or hubs, is not a discretionary item. It is essential. Similarly, it is essential that dredged materials be disposed of.

Unfortunately, many ports are experiencing serious problems with respect to disposal. These problems have plagued Federal channels and Federal facilities, such as military marine terminals, as well as local and private terminals. Ports that face immediate and near-term disposal problems include Boston, New Jersey-New York, Baltimore, Houston, and Oakland. Many more ports will face disposal problems in the next century.

Some ports, including New York Harbor, lack adequate disposal facilities, which has created great difficulty in obtaining Corps of Engineers and State dredging permits. The disposal capacity of many other ports is nearly full. This problem is likely to affect many more ports in the years ahead.

For many ports with inadequate disposal facilities, disposing dredged materials in the ocean is not a viable option, because of sediments that do not meet ocean disposal standards. Other methods of disposal will have to be pursued. Yet the costs associated with these alternatives often are high. Given the national interests at stake, the Federal Government needs to share in the costs of all viable alternatives.

Unfortunately, current law prevents such cost sharing in the case of facilities located on land. There is no real justification for this limitation. And without some modification of this law, many ports may well face a serious disposal crisis in the near future.

Mr. President, let me take a moment to comment on the environmental implications of this matter. Many ports are located in estuaries and coastal areas that represent significant natural resources. I recognize that some might believe that the protection and enhancement of those resources is inconsistent with the operation of a busy port. However, that is not true. In the New York metropolitan region and the bay area of northern California, for example, both ports and natural resources coexist, and provide important economic benefits. In my view, Federal policy should seek to promote both port commerce and environmental resources. This bill would help, by making possible the construction of confined disposal facilities that would support development in an environmentally constructive manner.

Mr. President, if commerce is to progress in this Nation, if import-export trade is to increase, if our Nation is to benefit from international trade agreements, our infrastructure must be prepared to make the transportation of goods efficient and cost effective. As Transportation Secretary Federico Peña has acknowledged, the port dredging problem is a national transportation problem. Secretary Peña organized the Interagency Working Group on the Dredging Process to determine how to improve Federal performance in several areas, including interagency coordination, the regulatory process, and disposal issues. The final report to the Secretary said:

> Over the past two decades, a number of factors have complicated the development, operation and maintenance of the nation's harbors, particularly in the area of dredged material management. These factors include increases in the demands of commerce, rapid evolution of shipping practices . . ., increasing environmental awareness and mounting environmental problems affecting coastal areas and ocean waters, heavy population shifts to coastal areas and a general increase in non-Federal responsibilities in the development and management of navigation projects. As a result, dredged material management has often become a contentious problem at all stages of harbor development and operation. . . . Left unattended, these problems could cause a crisis.

The report specifically discussed the problem of an inconsistent dredged material management policy, which would be addressed by this legislation.

I would note, Mr. President, that this legislation is supported by the American Association of Port Authorities, which represents more than 85 ports in 30 States.

Mr. President, I look forward to working with my colleagues and the corps to move this legislation forward.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD along with a letter signed by a number of organizations to Chairmen CHAFEE and SHUSTER expressing their support for equitable Federal cost sharing in the disposal of dredged material.

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

S. 1620

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 ''Environmental Dredge Disposal Act of 1996''.

SEC. 2. DREDGED MATERIAL DISPOSAL FACILITIES.

Section 101 of the Water Resources Development Act of 1986 (33 U.S.C. 2211) is amended by adding at the end the following:

''(f) DREDGED MATERIAL DISPOSAL FACILITIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, after the date of enactment of this subsection, the provision of upland, aquatic, and confined aquatic dredged material disposal facilities associated with the construction, operation, and maintenance of all Federal navigation projects for harbors and inland harbors (including diking and applying dredged material to beneficial use and other improvements necessary for the proper disposal of dredged material) shall be considered to be a general navigation feature of a project for the purpose of cost sharing under this section.

''(2) LIMITATIONS ON FEDERAL SHARE OF PROJECT COSTS.—

''(A) FUNDS NOT REQUIRED FOR OPERATION AND MAINTENANCE.—No funds comprising the Federal share of the costs associated with the construction of a dredged material disposal facility for the operation and maintenance of a Federal navigation project for a harbor or inland harbor in accordance with paragraph (1) that are eligible to be paid with sums appropriated out of the Harbor Maintenance Trust Fund under paragraph (3) shall be expended for construction until the Secretary, in the Secretary's discretion, determines that the funds are not required to cover eligible operation and maintenance costs assigned to commercial navigation.

''(B) MAXIMUM FEDERAL SHARE FOR OPERATION AND MAINTENANCE.—The Federal share of the costs of activities described in paragraph (3) for a project shall not exceed $25,000,000 for any fiscal year.

''(3) OPERATION AND MAINTENANCE COSTS.—For the purposes of section 210, eligible operation and maintenance costs shall include (in addition to eligible operation and maintenance costs assigned to commercial navigation)—

''(A) the Federal share of the costs of constructing dredged material disposal facilities associated with the operation and maintenance of all Federal navigation projects for harbors and inland harbors;

''(B) the costs of operating and maintaining dredged material disposal facilities associated with the construction, operation, and maintenance of all Federal navigation projects for harbors and inland harbors;

''(C) the Federal share of the costs of environmental dredging and disposal facilities for contaminated sediments that are in, or that affect the maintenance of, Federal navigation channels and the mitigation of environmental impacts resulting from Federal dredging activities; and

''(D) the Federal share of the costs of dredging, management, and disposal of in-place contaminated sediments and other environmental remediation in critical port and harbor areas to facilitate maritime commerce and navigation.

''(4) PREFERENCE.—In undertaking activities described in paragraph (3)(D), the Secretary shall give preference to port areas with respect to which, and in accordance with the extent that, annual payments of harbor maintenance fees exceed Federal expenditures for projects in the port area that are eligible for reimbursement out of the Harbor Maintenance Trust Fund.

''(5) APPLICABILITY.—This subsection applies to the provision of a dredged material disposal facility with respect to which, and to the extent that—

''(A) a contract for construction (or for construction of a usable portion of such a facility); or

''(B) a contract for construction of an associated navigation project (or usable portion of such a project);

has not been awarded on or before the date of enactment of this subsection.

''(6) AMENDMENT OF EXISTING AGREEMENTS.—

''(A) IN GENERAL.—Unless otherwise requested by the non-Federal interest within 30 days after the date of enactment of this subsection, each cooperative agreement entered into between the Secretary and a non-Federal interest under this section shall be amended, effective as of the date of enactment of this subsection, to conform to this subsection, including provisions relating to the Federal share of project costs for dredged material disposal facilities.

''(B) APPLICATION OF AMENDMENT.—An amendment to a cooperative agreement required by subparagraph (A) shall be applied prospectively.

''(7) EFFECT ON NON-FEDERAL COSTS OF OTHER DREDGED MATERIAL DISPOSAL FACILITIES.—Nothing in this subsection shall increase, or result in the increase of, the non-Federal share of the costs of any dredged material disposal facility required by the authorization for a project.''.

FEBRUARY 26, 1996.

Re action on a water resources development act.

Hon. JOHN CHAFEE,
Chairman, Senate Committee on Environment and Public Works, Dirksen Senate Office Building, Washington, DC.

Hon. BUD SHUSTER,
Chairman, House Transportation and Infrastructure Committee, Rayburn House Office Building, Washington, DC.

DEAR GENTLEMEN: Our nation's deep-draft commercial navigation system is essential to U.S. trade, economic development and national security objectives. It is critical that Congress enact a Water Resources Development Act (WRDA) in 1996 to ensure the continued capital investment in our ports and waterways which is essential to the safe and efficient movement of cargo in international and domestic trade.

Over 95% of U.S. international trade moves through U.S. ports, and trade volumes are expected to triple by the year 2010. Shippers increasingly rely on larger vessels and just in time delivery of goods while, at the same time, there is public concern for the safe transit of these vessels. U.S. navigation channels must be improved and maintained to meet these demands.

More than 90 percent of our ports require regular maintenance dredging. These ports are diverse—they include our largest container ports, as well as other ports that principally handle such products as petroleum, steel, automobiles and fruit. Because many U.S. export commodities—grain, coal, and forest products, to name a few—face tough competition around the world, even marginal transportation cost increases affect their marketability and consequently, the nation's balance of trade. It is clear that dredging, whether to maintain existing depths or to deepen channels to meet the demand of the next generation of ocean carriers, is as essential to our nation's commerce as maintaining and improving our highways and railroads.

However, for the first time since the passage of the Water Resources Development Act of 1986, Congress failed to enact a biennial water resource bill in 1994, and did not live up to its commitment to the federal/port partnership. If a navigation project is economically justified and supported financially by the local project sponsor throughout the arduous planning process, the sponsor must be able to rely on dependable water resource authorization legislation and annual appropriations levels.

In addition to project authorization, one important provision that should be included in any WRDA bill would clarify that the cost of dredged material disposal facilities should be cost-shared at the same rate as other navigation project elements. The Senate Environment and Public Works Committee has already approved a WRDA bill, S. 640. The Committee Report on S. 640 noted that: ''With respect to the construction of dredged material disposal facilities, it is apparent that cost-sharing inconsistencies do exist. Federal and non-Federal cost-sharing responsibilities for dredged material disposal vary from project to project, region to region, and port to port depending on when the project was authorized. In addition, current cost-sharing policies favor open water disposal * * * [T]he Committee urges the Administration to report possible solutions to the Congress for consideration.''

The Report of the Federal Interagency Working Group on the Dredging Process also recommended this clarification of federal cost sharing for disposal in order to level the playing field in selection of disposal alternatives and to facilitate the implementation of important navigation projects and appropriate disposal options. As the federal government mandates more restrictive environmental regulation of dredged material disposal, it is appropriate that the federal government, where it does not do so already, share the costs to assure compliance with those environmental mandates and to provide for sufficient and safe disposal capacity.

The undersigned organizations urge you to make water infrastructure a top priority for your Committees this year. Congress must enact a Water Resources Development Act in 1996 and continue the vital investment in our national water resources and navigation infrastructure. Thank you.

Sincerely,

American Association of Port Authorities, American Institute of Merchant Shipping, American Maritime Congress, American Petroleum Institute, American Pilots Association, American President Lines, Inc., American Waterways Operators, Inc., Bay Area Planning Coalition, Crowley Maritime Corp., Dredging Contractors of America, Intermodal Conference of the American Trucking Associations, International Longshoremen's Association, International Longshoremen's and Warehousemen's Union, International Council of Cruise Lines, Lake Carriers Association, Maersk Line, Inc., Maritime Institute for Research and Industrial Development, Matson Navigation Company, Inc., National

Association of Waterfront Employers, National Waterways Conference, Pacific Northwest Waterways Association, Propeller Club of the United States, Sea-Land Service, Inc., Transportation Institute.

Mrs. BOXER. Today I am joining with Senator FRANK R. LAUTENBERG in introducing legislation that will not only bring balance in the economic burden sharing between our Nation's ports and the Federal Government but also will provide real improvements to our marine environments. Or, as one local editorial headline called it: ''Turning mush to marsh.''

I am talking about providing real economic incentives to make upland disposal of dredged material feasible for our ports. In many cases, this disposal can be used to restore wetlands, particularly for the San Francisco Bay Delta system.

The San Francisco Bay-Delta Estuary is the largest and most significant estuary along the entire west coast of the Americas. Estuaries are one of the most productive types of ecosystems in the world. At the same time, they are one of the most degraded by human activities. Habitat losses, huge fresh water diversions, and pollution—more than 60 percent of the entire runoff from the entire State of California drains into the estuary—have significantly altered the ecosystem. Bay filling has vastly depleted this habitat resource.

The bay area is also the center of a $5.4 billion-a-year economic engine providing 100,000 jobs relating to its role as a center of international maritime commerce.

Concern over environmental degradation resulted in ''mudlock'' between our ports and the environmental community. Sensing the need to establish rational, affordable, and environmentally responsible dredging policies, in 1990 the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the San Francisco Bay Regional Water Quality Control Board, the Bay Conservation and Development Commission joined with navigation and fishing interests, the environmental community, and the public at-large to establish a comprehensive long-term management strategy for bay area dredged material.

One of their successes was the establishment of the Sonoma baylands demonstration project, a congressional authorized dredged disposal site cost-shared between the Federal Government and local agencies. This former tidal wetlands was drained for agricultural use during the last century. The 325-acre site has helped restore needed wetlands in the region and reverse their decline. In addition, it provides habitat for two endangered species—the California clapper rail and the salt marsh harvest mouse.

But that was a one-time congressional demonstration project. We need to correct the underlying law that leaves local agencies with the full cost burden of establishing an upland site for disposal of dredge spoil.

Every year an average of 6 million cubic yards of sediments must be dredged from shipping channels and related navigation facilities throughout the bay area, which is the home of the ports of Oakland, Richmond, San Francisco, and Redwood City. The San Francisco Bay Conservation and Development Commission has concluded that in-bay disposal sites cannot accommodate future dredging and disposal needs.

The bay area's maritime industry is expected to need to dispose of about 300 million cubic yards of sediment over the next 50 years. Due to the growth of Pacific rim countries, export cargo moving through the west coast ports has doubled in the last 2 years. The entire maintenance dredging and channel deepening program provides the critical link for Pacific rim and world trade which contributes directly to our regional, State, and national economies.

In 1994, the Federal Government permitted an ocean disposal site nearly 60 miles off shore and included costly ocean floor monitoring procedures. Annual disposal capacity is limited at this site. Even if seemingly a viable option, in some instances weather and wave conditions impede access of the barges to this offshore site and increases the cost. Dredge material, some of which could be used to restore wetlands, is lost.

The creation of vital wetlands through the beneficial use of dredged material has proven to be highly popular in California.

Several bay area sites, both publicly and privately owned, studied in the course of the long term management strategy show clear development potential for both beneficial use and confined disposal. However, the process by which the Federal Government and local agencies share the costs and other responsibilities of dredging and disposal projects creates many barriers to completion, because it does not reflect real environmental and economic realities.

The Federal Government does not participate at all in upland disposal, while ocean disposal is cost shared by the Federal and State or local agencies. This inconsistency is prejudicial to those ports which have run out of aquatic disposal options and are forced to use upland disposal without any Federal financial assistance.

The availability of dredged disposal capacity is a growing concern in many areas of the country. We need consistent Federal-local sponsor cost sharing across all dredged material disposal methods. Uplands disposal that promotes environmental restoration should be given priority consideration.

That is why this bill is important. It would make the provision of upland, aquatic and confined aquatic, dredge material disposal facilities associated with the construction, operation, and maintenance of Federal navigation projects as a general navigation feature for the purpose of cost sharing.

A consistent Federal policy that provides for cost-sharing upland disposal facilities is a ''win-win'' for the environment and the economy of California. I urge my colleagues to support this legislation and demonstrate that we can save the environment and boost our local, regional, and national economies at the same time.

By Mr. HATCH:

S. 1622. A bill to amend the independent counsel statute to permit appointees of an independent counsel to receive travel reimbursements for successive 6-month periods after 1 year of service; to the Committee on the Judiciary.

AMENDMENTS TO THE INDEPENDENT COUNSEL REAUTHORIZATION ACT

Mr. HATCH. Mr. President, I rise to introduce an amendment to the Independent Counsel Reauthorization Act of 1994. My legislation would provide travel expense reimbursements to appointees of the Office of Independent Counsel for successive 6-month periods after 1 year of service.

This legislation is necessary because the Independent Counsel Reauthorization Act precludes attorneys and other staff fired by an independent counsel from receiving reimbursements for travel expenses they incur after they have worked for an independent counsel investigation for 18 months. Currently, the act authorizes only one 6-month extension for travel reimbursement purposes after 1 year of service.

As a result, employees of the Independent Counsel may be forced to resign as they approach their 18-month anniversaries in order to avoid incurring the additional expense of living away from home for an extended period of time. These employees must then be replaced with new personnel having less knowledge and experience, thereby causing harm and delay to the Independent Counsel's investigation.

The reimbursement limitation will begin to have full effect in the next 2 months, which is a critical time for the Independent Counsel's investigation. As the decision of the eighth circuit on March 15, 1996, reinstating the indictments against Gov. Jim Guy Tucker makes clear, the Independent Counsel's work has been effective in bringing to light public corruption at the highest levels. The trial of United States versus McDougal started on March 4, 1996. Seven employees, including four attorneys, will have reached their 18-month anniversaries by the end of the trial.

Mr. President, Congress included the 18 month limitation to control spending and fiscal irresponsibility. But we did not anticipate an investigation such as this one, in which many individuals have been temporarily relocated to a remote office. The Independent Counsel's ability to complete the investigation in a timely manner may be seriously hindered, and costs may actually increase, if we do not pass this legislation.

My legislation will remedy this problem by permitting Independent Counsel

employees to receive travel reimbursements for successive 6-month periods after their first year of service, provided that such payment is certified at the beginning of each 6-month period as being in the public interest to carry out the purposes of the 1994 act. While some of us may have reservations about the constitutionality of an Independent Counsel or the current matters being investigated, we should all agree that if we are going to have an Independent Counsel, it must be given the necessary resources to do a thorough, complete job.

By Mr. WARNER:

S. 1623. A bill to establish a National Tourism Board and a National Tourism Organization, and for other purposes.

THE TRAVEL AND TOURISM PROMOTION ACT OF 1996

● Mr. WARNER. Mr. President, many of us do not focus on the impact that the travel and tourism industry has on our economy. Tourism means jobs in all of our States and tax revenue for our Federal, State, and local treasuries.

Whether it be our hotels, airlines, restaurants, campgrounds, amusement parks, or historically significant sights, tourism works for America.

The U.S. travel and tourism industry is the second leading provider of jobs in this Nation and the third largest retail industry giving the United States a $21.6 billion trade surplus.

Just last year, visitors from abroad brought approximately $80 billion to our economy which is one-fifth of the total $400 billion provided to the economy by the travel and tourism industry. It should be an economic powerhouse.

However, our lead is slipping. For the past several years the U.S. share of the international travel market has declined. Last year, 2 million fewer foreign visitors came to the United States, representing a 19-percent decline. This translated into 177,000 fewer travel-related jobs.

Mr. President, we must reverse this decline. We need to attract more international tourists and enhance the travel experience for both domestic and international travelers. The United States must remain the destination of choice for world travelers.

I am therefore introducing legislation today to create a public-private partnership between the travel and tourism industry and the Federal Government to aggressively market the promotion of international travel to the United States.

With the elimination of the U.S. Travel and Tourism Administration, the United States will become the only major developed nation without a Federal tourism office. We need a national strategy to maintain and increase our share of the global travel market. Other nations pour money into marketing attempting to lure tourists to their shores, and they are doing it at our expense. This legislation will provide the tools with which the United States can compete with any nation.

We can counter these foreign promotion dollars with a combination of technical assistance from the Federal Government and financial assistance from the private sector. This legislation will create a true public-private partnership between the travel and tourism industry and the public sector to effectively promote international travel to the United States. It supplants the big-government, top-down bureaucracy which was eliminated with the U.S. Travel and Tourism Administration.

The bill establishes a Federal charter for a National Tourism Board and a National Tourism Organization, which will act as a not-for-profit corporation. Members of the National Tourism Board will be appointed by the President with the input of the travel and tourism industry to advise the President and Congress on policies to improve the competitiveness of the U.S. travel and tourism industry in the global marketplace.

The National Tourism Organization will be charged with implementing the tourism promotion strategy proposed by the National Tourism Board. The president of the National Tourism Organization will also serve as a member of the Trade Promotion Coordinating Committee, which is the agency that develops our U.S. export trade promotion and financing programs, thereby further promoting the economic importance of the travel and tourism industry.

A primary task of the National Tourism Organization will be the establishment of a travel-tourism data bank to collect international market data for dissemination to the travel and tourism industry and to promote tourism to the United States at international trade shows.

No later than 1 year upon enactment of this legislation, the officers of the organization will meet to make recommendations for the long-term financing of the organization. However, no Federal funding is associated with this legislation. This is an industry-funded and industry-directed initiative.

Travel industry leaders from around the Nation enthusiastically endorsed the plan embodied in this bill when it was introduced at the just-completed White House conference on travel and tourism. In addition, this bill has the support of the White House, the House leadership, and 189 House Members.

Together, through the collective talent of both the board and the organization, as well as the technical assistance provided by the Federal Government through its staff and data collection, it is my hope that America will once again launch itself into the international tourism market as the destination of choice—bringing more jobs as well as revenue to our States and local communities.●

ADDITIONAL COSPONSORS

S. 942

At the request of Mr. THOMPSON, his name was added as a cosponsor of S. 942, a bill to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

At the request of Mr. MURKOWSKI, his name was added as a cosponsor of S. 942, supra.

S. 1610

At the request of Mr. BOND, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 1610, a bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees.

SENATE CONCURRENT RESOLUTION 43

At the request of Mr. THOMAS, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Delaware [Mr. ROTH], the Senator from Oklahoma [Mr. NICKLES], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Concurrent Resolution 43, a concurrent resolution expressing the sense of the Congress regarding proposed missile tests by the People's Republic of China.

SENATE RESOLUTION 215

At the request of Mr. LAUTENBERG, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Resolution 215, a resolution to designate June 19, 1996, as ''National Baseball Day.''

SENATE RESOLUTION 226

At the request of Mr. DOMENICI, the names of the Senator from Washington [Mrs. MURRAY], the Senator from North Dakota [Mr. CONRAD], and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of Senate Resolution 226, a resolution to proclaim the week of October 13 through October 19, 1996, as ''National Character Counts Week.''

AMENDMENT NO. 3526

At the request of Mr. THURMOND the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of amendment No. 3526 proposed to H.R. 3019, a bill making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes.