By Mr. CHAFEE, from the Committee on Environment and Public Works:

Special Report entitled ''Activities of the Committee on Environment and Public Works for the One Hundred and Fourth Congress'' (Rept. No. 105–13).

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. D'AMATO (for himself, Mr. MURKOWSKI, Mr. DODD, Mr. SARBANES, Mr. GRAMM, Mr. SHELBY, Mr. MACK, Mr. FAIRCLOTH, Mr. ALLARD, Mr. LOTT, Mr. DOMENICI, Mr. AKAKA, Mr. INOUYE, Mr. COATS, Mr. COCHRAN, Mr. ROBERTS, Mr. BROWNBACK, Mr. COVERDELL, Mr. SPECTER, and Mr. NICKLES):

S. 621. A bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1997, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATCH (for himself, Mr. CONRAD, Mr. COCHRAN, Mr. GREGG, Ms. MOSELEY-BRAUN, Mr. ENZI, Mr. INOUYE, Mr. BAUCUS, Mr. REID, Mr. D'AMATO, Mr. KYL, Mr. ASHCROFT, Mr. DOMENICI, Mr. HAGEL, Mr. BOND, Mr. THOMAS, Mr. MURKOWSKI, and Mr. NICKLES):

S. 622. A bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 623. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. BUMPERS:

S. 624. A bill to establish a competitive process for the awarding of concession contracts in units of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MCCONNELL (for himself, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. GORTON, and Mr. GRAMS):

S. 625. A bill to provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form on insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KENNEDY:

S. 626. A bill to amend the Fair Labor Standards Act of 1938 to provide for legal accountability for sweatshop conditions in the garment industry, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. JEFFORDS (for himself, Mr. MURKOWSKI, Mr. CHAFEE, Mr. COCHRAN, Mr. LEAHY, and Mr. WELLSTONE):

S. 627. A bill to reauthorize the African Elephant Conservation Act; to the Committee on Environmental and Public Works.

By Mr. GRAMM (for himself and Mrs. HUTCHISON):

S. 628. A bill to designate the United States courthouse to be constructed at the corner of 7th Street and East Jackson Street in Brownsville, Texas, as the ''Reynaldo G. Garza United States Courthouse''; to the Committee on Environment and Public Works.

By Mr. BREAUX (by request):

S. 629. A bill entitled the ''OECD Shipbuilding Agreement Act''; to the Committee on Commerce, Science, and Transportation.

By Mr. BYRD:

S. 630. A bill to amend the Internal Revenue Code of 1986 to deposit in the Highway Trust Fund the receipts of the 4.3-cent increase in the fuel tax rates enacted by the Omnibus Budget Reconciliation Act of 1993; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. THURMOND:

S. Res. 76. A resolution proclaiming a nationwide moment of remembrance, to be observed on Memorial Day, May 26, 1997, in order to appropriately honor American patriots lost in the pursuit of peace and liberty around the world; to the Committee on the Judiciary.

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 77. A resolution to authorize representation by the Senate Legal Counsel; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. D'AMATO (for himself, Mr. MURKOWSKI, Mr. DODD, Mr. SARBANES, Mr. GRAMM, Mr. SHELBY, Mr. MACK, Mr. FAIRCLOTH, Mr. ALLARD, Mr. LOTT, Mr. DOMENICI, Mr. AKAKA, Mr. INOUYE, Mr. COATS, Mr. COCHRAN, Mr. ROBERTS, Mr. BROWNBACK, Mr. COVERDELL, Mr. SPECTER, and Mr. NICKLES):

S. 621. A bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1997, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1997

Mr. D'AMATO. Mr. President, today I introduce the Public Utility Holding Company Act of 1997. This legislation is substantively identical to S. 1317 which the Senate Banking Committee reported in the 104th Congress. The bill would repeal the Public Utility Holding Company Act of 1935, [PUHCA] and would transfer residual regulatory authority from the Securities and Exchange Commission to the Federal Energy Regulatory Commission and State public service commissions.

Mr. President, this bill is introduced with the bipartisan cosponsorship of Senators MURKOWSKI, DODD, SARBANES, GRAMM, SHELBY, MACK, FAIRCLOTH, ALLARD, LOTT, DOMENICI, AKAKA, INOUYE, COATS, COCHRAN, ROBERTS, BROWNBACK, COVERDELL, and SPECTER.

Mr. President, this legislation would eliminate duplicative, unnecessary regulation which unfairly burdens a few utility holding companies. It would allow holding companies to improve service and possibly lower the costs of consumers' utility bills. The bill would enhance existing regulatory tools and provide State and Federal regulators new authority to ensure that they can protect energy consumers from unfair rate increases.

PUHCA was originally enacted more than six decades ago to regulate public utility holding companies. At that time, this Federal statute was needed to fill the regulatory gap that enabled holding companies to conceal assets by creating and speculating in public utility companies.

Mr. President, PUHCA has achieved the congressional purpose—it broke up the mammoth holding company structures that existed more than half a century ago. PUHCA is not only outdated, it is the relic of a different era. Today there is strong regulation of the energy industry at the State and Federal level. In addition, the Federal securities laws' registration and disclosure requirements have become effective tools for the SEC to protect investors and ensure the integrity of the market for public utility holding company securities.

Originally enacted to protect consumers and investors, PUHCA has become an unnecessary impediment to efficient and flexible business operations. Currently, there are 180 public utility holding companies in the United States. Of these 180 companies, 165 are exempt from PUHCA and only 15 companies are subject to direct SEC regulation. As a result, PUHCA imposes a burdensome regulatory scheme on these 15 registered holding companies and prevents them from diversifying into new business areas. PUHCA keeps these holding companies from diversifying, limits their growth opportunities and options, and requires the companies to apply for SEC permission to engage in almost all new business activities.

PUHCA also hinders the growth of nonregistered, exempt holding companies. Once exempt companies expand their business across State lines they too become subject to PUHCA's restrictions. As a result, exempt companies refrain from expanding across State lines even when such a move would lead to cheaper and more efficiently produced energy for consumers. Similarly, PUHCA prevents non-utility holding companies from diversifying into utility business.

Mr. President, PUHCA is more than just another example of Government overregulation—it is an impediment to both the deregulation of the energy industry and to the growth and diversification of existing businesses. Since many States have begun to deregulate the energy industry and Congress plans to review energy reform issues, the time for PUHCA reform is now. This year, in my own backyard, Long Island, two utility companies will merge.

This merger is expected to reduce energy bills for Long Island energy customers who currently pay the highest rates for energy in the continental U.S. The merger will not only lead to lower rates, but it should also mean better service for customers.

While Long Island's energy customers can finally look forward to lower rates, PUHCA prevents other utility companies from expanding, merging, and offering new services to consumers. Like any other utility merger, the State, the FERC and other Federal regulators will have to approve this merger. Under PUHCA, if either of these companies was a registered holding company or the merger involved companies from neighboring States, the companies would also have to seek SEC approval of the merger in advance and at all subsequent stages of restructuring. For example, if this merger included utility companies from New Jersey or Connecticut, PUHCA's restrictions on diversification and burdensome requirements, could have prevented a merger that would benefit consumers, investors, and business.

As one of the leaders in energy deregulation, New York State provides an example of why PUHCA reform is necessary now. Without PUHCA reform, companies will choose alternative corporate structures to avoid PUHCA's restrictive requirements, preventing the efficient restructuring of the energy industry. Congress must reform PUHCA so that the energy industry will be efficient and consumers can realize the reduction in rates and improvement in services they deserve.

Mr. President, the bill I introduce today follows the SEC's Division of Investment Management's 1995 recommendation to conditionally repeal PUHCA since ''the current regulatory system imposes significant costs, in direct administrative charges and foregone economies of scale and scope, that often cannot be justified in terms of benefits to utility investors.'' The legislation has been crafted in consultation with State and Federal utility regulators, public interest groups, the Senate Energy Committee, and both registered and non-registered utility companies.

Mr. President, let me summarize the purpose of the bill. The Public Utility Company Act of 1997 would maintain the provisions of the 1935 Act essential to consumer protection. In fact, the bill enhances consumer safeguards by enabling energy regulators to oversee all holding company operations. Specifically, the bill makes it easier for FERC and State public service commissions to protect consumers from paying nonutility related costs by giving the regulators expanded authority to review the books and records of all holding company activities to determine energy rates. At the same time, the bill would preserve FERC's authority to review transactions, acquisitions, and mergers of utilities and would clarify the FERC and state commission's authority to allocate costs when setting rates. The bill also gives state commissions vital enforcement backup to ensure that they can access all the books and records necessary to make rate determinations.

Mr. President, the goal of PUHCA reform is increased competition—to make sure consumers ultimately pay lower utility rates not higher ones. While some would prefer to address PUHCA reform in the larger context of comprehensive energy deregulation, there is no reason to delay consideration of this separate bill I introduce today. Rather than package PUHCA with comprehensive reform of the federal energy laws, PUHCA reform can proceed, on a stand alone basis, as it does not affect the larger energy issues which my knowledgeable colleagues on the Energy Committee are considering.

In fact, the experts in the energy field, lead by the distinguished chairman and former ranking member of the Energy Committee, Senators MURKOWSKI and Johnston, who testified before the Banking Committee on this issue last year, believe that PUHCA reform should move independently of, and separate from, full energy deregulation. PUHCA reform is a necessary first step in creating an efficient energy industry.

Mr. President, I have been a proponent of PUHCA reform for 16 years. Congress should allow consumers access to the cheapest power and the best services by repealing this burdensome and unnecessary law. The American people deserve and expect an efficient energy industry unfettered by unnecessary regulation. The legislation I introduce today accomplishes this by removing the energy industry from the 60-year-old regulatory shackles put in place by PUHCA. I urge my colleagues to support this legislation so that we may provide consumers with a highly efficient energy market that has better consumer protections.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 621

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Public Utility Holding Company Act of 1997''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Public Utility Holding Company Act of 1935 was intended to facilitate the work of Federal and State regulators by placing certain constraints on the activities of holding company systems;

(2) developments since 1935, including changes in other regulation and in the electric and gas industries, have called into question the continued relevance of the model of regulation established by that Act;

(3) there is a continuing need for limited Federal and State regulation in order to ensure the rate protection of utility customers; and

(4) limited Federal regulation is necessary to supplement the work of State commissions for the continued rate protection of electric and gas utility customers.

(b) PURPOSES.—The purposes of this Act are—

(1) to eliminate unnecessary regulation, yet continue to provide for consumer protection by facilitating existing rate regulatory authority through improved Federal and State commission access to books and records of all companies in a holding company system, to the extent that such information is relevant to rates paid by utility customers, while affording companies the flexibility required to compete in the energy markets; and

(2) to address protection of electric and gas utility customers by providing for Federal and State access to books and records of all companies in a holding company system that are relevant to utility rates.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term ''affiliate'' of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company;

(2) the term ''associate company'' of a company means any company in the same holding company system with such company;

(3) the term ''Commission'' means the Federal Energy Regulatory Commission;

(4) the term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing;

(5) the term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale;

(6) the terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935, as those sections existed on the day before the effective date of this Act;

(7) the term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power;

(8) the term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon holding companies;

(9) the term ''holding company system'' means a holding company, together with its subsidiary companies;

(10) the term ''jurisdictional rates'' means rates established by the Commission for the

transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use;

(11) the term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale;

(12) the term ''person'' means an individual or company;

(13) the term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce;

(14) the term ''public utility company'' means an electric utility company or a gas utility company;

(15) the term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies;

(16) the term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon subsidiary companies of holding companies; and

(17) the term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 4. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed, effective 18 months after the date of enactment of this Act.

SEC. 5. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 6. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, and subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information, a holding company or its associate company or affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission deems are relevant to costs incurred by such public utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, records, or any other information, or in any way limit the rights of any State to obtain books, records, or any other information under Federal law, contract, or otherwise.

(c) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 7. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the date of enactment of this Act, the Commission shall promulgate a final rule to exempt from the requirements of section 5 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds that the books, records, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility company, the Commission shall exempt such person or transaction from the requirements of section 5.

SEC. 8. AFFILIATE TRANSACTIONS.

Nothing in this Act shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

SEC. 9. APPLICABILITY.

No provision of this Act shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of his or her official duty.

SEC. 10. EFFECT ON OTHER REGULATIONS.

Nothing in this Act precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 11. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825d–825p) to enforce the provisions of this Act.

SEC. 12. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this Act prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the effective date of this Act, if that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this Act limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

SEC. 13. IMPLEMENTATION.

Not later than 18 months after the date of enactment of this Act, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this Act; and

(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this Act and the amendments made by this Act.

SEC. 14. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this Act shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 15. EFFECTIVE DATE.

This Act shall take effect 18 months after the date of enactment of this Act.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this Act.

SEC. 17. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

Mr. MURKOWSKI. Mr. President, I rise to cosponsor the Public Utility Holding Company Act of 1997. Enactment of this legislation is long overdue.

Mr. President, the Public Utility Holding Company Act was enacted in 1935 to curb serious abuses by utilities that hurt consumers. Back then it was needed, but since then much has

changed. As a result, PUHCA now does more harm than good.

This legislation will eliminate unnecessary regulation. It will also streamline and make more effective the regulation that is still needed. By doing so, it will promote competition in the electric power industry without jeopardizing consumer protections.

Over the past six decades, a comprehensive State-Federal regulatory system has been developed to protect consumers. In a nutshell, State public utility commissions regulate transactions that are intrastate in nature, and the Federal Energy Regulatory Commission regulates those that are interstate in nature. State commissions perform their regulatory activities pursuant to State law, and the FERC performs it pursuant to the Federal Power Act.

With the maturity of both State and Federal utility regulation, PUHCA is now at best superflouous, but in some instances it actually interferes with appropriate regulation. For example, the Ohio Power court case held that decisions by the Securities and Exchange Commission under PUHCA preempt FERC's regulatory authority over utilities under the Federal Power Act. This legislation solves that problem by giving the FERC clear and exclusive authority to address matters within its jurisdiction and expertise. It will also enhance the ability of State regulatory agencies to do their jobs. In short, the streamlining of the regulatory system proposed by this legislation will not diminish needed consumer protection, and in several important ways it will actually enhance it.

If the regulatory system created by PUHCA were necessary for consumer protection, then the regulatory burdens it imposes might be justified. But as everyone now acknowledges, PUHCA is not needed to protect consumers. As a result, regulatory costs caused by PUHCA are simply passed on to consumers in the form of higher rates without any offsetting consumer benefits.

Congress has long recognized that PUHCA creates problems. In 1978, the Public Utility Regulatory Policies Act provided an exemption from PUHCA for certain types of electric power generators. In 1992, the Energy Policy Act gave additional exemptions to certain other types of electric power generators. These were Band-Aid fixes to PUHCA; needed, but not a complete solution. Fundamental reform of PUHCA is needed and is justified. The time is ripe to streamline and modernize the act. It is for these reasons that I am cosponsoring Senator D'AMATO's legislation.

Mr. President, there may be some who will try to use this legislation as a vehicle to restructure the electric utility industry, including to impose retail wheeling or to federally preempt State public utility commissions. I will strenuously resist any such effort. I have received assurances that Senator D'AMATO is of like mind. This is not the place to do this. Retain wheeling and other utility competitive issues are not linked to the issues involved in PUHCA reform. Moreover, retail wheeling and other Federal Power Act matters are entirely within the jurisdiction of the Committee on Energy and Natural Resources, not the Committee on Banking, Housing and Urban Affairs, to which this legislation will be referred. Electric utility issues are very complex, and they are very significant not only to consumers but also to this Nation's competitiveness and economic well-being. These kinds of changes cannot, and will not be made without careful and complete consideration by the Committee on Energy and Natural Resources of all aspects of the issues and questions they raise. That is why the Committee on Energy and Natural Resources is now in the process of reviewing the factors that affect the competitiveness of the electric power industry.

Mr. President, it is for these reasons that I am today cosponsoring this legislation and I hope that it will soon be on the President's desk for his signature.

By Mr. HATCH (for himself, Mr. CONRAD, Mr. COCHRAN, Mr. GREGG, Ms. MOSELEY-BRAUN, Mr. ENZI, Mr. INOUYE, Mr. BAUCUS, Mr. REID, Mr. D'AMATO, Mr. KYL, Mr. ASHCROFT, Mr. DOMENICI, Mr. HAGEL, Mr. BOND, Mr. THOMAS, Mr. MURKOWSKI, and Mr. NICKLES):

S. 622. A bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans; to the Committee on Finance.

NONDISCRIMINATION RULES FOR GOVERNMENT PENSION PLANS LEGISLATION

Mr. HATCH. Mr. President, I rise today to introduce legislation with Senators CONRAD, COCHRAN, GREGG, MOSELEY-BRAUN, ENZI, INOUYE, BAUCUS, REID, D'AMATO, KYL, ASHCROFT, DOMENICI, HAGEL, BOND, THOMAS, and MURKOWSKI that would make permanent the current moratorium on the application of the pension nondiscrimination rules to State and local government pension plans. During the last Congress, I introduced similar legislation as S. 2047. And this year, a similar provision was included in S. 14, introduced by Senator DASCHLE.

The current laws governing private pension plans contain specific rules aimed at ensuring that pension plans do not discriminate in favor of highly paid employees. For nearly 20 years, State and local government pension plans have been deemed to satisfy these complex nondiscrimination rules until Treasury can figure out how or if these rules are applicable to unique government pension plans. This bill simply puts an end to this stalled process and dispels two decades of uncertainty for administrators of State and local government retirement plans. Let me summarize the evolution of this issue and why this bill is being introduced today.

Mr. President, the Federal Government has long ago established a policy of encouraging tax-deferred retirement savings. Most retirement plans that benefit employees are employer-sponsored tax-deferred retirement plans. Over the years, Congress has required that these plans meet strict nondiscrimination standards designed to ensure that they do not provide disproportionate benefits to business owners, officers, or highly compensated individuals relative to other employees.

In response to the growing popularity of employer-sponsored tax-deferred pension plans, Congress passed the Employee Retirement Income Security Act [ERISA] in 1974 to enhance the rules governing pension plans. However, during consideration of ERISA, Congress recognized that nondiscrimination rules for private pension plans were not readily applicable to public pension plans because of the unique nature of governmental employers. Former Representative Al Ullman stated, during Ways and Means Committee consideration of ERISA, that Congress was not prepared to apply nondiscrimination rules to public plans, saying that:

> The committee exempted Government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on governmental plans.

After studying the issue, the Internal Revenue Service on August 10, 1977, issued News Release IR–1869, which stated that issues concerning discrimination under State and local government retirement plans would not be raised until further notice. Thus, an indefinite moratorium was placed on the application of the new rules to government plans.

In 1986, Congress passed the Tax Reform Act of 1986, which made further changes to pension laws and the general nondiscrimination rules. On May 18, 1989, the Department of the Treasury, in proposed regulations, lifted the 12-year public sector moratorium and required that public sector plans comply with the new rules immediately. However, further examination revealed, and Treasury and the IRS recognized, that a separate set of rules was required for State and local government plans because of their unique features.

Consequently, through final rules issued in September 1991, the Treasury reestablished the moratorium on a temporary basis until January 1, 1993, and solicited comments for consideration. In addition, State and local government pension plans were deemed to satisfy the statutory nondiscrimination requirements for years prior to 1993. Since then, the moratorium has been extended three more times, the latest of which is in effect until 1999.

Mr. President, here we are, in April 1997, 23 years since the passage of

ERISA, and State and local government pension plans are still living under the shadow of having to comply with the cumbersome, costly, and complex nondiscrimination rules. Experience over the past 20 years has shown that the existing nondiscrimination rules have limited utility in the public sector. Furthermore, the long delay in action illustrates the seriousness of the problem and the doubtful issuance of nondiscrimination regulations by the Department of the Treasury.

Mr. President, during consideration of another extension of the moratorium, a coalition of associations representative of State and local governmental plans summarized their current position in a letter to IRS Commissioner Margaret Richardson dated October 13, 1995.

In our discussions with Treasury over the past two years, there have been no abuses or even significant concerns identified that would warrant the imposition of such a cumbersome thicket of federal rules on public plans that already are the subject of State and local government regulation.

Accordingly, while we always remain open to further discussion, as our Ways and Means statement indicates, the experience of the past two years in working with Treasury to develop a sensible and workable set of nondiscrimination rules for governmental plans has convinced us that the task ultimately is a futile one—portending tremendous cost, complexity, and disruption of sovereign State operations in the absence of any identifiable problem.

Mr. President, the sensible conclusion of this 20-year exercise is to admit that the Treasury is not likely to issue regulations for State and local pension plans and Congress should make the temporary moratorium permanent.

Furthermore, there are examples to support this legislation. Relief from the pension nondiscrimination rules is not a new concept. In reality, Mr. President, State and local government pension plans face a higher level of scrutiny. State law generally requires publicly elected legislators to amend the provisions of a public plan. Electoral accountability to the voters and media scrutiny serve as protections against abusive and discriminatory benefits.

Moreover, precedent exists for Congress to grant relief from the nondiscrimination rules. In 1986, the Congress established the Thrift Savings Fund for Federal employees. As originally enacted, the fund was required to comply with the 401(k) nondiscrimination rules on employee contributions and matching contributions to the fund. However, in 1987, as part of a Continuing Appropriations Act for 1988, the Congress passed a provision that made these nondiscrimination rules inapplicable to the Federal Thrift Savings Fund. Thus, Congress has reaffirmed the need to treat governmental pension plans as unique.

Mr. President, this legislation is not sweeping, nor does it grant any new treatment to these plans. Because of the moratorium, governmental plans are currently treated as satisfying the nondiscrimination rules. Lifting the moratorium would impose on governmental pension plans the cost task of testing for discrimination when no significant abuses or concerns exist. In fact, finally imposing the nondiscrimination rules at this juncture may require benefits to be reduced for State and local government employees and force costly modifications to these retirement plans. This legislation coincides with the principle of allowing a State to enjoy the right to determine the compensation of its employees.

Mr. President, with another expiration of the moratorium looming in the future, I believe it is time to address this issue. I have no illusion that it will be resolved quickly. The complexities of these rules and the uniqueness of governmental plans have brought us to where we are today. I believe that, as Senators better understand the history of this issue, they will agree with us that the appropriate step is to end this uncertainty and make the temporary moratorium permanent.

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. 622

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

SECTION 1. MODIFICATIONS TO NONDISCRIMINATION AND MINIMUM PARTICIPATION RULES WITH RESPECT TO GOVERNMENTAL PLANS.

(a) GENERAL NONDISCRIMINATION AND PARTICIPATION RULES.—

(1) NONDISCRIMINATION REQUIREMENTS.—Section 401(a)(5) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by adding at the end the following:

''(G) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).''.

(2) ADDITIONAL PARTICIPATION REQUIREMENTS.—Section 401(a)(26)(H) of such Code (relating to additional participation requirements) is amended to read as follows:

''(H) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).''.

(3) MINIMUM PARTICIPATION STANDARDS.—Section 410(c)(2) of such Code (relating to application of participation standards to certain plans) is amended to read as follows:

''(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall only apply if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).''.

(b) PARTICIPATION STANDARDS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—Section 401(k)(3) of the Internal Revenue Code of 1986 (relating to application of participation and discrimination standards) is amended by adding at the end the following:

''(G)(i) The requirements of subparagraph (A)(i) and (C) shall not apply to a governmental plan (within the meaning of section 414(d)).

''(ii) The requirements of subsection (m)(2) (without regard to subsection (a)(4)) shall apply to any matching contribution of a governmental plan (as so defined).''.

(c) NONDISCRIMINATION RULES FOR SECTION 403(b) PLANS.—Section 403(b)(12) of the Internal Revenue Code of 1986 (relating to nondiscrimination requirements) is amended by adding at the end the following:

''(C) GOVERNMENTAL PLANS.—For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) shall not apply to a governmental plan (within the meaning of section 414(d)).''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section apply to taxable years beginning on or after the date of enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403 (b)(1)(D) and (b)(12), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.

Mr. CONRAD, Mr. President, I rise today as an original cosponsor of legislation to modify the application of pension nondiscrimination rules to State and local governmental pension plans. This legislation, originally introduced by Senator HATCH and myself in the 104th Congress, will provide relief to State and local governments from unnecessary and overly burdensome Federal regulations.

Pension nondiscrimination laws are to assure that workers at all levels of employment are given access to the benefits of tax-exempt pension plans. As employers, State and local governments employ a wide range of workers, from judges to firefighters to teachers. Each occupation requires that its unique circumstances be considered when determining pension benefits. Laws that were created by the Federal Government do not adequately address the needs of the diverse work force of State and local governments.

Public pension plans are negotiated by popularly elected governments and subject to public scrutiny. They do not require a high degree of Federal review. The process of enacting these plans promotes fair benefits for governmental employees. Public pension plans have been given temporary exemption from nondiscrimination laws for almost 20 years, and the result is that full-time public employees enjoy almost twice the pension coverage rate of their counterparts in the private sector. It is time to make this temporary exemption permanent.

This bill enjoys a wide range of support from State and local governments, as well as public employee representatives. I urge my colleagues to join Senator HATCH and me, along with a bipartisan group of Senators, to ease the burden of Federal regulation on State and local governments. I look forward to this bill's consideration in committee and on the Senate floor.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 623. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the

Government of the Commonwealth of the Phillipines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans Affairs.

THE FILIPINO VETERANS EQUITY ACT OF 1997

Mr. INOUYE. Mr. President, I rise to introduce legislation which amends title 38, United States Code, to restore full veterans' benefits, by reason of service to certain organized military forces of the Philippine Commonwealth Army and the Philippine Scouts.

On July 26, 1942, President Roosevelt issued a military order that called members of the Philippine Commonwealth Army into the service of the U.S. Forces of the Far East. Under the command of Gen. Douglas MacArthur, our Filipino allies joined American soldiers in fighting some of the most fiercest battles of World War II.

From the onset of the war through February 18, 1946, Filipinos who were called into service under President Roosevelt's order were entitled to full veterans' benefits by reason of their active service in our Armed Forces. Unfortunately, on February 18, 1946, the Congress enacted the Rescission Act of 1946 (now codified as section 107, title 38, United States Code), which states that service performed by these Filipino veterans is not deemed as active service for purposes of any law of the United States conferring rights, privileges, or benefits. On May 27, 1946, the Congress extended the limitation on benefits to the new Philippine Scouts units.

Interestingly enough, section 107 denied Filipino veterans access to health care, particularly for nonservice connected disability, and denied them other benefits such as pensions and home loan guarantees. Additionally, section 107 limited the benefits received for service-connected disabilities and death compensation to 50 percent of what was received by their American counterparts.

As a result, Filipino veterans sued to obtain relief from this discriminatory treatment. The U.S. District Court for the District of Columbia, on May 12, 1989, in Quiban versus U.S. Veterans Administration, declared section 107 unconstitutional. However, the U.S. Court of Appeals for the District of Columbia reversed that ruling and the veterans did not file a petition for certiorari to the U.S. Supreme Court. Thus, the Congress is the only hope for rectifying this injustice.

For many years, Filipino veterans of World War II have sought to correct this injustice by seeking equal treatment for their valiant military service in our Armed Forces. We must not ignore the recognition they duly deserve as U.S. veterans. Accordingly, I urge my colleagues to support this measure which would restore full veterans' benefits, by reason of service, to our Filipino allies of World War II.

Mr. President, I ask unanimous consent that the text of my bill be placed in the RECORD.

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

S. 623

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 ''Filipino Veterans Equity Act of 1997''.

SEC. 2. CERTAIN SERVICE IN THE ORGANIZED MILITARY FORCES OF THE PHILIPPINES AND THE PHILIPPINE SCOUTS DEEMED TO BE ACTIVE SERVICE.

(a) IN GENERAL.—Section 107 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out ''not'' after ''Army of the United States, shall''; and

(B) by striking out '', except benefits under—'' and all that follows and inserting in lieu thereof a period; and

(2) in subsection (b)—

(A) by striking out ''not'' after ''Armed Forces Voluntary Recruitment Act of 1945 shall''; and

(B) by striking out ''except—'' and all that follows and inserting in lieu thereof a period.

(b) CONFORMING AMENDMENTS.—(1) The heading of such section is amended to read as follows:

§107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts".

(2) The item relating to such section in the table of sections at the beginning of chapter 1 of such title is amended to read as follows: ''107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts.''.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—No benefits shall accrue to any person for any period before the effective date of this Act by reason of the amendments made by this Act.

By Mr. BUMPERS:

S. 624. A bill to establish a competitive process for the awarding of concession contracts in units of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

THE NATIONAL PARK SERVICE CONCESSION POLICY REFORM ACT OF 1997

Mr. BUMPERS. Mr. President, as a part of the Earth Day celebration, I am, once again, introducing legislation to reform the concessions policies of the National Park Service. This bill is very similar to a bill I sponsored in the 103d Congress—listen to this—which passed the Senate 90 to 9 and passed the House 386 to 30, but it is not yet law. It repeals the 1965 Concessions Policy Act which has been over a 30-year-old outrage.

My legislation would establish an open competitive process for awarding concessions contracts in units of the National Park System. It will be a competitive process for the first time. These contracts are very lucrative the way they are let under the 1965 act, and the American people are getting shafted and have been for a very long time.

Instead of putting the money that we get today back into the Treasury for general purposes, under my bill, the money we get from the contracts will go to a special account for the use of the National Park Service, and Lord only knows every study shows they need it.

This will be the 18th year that I have worked to reform the concession policies of this country. The very first oversight hearing I ever held upon becoming chairman of the Parks Subcommittee in 1979 was on this very issue. One has to have a lot of patience to operate around here.

Since that time, there has been no telling how many reports, hearings, markups, floor debates there have been. Everybody agrees the existing law ought to be changed, but in 18 years, with the most diligent efforts I can put into it, it has not been changed, simply because the park concessioners have more clout with some Members of the Senate than have I. They have more clout than the American people have with the U.S. Senate.

Mr. President, let me just tell you what has been happening.

In 1995—that is the latest year for which we have complete information on these concession contracts—in 1995, the United States received just under $16 million in franchise fees on gross concession revenues of $676 million, a whopping 2.4-percent return.

These contracts are almost handed down from generation to generation. They probably put them in their will and give them to their first-born son. It is almost impossible to undo one. But the U.S. taxpayer had a 2.4 percent return on $676 million of national park concessions fees last year.

In all fairness, let me add this. Under the existing law, a concessioner can also make improvements in the parks in consultation and agreement with the National Park Service. He can make improvements, he might even build a new hotel—all kinds of things like that—and he is entitled then to take that into consideration as a part of his fee. But even when you add that in, even when you add in the amount that concessioners spend to improve the park, which, incidentally, is to their benefit because it invariably increases revenues, that increases the amount we received to $40 million on $676 million, still only a 5.9-percent return.

You can invest in a T-bill and do as well, but this is our land, our property, the reason tourists go there and spend their money, because it is a park that Congress, in its infinite wisdom, established. Any property owner in the United States should ask yourself this question: Would you lease your property out for that kind of return when it was producing that kind of revenue for the lessee? You would not even consider it.