SLADE GORTON.
GORDON SMITH.
DIRK KEMPTHORNE.
PATTY MURRAY.
SAM BROWNBACK.
CHUCK HAGEL.
TOM HARKIN.
LARRY E. CRAIG.
CONRAD BURNS.
RON WYDEN.
PAT ROBERTS.
MAX BAUCUS.
MICHAEL B. ENZI.

MESSAGES FROM THE HOUSE

At 2:26 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1463. An act to authorize appropriations for fiscal years 1998 and 1999 for the Customs Service, the Office of the United States Trade Representative, and the International Trade Commission.

MEASURES REFERRED

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

H.R. 1463. An act to authorize appropriations for fiscal years 1998 and 1999 for the Customs Service, the Office of the United States Trade Representative, and the International Trade Commission; to the Committee on Finance.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1798. A communication from the Assistant Attorney General, Office of Justice Programs, Department of Justice, transmitting, pursuant to law, a rule (RIN1121–AA24) received on April 24, 1997; to the Committee on the Judiciary.

EC–1799. A communication from the Assistant Attorney General, Office of Justice Programs, Department of Justice, transmitting, pursuant to law, a rule entitled ''Young American Medals Program'' (RIN1121–AA37) received on April 24, 1997; to the Committee on the Judiciary.

EC–1800. A communication from the Regulatory Policy Officer of the Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury, transmitting, pursuant to law, a rule entitled ''Residency Requirements for Persons Acquiring Firearms'' (RIN1512–AB66) received on April 21, 1997; to the Committee on the Judiciary.

EC–1801. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a rule entitled ''Visas'' received on April 28, 1997; to the Committee on the Judiciary.

EC–1802. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a rule entitled ''Visas'' received on April 28, 1997; to the Committee on the Judiciary.

EC–1803. A communication from the Chairman of the Federal Communications Commission, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1804. A communication from the Acting General Counsel of the Office of Community Oriented Policing Services, Department of Justice, transmitting, pursuant to law, a rule entitled ''Solid Waste Programs'' (FRL5670–6) received on May 5, 1997; to the Committee on the Judiciary.

EC–1805. A communication from the Chairman of the U.S. Sentencing Commission, transmitting, pursuant to law, a report relative to sentencing guidelines; to the Committee on the Judiciary.

EC–1806. A communication from the Acting Chair of the National Indian Gaming Commission, transmitting, a draft of proposed legislation relative to assess fees; to the Committee on Indian Affairs.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Labor and Human Resources:

Donald Rappaport, of the District of Columbia, to be Chief Financial Officer, Department of Education.

Hans M. Mark, of Texas, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring April 17, 2002. (Reappointment)

Anthony R. Sarmiento, of Maryland, to be a Member of the National Institute for Literacy Advisory Board for a term expiring September 22, 1998.

Susan E. Trees, of Massachusetts, to be a Member of the National Council on the Humanities for a term expiring January 26, 2002.

Marsha Mason, of New Mexico, to be a Member of the National Council on the Arts for a term expiring September 3, 2002.

Gerald N. Tirozzi, of Connecticut, to be Assistant Secretary for Elementary and Secondary Education, Department of Education.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. HAGEL:

S. 709. A bill to protect private property rights guaranteed by the fifth amendment to the Constitution by requiring Federal agencies to prepare private property taking impact analyses and by allowing expanded access to Federal courts; to the Committee on Governmental Affairs.

By Mr. BREAUX:

S. 710. A bill to amend the Internal Revenue Code of 1986 to extend the credit for producing fuel from a nonconventional source to taxpayers using biomass fuel sources in the generation of electricity through the use of a suspension burning process; to the Committee on Finance.

By Mr. BREAUX (for himself, Mr. BRYAN, Mr. D'AMATO, and Mr. FRIST):

S. 711. A bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. HELMS):

S. 712. A bill to provide for a system to classify information in the interests of national security and a system to declassify such information; to the Committee on Governmental Affairs.

By Mr. DODD (for himself and Mr. DEWINE):

S. 713. A bill to amend the Federal Food, Drug, and Cosmetic Act to allow for additional deferred effective dates for approval of applications under the new drugs provisions, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. AKAKA (for himself, Mr. DASCHLE, Mr. INOUYE, Mr. HOLLINGS, Mr. WELLSTONE, and Mr. JEFFORDS):

S. 714. A bill to make permanent the Native American Veteran Housing Loan Pilot Program of the Department of Veterans' Affairs; to the Committee on Veterans Affairs.

By Mr. COVERDELL (for himself and Mr. CLELAND):

S. 715. A bill to redesignate the Dublin Federal Courthouse building located in Dublin, Georgia, as the J. Roy Rowland Federal Courthouse; to the Committee on Environment and Public Works.

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. BURNS, Mr. GORTON, Mr. KEMPTHORNE, and Mr. ENZI):

S. 716. A bill to establish a Joint United States-Canada Commission on Cattle and Beef to identify, and recommend means of resolving, national, regional, and provincial trade-distorting differences between the countries with respect to the production, processing, and sale of cattle and beef, and for other purposes; to the Committee on Finance.

By Mr. JEFFORDS (for himself, Mr. HARKIN, Mr. LOTT, Mr. KENNEDY, Mr. COATS, Mr. DODD, Mr. GREGG, Ms. MIKULSKI, Mr. FRIST, Mr. DEWINE, Mr. ENZI, Mr. HUTCHINSON, Mrs. MURRAY, Ms. COLLINS, Mr. WARNER, Mr. MCCONNELL, and Mr. REED):

S. 717. A bill to amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. GREGG (for himself and Mr. SMITH of New Hampshire):

S. Res. 85. A resolution expressing the sense of the Senate that individuals affected by breast cancer should not be alone in their fight against the disease; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HAGEL:

S. 709. A bill to protect private property rights guaranteed by the fifth amendment to the Constitution by requiring Federal agencies to prepare private property taking impact analyses and by allowing expanded access to Federal courts; to the Committee on Governmental Affairs.

THE PRIVATE PROPERTY FAIRNESS ACT OF 1997

Mr. HAGEL. Mr. President, I rise today to introduce the Private Property Fairness Act of 1997. This bill will

help ensure that when the Government issues regulations for the benefit of the public as a whole, it does not saddle just a few landowners with the whole cost of compliance. This bill will help enforce the U.S. Constitution's guarantee that the Federal Government cannot take private property without paying just compensation to the owner.

The dramatic growth in Federal regulation in recent decades has focused attention on a very murky area of property law, a regulatory area in which the law of takings is not yet settled to the satisfaction of most Americans.

The bottom line is that the law in this area is unfair. For example, if the Government condemns part of a farm to build a highway, it has to pay the farmer for the value of his land. But if the Government requires that same farmer stop growing crops on that same land in order to protect endangered species or conserve wetlands, the farmer gets no compensation. In both situations the Government has acted to benefit the general public and, in the process, has imposed a cost on the farmer. In both cases, the land is taken out of production and the farmer loses income. But only in the highway example is the farmer compensated for his loss. In the regulatory example, the farmer, or any other landowner, has to absorb all of the cost himself. This is not fair.

The legislation I am introducing today is an important step toward providing relief from these so-called regulatory takings. I know my distinguished colleague, Senator HATCH, intends to introduce an omnibus private property rights bill, and I look forward to working with him. My bill is a narrowly tailored approach that will make a real difference for property owners across America. It protects private property rights in two ways. First, it puts in place procedures that will stop or minimize takings by the Federal Government before they occur. The Government would have to jump a much higher hurdle before it can restrict the use of someone's privately owned property. For the first time, the Federal Government will have to determine in advance how its actions will impact the property owner, not just the wetland or the endangered species. This bill also would require the Federal Government to look for options other than restricting the use of private property to achieve its goal.

Second, if heavy Government regulations diminish the value of private property, this bill would allow the landowners to plead their case in a Federal district court, instead of forcing them into the U.S. Court of Federal Claims. This means, for example, that Nebraskans can have their case heard in a Nebraska courthouse; they won't have to travel to Washington, DC, at their own expense to seek relief. This bill makes the process easier, less costly, and more accessible and accountable so all citizens can fully protect their property rights.

For too long, Federal regulators have made private property owners bear the burdens and the costs of Government land use decisions. The result has been that real people suffer.

Joe Jeffrey is a farmer in Lexington, NE. Like most Americans, he is proud of his land. He believed his property was his to use and control as he saw fit.

Then he met the U.S. Fish and Wildlife Service and the Army Corps of Engineers.

In 1987, the long arm of the Federal bureaucracy reached onto Mr. Jeffrey's property in the form of wetlands regulations. Mr. Jeffrey was notified that he had to destroy two dikes on his land because they were constructed without the proper permits. Nearly 2 years later, the corps partially changed its mind and allowed Mr. Jeffrey to reconstruct one of the dikes because the corps lacked authority to make him destroy it in the first place.

Then floods damaged part of Mr. Jeffrey's irrigated pastureland and changed the normal water channel. Mr. Jeffrey set out to return the channel to its original course by moving sand that the flood had shifted. But the Government said ''no.'' The corps told him he had to give public notice before he could repair his own property.

Then came the Endangered Species Act.

Neither least terns nor piping plovers—both federally protected endangered species—have ever nested on Mr. Jeffrey's property. But that didn't stop the regulators. The U.S. Fish and Wildlife Service wanted to designate Mr. Jeffrey's property as ''critical habitat'' for these protected species.

The bureaucrats could not even agree among themselves on what they wanted done. The Nebraska Department of Environmental Control wanted the area re-vegetated. But the U.S. Fish and Wildlife Service wanted the area kept free of vegetation. Mr. Jeffrey was caught in the middle.

This is a real regulatory horror story. And there's more.

Today—10 years after his regulatory struggle began—Mr. Jeffrey is faced with eroded pastureland that cannot be irrigated and cannot be repaired without significant personal expense. The value of Mr. Jeffrey's land has been diminished by the Government's regulatory intrusion—but he has not been compensated. In fact, he has had to spend money from his own pocket to comply with the regulations. The Fish and Wildlife Service asked Mr. Jeffrey to modify his center pivot irrigation system to negotiate around the eroded area—at a personal cost of $20,000. And the issue is still not resolved.

Mr. President, we do not need more stories like Joe Jeffrey's in America. Our Constitution guarantees our people's rights. Congress must act to uphold those rights and guarantee them in practice, not just in theory. Government regulation has gone too far. We must make it accountable to the people. Government should be accountable to the people, not the people accountable to the Government.

What this issue comes down to is fairness. It is simply not fair and it is not right for the Federal Government to have the ability to restrict the use of privately owned property without compensating the owner. It violates the principles this country was founded on. This legislation puts some justice back into the system. It reins in regulatory agencies and gives the private property owner a voice in the process. It makes it easier for citizens to appeal any restrictions imposed on their land or property. It is the right thing to do. It is the just and fair thing to do.

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

S. 709

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 ''Private Property Rights Act of 1997''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the ownership of private property plays an important role in the economic and social well-being of the Nation;

(2) the protection of private property from a taking by the Government without just compensation is an integral protection for private citizens incorporated into the United States Constitution by the fifth amendment and made applicable to the States by the fourteenth amendment;

(3) Federal agency actions that restrict the use of private property and result in a significant diminution in value of such property constitute a taking of that property and should be properly compensated;

(4) Federal agencies should consider the impact of agency actions, including regulations, on the use and ownership of private property; and

(5) owners of private property that is taken by a Federal agency action should be permitted to seek relief in Federal district court.

SEC. 3. STATEMENT OF POLICY.

The policy of the Federal Government is to protect the health, safety, and general welfare of the public in a manner that, to the extent practicable, avoids takings of private property.

SEC. 4. DEFINITIONS.

For purposes of this Act—

(1) the term ''agency'' means a department, agency, independent agency, or instrumentality of the United States, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government;

(2) the term ''agency action'' means any action, inaction, or decision taken by an agency and includes such an action, inaction, or decision taken by, or pursuant to—

(A) a statute, rule, regulation, order, guideline, or policy; or

(B) the issuance, denial, or suspension of any permit, license, or authorization;

(3) the term ''owner'' means the person with title, possession, or other property rights in property affected by any taking of such property; and

(4) the term ''taking of private property'' means any action whereby private property is taken in such a way as to require compensation under the fifth amendment to the United States Constitution.

SEC. 5. REQUIREMENT FOR PRIVATE PROPERTY TAKING IMPACT ANALYSIS.

(a) IN GENERAL.—To the fullest extent possible—

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this Act; and

(2) subject to subsection (b), each agency shall complete a private property taking impact analysis before taking any agency action (including the promulgation of a regulation) which is likely to result in a taking of private property.

(b) NONAPPLICATION.—Subsection (a)(2) shall not apply to—

(1) an action in which the power of eminent domain is formally exercised;

(2) an action taken—

(A) with respect to property held in trust by the United States; or

(B) in preparation for, or in connection with, treaty negotiations with foreign nations;

(3) a law enforcement action, including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(4) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;

(5) the placement of a military facility or a military activity involving the use of solely Federal property;

(6) any military or foreign affairs function (including a procurement function under a military or foreign affairs function), but not including the civil works program of the Army Corps of Engineers; and

(7) any case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation under section 553(b)(B) of title 5, United States Code, if the taking impact analysis is completed after the emergency action is carried out or the regulation is published.

(c) CONTENT OF ANALYSIS.—A private property taking impact analysis shall be a written statement that includes—

(1) the specific purpose of the agency action;

(2) an assessment of the likelihood that a taking of private property will occur under such agency action;

(3) an evaluation of whether such agency action is likely to require compensation to private property owners;

(4) alternatives to the agency action that would—

(A) achieve the intended purposes of the agency action; and

(B) lessen the likelihood that a taking of private property will occur; and

(5) an estimate of the potential liability of the Federal Government if the Government is required to compensate a private property owner as a result of the agency action.

(d) SUBMISSION TO OMB.—Each agency shall provide the analysis required under this section as part of any submission otherwise required to be made to the Office of Management and Budget relating to an agency action.

(e) PUBLIC AVAILABILITY OF ANALYSIS.—An agency shall—

(1) make each private property taking impact analysis available to the public; and

(2) to the greatest extent practicable, transmit a copy of such analysis to the owner and any other person with a property right or interest in the affected property.

SEC. 6. ALTERNATIVES TO TAKING OF PRIVATE PROPERTY.

Before taking any final agency action, the agency shall fully consider alternatives described in section 5(c)(4) and shall, to the maximum extent practicable, alter the action to avoid or minimize the taking of private property.

SEC. 7. CIVIL ACTION.

(a) STANDING.—If an agency action results in the taking of private property, the owner of such property may obtain appropriate relief in a civil action against the agency that has caused the taking to occur.

(b) JURISDICTION.—Notwithstanding sections 1346 or 1491 of title 28, United States Code—

(1) a civil action against the agency may be brought in either the United States District Court in which the property at issue is located or in the United States Court of Federal Claims, regardless of the amount in controversy; and

(2) if property is located in more than 1 judicial district, the claim for relief may be brought in any district in which any part of the property is located.

SEC. 8. GUIDANCE AND REPORTING REQUIREMENTS.

(a) GUIDANCE.—The Attorney General shall provide legal guidance in a timely manner, in response to a request by an agency, to assist the agency in complying with this Act.

(b) REPORTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act and at the end of each 1-year period thereafter, each agency shall submit a report to the Director of the Office of Management and Budget and the Attorney General that identifies—

(A) each agency action that has resulted in the preparation of a taking impact analysis;

(B) the filing of a taking claim; and

(C) any award of compensation pursuant to the just compensation clause of the fifth amendment to the Constitution.

(2) PUBLICATION OF REPORTS.—The Director of the Office of Management and Budget and the Attorney General shall publish in the Federal Register, on an annual basis, a compilation of the reports of all agencies made under this paragraph.

SEC. 9. PRESUMPTIONS IN PROCEEDINGS.

For the purpose of any agency action or administrative or judicial proceeding, there shall be a rebuttable presumption that the costs, values, and estimates in any private property takings impact analysis shall be outdated and inaccurate, if—

(1) such analysis was completed 5 years or more before the date of such action or proceeding; and

(2) such costs, values, or estimates have not been modified within the 5-year period preceding the date of such action or proceeding.

SEC. 10. RULES OF CONSTRUCTION.

Nothing in this Act shall be construed to—

(1) limit any right or remedy, constitute a condition precedent or a requirement to exhaust administrative remedies, or bar any claim of any person relating to such person's property under any other law, including claims made under this Act, section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(2) constitute a conclusive determination of—

(A) the value of any property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

SEC. 11. EFFECTIVE DATE.

This Act shall take effect 120 days after the date of enactment of this Act.

By Mr. BREAUX (for himself, Mr. BRYAN, Mr. D'AMATO, and Mr. FRIST):

S. 711. A bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits; to the Committee on Finance.

THE DISTILLED SPIRITS TAX PAYMENT SIMPLIFICATION ACT OF 1997

Mr. BREAUX. Mr. President, I rise today with Mr. BRYAN, Mr. D'AMATO and Mr. FRIST to introduce the Distilled Spirits Tax Payment Simplification Act of 1997, a bill more readily known as All-in-Bond. This bill would streamline the way in which the government collects federal excise tax on distilled spirits by extending the current system of collection now applicable only to imported products to domestic products as well.

Today wholesalers purchase foreign bottled distilled spirits in bond—tax free—paying the Federal excise tax directly after sale to a retailer. In contrast, when the wholesaler buys domestically bottled spirits—nearly 86 percent of total inventory—the price includes the Federal excise tax, pre-paid by the distiller. This means that hundreds of U.S. family-owned wholesale businesses increase their inventory carrying costs by 40 percent when buying U.S. products, which often have to be financed through borrowing.

Under my bill, wholesalers would be allowed to purchase domestically bottled distilled spirits in-bond from distillers just as they are now permitted to purchase foreign produced spirits. Products would become subject to tax on removal from wholesale premises. This legislation is designed to be revenue neutral and includes the requirement that any wholesaler electing to purchase spirits in bond must make certain estimated tax payments to Treasury before the end of the fiscal year.

All-in-Bond is an equitable and sound way to streamline our tax collection system. I hope my colleagues will join me in cosponsoring this important legislation.

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

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

S. 711

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Distilled Spirits Tax Payment Simplification Act of 1997''.

(b) REFERENCE TO 1986 CODE.—Except as otherwise expressly provided, whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. TRANSFER OF DISTILLED SPIRITS BETWEEN BONDED PREMISES.

(a) IN GENERAL.—Section 5212 is amended to read as follows:

''SEC. 5212. TRANSFER OF DISTILLED SPIRITS BETWEEN BONDED PREMISES.

''Distilled spirits on which the internal revenue tax has not been paid as authorized by law may, under such regulations as the Secretary shall prescribe, be transferred in bond between bonded premises in any approved container. For the purposes of this chapter, except in the case of any transfer from a premise of a bonded dealer, the removal of distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises.''.

(b) CONFORMING AMENDMENT.—The first sentence of section 5232(a) (relating to transfer to distilled spirits plant without payment of tax) is amended to read as follows: ''Distilled spirits imported or brought into the United States, under such regulations as the Secretary shall prescribe, may be withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the internal revenue tax imposed on such distilled spirits.''.

SEC. 3. ESTABLISHMENT OF DISTILLED SPIRITS PLANT.

Section 5171 (relating to establishment) is amended—

(1) in subsection (a), by striking ''or processor'' and inserting ''processor, or bonded dealer'';

(2) in subsection (b), by striking ''or as both'' and inserting ''as a bonded dealer, or as any combination thereof'';

(3) in subsection (e)(1), by inserting '', bonded dealer,'' before ''processor''; and

(4) in subsection (e)(2), by inserting ''bonded dealer,'' before ''or processor''.

SEC. 4. DISTILLED SPIRITS PLANTS.

Section 5178(a) (relating to location, construction, and arrangement) is amended by adding at the end the following:

''(5) BONDED DEALER OPERATIONS.—Any person establishing a distilled spirits plant to conduct operations as a bonded dealer may, as described in the application for registration—

''(A) store distilled spirits in any approved container on the bonded premises of such plant, and

''(B) under such regulations as the Secretary shall prescribe, store taxpaid distilled spirits, beer, and wine, and such other beverages and items (products) not subject to tax or regulation under this title on such bonded premises.''.

SEC. 5. BONDED DEALERS.

(a) DEFINITIONS.—Section 5002(a) (relating to definitions) is amended by adding at the end the following:

''(16) BONDED DEALER.—The term 'bonded dealer' means any person who has elected under section 5011 to be treated as a bonded dealer.

''(17) CONTROL STATE ENTITY.—The term 'control State entity' means a State, a political subdivision of a State, or any instrumentality of such a State or political subdivision, in which only the State, political subdivision, or instrumentality is allowed under applicable law to perform distilled spirit operations.''.

(b) ELECTION TO BE TREATED AS A BONDED DEALER.—Subpart A of part I of subchapter A of chapter 51 (relating to distilled spirits) is amended by adding at the end the following:

''SEC. 5011. ELECTION TO BE TREATED AS BONDED DEALER.

''(a) ELECTION.—Any wholesale dealer or any control State entity may elect, at such time and in such manner as the Secretary shall prescribe, to be treated as a bonded dealer if such wholesale dealer or entity sells bottled distilled spirits exclusively to a wholesale dealer in liquor, to an independent retail dealer subject to the limitation set forth in subsection (b), or to another bonded dealer.

''(b) LIMITATION IN CASE OF SALES TO RETAIL DEALERS.—

''(1) BY BONDED DEALER.—Any person, other than a control State entity, who is a bonded dealer shall not be considered as selling to an independent retail dealer if—

''(A) the bonded dealer has a greater than 10 percent ownership interest in, or control of, the retail dealer;

''(B) the retail dealer has a greater than 10 percent ownership interest in, or control of, the bonded dealer; or

''(C) any person has a greater than 10 percent ownership interest in, or control of, both the bonded and retail dealer.

For purposes of this paragraph, ownership interest, not limited to stock ownership, shall be attributed to other persons in the manner prescribed by section 318.

''(2) BY CONTROL STATE ENTITY.—In the case of any control State entity, subsection (a) shall be applied by substituting 'retail dealer' for 'independent retail dealer'.

''(c) INVENTORY OWNED AT TIME OF ELECTION.—Any bottled distilled spirits in the inventory of any person electing under this section to be treated as a bonded dealer shall, to the extent that the tax under this chapter has been previously determined and paid at the time the election becomes effective, not be subject to such additional tax on such spirits as a result of the election being in effect.

''(d) REVOCATION OF ELECTION.—The election made under this section may be revoked by the bonded dealer at any time, but once revoked shall not be made again without the consent of the Secretary. When the election is revoked, the bonded dealer shall immediately withdraw the distilled spirits on determination of tax in accordance with a tax payment procedure established by the Secretary.

''(e) EQUITABLE TREATMENT OF BONDED DEALERS USING LIFO INVENTORY.—The Secretary shall provide such rules as may be necessary to assure that taxpayers using the last-in, first-out method of inventory valuation do not suffer a recapture of their LIFO reserve by reason of making the election under this section or by reason of operating a bonded wine cellar as permitted by section 5351.

''(f) APPROVAL OF APPLICATION.—Any person submitting an application under section 5171(c) and electing under this section to be treated as a bonded dealer shall be entitled to approval of such application to the same extent such person would be entitled to approval of an application for a basic permit under section 104(a)(2) of the Federal Alcohol Administration Act (27 U.S.C 204(a)(2)), and shall be accorded notice and hearing as described in section 104(b) of such Act (27 U.S.C. 204(b)).''.

(c) CONFORMING AMENDMENT.—The tables of sections of subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following:

''Sec. 5011. Election to be treated as bonded dealer.''.

SEC. 6. DETERMINATION OF TAX.

The first sentence of section 5006(a)(1) (relating to requirements) is amended to read as follows: ''Except as otherwise provided in this section, the tax on distilled spirits shall be determined when the spirits are transferred from a distilled spirits plant to a bonded dealer or are withdrawn from bond.''.

SEC. 7. LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

Section 5008 (relating to abatement, remission, refund, and allowance for loss or destruction of distilled spirits) is amended—

(1) in subsections (a)(1)(A) and (a)(2), by inserting ''bonded dealer,'' after ''distilled spirits plant,'' both places it appears;

(2) in subsection (c)(1), by striking ''of a distilled spirits plant''; and

(3) in subsection (c)(2), by striking ''distilled spirits plant'' and inserting ''bonded premises''.

SEC. 8. TIME FOR COLLECTING TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Section 5061(d) (relating to time for collecting tax on distilled spirits, wines, and beer) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following:

''(5) ADVANCED PAYMENT OF DISTILLED SPIRITS TAX.—Notwithstanding the preceding provisions of this subsection, in the case of any tax imposed by section 5001 with respect to a bonded dealer who has an election in effect on September 20 of any year, any payment of which would, but for this paragraph, be due in October or November of that year, such payment shall be made on such September 20. No penalty or interest shall be imposed for the period from such September 20 until the due date determined without regard to this paragraph to the extent that tax due exceeds the tax which would have been due with respect to distilled spirits in the preceding October and November had the election under section 5011 been in effect.''.

(b) CONFORMING AMENDMENT.—Section 5061(e)(1) (relating to payment by electronic fund transfer) is amended by inserting ''or any bonded dealer,'' after ''respectively,''.

SEC. 9. EXEMPTION FROM OCCUPATIONAL TAX NOT APPLICABLE.

Section 5113(a) (relating to sales by proprietors of controlled premises) is amended by adding at the end the following: ''This subsection shall not apply to a proprietor of a distilled spirits plant whose premises are used for operations of a bonded dealer.''.

SEC. 10. CONFORMING AMENDMENTS.

(1) Section 5003(3) is amended by striking ''certain''.

(2) Section 5214 is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

''(b) EXCEPTION.—Paragraphs (1), (2), (3), (5), (10), (11), and (12) of subsection (a) shall not apply to distilled spirits withdrawn from premises used for operations as a bonded dealer.''.

(3) Section 5215 is amended—

(A) in subsection (a), by striking ''the bonded premises'' and all that follows through the period and inserting ''bonded premises.'';

(B) in the heading of subsection (b), by striking ''A DISTILLED SPIRITS PLANT'' and inserting ''BONDED PREMISES''; and

(C) in subsection (d), by striking ''a distilled spirits plant'' and inserting ''bonded premises''.

(4) Section 5362(b)(5) is amended by adding at the end the following: ''The term does not mean premises used for operations as a bonded dealer.''.

(5) Section 5551(a) is amended by inserting ''bonded dealer,'' after ''processor'' both places it appears.

(6) Subsections (a)(2) and (b) of section 5601 are each amended by inserting '', bonded dealer,'' before ''or processor'' .

(7) Paragraphs (3), (4), and (5) of section 5601(a) are each amended by inserting ''bonded dealer,'' before ''or processor'' .

(8) Section 5602 is amended—

(A) by inserting '', warehouseman, processor, or bonded dealer'' after ''distiller''; and

(B) in the heading, by striking ''**by distiller**''.

(9) Sections 5115, 5180, and 5681 are repealed.

(10) The table of sections for part II of subchapter A of chapter 51 is amended by striking the item relating to section 5115.

(11) The table of sections for subchapter B of chapter 51 is amended by striking the item relating to section 5180.

(12) The item relating to section 5602 in the table of sections for part I of subchapter J of chapter 51 is amended by striking ''by distiller''.

(13) The table of sections for part IV of subchapter J of chapter 51 is amended by striking the item relating to section 5681.

SEC. 11. REGISTRATION FEES.

(a) GENERAL RULE.—The Director of the Bureau of Alcohol, Tobacco, and Firearms shall, in accordance with this section, assess and collect registration fees solely to defray a portion of any net increased costs of regulatory activities of the Government resulting from enactment of this Act.

(b) PERSONS SUBJECT TO FEE.—Fees shall be paid in a manner prescribed by the Director by the bonded dealer.

(c) AMOUNT AND TIMING OF FEES.—Fees shall be paid annually and shall not exceed $1,000 per bonded premise.

(d) DEPOSIT AND CREDIT.—The moneys received during any fiscal year from fees described in subsection (a) shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to conduct the regulatory activities of the Government resulting from enactment of this Act.

(e) LIMITATION.—The aggregate amount of fees assessed and collected under this section may not exceed in any fiscal year the aggregate amount of any net increased costs of regulatory activity referred to in subsection (a).

SEC. 12. COOPERATIVE AGREEMENTS.

(a) STUDY.—The Secretary of the Treasury shall study and report to Congress concerning possible administrative efficiencies which could inure to the benefit of the Federal Government of cooperative agreements with States regarding the collection of distilled spirits excise taxes. Such study shall include, but not be limited to, possible benefits of the standardization of forms and collection procedures and shall be submitted 1 year after the date of enactment of this Act.

(b) COOPERATIVE AGREEMENT.—The Secretary of the Treasury is authorized to enter into such cooperative agreements with States which the Secretary deems will increase the efficient collection of distilled spirits excise taxes.

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act take effect on the date which is 120 days after the date of enactment of this Act.

(b) EXCEPTIONS.—

(1) ESTABLISHMENT OF DISTILLED SPIRITS PLANT.—The amendments made by section 3 take effect on the date of enactment of this Act.

(2) SPECIAL RULE.—Each wholesale dealer who is required to file an application for registration under section 5171(c) of the Internal Revenue Code of 1986 whose operations are required to be covered by a basic permit under sections 103 and 104 of the Federal Alcohol Administration Act (27 U.S.C. 203, 204) and who has received such basic permits as an importer, wholesaler, or as both, and has obtained a bond required under subchapter B of chapter 51 of subtitle E of such Code before the close of the fourth month following the date of enactment of this Act, shall be qualified to operate bonded premises until such time as the Secretary of the Treasury takes final action on the application. Any control State entity (as defined in section 5002(a)(17) of such Code, as added by section 5(a)) that has obtained a bond required under such subchapter shall be qualified to operate bonded premises until such time as the Secretary of the Treasury takes final action on the application for registration under section 5171(c) of such Code.

By Mr. MOYNIHAN (for himself and Mr. HELMS):

S. 712. A bill to provide for a system to classify information in the interests of national security and a system to declassify such information; to the Committee on Governmental Affairs.

THE GOVERNMENT SECRECY ACT OF 1997

Mr. MOYNIHAN. Mr. President, I am pleased to join with my colleague from North Carolina, Senator HELMS, in introducing the Government Secrecy Act of 1997. Congressmen LARRY COMBEST of Texas and LEE HAMILTON of Indiana are introducing companion legislation in the House of Representatives this afternoon. The four of us, along with eight other distinguished individuals, served for the past 2 years on the Commission on Protecting and Reducing Government Secrecy.

Earlier today, the four of us testified together at a hearing of the Committee on Governmental Affairs called by Chairman THOMPSON to review the Commission's report, issued in March. The legislation that we introduce today is intended to implement one of the core recommendations of that Commission: The need for a statute establishing the principles to govern the classification and declassification of information. The remarks that follow track my testimony before the Governmental Affairs Committee this morning.

We begin by defining our subject. ''Secrecy is a form of government regulation.'' It can be understood in terms of a now considerable literature concerning how organizations function. Begin with the German scholar Max Weber, writing eight decades ago in his chapter ''Bureaucracy'' in ''Wirtschaft und Gesellschaft'' (Economy and Society):

> Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of ''secret sessions''; in so far as it can, it hides its knowledge and action from criticism. The pure interest of the bureaucracy in power, however, is efficacious far beyond those areas where purely functional interests make for secrecy. The concept of the ''official secret'' is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude, which cannot be substantially defended beyond these specifically qualified areas.

Normal regulation concerns how citizens are to behave. As the administrative state developed in the United States, beginning with the Progressive Era at the turn of the century and expanding greatly under the New Deal, legal scholars began to ask just what these new rules were. Were they laws? If not, then what? In 1938, Roscoe Pound, chairman of the American Bar Association's Special Committee on Administrative Law and former Dean of the Harvard Law School, attacked those ''who would turn the administration of justice over to administrative absolutism . . . a Marxian idea,'' and inveighed against those ''progressives, liberals, or radicals who desire to invest the National Government with totalitarian powers in the teeth of constitutional democracy . . .''

We managed to get a handle on that system, in no small measure through the efforts of Erwin Griswold, also a dean of the Harvard Law School, and others who decried the fact that administrative regulations equivalent to law had become increasingly important to everyday life and yet were not available to the public. One year after Professor Griswold published a seminal article calling for the publication of such rules and regulations, Congress enacted the Federal Register Act of 1935. Eleven years later, in 1946, working from the recommendations made in 1941 by the Attorney General's Committee on Administrative Procedure, chaired by Dean Acheson, Congress enacted the Administrative Procedure Act.

Thus, today our system of public regulation is public indeed. Regulations are both widely accessible and subject to the APA's set of procedural requirements—bringing a degree of order and accountability to this regime.

Secrecy, by contrast, concerns what citizens may know, but the citizen does not know what may not be known. Our Commission states:

> Americans are familiar with the tendency to overregulate in other areas. What is different with secrecy is that the public cannot know the extent or the content of the regulation.

Thus, secrecy is the ultimate mode of regulation; the citizen does not even know that he or she is being regulated. It is a parallel regulatory regime with a far greater potential for damage if it malfunctions.

Flowing from this understanding of secrecy as regulation is the recognition that, to paraphrase Justice Potter Stewart's opinion in the Pentagon Papers case, when everything is secret, nothing is secret. We state:

> The best way to ensure that secrecy is respected, and that the most important secrets remain secret, is for secrecy to be returned to its limited but necessary role. Secrets can be protected more effectively if secrecy is reduced overall.

It is time to reexamine the foundations of that secrecy system. The Information Security Oversight Office report to Congress last week estimated the direct costs of secrecy at $5.2 billion in 1996 alone. The same Office reports that in 1995 we had 21,871 original new top secret designations and another 374,244 derivative top secret designations. Meaning that, in a single year, roughly 400,000 new secrets were created at the Top Secret level alone—the disclosure of any one of which would cause exceptionally grave damage to the national security.

It is also time to examine the appropriateness of security arrangements

put in place during an earlier age, when the perceived threats were so different from those of today. In 1957, the only previous commission established by the Congress to examine the secrecy system—the Commission on Government Security—issued a report that, for any number of reasons—in particular the fact that its core recommendation that amounted to prior restraint of the press—did nothing to change the prevailing mode. Although the Commission did understand classification as a cost; its report ''stresses the dangers to national security that arise out of overclassification of information which retards scientific and technological progress, and thus tend to deprive the country of the lead time that results from the free exchange of ideas and information.''

When the Commission on Government Security presented its report to President Eisenhower and the Congress, we still were consumed with concerns about a Federal Government infiltrated by ideological enemies of the United States. Today, the public and its representatives have few such concerns; indeed, today it is the U.S. Government that increasingly is the object of what Edward Shils in 1956, in ''The Torment of Secrecy,'' termed the ''phantasies of apocalyptic visionaries.''

We are not proposing putting an end to secrecy. It is at times terribly necessary and used for the most legitimate reasons. But secrecy need not remain the only norm: We must develop a competing culture of openness, fully consistent with our interests in protecting national security, but in which power is no longer derived primarily from one's ability to withhold information.

I am struck in this regard by a most remarkable letter that I received on March 25 from George F. Kennan, professor emeritus at the Institute for Advanced Study in Princeton, NJ, in response to our Commission report. As lucid and thoughtful as ever at age 93, Professor Kennan builds a compelling case for the proposition that much of our secrecy system arose out of our efforts to penetrate the obsessively secretive Soviet Communist regime of the Stalin era. And that the system we put in place remains largely intact today, even as that adversary has disappeared. Professor Kennan writes:

> It is my conviction, based on some 70 years of experience, first as a government official and then in the past 45 years as an historian, that the need by our government for secret intelligence about affairs elsewhere in the world has been vastly over-rated. I would say that something upwards of 95% of what we need to know about foreign countries could be very well obtained by the careful and competent study of perfectly legitimate sources of information open and available to us in the rich library and archival holdings of this country.

I ask unanimous that the full text of Professor Kennan's letter be inserted in the RECORD.

I should note further that Professor Kennan's conclusion about the share of information available from open sources also has been reached by other notable observers of the secrecy system—the estimable George P. Shultz among them.

Developing a culture of openness within the Federal Government requires that secrecy be defined in statute. A statute will not put an end to overclassification and needless classification, but it will help by ensuring that the present regulatory regime cannot simply continue to flourish without any restraint. Classification should proceed according to law; classifiers should know that they are acting lawfully and properly. We need to balance the possibility of harm to national security against the public's right to know what the Government is doing, or not doing. We should establish by statute that secrecy belongs in the realm of national security and must serve that interest alone. It should not be employed as a badge of office or a status symbol.

Thus we propose this statute, the Government Secrecy Act of 1997. As noted, Representatives COMBEST and HAMILTON are cosponsoring a companion measure in the House of Representatives. This legislation—defining the principles and standards to govern classification and declassification, and establishing within an existing agency a National Declassification Center to coordinate responsibility for declassifying historical documents—is drawn directly from the Commission's recommendation for such a statute, as set out in the summary and in chapter I of our report.

I look forward to reviewing the legislation, as well as the other findings and recommendations of the Commission, with Members of this body, as well as our colleagues in the House of Representatives, executive branch officials, and interested persons outside of Government, in the weeks ahead.

I send the bill to the desk and ask unanimous consent that it be printed in the RECORD and be referred to the appropriate committee.

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

S. 712

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 ''Government Secrecy Act of 1997''.

SEC. 2. PURPOSE.

It is the purpose of this Act to promote the effective protection of classified information and the disclosure of information where there is not a well-founded basis for protection or where the costs of maintaining a secret outweigh the benefits.

SEC. 3. FINDINGS.

The Congress makes the following findings:

(1) The system for classifying and declassifying national security information has been based in regulation, not in statute, and has been governed by six successive Executive orders since 1951.

(2) The Commission on Protecting and Reducing Government Secrecy, established under Public Law 103–236, issued its report on March 4, 1997 (S. Doc. 105–2), in which it recommended reducing the volume of information classified and strengthening the protection of classified information.

(3) The absence of a statutory framework has resulted in unstable and inconsistent classification and declassification policies, excessive costs, and inadequate implementation.

(4) The implementation of Executive orders will be even more costly as more documents are prepared and used on electronic systems.

(5) United States taxpayers incur substantial costs as several million documents are classified each year. According to figures submitted to the Information Security Oversight Office and the Congress, the executive branch and private industry together spent more than $5.2 billion in 1996 to protect classified information.

(6) A statutory foundation for the classification and declassification of information is likely to result in a more stable and cost-effective set of policies and a more consistent application of rules and procedures.

(7) Enactment of a statute would create an opportunity for greater oversight by the Congress of executive branch classification and declassification activities, without impairing the responsibility of executive branch officials for the day-to-day administration of the system.

SEC. 4. CLASSIFICATION AND DECLASSIFICATION OF INFORMATION.

(a) CLASSIFICATION FOR NATIONAL SECURITY REASONS.—The President may, in accordance with this Act, protect from unauthorized disclosure information in the possession and control of the executive branch when there is a demonstrable need to do so in order to protect the national security of the United States. The President shall ensure that the amount of information classified is the minimum necessary to protect the national security.

(b) PROCEDURES FOR CLASSIFICATION AND DECLASSIFICATION.—

(1) IN GENERAL.—The President shall, to the extent necessary, establish categories of information that may be classified and procedures for classifying information under subsection (a). The President shall, concurrently with the establishment of such categories and procedures, establish, and allocate resources for the implementation of, procedures for declassifying information previously classified.

(2) PUBLICATION OF CATEGORIES AND PROCEDURES.—

(A) The President shall publish notice in the Federal Register of any categories and procedures proposed to be established under paragraph (1) with respect to both the classification and declassification of information, and shall provide an opportunity for interested agencies and other interested persons to submit comments thereon. The President shall take into account such comments before establishing the categories and procedures, which shall also be published in the Federal Register.

(B) The procedures set forth in subparagraph (A) shall apply to any modifications in categories or procedures established under paragraph (1).

(3) AGENCY STANDARDS AND PROCEDURES.—The head of each agency shall establish standards and procedures for classifying and declassifying information created by that agency on the basis of the categories and procedures established by the President under paragraph (1). Each agency head, in establishing and modifying standards and procedures under this paragraph, shall follow the procedures required of the President in paragraph (2) for establishing and modifying

categories and procedures under that paragraph.

(c) CONSIDERATIONS IN DETERMINING CLASSIFICATION AND DECLASSIFICATION.—

(1) IN GENERAL.—In determining whether information should be classified or declassified, the agency official making the determination shall weigh the benefit from public disclosure of the information against the need for initial or continued protection of the information under the classification system. If there is significant doubt as to whether information requires such protection, it shall not be classified.

(2) WRITTEN JUSTIFICATION.—

(A) ORIGINAL CLASSIFICATION.—The agency official who makes the decision to classify information shall identify himself or herself and shall provide in writing a detailed justification for that decision.

(B) DERIVATIVE CLASSIFICATION.—In any case in which an agency official classifies a document on the basis of information previously classified that is included or referenced in the document, that agency official shall identify himself or herself in that document.

(d) STANDARDS FOR DECLASSIFICATION.—

(1) INITIAL CLASSIFICATION PERIOD.—Information may not remain classified under this Act for longer than a 10-year period unless the head of the agency that created the information certifies to the President at the end of such period that the information requires continued protection, based on a current assessment of the risks of disclosing the information, carried out in accordance with subsection (c)(1).

(2) ADDITIONAL CLASSIFICATION PERIOD.—Information not declassified prior to or at the end of the 10-year period referred to in paragraph (1) may not remain classified for more than a 30-year period unless the head of the agency that created the information certifies to the President at the end of such 30-year period that continued protection of the information from unauthorized disclosure is essential to the national security of the United States or that demonstrable harm to an individual will result from release of the information.

(3) DECLASSIFICATION SCHEDULES.—All classified information shall be subject to regular review pursuant to schedules each agency head shall establish and publish in the Federal Register. Each agency shall follow the schedule established by the agency head in declassifying information created by that agency.

(4) ASSESSMENT OF EXISTING CLASSIFIED INFORMATION.—Each agency official responsible for information which, before the effective date of this Act—

(A) was determined to be kept protected from unauthorized disclosure in the interest of national security, and

(B) had been kept so protected for longer than the 10-year period referred to in paragraph (1),

shall, to the extent feasible, give priority to making decisions with respect to declassifying that information as soon as is practicable.

(e) REPORTS TO CONGRESS.—Not later than December 31 of each year, the head of each agency that is responsible for the classification and declassification of information shall submit to the Congress a report that describes the application of the classification and declassification standards and procedures of that agency during the preceding fiscal year.

(f) AMENDMENT TO FREEDOM OF INFORMATION ACT.—Section 552(b)(1) of title 5, United States Code, is amended to read as follows:

''(1)(A) specifically authorized to be classified under the Government Secrecy Act of 1997, or specifically authorized, before the effective date of that Act, under criteria established by an Executive order to be kept secret in the interest of national security (as defined by section 7(6) of the Government Secrecy Act of 1997), and (B) are in fact properly classified pursuant to that Act or Executive order;''.

SEC. 5. NATIONAL DECLASSIFICATION CENTER.

(a) ESTABLISHMENT.—The President shall establish, within an existing agency, a National Declassification Center, the functions of which shall be—

(1) to coordinate and oversee the declassification policies and practices of the Federal Government; and

(2) to provide technical assistance to agencies in implementing such policies and practices, in accordance with this section.

(b) FUNCTIONS.—

(1) DECLASSIFICATION OF INFORMATION.—The Center shall, at the request of any agency and on a reimbursable basis, declassify information within the possession of that agency pursuant to the guidance of that agency on the basis of the declassification standards and procedures established by that agency under section 4, or if another agency created the information, pursuant to the guidance of that other agency on the basis of the declassification standards and procedures established by that agency under section 4. In carrying out this paragraph, the Center may use the services of officers or employees or the resources of another agency, with the consent of the head of that agency.

(2) COORDINATION OF POLICIES.—The Center shall coordinate implementation by agencies of the declassification policies and procedures established by the President under section 4 and shall ensure that declassification of information occurs in an efficient, cost-effective, and consistent manner among all agencies that create or otherwise are in possession of classified information.

(3) DISPUTES.—If disputes arise among agencies regarding whether information should or should not be classified, or between the Center and any agency regarding the Center's functions under this section, the heads of the agencies concerned or of the Center may refer the matter to the President for resolution of the dispute.

(c) NATIONAL DECLASSIFICATION ADVISORY COMMITTEE.—

(1) IN GENERAL.—There is established a 12-member National Declassification Advisory Committee. 4 members of the Advisory Committee shall be appointed by the President and 2 members each shall be appointed by the majority and minority leaders of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives.

(2) MEMBERSHIP.—The members of the Advisory Committee shall be appointed from among distinguished historians, political scientists, archivists, other social scientists, and other members of the public who have a demonstrable expertise in declassification and the management of Government records. No officer or employee of the United States Government shall be appointed to the Advisory Committee.

(3) DUTIES.—The Advisory Committee shall provide advice to the Center and make recommendations concerning declassification priorities and activities.

(d) ANNUAL REPORTS.—The Center shall submit to the President and the Congress, not later than December 31 of each year, a report on its activities during the preceding fiscal year, and on the implementation of agency declassification practices and its efforts to coordinate those practices.

SEC. 6. INFORMATION TO THE CONGRESS.

Nothing in this Act shall be construed to authorize the withholding of information from the Congress.

SEC. 7. DEFINITIONS.

As used in this Act—

(1) the term ''Advisory Committee'' means the National Declassification Advisory Committee established under section 5(c);

(2) the term ''agency'' means any executive agency as defined in section 105 of title 5, United States Code, any military department as defined in section 102 of such title, and any other entity in the executive branch of the Government that comes into the possession of classified information;

(3) the term ''Center'' means the National Declassification Center established under section 5(a);

(4) the terms ''classify'', ''classified'', and ''classification'' refer to the process by which information is determined to require protection from unauthorized disclosure pursuant to this Act in order to protect the national security of the United States;

(5) the terms ''declassify'', ''declassified'', and ''declassification'' refer to the process by which information that has been classified is determined to no longer require protection from unauthorized disclosure pursuant to this Act; and

(6) the term ''national security of the United States'' means the national defense or foreign relations of the United States.

SEC. 8. EFFECTIVE DATE.

This Act shall take effect 180 days after the date of the enactment of this Act.

INSTITUTE FOR ADVANCED STUDY,
SCHOOL OF HISTORICAL STUDIES,
Princeton, NJ, March 25, 1997.

Senator DANIEL P. MOYNIHAN,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR: Thank you for your note of the 7th, and for the copy of your recent talk at Georgetown, which I have read with deep appreciation.

There are several points you touched on in that talk which, were we sitting at leisure around a fireside, I would like to pursue. I cannot treat them all here. But there is one matter on which you did not specifically mention but which lies close to the subject you had in mind, and on which I am moved to say a word. It is a matter on which I have long looked for, but never found, a suitable chance to comment publicly.

It is my conviction, based on some 70 years of experience, first as a government official and then in the past 45 years as an historian, that the need by our government for secret intelligence about affairs elsewhere in the world has been vastly over-rated. I would say that something upwards of 95% of what we need to know about foreign countries could be very well obtained by the careful and competent study of perfectly legitimate sources of information open and available to us in the rich library an archival holdings of this country. Much of the remainder, if it could not be found here (and there is very little of it that could not) could easily be non-secretively elicited from similar sources abroad.

In Russia, in Stalin's time and partly thereafter, the almost psychotic preoccupation of the Communist regime with secrecy appeared to many, not unnaturally, to place a special premium on efforts to penetrate that curtain by secretive methods of our own. This led, of course, to the creation here of a vast bureaucracy dedicated to this particular purpose; and this latter, after the fashion of all great bureaucratic structures, has endured to this day, long after most of the reasons for it have disappeared. Even in the Soviet time, much of it was superfluous. A lot of what we went to such elaborate and dangerous means to obtain secretly would have been here for the having, given the requisite quiet and scholarly analysis of what already lay before us.

The attempt to elicit information by secret means has another very serious negative effect that is seldom noted. The development of clandestine sources of information in another country involves, of course, the placing and the exploitation of secret agents on the territory of that country. This naturally incites the mounting of a substantial effort of counterintelligence on the part of the respective country's government. This, in turn, causes us to respond with an equally vigorous effort of counterintelligence in order to maintain the integrity of our espionage effort. But for a variety of reasons, this competition in counterintelligence efforts tends to grow into dimensions that wholly overshadow the original effort of positive intelligence procurement that gave rise to it in the first place. It takes on aspects which cause it to be viewed as a game, played in its own rights. Unfortunately, it is a game requiring such lurid and dramatic character that it dominates the attention both of those that practice it, and of those in the press and the media who exploit it. Such is the fascination it exerts that it tends wholly to obscure, even for the general public the original reasons for it. It would be interesting to know what proportion of the energies and expenses and bureaucratic involvement of the C.I.A. is addressed to this consuming competition, and whether one ever stacks this up against the value of its almost forgotten original purposes. Do people ever reflect, one wonders, that the best way to protect against the penetration of one's secrets by others is to have the minimum of secrets to conceal?

One more point. At the bottom of the whole great effort of secret military intelligence, which has played so nefarious a part in the entire history of great-power relationships in this passing century, there has usually lain the assumption by each party that if it did not engage to the limit in that exercise the other party, working in secret, might develop a weapon so devastating that with it he could confront all others with the demand that they submit to his will ''or else''.

But this sort of anxiety is now greatly outdated. The nuclear competition has taught us that the more terrible the weapons available, the more suicidal becomes any conceivable actual use of them. With the recognition of the implications of this simple fact would go a large part of the motivation for our frantic efforts of secret intelligence. In this respect, too, this is really a new age. It is time we recognized it and drew the inescapable conclusions.

There may still be areas, very small areas really, in which there is a real need to penetrate someone else's curtain of secrecy. All right. But then please, without the erection of false pretenses and elaborate efforts to deceive—and without, to the extent possible—the attempt to maintain ''spies'' on the adversary's territory. We easily become ourselves, the sufferers from these methods of deception. For they inculcate in their authors, as well as their intended victims, unlimited cynicism, causing them to lose all realistic understanding of the interrelationship, in what they are doing, of ends and means.

Forgive me for burdening you with this outburst. I am not unloading upon my friends, in private letters, thoughts I should probably have brought forward publicly long ago. I have to consider that this is the only way I can put some of these thoughts into words before, in the case of a person 93 years of age, it becomes too late.

Warm and admiring greetings.

Very sincerely,

GEORGE KENNAN.

Mr. HELMS. I am pleased to join Senator MOYNIHAN today in introducing a bill that would for the first time place in statute the Government system for the classification of information. To date this has been accomplished solely through Executive order.

The statute is based on the recommendations contained in the report of the Commission to Protect and Reduce Government Secrecy chaired by my colleague PAT MOYNIHAN, the senior Senator from New York. The Secrecy Commission achieved a unified report of recommendations—a feat that should not be underrated, especially in Washington.

The Commission, by law, had the twin goals of studying how to protect important Government secrets and simultaneously reducing the amount of classified documents and materials. All Commissioners began their deliberations with the premise that Government secrecy is a form of regulation that, like all regulations, should be used sparingly, and certainly never for the goal of keeping the truth from the American people. Commissioners also began the process recognizing that over-classification can actually weaken the protections of those secrets that truly are in our national interest.

All the same I am obliged to begin with a reiteration of the obvious—that the protection of true national security information remains vital to the well-being and security of the United States. The end of the cold war notwithstanding, the United States continues to face serious and long-term threats from a variety of fronts. While Communist and anti-American regimes, such as North Korea, Cuba, Iran, and Iraq, continue to wage a war of espionage against the United States, new threats have arisen as well.

Most alarming, perhaps, is the growing trend of espionage conducted not by our enemies but by American allies. Such espionage is on the rise especially against U.S. economic secrets. According to a February 1996 report by GAO, classified military information and sensitive military technologies are high priority targets for the intelligence agencies of U.S. allies.

At first blush, a push to reduce Government secrecy may seem at odds with these increasing threats. I am convinced it is not. The sheer volume of government secrets—and their cost to the taxpayers and U.S. business—is staggering. In 1996 the taxpayers spent more than $5.2 billion to protect classified information. We know all too well from our own experiences that when everything is secret nothing is secret.

Secrecy all too often then becomes a political tool used by executive branch agencies to shield information which may be politically sensitive or policies which may be unpopular with the American public. Worse yet, information may be classified to hide from public view illegal or unethical activity. On numerous occasions I, and other Members of Congress, have found the executive branch to be reluctant to share certain information, the nature of which is not truly a national secret, but which would be potentially politically embarrassing to officials in the executive branch or which would make known an illegal or indefensible policy.

I have also found that one of the largest impediments to openness is the perverse incentives of the Government bureaucracy itself in favor of classification, and the lack of accountability for those who do the actual classification. I strongly endorse the Commission's recommendation of adding individual accountability to the process by requiring original and derivative classifiers to actually identify themselves and include within the documents a justification of the decision to classify.

The only way to change a bureaucracy is to reverse the incentive to classify. A good example of how to change this lack of bureaucratic accountability is a provision contained in H.R. 3121—legislation which we approved in the Foreign Relations Committee last year that was signed into law. Previously, details on U.S. commercial arms sales to foreign governments were not made available to the public unless a citizen requested that the State Department make it public. The incentive therefore was to keep the information closely regulated. H.R. 3121 provides that all arm sales will be made public unless the President determines that the release of the information is contrary to U.S. national security interest. Although this may appear to be a small nuance, the bureaucratic incentive is changed enormously to favor openness. Shifting the burden in this way can introduce more openness into the system and force the bureaucracy to identify true national security threats.

I am convinced, however, that the single most important recommendation of our Commission that Congress should focus on is the concept of creating a life cycle for secrets. This means that all information, classified and unclassified alike, has a life span in which decisions must be made regarding creation, management, and use. This kind of rationalization would shift the burden to favor openness and reduce some of the costs associated with declassification.

I would add a note of caution to the Commission's work on declassification, however. In the course of the 2 years of its work, the Commission became very interested in the declassification of existing documents and materials. In a perfect world, if information remains relevant to true U.S. national interests it should remain classified indefinitely. Information that does not compromise U.S. interests and sources should be made public. We all realize, however, that this is a tremendously costly venture. In fact, the Commission was unable to come up with solid data on the true cost of declassification.

In this era when Congress has finally begun to grasp the essential need to reduce Government spending and balance the budget, the issue of balancing costs

and benefits is an essential one. The financial costs to the American taxpayers must be balanced against the necessity of the declassification. The real lesson to take from the work of this Commission is the need to redress for the future the problems of over classification and a systematic process for declassification, so that the costs and timeliness of declassification does not pose the same economic and regulatory burdens on future generations. At the same time, it may be too costly to declassify all of the countless classified documents now in existence.

With this caveat in mind, I hope the Congress will focus on bringing government-wide rationalization to the classification process. It is an area where tough congressional oversight is long overdue.

By Mr. AKAKA (for himself, Mr. DASCHLE, Mr. INOUYE, Mr. HOLLINGS, Mr. WELLSTONE and Mr. JEFFORDS):

S. 714. A bill to make permanent the Native American Veteran Housing Loan Pilot Program of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

REAUTHORIZATION OF THE NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM LEGISLATION

Mr. AKAKA. Mr. President, I rise to introduce a measure which permanently authorizes the Native American Veteran Housing Loan Program. I am pleased that Senators DASCHLE, INOUYE, HOLLINGS, WELLSTONE, and JEFFORDS have joined me in cosponsoring this important measure.

In 1992, I authored a bill that established a 5-year pilot program of direct home loans to assist native american veterans who reside on trust lands. This pilot program, administered by the Department of Veterans Affairs [VA], provides direct loans to native American veterans to build or purchase homes on trust lands. Previously, native American veterans who reside on trust lands were unable to qualify for VA home loan benefits. This disgraceful treatment of native American veterans was finally corrected when Congress established the native American Direct Home Loan Program.

Despite the complexities of creating a program that addresses the needs of hundreds of different tribal entities, VA has successfully entered into agreements to provide direct VA loans to members of 46 tribes and Pacific Island groups, and negotiations continue with other tribes. Since the program's inception, 127 native American veterans have been able to achieve home ownership, and none of the loans approved by the VA have been foreclosed.

Unfortunately, the authority to issue new loans under this remarkably successful program will cease on September 30, 1997. This would be tragic and devastating to a number of native American veterans who want to participate in this program. Although VA has proposed a 2-year extension for the program, it fails to address the basic reason this program exists—equity. Native American veterans who reside on trust lands should be afforded the same benefits available to other veterans. Without this program, home loan benefits to native Americans living on trust lands will cease. This is the only program available for native American veterans who live on trust lands to finance a home for themselves and their families. There are no alternatives available.

Permanent authorization of this program will ensure that native American veterans are provided equal access to services and benefits available to other veterans. I urge my colleagues to support this important legislation.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 714

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

SECTION 1. PERMANENT AUTHORITY FOR NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM.

(a) PERMANENT AUTHORITY.—Section 3761 of title 38, United States Code, is amended by striking out subsection (c).

(b) CONFORMING AMENDMENTS.—(1) Section 3761(a) of such title is amended—

(A) by striking out ''shall establish and implement a pilot program'' and inserting in lieu thereof ''shall carry out a pilot program''; and

(B) by striking out ''shall establish and implement the pilot program'' and inserting in lieu thereof ''shall carry out the pilot program''.

(2) Sections 3761(b) and 3762(i) of such title are each amended by striking out ''pilot program'' and inserting in lieu thereof ''program''.

(3) Section 3762 of such title is amended—

(A) in subsection (b)(1)(E), by striking out ''pilot program established under this subchapter is implemented'' and inserting in lieu thereof ''program under this subchapter is carried out''; and

(B) in subsection (c)(1)(B), by striking out the second sentence.

(4)(A) The subchapter heading for subchapter V of chapter 37 of such title is amended by striking out ''PILOT''.

(B) The section heading for section 3761 of such title is amended to read as follows:

''§ 3761. Native American Veteran Housing Loan Program''.

(C) The table of sections at the beginning of chapter 37 of such title is amended—

(i) in the item relating to subchapter V, by striking out ''PILOT''; and

(ii) by striking out the item relating to section 3761 and inserting in lieu thereof the following new item:

''3761. Native American Veteran Housing Loan Program.''.

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. BURNS, Mr. GORTON, Mr. KEMPTHORNE, and Mr. ENZI):

S. 716. A bill to establish a Joint United States-Canada Commission on Cattle and Beef to identify, and recommend means of resolving national, regional, and provincial trade-distorting differences between the countries with respect to the production, processing, and sale of cattle and beef, and for other purposes; to the Committee on Finance.

LEGISLATION TO ESTABLISH CATTLE AND BEEF COMMISSION

Mr. CRAIG. Mr. President, I rise to introduce a bill of critical importance to our Nation's cattle industry. The joint United States-Canada Commission on Cattle and Beef is designed to resolve some of the existing differences in trade practices between the two countries.

I want to thank a number of my colleagues who are joining me as original cosponsors of this legislation. The cosponsors of this bill include Senator BAUCUS, Senator BURNS, Senator GORTON, Senator KEMPTHORNE, and Senator ENZI.

As a former rancher, I have a firsthand understanding of the challenges that face the cattle industry. The prolonged down cycle is especially troubling because it affects the livelihoods of thousands of ranching families in Idaho and across the country.

These beef producers are the largest sector of Idaho and American agriculture. Over 1 million families raise over 100 million head of beef cattle every year. This contributes over $36 billion to local economies. Even with the extended cycle of low prices, direct cash receipts from the Idaho cattle industry were almost $620 million in 1995. These totals only represent direct sales; they do not capture the multiplier effect that cattle ranches have in their local economies from expenditures on labor, feed, fuel, property taxes, and other inputs.

Over the years, cattle operations have provided a decent living and good way of life in exchange for long days, hard work, and dedication. While the investment continues to be high, the returns have been low in recent years.

The problems facing the cattle industry in recent years are complex. The nature of the market dictates that stable consumption combined with increased productivity and growing herd size yield lower prices to producers. This, combined with high feed prices and limited export opportunities, has caused a near crisis.

Many Idahoans have contacted me on a number of cattle industry issues. Some suggest the Federal Government intervene in the market to help producers. However, many others have expressed fear that Federal intervention, if experience is any indication, will only complicate matters and may also create a number of unintended results. I tend to agree with the latter. Time and again, I have seen lawmakers and bureaucrats in Washington, DC, albeit well intentioned, take a difficult situation and make it worse. This does not mean that I believe Government has no role to play. I have supported and will continue to support Government involvement in areas like trade, where individual producers cannot help themselves.

This bill recognizes a number of barriers to international trade that adversely affect American beef producers.

The bill is meant to elevate the importance of all trade issues and specifically address some of the pending cattle trade issues between the United States and Canada.

The United States-Canada Commission on Cattle and Beef is a measure designed to provide immediate, short-term solutions to some of the serious trade problems facing the cattle industry. Specific cattle issues that could be resolved with further discussion include animal health requirements and the availability of feed grains. The bill creates a commission composed of three people from each country along with a number of other nonvoting advisors. Within 30 days of passage, the Commission must be in place and within 6 months must issue a preliminary report on how to resolve the existing differences between United States and Canadian trade.

I know that a number of my colleagues have legislation pending in regards to the cattle market. I would comment that I see this bill as a starting point, not an ending point for cattle industry issues and I urge my colleagues to support this legislation.

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

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

S. 716

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

SECTION 1. JOINT UNITED STATES-CANADA COMMISSION ON CATTLE AND BEEF.

(a) ESTABLISHMENT.—There is established a Joint United States-Canada Commission on Cattle and Beef to identify, and recommend means of resolving, national, regional, and provincial trade-distorting differences between the United States and Canada with respect to the production, processing, and sale of cattle and beef, with particular emphasis on—

(1) animal health requirements;

(2) transportation differences;

(3) the availability of feed grains; and

(4) Other market-distorting direct and indirect subsidies.

(b) COMPOSITION.—

(1) IN GENERAL.—The Commission shall be composed of—

(A) 3 members representing the United States, including—

(i) 1 member appointed by the Majority Leader of the Senate;

(ii) 1 member appointed by the Speaker of the House of Representatives; and

(iii) 1 member appointed by the Secretary of Agriculture;

(B) 3 members representing Canada, appointed by the Government of Canada; and

(C) nonvoting members appointed by the Commission to serve as advisers to the Commission, including university faculty, State veterinarians, trade experts, and other members.

(2) APPOINTMENT.—Members of the Commission shall be appointed not later than 30 days after the date of enactment of this Act.

(c) REPORT.—Not later than 180 days after the first meeting of the Commission, the Commission shall submit a report to Congress and the Government of Canada that identifies, and recommends means of resolving, differences between the United States and Canada with respect to the production, processing, and sale of cattle and beef.

By Mr. JEFFORDS (for himself, Mr. HARKIN, Mr. LOTT, Mr. KENNEDY, Mr. COATS, Mr. DODD, Mr. GREGG, Ms. MIKULSKI, Mr. FRIST, Mr. DEWINE, Mr. ENZI, Mr. HUTCHINSON, Mrs. MURRAY, Ms. COLLINS, Mr. WARNER, Mr. MCCONNELL, and Mr. REED):

S. 717. A bill to amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes; to the Committee on Labor and Human Resources.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

Mr. JEFFORDS. Mr. President, today along with 16 of my colleagues, I am introducing the Individuals with Disabilities Education Act Amendments of 1997. This legislation is the product of 4 months of intensive discussion among members of the committee, the House Committee on Education and the Workforce, and officials from the U.S. Department of Education.

The process followed in developing this legislation was unprecedented and demonstrates the high priority all involved place on the importance of the education of children with disabilities, their parents, and their educators.

Many people and organizations have helped us to develop this legislation. I would like to name just a few.

First and foremost, I wish to thank the Majority Leader TRENT LOTT for his unwavering support, and, in particular for the assistance of his Chief of Staff, Dave Hoppe. It is my firm belief that without their commitment to the process that we could not have produced this bill.

I would also like to thank my colleagues Senators KENNEDY, COATS, HARKIN, and GREGG, and especially, Chairman GOODLING, Mr. CLAY and our other colleagues in the House, and Secretary Riley, and Assistant Secretary Heumann.

I also wish to especially thank Senator FRIST, who set the direction and standard that led us in our efforts to reauthorize IDEA in the last Congress.

I introduce this bill in a much different climate than the one in which Congress first addressed the issue. In 1975, responding to numerous Federal court cases, Congress passed Public Law 94–142 which guaranteed all children with disabilities a ''free and appropriate public education,'' and promised that the Federal Government would contribute 40 percent of the costs of special education. It is 22 years later and today we are on the threshold of honoring that commitment.

Our efforts in drafting this legislation are driven by a common belief that education is our No. 1 national priority, and that meeting the needs of our children includes meeting the needs our 5.1 million children with disabilities. In this bill we address several important issues: How to increase the flow of Federal dollars to local school districts; how to expand opportunities for children with disabilities to participate and succeed in the classroom along with their nondisabled peers; and how to ensure the appropriate participation of children with disabilities in State and district-wide assessments of student progress.

I hope all of my colleagues will support this legislation when it is considered. It's importance has been demonstrated by the collaborative process in which it was developed, and the valuable group of Americans it is intended to serve.

Thank you, Mr. President.

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. ROTH, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 2, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for American families, and for other purposes.

At the request of Mr. GRAMM, his name was added as a cosponsor of S. 2, supra.

S. 4

At the request of Mr. ASHCROFT, the names of the Senator from Maine [Ms. SNOWE], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 4, a bill to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

S. 124

At the request of Mr. GRAMM, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 124, a bill to invest in the future of the United States by doubling the amount authorized for basic science and medical research.

S. 143

At the request of Mr. DASCHLE, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 143, a bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

S. 231

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 231, a bill to establish the National Cave and Karst Research Institute in the State of New Mexico, and for other purposes.