S. 844. A bill to amend the President John F. Kennedy Assassination Records Collection Act of 1992 to extend the authorization of the Assassination Records Review Board until September 30, 1998; to the Committee on Governmental Affairs.

By Mr. LUGAR (for himself, Mr. HARKIN, Mr. MCCONNELL, Mr. SANTORUM, Mr. ROBERTS, Mr. COCHRAN, Mr. CRAIG, Mr. GRASSLEY, Mr. DASCHLE, Mr. LEAHY, Mr. KERREY, Mr. BAUCUS, Ms. LANDRIEU, Mr. JOHNSON, and Mr. CONRAD):

S. 845. A bill to transfer to the Secretary of Agriculture the authority to conduct the census of agriculture, and for other purposes; to the Committee on Governmental Affairs.

By Mr. AKAKA:

S. 846. A bill to amend the Federal Power Act to remove the jurisdiction of the Federal Energy Regulatory Commission to license projects on fresh waters in the State of Hawaii; to the Committee on Energy and Natural Resources.

By Mr. COATS (for himself, Mr. LIEBERMAN, Mr. BROWNBACK, Mr. ASHCROFT, Mr. COVERDELL, and Mr. GREGG):

S. 847. A bill to provide scholarship assistance for District of Columbia elementary and secondary school students; to the Committee on Governmental Affairs.

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

S. 848. A bill to direct the Secretary of Health and Human Services, through the Health Care Financing Administration, to expand and strengthen the demonstration project known as the Medicare telemedicine demonstration program; 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. CRAIG:

S. Res. 96. A resolution proclaiming the week of March 15 through March 21, 1998, as ''National Safe Place Week''; to the Committee on the Judiciary.

By Mr. WARNER (for himself and Mr. ROBB):

S. Res. 97. A resolution expressing the sense of the Senate that the President should designate the month of June 1997, the fiftieth anniversary of the Marshall Plan, as George C. Marshall month, and for other purposes; considered and agreed to.

By Mr. D'AMATO (for himself, Mr. BOND, Mr. MACK, and Mr. SPECTER):

S. Con. Res. 31. A concurrent resolution concerning the Palestinian Authority and the sale of land to Israelis; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JEFFORDS:

S. 830. A bill to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes; to the Committee on Labor and Human Resources.

THE FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

Mr. JEFFORDS. Mr. President, today I am introducing legislation to modernize the Food and Drug Administration [FDA] and reauthorize the Prescription Drug User Fee Act for 5 years. This legislation comes as result of over 3 years of consideration by the Congress on steps that could be taken by the agency that would contribute to its mandate to protect the American public while ensuring that life-saving products could be made more readily available.

FDA acknowledges that its mandate also requires it to regulate over one-third of our Nation's products. Within its purview the FDA regulates virtually all of the food and all of the cosmetics, medical devices, and drugs made available to our citizens. I believe, and several members of the Labor Committee share my belief, that in an organization the size of FDA there is always room for improvement and modernization. Our objective, which this legislation achieves, was identify areas where improvements could be made that will strengthen the agency's ability to approve safe and effective products more expeditiously.

Last year, both the House and the Senate held numerous and extensive hearings on countless proposals for modernizing and reforming the FDA. The Senate Labor and Human Resources Committee successfully reported a bipartisan bill that sought to accomplish many of those reforms. But last year, acrimonious issues remained, time ran out and the bill did not receive floor consideration. This year I have resolved to move forward. I have been committed to addressing last year's most controversial issues. I believe that the legislation I am introducing today addresses virtually all of objections raised last year both in process and in content. This is a better bill and I believe that upon examination, my colleagues will agree that it accomplishes its goal.

I want to comment a moment on the open, consensus-building process we followed in developing this legislation. The Labor Committee held two hearings. During the first the committee received testimony from the principal FDA Deputy Commissioner, Dr. Michael Friedman, and all of the FDA Center Directors. The second hearing included representatives from patient and consumer coalitions and from the food, drug, and medical device sectors regulated by the FDA. Committee members learned from the agency of the administrative reforms and the progress it has already undertaken, areas that remain a challenge, and those areas that require legislative authority to change. The committee listened to consumers' concerns with provisions that were considered last year that they felt would weaken the FDA's ability to protect the public health. Finally, the committee learned of the ongoing and needless delays and frustrations facing health care and consumer product sectors of our economy in working with the FDA. The committee learned of the frustrated attempts to work through the bureaucratic labyrinth of needless regulatory delays. Delays that prohibited people from getting access to vitally needed, life saving medical treatments, drugs, and devices.

Since the finish of the committee's hearings we have engaged in an open, collaborative process that has given voice to each party wishing to be heard. For many of these meetings it is worth noting that the agency was a full, cooperating participant and we would not have been able to make the progress made without FDA's collaboration. Several meetings, essentially roundtable discussions, have occurred with bipartisan committee staff, the FDA, and each of the several sectors regulated by the agency. These meetings have given all the participants an opportunity to discuss problems and potential solutions and have been the basis for the consensus bill I am introducing today. Finally, committee staff have had numerous meetings to discuss key provisions in the bill with a wide range of consumer groups including, among others, the Patient Coalition, Public Citizen, the Centers for Science in the Public Interest, the Pediatric AIDS Foundation, and the National Organization for Rare Diseases. It should be clear that no person or group was excluded from this deliberative process.

Let me turn to the content of this measure and the steps we have taken to respond to the controversies raised last year. Five key objections were raised against the FDA reform bill that had been reported on a strong bipartisan vote from the Labor and Human Resources Committee during the last Congress. In that vein, we have sought to and have accomplished addressing each of the substantive concerns raised by the minority.

Last year's measure was criticized by some for the number of mandatory, but shortened, product review time frames that critics said would overburden the FDA and for the hammers that would have required FDA to contract out some product reviews or to give priority to products approved abroad. Today's legislation eliminates most of the mandatory time frames and retains only those necessary to ensure collaborative, more efficient reviews or to facilitate quick reviews of low risk products. The contracting out and European review hammers that would have forced FDA actions have been eliminated.

Last year's provision allowing for third party, outside expert review were criticized for turning central regulatory authority decisions over to private industry, creating conflicts of interest, and depriving FDA of resources and expertise. Today's legislation adopts FDA's current system for accrediting and selecting third-party review organizations. The bill expands FDA's current pilot third-party review program beyond just the lowest risk devices and FDA retains final approval for all devices. Devices that are life-

supporting, life-sustaining, or implantable are excluded from third-party review. FDA may allow third-party review for higher risk devices at its sole discretion. This approval will allow FDA to retain, augment, and focus its expertise, at its discretion, on critical areas of its expanding workload.

Last year's bill would have required FDA to contract out review of food additive petitions, medical devices, and drugs. Critics argued these changes would weaken consumer protections. We have modified these provisions to give FDA express authority to contract out when deemed by FDA to be more efficient or to add needed expertise.

Thsi year the collaborative effort has continued. During our meetings FDA identified a number of enforcement powers that the agency believes will enhance its ability to protect the public health. We have included a number of FDA's specific requests. Many patient and consumer groups raised concerns about insufficient safeguards related to the fast-track drug approval process and the provision improving accelerated access to investigational products and we have adopted several of their key concerns.

I would close by saying that this measure embodies a reasonable, moderate approach to balancing the agency's mandate to regulate over one-third of our Nation's economy and provide for the public health and safety with the compelling need to provide new, improved, safe, and effective products to the American public. It is a good bill and I look forward to working with my colleagues to improve it even further.

By Mr. SHELBY (for himself, Mr. BOND, Mr. HAGEL, Mr. HUTCHINSON, and Mr. COVERDELL):

S. 831. A bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes; to the Committee on Governmental Affairs.

THE STEALTH TAX PREVENTION ACT

Mr. SHELBY. Mr. President, I rise today to introduce the Stealth Tax Prevention Act. Perhaps the most important power given to the Congress in the Constitution of the United States is bestowed in article I, section 8—the power to tax. This authority is vested in Congress because, as elected representatives, Congress remains accountable to the public when they lay and collect taxes.

Last year, Mr. President, Congress passed the Congressional Review Act of 1996, which provides that when a major agency rule takes effect, Congress has 60 days to review it. During this time period, Congress has the option to pass a disapproval resolution. If no such resolution is passed, the rule then goes into effect.

The Internal Revenue Service, as the President here knows, has enormous power to affect the lives and the livelihoods of American taxpayers through their authority to interpret the Tax Code. The Stealth Tax Prevention Act that I am introducing today, along with Senator BOND and Senator HAGEL, will expand the definition of a major rule to include, Mr. President, any IRS regulation which increases Federal revenue. Why? Because we desperately need this today.

For example, if the Office of Management and Budget finds that the implementation and enforcement of a rule has resulted in an increase of Federal revenues over current practices or revenues anticipated from the rule on the date of the enactment of the statute under which the rule is promulgated. Therefore, the Stealth Tax Prevention Act will allow Congress to review the regulation and take appropriate measures to avoid raising taxes on hard-working Americans, in most cases, small businesses.

Mr. President, the Founding Fathers' intent, as you know, was to put the power to lay and collect taxes in the hands of elected Members of Congress, not in the hands of bureaucrats who are shielded from public accountability. It is appropriate, I believe, that the IRS's breach of authority is addressed, in light of the fact that we are celebrating this week Small Business Week.

The discretionary authority of the Internal Revenue Service exposes small businesses, farmers, and others to the arbitrary whims of bureaucrats, thus creating an uncertain and, under certain cases, hostile environment in which to conduct day-to-day activities. Most of these people do not have lobbyists that work for them, other than their elected Representatives, the way it should be. The Stealth Tax Prevention Act will be particularly helpful in lowering the tax burden on small business which suffers disproportionately, Mr. President, from IRS regulations. This burden discourages the startup of new firms and ultimately the creation of new jobs in the economy, which has really made America great today.

Americans pay Federal income taxes. They, Mr. President, as you well know, pay State income taxes. They pay property taxes. On the way to work in the morning they pay a gasoline tax when they fill up their car, and a sales tax when they buy a cup of coffee.

Mr. President, average Americans in small businesses are saddled with the highest tax burden in our country's history.

Allowing bureaucrats to increase taxes even further, at their own discretion through interpretation of the Tax Code is intolerable. The Stealth Tax Prevention Act will leave tax policy where it belongs, to elected Members of the Congress, not unelected and unaccountable IRS bureaucrats.

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. 831

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

SECTION 1. CONGRESSIONAL REVIEW OF INTERNAL REVENUE SERVICE RULES THAT INCREASE REVENUE.

(a) SHORT TITLE.—This Act may be cited as the ''Stealth Tax Prevention Act''.

(b) IN GENERAL.—Section 804(2) of title 5, United States Code, is amended to read as follows:

''(2) The term 'major rule'—

''(A) means any rule that—

''(i) the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

''(I) an annual effect on the economy of $100,000,000 or more;

''(II) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

''(III) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

''(ii)(I) is promulgated by the Internal Revenue Service; and

''(II) the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds that the implementation and enforcement of the rule has resulted in or is likely to result in any net increase in Federal revenues over current practices in tax collection or revenues anticipated from the rule on the date of the enactment of the statute under which the rule is promulgated; and

''(B) does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.''.

Mr. BOND. Mr. President, I rise today to join my distinguished colleague from Alabama, Senator SHELBY, in introducing legislation to ensure that the Treasury Department's Internal Revenue Service does not usurp the power to tax—a power solely vested in Congress by the U.S. Constitution. The Stealth Tax Prevention Act will ensure that the duly elected representatives of the people, who are accountable to the electorate for our actions, will have discretion to exercise the power to tax. This legislation is intended to curb the ability of the Treasury Department to bypass Congress by proposing a tax increase without the authorization or consent of Congress.

The Stealth Tax Prevention Act builds on legislation passed unanimously by the Senate just over 1 year ago. As chairman of the Committee on Small Business, I authored the Small Business Regulatory Enforcement Fairness Act—better known as the Red Tape Reduction Act—to ensure that small businesses are treated fairly in agency rulemaking and enforcement activities. Subtitle E of the Red Tape Reduction Act provides that a final rule issued by a Federal agency and deemed a major rule by the Office of Information and Regulatory Affairs of the Office of Management and Budget

cannot go into effect for at least 60 days. This delay is to provide Congress with a window during which it can review the rule and its impact, allowing time for Congress to consider whether a resolution of disapproval should be enacted to strike down the regulation. To become effective, the resolution must pass both the House and Senate and be signed into law by the President or enacted as the result of a veto override.

The bill Senator SHELBY and I introduce today amends this law to provide that any rule issued by the Treasury Department's Internal Revenue Service that will result in a tax increase—any increase—will be deemed a major rule by OIRA and, consequently, not go into effect for at least 60 days. This procedural safeguard will ensure that the Department of the Treasury and its Internal Revenue Service cannot make an end-run around Congress, as it is currently attempting with the stealth tax it proposed on January 13.

As my colleagues are aware, the IRS has issued a proposal that is tantamount to a tax increase on businesses structured as limited liability companies. The IRS proposal disqualifies a taxpayer from being considered as a limited partner if he or she ''participates in the partnership's trade or business for more than 500 hours during a taxable year'' or is involved in a ''service'' partnership, such as lawyers, accountants, engineers, architects, and health-care providers.

The IRS alleges that its proposal merely interprets section 1402(a)(13) of the Tax Code, providing clarification, when in actuality it is a tax increase by regulatory fiat. Under the IRS proposal, disqualification as a limited partner will result in a tax increase on income from both capital investments as well as earnings of the partnership. The effect will be to add the self-employment tax—12.4 percent for social security and 2.9 percent for Medicare—to income from investments as well as earnings for limited partners that under current rules can exclude such income from the self-employment tax.

Under the bill introduced today, the tax increase proposed by the Internal Revenue Service of the Treasury Department, if later issued as a final rule, could not go into effect for at least 60 days following its publication in the Federal Register. This window, which coincides with issuance of a report by the Comptroller General, would allow Congress the opportunity to review the rule and vote on a resolution to disapprove the tax increase before it is applied to a single taxpayer.

The Stealth Tax Prevention Act strengthens the Red Tape Reduction Act and the vital procedural safeguards it provides to ensure that small businesses are not burdened unnecessarily by new Federal regulations. Congress enacted the 1966 provisions to strengthen the effectiveness of the Regulatory Flexibility Act, a law which had been ignored too often by Government agencies, especially the Internal Revenue Service. Three of the top recommendations of the 1995 White House Conference on Small Business sought reforms to the way Government regulations are developed and enforced, and the Red Tape Reduction Act passed the Senate without a single dissenting vote on its way to being signed into law last year. Despite the inclusion of language in the 1996 amendments that expressly addresses coverage of IRS interpretative rules, we find ourselves faced again with an IRS proposal that was not issued in compliance with the Regulatory Flexibility Act.

As 18 of my Senate colleagues and I advised Secretary Rubin in an April letter, the proposed IRS regulation on limited partner taxation is precisely the type of rule for which a regulatory flexibility analysis should be done. Although, on its face, the rulemaking seeks merely to define a limited partner or to eliminate uncertainty in determining net earnings from self-employment, the real effect of the rule would be to raise taxes by executive fiat and expand substantially the spirit and letter of the underlying statute. The rule also seeks to impose on small businesses a burdensome new recordkeeping and collection of information requirement that would affect millions of limited partners and members of limited liability companies. The Treasury's IRS proposes this stealth tax increase with the knowledge that Congress declined to adopt a similar tax increase in the Health Security Act proposed in 1994—a provision that the Congressional Joint Committee on Taxation estimated in 1994 would have resulted in a tax increase of approximately $500 million per year.

The Stealth Tax Prevention Act would remove any incentive for the Treasury Department to underestimate the cost imposed by an IRS proposed or final rule in an effort to skirt the administration's regulatory review process or its obligations under the Regulatory Flexibility Act. By amending the definition of major rule under the Congressional Review Act, which is subtitle E of the Red Tape Reduction Act, we ensure that an IRS rule that imposes a tax increase will be a major rule, whether or not it has an estimated annual effect on the economy of $100,000,000. Our amendment does not change the trigger for a regulatory flexibility analysis, which still will be required if a proposed rule would have a significant economic impact on a substantial number of small entities. We believe the heightened scrutiny of IRS regulations called for by this legislation will provide an additional incentive for the Treasury Department's Internal Revenue Service to meet all of its procedural obligations under the Regulatory Flexibility Act and the Red Tape Reduction Act.

I urge my colleagues to join Senator SHELBY and me in supporting this important legislation to ensure that the IRS not usurp the proper role of Congress—nor skirt its obligations to identify the impact of its proposed and final rules. Rules such as that currently proposed by the IRS should be carefully scrutinized by Congress. When the Department of the Treasury issues a final IRS rule that increases taxes, Congress should have the ability to exercise its discretion to enact a resolution of disapproval before the rule is applicable to a single taxpayer. The Stealth Tax Prevention Act Senator SHELBY and I introduce today provides that opportunity.

By Mr. KOHL (for himself, Mr. KERREY, Mr. HARKIN, Mr. HATCH, Mr. HAGEL, and Mr. GRASSLEY):

S. 832. A bill to amend the Internal Revenue Code of 1986 to increase the deductibility of business meal expenses for individuals who are subject to Federal limitations on hours of service; to the Committee on Finance.

THE BUSINESS MEAL DEDUCTION FAIRNESS ACT OF 1997

Mr. KOHL. Mr. President, as my colleagues know, I am one of this body's strongest advocates for deficit reduction. I attribute much of my deep commitment to this goal to my days in business. As a businessman, I learned that you must balance your books and live within your means. I also learned that you must treat people fairly and admit when you have made a mistake. I have come to the floor to acknowledge that a mistake has been made, and must be corrected.

In August 1993 we passed the omnibus budget reconciliation bill. I am proud to say that this legislation has helped to produce falling deficits and sustained economic growth. However, in our efforts to get our fiscal house in order we unfairly penalized a group of hard working, middle-class Americans: transportation workers. It is for this reason that I rise today, to reintroduce the business meal deduction fairness bill. This measure would increase the deductibility of business meals, from 50 to 80 percent, for individuals who are required to eat away from home due to the nature of their work.

In the 1993 reconciliation bill was a provision which lowered the deductible portion of business meals and entertainment expenses from 80 to 50 percent. The change was aimed at the so-called three martini lunches and extravagant entertainment expenses of Wall Street financiers and Hollywood movie moguls. Unfortunately, the change also hit the average truck driver who eats chicken fried steak, hot roast beef sandwiches, and meatloaf in truck stops. And while those who entertain for business purposes can change their practices based on the tax law change, long-haul transportation workers often have no choice but to eat on the road.

For these workers, the 1993 decrease in the meal deduction has translated into an undeserved decrease in take home pay. For example, when the allowable deduction was dropped in 1993,

it increased taxes on an average truck driver $700 to $2,000 per year. This is a huge increase for a truck driver who normally earns $27,000 to $35,000 per year.

Our legislation would increase the take-home pay of hard working, middle-class Americans who were inadvertently hurt by changes in the tax law in 1993. Workers who, due to regulations limiting travel hours, must eat out. They have no control over the length of their trips, the amount of time they must rest during a delivery, or, in many cases, the places they can stop and eat. This legislation is straight forward. It would simply restore the business meal expense deduction to 80 per cent for individuals subject to the Department of Transportation's hours-of-service limitations.

I will be the first to admit that the budget deficit is the No. 1 economic problem facing this country. Since being elected to the Senate, I have fought to eliminate this destructive drain on our ability to grow and compete in the world economy, but I have fought to do so in a fair manner. The 1993 reconciliation bill closed a loophole and unintentionally trapped some very hard working Americans. We need to acknowledge that a mistake was made and take the opportunity of a tax bill moving this year to fix that mistake. Therefore my colleagues, Senators KERREY, HARKIN, HATCH, HAGEL, GRASSLEY and I are requesting the support and assistance of this entire body to ensure that the business meal deduction fairness bill becomes law. Mr. President, I ask unanimous consent that a copy of my legislation be printed in the RECORD.

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

S. 832

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

SECTION 1. INCREASED DEDUCTIBILITY OF BUSINESS MEAL EXPENSES FOR INDIVIDUALS SUBJECT TO FEDERAL LIMITATIONS ON HOURS OF SERVICE.

(a) IN GENERAL.—Section 274(n) of the Internal Revenue Code of 1986 (relating to only 50 percent of meal and entertainment expenses allowed as deduction) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR INDIVIDUALS SUBJECT TO FEDERAL LIMITATIONS ON HOURS OF SERVICE.—In the case of any expenses for food or beverages consumed by an individual during, or incident to, any period of duty which is subject to the hours of service limitations of the Department of Transportation, paragraph (1) shall be applied by substituting '80 percent' for '50 percent'.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1997.

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

S. 833. A bill to designate the Federal building courthouse at Public Square and Superior Avenue in Cleveland, Ohio, as the ''Howard M. Metzenbaum United States Courthouse''; to the Committee on Environment and Public Works.

THE HOWARD M. METZENBAUM UNITED STATES COURTHOUSE DESIGNATION ACT OF 1997

Mr. LAUTENBERG. Mr. President, I rise today to congratulate my dear friend and former colleague, Howard Metzenbaum, on the occasion of his 80th birthday. In his honor, I am introducing a bill that would designate the Federal Building Courthouse in Cleveland, OH, as the ''Howard M. Metzenbaum United States Courthouse.'' I am joined by Ohio's two Senators, Senator GLENN and Senator DEWINE.

Mr. President, I propose naming a courthouse after Howard because a courthouse is a symbol of justice where all people can come and be treated equally under the law. Howard Metzenbaum deserves this honor because he was a dedicated public servant, who served his home State of Ohio for 18 years in the U.S. Senate. Howard's sense of fairness and equality for all Americans led one of his former colleagues to suggest that Howard would have made an exceptional U.S. Supreme Court Justice when he retired from the Senate in 1994.

Mr. President, naming a courthouse after Howard is only a small gesture in attempting to remember a man so committed to justice and fairness. Howard's contributions to the Senate are extraordinary, so we should commemorate his unique contribution by celebrating his 80th year, his 18 years in the United States Senate, and also the special character he brought to our body.

I pay tribute today to a man who always stood up for what he believed was right, fighting hard to preserve opportunity for those yet to come. As a Senator, Howard had a broad range of interests and he pursued them with dogged perseverance, sincerity, and clarity.

Howard and I worked on many issues together during our time in the Senate. Individual rights and environmental preservation were major concerns. He poured his energy into clean air protection, nuclear regulation, cleaning up superfund sites, and recycling. Howard provided strong leadership on antitrust issues as Chairman of the Subcommittee on Antitrust, Monopolies and Business Rights on the Judiciary Committee.

He was a persistent gun control advocate, taking the lead on many antigun initiatives in the Senate. He was one of the lead sponsors of the Brady bill handgun purchase waiting period, as well as the bans on assault weapons and plastic explosives.

But Howard's true passions lay with America's underprivileged and needy communities, which never had a bolder champion. His work on behalf of the poor, the disabled, and the elderly reflect his remarkable compassion for those members of society who face challenges that many of us cannot fully appreciate. He tirelessly defended their interests and fought for their protection. He was dedicated to eradicating discrimination, ensuring adequate health care to those in need, and boosting public education. It has been said many times, but for good reason, that Howard brought not only his conscience to the Senate, but also the courage to act on his convictions.

Howard remains a good friend to me, but he was also a mentor and a teacher during his years in the Senate. He gave me good advice and plenty of it. And, I might add, he continues to do so today, which I welcome. But more than that, his dedication to the office of United States Senator is an example by which to live. He stood tall for the little people.

Some will affectionately remember Howard as determined, argumentative, and even ''irascible.'' I cannot deny that those words come to my mind every now and then, when describing Howard. He was always at his best then, and for good reason. I heard it said by one Senator, and not a good friend: ''If there wasn't a Metzenbaum here, we'd have to invent one to keep us alert.''

I have missed working with Howard Metzenbaum in this great institution, a place that has been truly enhanced by his presence. I salute him on celebrating his 80th year.

I ask unanimous consent that the text of the bill appear at the appropriate place in the RECORD.

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

S. 833

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

SECTION 1. DESIGNATION OF HOWARD M. METZENBAUM UNITED STATES COURTHOUSE.

The Federal building courthouse at Public Square and Superior Avenue in Cleveland, Ohio, shall be known and designated as the ''Howard M. Metzenbaum United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building courthouse referred to in section 1 shall be deemed to be a reference to the ''Howard M. Metzenbaum United States Courthouse''.

By Mr. HARKIN (for himself and Mr. REED):

S. 834. A bill to amend the Public Health Service Act to ensure adequate research and education regarding the drug DES; to the Committee on Labor and Human Resources.

THE DES RESEARCH AND EDUCATION AMENDMENTS OF 1997

Mr. HARKIN. Mr. President, today I am pleased to be joined by my distinguished colleague from Rhode Island, Senator REED, in introducing an important women's health initiative. The DES Research and Education Amendments of 1997 would extend and expand our effort to assist the over 5 million Americans who have been exposed to

the drug, DES. Representative LOUISE SLAUGHTER, a long-time leader on this issue, is introducing companion legislation today in the other body.

Between 1938 and 1971, some 5 million American women were given the synthetic drug, diethylstilbestrol, commonly known as DES. Women were given the drug during pregnancy in the mistaken belief it would help prevent miscarriage. The drug was pulled from the market based on studies that found that it was ineffective and might result in damage to children born to the women who had been given it.

Since the 1970's, studies have shown that DES does damage the reproductive systems of those exposed in utero and increases these individuals' risk for cancer, infertility, and a wide range of other serious reproductive tract disorders. The women exposed in utero to DES are five times more likely to have an ectopic pregnancy and three times more likely to miscarry when they in turn try to have children. Studies also show that one of every thousand women exposed to DES in utero will develop clear cell cancer. Women who took DES have also been found to face a higher risk for breast cancer.

In 1992, while there had been a number of research studies on DES exposure and its effects, much more research was necessary. That year, President Bush signed legislation introduced by myself and Representative SLAUGHTER, that mandated a significant increase in DES research supported by the National Institutes of Health [NIH]. Our legislation also required NIH to support long-term studies of Americans impacted by this drug. Those studies are now underway and must be continued. The legislation we are introducing today will ensure that this critical medical research continues. In addition, there is now preliminary evidence that the grandkids of women who took DES may also be at higher risk for certain health problems, and this legislation would help ensure that further research into this is supported.

Another major problem in this area is that millions of Americans don't know the risks they face because of their exposure to DES. Many health professionals who see these people also lack sufficient information about DES exposure and the appropriate steps that should be taken to identify and assist their patients. As a result, many people do not seek or get the appropriate preventive care or take appropriate preventive measures to reduce their risks of adverse affects. For example, women exposed to DES in utero and therefore at higher risk of miscarriage may be able to reduce their risks with appropriate precautionary steps.

In an initial attempt to address this need for better information, our 1992 legislation required NIH to test ways to educate the public and health professionals about how to deal with DES exposure. The legislation we are introducing today would give people across the Nation access to the information developed through these pilot programs by requiring a national consumer and health professional education effort.

Mr. President, we took a very important step in 1992 to begin to address the significant problem presented by DES exposure. And we did it with strong bipartisan cooperation between a Democratic Congress and a Republican President. That legislation expires this year. We need to make sure that the progress we've made is continued. The 5 million Americans whose health is at risk are depending on us to work together to make sure that happens. I urge my colleagues to join me in support of that effort. I ask unanimous consent that a copy of the legislation be included in the RECORD.

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

S. 834

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 ''DES Research and Education Amendments of 1997''.

SEC. 2. FINDINGS.

With respect to diethylstilbestrol (a drug commonly known as DES), the Congress finds as follows:

(1) DES was widely prescribed to American women from 1938 to 1971 in the mistaken belief it would prevent miscarriage. Approximately 5,000,000 pregnant women took the drug, resulting in DES exposure for approximately 5,000,000 daughters and sons.

(2) Studies conducted since the 1970s have shown that DES damages the reproductive systems of those exposed in utero and increases the risk for cancer, infertility, and a wide range of other serious reproductive tract disorders. These disorders include a five-fold increased risk for ectopic pregnancy for DES daughters and a three-fold increase in risk for miscarriage and preterm labor. Studies have indicated that exposure to DES may increase the risk for autoimmune disorders and diseases.

(3) An estimated 1 in 1,000 women exposed to DES in utero will develop clear cell cancer of the vagina or cervix. While survival rates for clear cell cancer are over 80 percent when it is detected early, there is still no effective treatment for recurrences of this cancer.

(4) Studies also indicate a higher incidence of breast cancer among mothers who took DES during pregnancy.

(5) While research on DES and its effects has produced important advances to date, much more remains to be learned.

(6) Preliminary research results indicate that DES exposure may have a genetic impact on the third generation—the children of parents exposed to DES in utero—and that estrogen replacement therapy may not be advisable for DES-exposed women.

(7) All DES-exposed individuals have special screening and health care needs, especially during gynecological exams and pregnancy for DES daughters, who should receive high risk care.

(8) Many Americans remain unaware of their DES exposure or ignorant about proper health care and screening. There remains a great need for a national education effort to inform both the public and health care providers about the health effects and proper health care practices for DES-exposed individuals.

SEC. 3. REVISION AND EXTENSION OF PROGRAM FOR RESEARCH AND AUTHORIZATION OF NEW NATIONAL PROGRAM OF EDUCATION REGARDING DRUG DES.

(a) PERMANENT EXTENSION OF GENERAL PROGRAM.—Section 403A(e) of the Public Health Service Act (42 U.S.C. 283a(e)) is amended by striking ''for each of the fiscal years 1993 through 1996'' and inserting ''for fiscal year 1997 and each subsequent fiscal year''.

(b) NATIONAL PROGRAM FOR EDUCATION OF HEALTH PROFESSIONALS AND PUBLIC.—From amounts appropriated for carrying out section 403A of the Public Health Service Act (42 U.S.C. 283a), the Secretary of Health and Human Services, acting through the heads of the appropriate agencies of the Public Health Service, shall carry out a national program for the education of health professionals and the public with respect to the drug diethylstilbestrol (commonly known as DES). To the extent appropriate, such national program shall use methodologies developed through the education demonstration program carried out under such section 403A. In developing and carrying out the national program, the Secretary shall consult closely with representatives of nonprofit private entities that represent individuals who have been exposed to DES and that have expertise in community-based information campaigns for the public and for health care providers. The implementation of the national program shall begin during fiscal year 1998.

By Mr. ABRAHAM (for himself, Mr. MCCONNELL, Mr. COVERDELL, Mr. SANTORUM, Mr. MCCAIN and Mr. ASHCROFT):

S. 836. A bill to offer small businesses certain protections from litigation excesses; to the Committee on the Judiciary.

THE SMALL BUSINESS LAWSUIT ABUSE PROTECTION ACT OF 1997

Mr. ABRAHAM. Mr. President, I rise today to introduce the Small Business Lawsuit Abuse Protection Act of 1997. This bill will provide targeted relief from litigation excesses to small businesses.

Small businesses in Michigan and across the Nation have faced increasingly burdensome litigation and desperately need relief from unwarranted and costly lawsuits. While other sectors of our society and our economy also need relief from litigation excesses, small businesses by their very nature are particularly vulnerable to lawsuit abuses and especially unable to bear the high costs of unjustified and unfair litigation against them.

As this week is Small Business Week, it provides a fine opportunity for us to focus on relieving the burdens faced by small businesses. Small businesses represent the engine of our growing economy and provide countless benefits to communities across America. The Research Institute for Small and Emerging Business, for example, has estimated that there are over 20 million small businesses in America and that small businesses generate 50 percent of the country's private sector output.

When I was in Michigan last week over the Memorial Day recess, I heard story after story from small businesses about the constraints, limitations, and

fear imposed on them by the threat of abusive and unwarranted litigation. I also heard about the high costs that they must pay for liability insurance. Those represent costs that could be going to expand small businesses, to provide more jobs, or to offer more benefits. According to a recent Gallup survey, one out of every five small businesses decides not to hire more employees, expand its business, introduce a new product, or improve an existing one out of fear of lawsuits.

Before the Memorial Day recess, Congress passed the Volunteer Protection Act, which—if signed by the President—will provide specific protections from abusive litigation to volunteers. The Senate passed that legislation by an overwhelming margin of 99 to 1. That legislation provides a model for further targeted reforms for sectors that are particularly hard hit and in need of immediate relief.

Small businesses have carried an often unbearable load from unwarranted and unjustified lawsuits. Data from San Diego's superior court published by the Washington Legal Foundation revealed that punitive damages were requested in 41 percent of suits against small businesses. It is unfathomable that such a large proportion of our small businesses are engaging in the sort of egregious misconduct that would warrant a claim of punitive damages. Unfortunately, those sort of findings are not unusual. The National Federation of Independent Business has reported that 34 percent of Texas small business owners have been sued or threatened with court action seeking punitive damages. Those figures are outrageously high and simply cannot have anything to do with actual wrongdoing.

We know of far too many examples of expensive and ridiculous legal threats faced by our small businesses that they must defend every day. In a case reported by the American Consulting Engineers Council, a drunk driver had an accident after speeding and bypassing detour signs. Eight hours after the crash, the driver had a blood alcohol level of 0.09. The driver sued the engineering firm that designed the road, the contractor, the subcontractor, and the State highway department. Five years later, and after expending exorbitant amounts on legal fees, the defendants settled the case for $35,000. The engineering firm—a small 15 person firm—was swamped with over $200,000 in legal costs. That represents an intolerable amount for a small business to have to pay in defending a questionable and unwarranted lawsuit.

There are more examples. In an Ann Landers column from October 1995, a case was reported that involved a minister and his wife who sued a guide dog school for $160,000 after a blind man who was learning to use a seeing-eye dog stepped on the woman's toes in a shopping mall. The guide dog school, Southeastern Guide Dogs, Inc., which provided the instructor supervising the man, was the only school of its kind in the Southeast. It trains seeing-eye dogs at no cost to the visually impaired. The couple filed their lawsuit 13 months after the so-called accident, in which witnesses reported that the woman did not move out of the blind man's way because she wanted to see if the dog would walk around her.

The experiences of a small business in Michigan, the Michigan Furnace Co., is likewise alarming. The plawsuit in the history of her company has been a nuisance lawsuit. She indicates that if the money the company spends on liability insurance and legal fees was distributed among the employees, it would amount to a $10,000 annual raise per employee.

These costs are stifling our small businesses and the people who work there. The straightforward provisions of the Small Business Lawsuit Abuse Protection Act will provide small businesses with relief by discouraging abusive litigation. The bill contains essentially two principal reforms.

First, the bill limits punitive damages that may be awarded against a small business. In most civil lawsuits against small businesses, punitive damages would be available against the small business only if the claimant proves by clear and convincing evidence that the harm was caused by the small business through at least a conscious, flagrant indifference to the rights and safety of the claimant. Punitive damages would also be limited in amount. Punitive damages would be limited to the lesser of $250,000 or two times the compensatory damages awarded for the harm. That formulation is exactly the same formulation that appears in the small business protection provision that was included in the product liability conference report that passed in the 104th Congress.

Second, joint and several liability reforms for small businesses are included under the exact same formulation that was used both in the Volunteer Protection Act passed this Congress and in the product liability conference report passed last Congress. Joint and several liability would be limited so that a small business would be liable for noneconomic damages only in proportion to the small business's responsibility for causing the harm. If a small business is responsible for 100% of an accident, then it will be liable for 100% of noneconomic damages. But if it is only 70%, 25%, 10%, or any other amount responsible, then the small business will be liable only for that same percent of noneconomic damages.

Of course, small businesses would still be jointly and severally liable for economic damages, and any other defendants in the action that were not small businesses could be held jointly and severally liable for all damages. This should provide some protection to small businesses so that they will not be sought out as ''deep pocket'' defendants by trial lawyers who would otherwise try to get them on the hook for harms that they have not caused. The fact is that many small businesses simply do not have deep pockets, and they frequently need all of their resources just to stay in business, take care of their employees, and make ends meet.

The other provisions in the bill specify the situations in which those reforms apply. The bill defines small business as any business having fewer than 25 employees. That is the same definition of small business that was included in the Product Liability Conference Report. Like the Volunteer Protection Act, this bill covers all civil lawsuits with the exception of suits involving certain types of egregious conduct. The limitations on liability included in the bill would not apply to any misconduct that constitutes a crime of violence, act of international terrorism, hate crime, sexual offense, or civil rights law violation, or which occurred while the defendant was under the influence of intoxicating alcohol or any drug.

Also like the Volunteer Protection Act, the bill includes a State opt-out. A State would be able to opt out of the provisions of the bill provided the State enacts a law indicating its election to do so and containing no other provisions. I do not expect that any State will opt-out of these provisions, but I feel it is important to include one out of respect for principles of federalism.

I am pleased to have Senators MCCONNELL, COVERDELL, SANTORUM and MCCAIN as original cosponsors of the legislation and very much appreciate their support for our small businesses and for meaningful litigation reforms. The bill is also supported by the National Federation of Independent Business and by the National Restaurant Association. I ask unanimous consent that letters from those two organizations be inserted in the RECORD.

Finally, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD, as well as the full text of the bill, and I encourage my colleagues to support this simple and much-needed legislation.

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

S. 836

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 ''Small Business Lawsuit Abuse Protection Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the United States civil justice system is inefficient, unpredictable, unfair, costly, and impedes competitiveness in the marketplace for goods, services, business, and employees;

(2) the defects in the civil justice system have a direct and undesirable effect on interstate commerce by decreasing the availability of goods and services in commerce;

(3) there is a need to restore rationality, certainty, and fairness to the legal system;

(4) the spiralling costs of litigation and the magnitude and unpredictability of punitive

damage awards and noneconomic damage awards have continued unabated for at least the past 30 years;

(5) the Supreme Court of the United States has recognized that a punitive damage award can be unconstitutional if the award is grossly excessive in relation to the legitimate interest of the government in the punishment and deterrence of unlawful conduct;

(6) just as punitive damage awards can be grossly excessive, so can it be grossly excessive in some circumstances for a party to be held responsible under the doctrine of joint and several liability for damages that party did not cause;

(7) as a result of joint and several liability, entities including small businesses are often brought into litigation despite the fact that their conduct may have little or nothing to do with the accident or transaction giving rise to the lawsuit, and may therefore face increased and unjust costs due to the possibility or result of unfair and disproportionate damage awards;

(8) the costs imposed by the civil justice system on small businesses are particularly acute, since small businesses often lack the resources to bear those costs and to challenge unwarranted lawsuits;

(9) due to high liability costs and unwarranted litigation costs, small businesses face higher costs in purchasing insurance through interstate insurance markets to cover their activities;

(10) liability reform for small businesses will promote the free flow of goods and services, lessen burdens on interstate commerce, and decrease litigiousness; and

(11) legislation to address these concerns is an appropriate exercise of Congress powers under Article I, section 8, clauses 3, 9, and 18 of the Constitution, and the fourteenth amendment to the Constitution.

SEC. 3. DEFINITIONS.

In this Act:

(1) ACT OF INTERNATIONAL TERRORISM.—The term ''act of international terrorism'' has the same meaning as in section 2331 of title 18, United States Code).

(2) CRIME OF VIOLENCE.—The term ''crime of violence'' has the same meaning as in section 16 of title 18, United States Code.

(3) DRUG.—The term ''drug'' means any controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802(b)) that was not legally prescribed for use by the defendant or that was taken by the defendant other than in accordance with the terms of a lawfully issued prescription.

(4) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(5) HARM.—The term ''harm'' includes physical, nonphysical, economic, and noneconomic losses.

(6) HATE CRIME.—The term ''hate crime'' means a crime described in section 1(b) of the Hate Crime Statistics Act (28 U.S.C. 534 note)).

(7) NONECONOMIC LOSSES.—The term ''noneconomic losses'' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), injury to reputation, and all other nonpecuniary losses of any kind or nature.

(8) SMALL BUSINESS.—

(A) IN GENERAL.—The term ''small business'' means any unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has less than 25 full-time employees.

(B) CALCULATION OF NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the number of employees of a subsidiary of a wholly-owned corporation includes the employees of—

(i) a parent corporation; and

(ii) any other subsidiary corporation of that parent corporation.

(10) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

SEC. 4. LIMITATION ON PUNITIVE DAMAGES FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 6, in any civil action against a small business, punitive damages may, to the extent permitted by applicable State law, be awarded against the small business only if the claimant establishes by clear and convincing evidence that conduct carried out by that defendant through willful misconduct or with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.

(b) LIMITATION ON AMOUNT.—In any civil action against a small business, punitive damages shall not exceed the lesser of—

(1) two times the total amount awarded to the claimant for economic and noneconomic losses; or

(2) $250,000.

(c) APPLICATION BY COURT.—This section shall be applied by the court and shall not be disclosed to the jury.

SEC. 5. LIMITATION ON SEVERAL LIABILITY FOR NONECONOMIC LOSS FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 6, in any civil action against a small business, the liability of each defendant that is a small business, or the agent of a small business, for noneconomic loss shall be determined in accordance with subsection (b).

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—In any civil action described in subsection (a)—

(A) each defendant described in that subsection shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable; and

(B) the court shall render a separate judgment against each defendant described in that subsection in an amount determined pursuant to subparagraph (A).

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the harm to the claimant, regardless of whether or not the person is a party to the action.

SEC. 6. EXCEPTIONS TO LIMITATIONS ON LIABILITY.

The limitations on liability under sections 4 and 5 do not apply to any misconduct of a defendant—

(1) that constitutes—

(A) a crime of violence;

(B) an act of international terrorism; or

(C) a hate crime;

(2) that involves—

(A) a sexual offense, as defined by applicable State law; or

(B) a violation of a Federal or State civil rights law; or

(3) if the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or a drug at the time of the misconduct, and the fact that the defendant was under the influence was the cause of any harm alleged by the plaintiff in the subject action.

SEC. 7. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

(a) PREEMPTION.—Subject to subsection (b), this Act preempts the laws of any State to the extent that State laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protections from liability for small businesses.

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act does not apply to any action in a State court against a small business in which all parties are citizens of the State, if the State enacts a statute—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act does not apply as of a date certain to such actions in the State; and

(3) containing no other provision.

SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—This Act shall take effect 90 days after the date of enactment of this Act.

(b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a small business, if the claim is filed on or after the effective date of this Act, without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before such effective date.

SECTION-BY-SECTION ANALYSIS—THE SMALL BUSINESS LAWSUIT ABUSE PROTECTION ACT OF 1997

SECTION 1. SHORT TITLE

This section provides that the act may be cited as the ''Small Business Lawsuit Abuse Protection Act of 1997.''

SECTION 2. FINDINGS

This section sets out congressional findings concerning the litigation excesses facing small businesses, and the need for litigation reforms to provide certain protections to small businesses from abusive litigation.

SECTION 3. DEFINITIONS

Various terms used in the bill are defined in the section. Significantly, for purposes of the legislation, a small business is defined as any business or organization with fewer than 25 full time employees.

SECTION 4. LIMITATION ON PUNITIVE DAMAGES FOR SMALL BUSINESSES

The bill provides that punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant that is a small business only if the claimant establishes by clear and convincing evidence that conduct carried out by that defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.

The bill also limits the amount of punitive damages that may be awarded against a small business. In any civil action against a small business, punitive damages may not exceed the lesser of two times the amount awarded to the claimant for economic and noneconomic losses, or $250,000.

SECTION 5. LIMITATION ON SEVERAL LIABILITY FOR NONECONOMIC LOSS FOR SMALL BUSINESSES

This section provides that, in any civil action against a small business, for each defendant that is a small business, the liability of that defendant for noneconomic loss will be in proportion to that defendant's responsibility for causing the harm. Those defendants would continue, however, to be held

jointly and severally liable for economic loss. In addition, any other defendants in the action that are not small businesses would continue to be held jointly and severally liable for both economic and noneconomic loss.

SECTION 6. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY

The bill preempts State laws to the extent that any such laws are inconsistent with it, but it does not preempt any State law that provides additional protections from liability to small businesses. The bill also includes an opt-out provision for the States. A State may opt out of the provisions of the bill for any action in State court against a small business in which all parties are citizens of the State. In order to opt out, the State would have to enact a statute citing the authority in this section, declaring the election of the State to opt out, and containing no other provisions.

SECTION 7. EXCEPTIONS TO LIMITATIONS ON LIABILITY

The limitations on liability included in the bill would not apply to any misconduct that constitutes a crime of violence, act of international terrorism, hate crime, sexual offense, or civil rights law violation, or which occurred while the defendant was under the influence of intoxicating alcohol or any drug.

SECTION 8. EFFECTIVE DATE

The bill would take effect 90 days after the date of enactment, and would apply to claims filed on or after the effective date.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, June 4, 1997.

Hon. SPENCER ABRAHAM,
U.S. Senate,
Washington, DC

DEAR SENATOR ABRAHAM: On behalf of the 600,000 small business owners of the National Federation of Independent Business (NFIB), I am writing to commend you for your efforts to put an end to abusive litigation and restore common sense to our civil justice system.

Legal reform is a small business issue and was listed as to top priority at the 1995 White House Conference on Small Business. The frequency and cost of litigation have been exploding at an alarming rate. Our civil justice system is becoming increasingly inaccessible, unaffordable and intimidating, not to mention unfair. It is now so strained that it threatens not only the fair judicial process but also has become a huge disincentive to business start-ups. The cost and availability of liability insurance was listed as a top concern to small business owners in a survey conducted recently by the NFIB Education Foundation.

Small business owners now see the legal system as a ''no win'' situation. If sued—even if completely innocent—it means either a costly, protracted trial or being forced into an expensive settlement to avoid a trial. Thousands of small business owners across the country are having their business, their employees, and their future put at risk by a legal system that is out of control.

Small business owners support any measures that inject more fairness into our civil justice system and allow for the affordable pursuit—or defense—of legitimate cases. Your legislation, the Small Business Lawsuit Abuse Protection Act of 1997, is an important vehicle for those goals. With our courts facing an extraordinary backlog with delays up to several years in some jurisdictions, your bill will discourage frivolous or malicious cases, and help streamline and balance the system.

Thank you for your continued support of small business.

Sincerely,

DAN DANNER,
Vice President, Federal Governmental Relations.

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, June 4, 1997.

Hon. SPENCE ABRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABRAHAM: The National Restaurant Association—the leading representative for the nation's restaurant industry which employs more than nine million Americans—strongly applauds your effort to protect small businesses from Litigation excesses.

Many small businesses, particularly restaurants, have become vulnerable to excessive litigation in recent years. Indeed, our members are all too familiar with the rising costs of liability insurance and with the reality that a single frivolous lawsuit can be enough to drive a restaurant out of business. We strongly support the Small Business Lawsuit Abuse Protection Act of 1997 and believe it will go a long way toward curbing lawsuit abuse.

Because of the fear of unlimited punitive damages when faced with a claim, many small business owners settle out of court for significant award amounts, even if the plaintiff's claim is frivolous and unwarranted. Plaintiffs' attorneys take advantage of a small business owner's fear, pursuing claims against businesses that they know will have ''settlement value.'' The Small Business Lawsuit Abuse Protection Act limits the amount of punitive damages that may be awarded against a small business. In any civil action against a small business, punitive damages may not exceed the lesser of two times the amount awarded to the claimant for economic and noneconomic losses, or $250,000. Putting a cap on the amount of punitive damages would help to reduce frivolous suits and would enable businesses to obtain more equitable settlements and avoid costly and unnecessary legal fees.

In addition to limiting punitive damages, we are pleased that your legislation includes a provision to limit several liability for noneconomic damages. Under joint and several liability, small business owners are often dragged into lawsuits with which they had little, or nothing, to do. The Abraham Small Business Lawsuit Abuse Protection Act takes an important first step by limiting the liability for noneconomic loss to the proportion of the small business' responsibility. The limitation on several liability would apply in any civil action against a small business.

Senator Abraham, we appreciate your continued commitment to small business and to legal reform. We look forward to working with you to pass the Small Business Lawsuit Abuse Protection Act.

Sincerely,

ELAINE Z. GRAHAM,
Senior Vice President, Government Relations and Membership.
CHRISTINA M. HOWARD,
Senior Legislative Representative.

Mr. MCCONNELL. Mr. President, I rise today to join my esteemed colleague from Michigan in the introduction of the Small Business Lawsuit Abuse Protection Act of 1997.

Over the past 30 years, the American civil justice system has become inefficient, unpredictable, and costly. Consequently, I have spent a great deal of my time in the U.S. Senate working to reform the legal system. I was particularly pleased to help lead in the efforts to pass the Volunteer Protection Act, which offers much-needed litigation protection for our country's battalion of volunteers. America's litigation crisis, however, goes well beyond our volunteers.

Lawsuits and the mere threat of lawsuits impede our country's invention, innovation, and the competitive position our Nation has enjoyed in the world marketplace. The litigation craze has several perverse effects. For example, it discourages the production of more and better products, while encouraging the production of more and more attorneys. In the 1950's, there was one lawyer for every 695 Americans. Today, in contrast, there is one lawyer for every 290 people. In fact, we have more lawyers per capita than any other western democracy.

Mr. President, don't get me wrong—there is nothing inherently wrong with being a lawyer. I am proud to be a graduate of the University of Kentucky College of Law. My point, however, is simple: government and society should promote a world where it is more desirable to create goods and services than it is to create lawsuits.

The chilling effects of our country's litigation epidemic are felt throughout our national economy—especially by our small businesses. We must act to remove the litigation harness from the backs of our small businesses.

The Small Business Lawsuit Abuse Protection Act is a narrowly crafted bill which seeks to restore some rationality, certainty, and civility to the legal system. Specifically, this bill would offer limited relief to businesses or organizations that have fewer than 25 full-time employees.

First, the bill seeks to provide some reasonable limits on punitive damages, which typically serve as a windfall to plaintiffs. The bill provides that punitive damages may be awarded against a small business only if the claimant establishes by clear and convincing evidence that the business engaged in wanton or willful conduct. The bill would also limit the amount of punitive damages that may be awarded against a small business to, the lesser of: First, $250,000, or second, two times the amount awarded to the claimant for economic and noneconomic losses. Third, the bill provides that a business' responsibility for noneconomic losses would be in proportion to the business' responsibility for causing the harm. Any other defendants in the action who are not small businesses would continue to be held jointly and severally liable.

Now, let me explain what this bill does not do. It does not close the courthouse door to plaintiffs who sue small businesses. For example, this bill does not limit a plaintiff's ability to sue a small business for an act of negligence, or any other act, for that matter. The

bill also does not abolish joint and several liability for economic losses.

Mr. President, this is a sensible, narrowly tailored piece of legislation that is greatly needed to free up the enterprising spirit of our small businesses. I look forward to Senate's consideration of this important legislation.

Mr. COVERDELL. Mr. President, I rise today to join my good friend, Senator ABRAHAM, in introducing the Small Business Lawsuit Abuse Protection Act. As a member of the Senate's Small Business Committee, I have focused on helping small businesses succeed in an increasingly competitive environment.

Small businesses are vulnerable to abusive lawsuits. Take for example the case of Dixie Flag Manufacturing, a small business in Texas that manufactures American flags. The company was named in an injury lawsuit claiming it manufactured an unreasonably dangerous product—a flag—that failed to carry proper instructions or warning labels. Ironically, Dixie Flag Manufacturing did not even make the flag involved in the injury prompting the lawsuit. In fact, its only connection to the incident was that it happened to be in the business of manufacturing American flags. Nevertheless, this mall family-owned business was forced to settle out of court in order to avoid large legal fees.

The cost of obtaining product liability insurance has skyrocketed over the last 20 years, and small businesses have been disproportionately affected. A recent Gallup survey found that the fear of lawsuits drove 20 percent of small businesses not to hire more employees, expand the business, introduce a new product, or improve an existing one.

I recently authored the Volunteer Protection Act to shield volunteers from unreasonable and costly lawsuits, and it received overwhelming support in Congress because it takes real action to promote voluntarism. Frivolous and absurd lawsuits are having a chilling effect on the volunteer community. Consequently, the Volunteer Protection Act deserves the President's unqualified support.

The Gallup study demonstrates that the threat of frivolous lawsuits is having a similar chilling effect on small business. Simply put, the Small Business Lawsuit Abuse Protection Act, which has been modeled after the Volunteer Protection Act, would provide needed protections for small businesses from abusive and frivolous lawsuits.

Let me take this opportunity to briefly describe how the Small Business Lawsuit Abuse Protection Act would protect small businesses, specifically those with fewer than 25 full-time employees.

First, it would require that clear and convincing evidence of gross negligence must be present before punitive damages could be awarded against a small business. Second, it would place sensible limits on punitive damages, which could potentially bankrupt a small business. Third, it would provide for proportionate liability for small business.

It is important to note that this legislation would give States the flexibility to impose conditions and to make exceptions to the granting of liability protection. In addition, it would allow States to opt for cases where all parties are citizens of that State.

Finally, it is important to note that the bill clearly states which actions would not entitle a small business to protection. Any misconduct constituting a crime of violence, an act of international terrorism, a hate crime, a sexual offense, or a civil rights violation or misconduct occurring while under the influence of alcohol or drugs would not be covered.

Mr. President, this is Small Business Week. Accordingly, all citizens should take a moment during this year's Small Business Week to recognize our economy's dependence on small business and realize the importance of nurturing their development. For Georgia, as is the case for the whole Nation, small businesses are the jobs provider and the backbone of our economy. The Small Business Administration reports that nearly 98 percent of the firms in Georgia that provide employment are small businesses. Moreover, it is estimated there are an additional 213,000 self-employed entrepreneurs in my State.

What better time to highlight the importance of providing small business much-needed relief from abusive lawsuits than during Small Business Week? I urge my colleagues to join us in supporting the Small Businesses Lawsuit Abuse Protection Act and in protecting small businesses from abusive litigation.

By Mr. CAMPBELL (for himself, Mr. HATCH, and Mr. CRAIG):

S. 837. A bill to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed firearms and to allow States to enter into compacts to recognize other States' concealed weapons permits; to the Committee on the Judiciary.

CONCEALED WEAPONS PERMITS LEGISLATION

Mr. CAMPBELL. Mr. President, today I am pleased to be joined by the chairman of the Judiciary Committee, Senator HATCH and Senator CRAIG as original cosponsors of this legislation.

This bill would both authorize States to recognize each other's concealed weapons laws and would exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed firearms. This legislation is designed to support the rights of States and to facilitate the right of law-abiding citizens as well as law enforcement officers to protect themselves, their families, and their property.

The language of this bill is similar to a provision in S. 3, the Omnibus Crime Control Act of 1997, introduced earlier this year by the chairman of the Senate Judiciary Committee, Senator HATCH. In light of the importance of this provision to law-abiding gunowners and law enforcement officers, I am introducing this free-standing bill today for the Senate's consideration and prompt action.

This bill allows States to enter into agreements known as compacts to recognize the concealed weapons laws of those States included in the compacts. This is not a Federal mandate; it is strictly voluntary for those States interested in this approach. States would also be allowed to include provisions which best meet their needs, such as special provisions for law enforcement personnel.

This legislation would allow anyone possessing a valid permit to carry a concealed firearm in their respective State to also carry one in another State, provided that the States have entered into a compact agreement which recognizes the host State's right-to-carry laws. This is needed if you want to protect the security individuals enjoy in their own State when they travel or simply cross State lines to avoid a crazy quilt of differing laws.

I use my own experience in Colorado as a former deputy sheriff and as a person who just lives 9 miles from the New Mexico border and within an hour's drive of both Arizona and Utah as a person who is caught in this kind of crazy quilt. I have always been a law-abiding citizen. I have a permit to carry a gun in Colorado, but if I go south just 5 minutes into New Mexico, I have to comply with a different standard, and this bill would correct this different standard.

Currently, a Federal standard governs the conduct of nonresidents in those States that do not have a right-to-carry statute. Many of us in this body have always strived to protect the interests of States and communities by allowing them to make important decisions on how their affairs should be conducted. We are taking to the floor almost every day to talk about mandating certain things to the States. This bill would allow States to decide for themselves.

Specifically, it allows that the law of each State govern conduct within that State where the State has a right-to-carry statute, and States determine through a compact agreement which out-of-State right-to-carry statute will be recognized.

To date, 31 States have passed legislation making it legal to carry concealed weapons. These State laws enable citizens of those States to exercise their right to protect themselves, their families, and their property.

Applicants, of course, must be law-abiding citizens and pass their State's firearm training requirements. In my State of Colorado, the State legislature has passed a bill which puts into place statewide uniform standards for concealed weapons permits.

The second major provision of this bill would allow qualified current and

former law enforcement officers who are carrying appropriate written identification of that status to be exempt from State laws that prohibit the carrying of concealed weapons. This provision sets forth a checklist of stringent criteria that law enforcement officers must meet in order to qualify for this exemption status. Exempting qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed weapons, I believe, would add additional forces to our law enforcement community in our unwavering fight against crime.

I share the view of the Judiciary Committee chairman, Senator HATCH, as reflected in his legislation, that the need to establish greater national uniformity concerning the entitlement of active and retired law enforcement officers to carry weapons across State lines is paramount. That is why I have included this provision in this bill. To our friends who do not believe in the right to bear arms, I recommend reading this morning's Washington Post. I ask unanimous consent that this article be printed in the RECORD.

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

[From the Washington Post, June 5, 1997]

SEVEN SLAIN IN DISTRICT IN 36 HOURS OF VIOLENCE

(By Brian Mooar and Avis Thomas-Lester)

Two men were fatally shot yesterday in separate incidents in Southeast Washington in a deadly 36-hour period in which seven people were killed in the city, police said.

At least four other people were wounded by gunfire.

the unusual flurry of violence stretched the resources of the D.C. police homicide branch, sending investigators from one end of Washington to the other as reports came in about shootings.

''Everybody has their hands full, running here and running there,'' Sgt. Marvin Lyons, a homicide squad supervisor, said last night.

''My detectives have been working around the clock and on the multitude of different cases, and then this latest group of homicides happens,'' said Capt. Alan Dreher, head of the homicide unit for the last two years. ''I don't know if it's a record, but it is certainly the highest number of homicides I've seen in a 24- or 36-hour period since I've been commander of homicide.''

The latest shooting occurred about 11 p.m. in the Washington Highlands neighborhood in far Southeast Washington. Police said that a woman and two men were shot and wounded by gunfire in the 4200 block of Sixth Street SE.

That scene was not far from a shooting about eight hours earlier that left one man dead near Sixth and Chesapeake Streets SE.

Another man was killed about 1:30 p.m. yesterday near the Kentucky Courts apartment complex in the 200 block of Kentucky Avenue SE.

The names of those shot, including a man wounded on 50th Street NE about 9 p.m., had not been released last night.

While keeping up with the two fatal shootings yesterday, homicide detectives were investigating Tuesday's fatal shootings of three young men in Northeast Washington and the discovery of two bodies in Northwest.

Officers on patrol in the 5800 block of Blaine Street NE about 4 p.m. Tuesday saw what appeared to be two men sitting in a car in an alley. But when the officers checked on them, officials said, they discovered that both men had been shot several times.

They were identified as Norman Isaac, 18, of the 100 block of 59th Street NE, and William Alonzo Powell III, 23, of the 100 block of 58th Place NE, police said.

Later Tuesday, Bernard Campbell Allen, 17, was shot multiple times about 11 p.m. at 16th and E streets NE. Allen, of the 9300 block of Edmonston Road in Greenbelt, was taken to D.C. General Hospital, where he was pronounced dead a few hours later, police said.

About 9 a.m. Tuesday, police found the body of an unidentified woman who had been stabbed to death and left in an alley in Columbia Heights. Later in the day, the body of an unidentified man was found in the trunk of a car in the 1400 block of Chapin Street NW.

Mr. CAMPBELL. This appeared this morning, and is a story about seven people slain in violence in the last 36 hours in Washington, DC, four or more wounded in just that same 36-hour period. And I would point out that this is a city that has the tightest gun control laws in the Nation, so tight in fact that not a Senator or Congressman, not a Supreme Court Justice, for that matter, can carry a concealed weapon. It seems like only the bad guys can carry them in this town.

I do ask unanimous consent that Senator HATCH be added as an original cosponsor to this bill and it be printed in the RECORD.

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

S. 837

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 ''Law Enforcement Protection Act of 1997''.

SEC. 2. EXEMPTION OF QUALIFIED CURRENT AND FORMER LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

''§ 926B. Carrying of concealed firearms by qualified current and former law enforcement officers

''(a) IN GENERAL.—Notwithstanding any provision of the law of any State or any political subdivision of a State, an individual may carry a concealed firearm if that individual is—

''(1) a qualified law enforcement officer or a qualified former law enforcement officer; and

''(2) carrying appropriate written identification.

''(b) EFFECT ON OTHER LAWS.—

''(1) COMMON CARRIERS.—Nothing in this section shall be construed to exempt from section 46505(B)(1) of title 49—

''(A) a qualified law enforcement officer who does not meet the requirements of section 46505(D) of title 49; or

''(B) a qualified former law enforcement officer.

''(2) FEDERAL LAWS.—Nothing in this section shall be construed to supersede or limit any Federal law or regulation prohibiting or restricting the possession of a firearm on any Federal property, installation, building, base, or park.

''(3) STATE LAWS.—Nothing in this section shall be construed to supersede or limit the laws of any State that—

''(A) grant rights to carry a concealed firearm that are broader than the rights granted under this section;

''(B) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

''(C) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

''(4) DEFINITIONS.—In this section:

''(A) APPROPRIATE WRITTEN IDENTIFICATION.—The term 'appropriate written identification' means, with respect to an individual, a document that—

''(i) was issued to the individual by the public agency with which the individual serves or served as a qualified law enforcement officer; and

''(ii) identifies the holder of the document as a current or former officer, agent, or employee of the agency.

''(B) QUALIFIED LAW ENFORCEMENT OFFICER.—The term 'qualified law enforcement officer' means an individual who—

''(i) is presently authorized by law to engage in or supervise the prevention, detection, or investigation of any violation of criminal law;

''(ii) is authorized by the agency to carry a firearm in the course of duty;

''(iii) meets any requirements established by the agency with respect to firearms; and

''(iv) is not the subject of a disciplinary action by the agency that prevents the carrying of a firearm.

''(C) QUALIFIED FORMER LAW ENFORCEMENT OFFICER.—The term 'qualified former law enforcement officer' means, an individual who is—

''(i) retired from service with a public agency, other than for reasons of mental disability;

''(ii) immediately before such retirement, was a qualified law enforcement officer with that public agency;

''(iii) has a nonforfeitable right to benefits under the retirement plan of the agency;

''(iv) was not separated from service with a public agency due to a disciplinary action by the agency that prevented the carrying of a firearm;

''(v) meets the requirements established by the State in which the individual resides with respect to—

''(I) training in the use of firearms; and

''(II) carrying a concealed weapon; and

''(vi) is not prohibited by Federal law from receiving a firearm.

''(D) FIREARM.—The term 'firearm' means, any firearm that has, or of which any component has, traveled in interstate or foreign commerce.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 926A the following:

''926B. Carrying of concealed firearms by qualified current and former law enforcement officers.''.

SEC. 3. AUTHORIZATION TO ENTER INTO INTERSTATE COMPACTS.

(a) IN GENERAL.—The consent of Congress is given to any 2 or more States—

(1) to enter into compacts or agreements for cooperative effort in enabling individuals to carry concealed weapons as dictated by laws of the State within which the owner of the weapon resides and is authorized to carry a concealed weapon; and

(2) to establish agencies or guidelines as they may determine to be appropriate for making effective such agreements and compacts.

(b) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal this section is hereby expressly reserved by Congress.

By Mr. BRYAN (for himself, Mr. BOND, and Ms. MOSELEY-BRAUN):

S. 838. A bill to amend the Securities Exchange Act of 1934 to eliminate legal impediments to quotation in decimals for securities transactions in order to protect investors and to promote efficiency, competition, and capital formation; to the Committee on Banking, Housing, and Urban Affairs.

THE COMMON CENTS STOCK PRICING ACT OF 1997

Mr. BRYAN. Mr. President, today Senator BOND, Senator MOSELEY-BRAUN, and I are introducing legislation to require stocks to be traded in a much more consumer-friendly fashion with the added benefit of saving investors billions of dollars.

Mr. President, I send that legislation to the desk for its introduction.

Let me just say parenthetically this is not the first time that I have had the privilege of working with the senior Senator from Missouri on legislation that affects vital consumer interests. He and I had the opportunity to work over several previous Congresses and secured in the last Congress significant changes to Federal law that protect consumers in terms of correcting information on their consumer histories, the largest single complaint before the Federal Trade Commission, and through his leadership and support and sustained efforts we were able to accomplish that. So I look forward to working with him on the piece of legislation that we introduce today, with the only caveat that I hope my distinguished colleague and I might be more helpful in getting this passed in a sooner period of time than we did on our previous enterprise which took three successive Congresses to work through.

This legislation would bring to an end an antiquated pricing system currently used by Wall Street to buy and sell stocks that dates back to colonial times when the New York Stock Exchange was founded in the 18th century and the dollar was denominated in pieces of eight. While every other pricing system in our country has moved to dollars and cents, Wall Street continues to use this outdated eighths pricing system.

As one article pointed out, and I quote, ''Imagine going to the grocery store and seeing bacon selling for $3\frac{3}{8}$ and chicken potpies for $1\frac{5}{8}$.'' Mr. President, not only has every other pricing system in America moved to dollars and cents, but all other major stock exchanges in the world—all—have abandoned the antiquated eighths system and now trade in decimals.

The bill that we are introducing today is a companion piece of legislation to H.R. 1053 sponsored in the House of Representatives by Congressmen OXLEY, MARKEY and BLILEY. This legislation would direct the Securities and Exchange Commission to, within 1 year after the enactment of the legislation, adopt a rule to transition the stock and option markets away from their current trading practice in eighths to trading in dollars and cents.

Currently, the New York Stock Exchange has a rule which mandates a minimum quote of an eighth for a share of stock trading in excess of $1. This rule is sanctioned by the Securities and Exchange Commission. Otherwise, it would be a blatant example of price-fixing. This legislation would require the SEC to revise this sanction to better represent the interests of consumers and investors throughout the country.

I must say, Mr. President, I have been encouraged by recent newspaper reports which suggest that the New York Stock Exchange plans to move to one-sixteenth of a dollar and in 2 years to switch to decimals. If those reports are in fact confirmed—and I am informed that there is a meeting today in which formal action will be taken to that effect—then the members of the New York Stock Exchange are to be commended for moving in the right direction. I would note, however, that there are other stock exchanges in the United States which have not yet indicated that is their course of action, and so this legislation will be necessary to ensure that all take that step.

There are currently 60 million Americans who participate directly in the stock markets who would benefit from change. Large pension funds and small investors alike would benefit. According to SEC Commissioner Steven Wallman, investors would end up saving between $5 billion to $10 billion each year if stocks were traded in increments of dollars and cents rather than in the current practice of trading in eighths. It is not uncommon for a 500-million share day to occur on a given day, so a small change in the spread would mean enormous savings for investors.

Many of us are reluctant to have Government intervene in the marketplace. Private sector determinations ought to be the rule, not the exception, here in America. In point of fact, we do not have a free market at work here. In fact, we have a classic example of price collusion. Wall Street dictates that this antiquated system be used and that all dealers must adhere to it. In essence, we are not interfering with the free market system; we are stepping in to help the stock market act more like a free market.

We are not trying to dictate the spreads that could be charged in the buying and selling of stocks or the profits that Wall Street can make. In my judgment, that would be appropriate. If this legislation is enacted, however, stocks would be traded in dollars and cents and then the free market can more accurately determine what the prices and spreads should be. This is the essence of a free market. This is the essence of free enterprise. It seems appropriate as we move into the 21st century. It is time the United States joined the rest of the world in using a more rational, understandable system of stock transactions.

Mr. BOND. Mr. President, I am pleased to join Senator BRYAN in introducing the Common Cents Stock Pricing Act of 1997. I thank Senator BRYAN for his leadership in this measure. As he indicated in his comments, we worked together through three sessions of Congress to pass the Fair Credit Reporting Act. Numerous members of staff came and went while we were trying to get this commonsense consumer measure passed, and I only hope, as he indicated, that we will not have a similar 6-year battle on this one, because I think the bill is very simple, very straightforward, and reflects common sense. It calls for the markets to get on in the business of trading in plain numbers, dollars and cents, instead of fractions.

The Common Cents Stock Pricing Act will make stock prices easier to understand for the average small investor. It will also force stock dealers to compete in pennies, which should result in lower transaction costs and investor savings.

Our Nation's stock markets use pricing methodologies which date back to the 18th century, when colonies used Spanish dollars as their currency. Traders would chisel these ancient coins into ''pieces of eight'' or ''bits'' and use them to purchase commodities. When organized stock trading began in New York in 1792, stock prices were quoted in bits, or eighths.

Mr. President, 200 years later, the time has come to move beyond this pricing system. We don't use Spanish coins today, we don't use bits, and we don't need confusing price systems.

The pricing system based on ancient coins is not only out of date, but it is difficult for the average investor to understand. At least one newspaper has recognized this fact. The San Francisco Chronical recently began printing its tables in dollars and cents, instead of fractions. Others, including the Boston Globe and USA Today have called on the stock exchanges to move to a penny pricing system.

Small investors also stand to benefit financially from the move to pricing by the penny rather than by the bit. SEC Commissioner Steve Wallman estimates investors lose a minimum of $1.5 billion a year under the current system. Other experts put the figure in the $4 to $9 billion range.

Let me just explain why small investors lose in the current environment. Stock exchange rules effectively limit the minimum spread between a stock's buy-and-sell price to one-eighth of a dollar, or 12.5 cents. This means that floor traders earn at least 12.5 cents from investors on every trade. Large investor institutions can get better deals on their trades by negotiating prices on block trades, but the average small investor has to pay the full fare.

Penny stock pricing is also in step with the rest of the world. The U.S. is

the only major market that trades in eighths; every other country uses decimal pricing. If we are going to maintain our role as the dominant player in world markets, the U.S. must keep pace and move to a system of decimal pricing.

The bill we are introducing today is straightforward. It simply calls on the Securities and Exchange Commission to promulgate a rule, within 1 year after the enactment date of the legislation, to transition the stock and option markets away from fractionalized trading, bits trading, into dollars and cents pricing.

I think the bill is an appropriate way for the Government to regulate financial markets. The Common Cents Stock Pricing Act does not micromanage the markets by dictating what the spread will be. The competition and the markets will determine the spread. The implementation of the SEC will allow competitive forces to decide what the spread will be.

Let me close by saying I also noted the New York Stock Exchange announcement has been made that it will begin trading in sixteenths and eventually in decimals. I commend Senator BRYAN and the sponsors of the companion House legislation, because their bill was cited as one of the reasons that the New York Stock Exchange was moving forward. I plan to review the language to ensure that their efforts clearly commit them to move to decimals, and that other exchanges will move to decimals. We need to do so in a reasonable timeframe and not wait until the forecasted computer crisis of the year 2000, when all of the computers go back to 1900.

Big investors get good deals every day in negotiating stock trade prices. I think it is time for the average investor to get a good deal too. I encourage my colleagues to join me in making sure average investors are treated equitably. I thank my colleague from Nevada for his work on this issue, and I encourage and invite other Members of the Senate to join us in supporting this bill.

By Mr. BINGAMAN (for himself and Mrs. MURRAY):

S. 839. A bill to improve teacher mastery and use of educational technology; to the Committee on Labor and Human Resources.

THE TECHNOLOGY FOR TEACHERS ACT

Mr. BINGAMAN. Mr. President, I rise today, with the support of Senator MURRAY from the State of Washington, to introduce legislation that will increase the effectiveness of our efforts to improve education in the country. I send to the desk the legislation and ask that it be referred to the appropriate committee.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. BINGAMAN. Mr. President, the bill is entitled the Technology for Teachers Act. Its purpose is to increase the ability of millions of new and current teachers to use technology in the classroom.

Every school day in my home State of New Mexico and across the country, computers are being purchased, are being unpacked and are being delivered to classrooms in the hope that the teachers there will do wonderful things with those computers to assist the educational process. Sometimes that happens, but most of the time, the computer that is delivered and unpacked is just one more challenge to that teacher, one more demand on that teacher's time and one more drain on the energy of that teacher, because no one has given the teacher the training necessary to be able to do wonderful things with the computer.

Most of the teachers in our public schools today started teaching before the era of personal computers really began and was established.

The problem begins with low standards for the preparation of teachers to use this new technology and for the licensing of new teachers. This is reflected in a chart I have, Mr. President, that I would like to call attention to. This chart demonstrates the following. On the left-hand side, we have the States that now require one course in education technology. You can see that the red area indicates that 32 States now require a course in education technology. Eighteen of our States require no instruction in education technology today.

But the more problematic part of this chart is the right-hand side, where we try to depict the new teachers who feel prepared to use technology in the classroom.

You can see that the green area indicates that 90 percent of our new teachers do not feel prepared to use technology in the classroom. That means 90 percent have not had adequate training, including the 90 percent who have had that one course that is required in those 32 States. So there is a serious problem.

We also have a disturbing imbalance between the high investment we are making in equipment on the one hand and our inadequate investment in teachers on the other. Let me show a couple of other charts to make that point.

This chart tries to make the distinction between the high availability of computers in our schools versus the low amount of teacher training to use them. Ninety-eight percent of our schools today are equipped with some computers. So, clearly, that is a major step forward from where we were, for example, 5 or 10 years ago. But if you look at the teachers who took more than 1 day of training in a single school year on how to use those computers, it is 15 percent of our teachers. Clearly, that imbalance exists.

We are investing in the hardware; we are not investing in training the teachers to use that hardware effectively.

Let me show one other chart to make the same point. This is connections to the Internet. This shows a 1997 estimate of the percent of schools that are connected to the Internet. About 65 percent of our schools have at least some connection to the Internet. When you look, though, down at the classroom level, you see that only 14 percent of our classrooms actually have a connection to the Internet.

Only 13 percent of schools require some kind of advanced training for teachers so that they would know how to take advantage of that hookup to the Internet. And teachers who are actually using the Internet to help with their instruction is only 20 percent. So, again, we have a major imbalance between the investment in the equipment on the one hand, and the inadequate investment in training our teachers on the other. The experts say that 30 percent of the total investment we make in education technology should be used to train teachers, but right now we spend only 9 percent on teacher training. In my own State of New Mexico, only 4 percent of the $33 million spent on education technology goes for training teachers. That's less than half the national average and less than one seventh what we should be spending on teacher training.

I am not saying that the Federal Government has not invested in teacher training as a part of school reform. There is a lot of money which is available for this, but also for a great many other needs. Clearly, this chart shows that. When we talk about general reform of education, there are four large programs that the Federal Government has. Of course, Title I is by far the largest, Title VI, Goals 2000, the Eisenhower Professional Development Program—all of those programs have funds that arguably can be used for training of teachers in this respect but, in fact, there are other great demands on those funds.

When you look at technology for education, we now have the Technology Literacy Program that is funded at $257 million. The request from the President and the agreement in this year's Budget Resolution is to substantially increase that in the coming years. But when you look at technology training for teachers, there is absolutely nothing planned for that or required to be spent on that. This legislation tries to correct that deficiency.

There are no Federal programs today devoted exclusively to technology training for teachers—either technology training for new teachers that are being trained, or technology training for current teachers in the work force.

Let me briefly describe what our bill would do, Mr. President. This bill has two parts. One would improve the technology training that 2 million new teachers will get while they are in college during the next decade to try to ensure that as they begin their teaching careers, they have had this instruction.

The other part involves the technology training that millions of our

current teachers will need throughout their teaching careers.

For both parts, our legislation provides that the Department of Education would make competitive grants to the States, to the States' departments of education that are responsible for the licensing of teachers and for maintaining high teaching standards. Those States' departments would then set up competitive grant programs, one to go to colleges of education for innovative programs to train new teachers to use technology; the other set of grants would go to local school districts for innovative professional development of current teachers.

The bill would require that the States' departments of education, the colleges of education, the local school districts, and the education technology private sector all work together to create these innovative teacher training programs. This bill would be a major step forward in providing the necessary training to our teachers so that they can benefit from new technologies and integrate those new technologies into their instruction.

There are some very good examples, happening in a few places, of what should be happening all over the country. For example, the University of Missouri has a program that issues a laptop computer to incoming freshmen in their College of Education. It has built telecommunications links to K-through-12 schools throughout the State of Missouri.

This bill would also support some innovative programs similar to the program we have in New Mexico called the Regional Education Technology Assistance Program; it trains five teachers from each of the school districts in my State. In fact, we have only reached out now and gotten the involvement of 52 of our 89 school districts. But the idea here is to get a cadre of teachers who are comfortable with the use of technology who can then work in their school district to train other teachers so that they, too, can be comfortable with the use of that technology and not have the technology just be a frill which is put over in the corner of their classroom for people to use when they don't have other more important activities to pursue.

Mr. President, I think this legislation is particularly important because it tries to deal with the very real resource constraints that some of our school districts face. In my home State, we have a school district in Cuba, NM, where they have had to give up their music instruction, they have had to give up their home economics program, in order to acquire technology to try to enrich their curriculum. This would provide some additional sources of funds for them so that they could get that technology, they could get the training for the use of that technology. That is the great need that we have at this particular time.

I hope very much that we can get a hearing on this bill this summer, move ahead with it, and enact this legislation before the conclusion of this session of the Congress. I think this is a step forward.

We have seen significant progress over the last few years in Federal support for technology and the use of technology in education. The one great deficiency today is that we do not put enough into training teachers so that that technology can be used effectively. This legislation will help to correct that problem.

I thank Senator MURRAY for cosponsoring the legislation. I hope other colleagues will do so as well.

By Mr. GRAHAM:

S. 840. A bill to amend the Internal Revenue Code of 1986 to provide an exemption from tax gain on sale of a principal residence; to the Committee on Finance.

THE PRINCIPAL RESIDENCE TAX EXCLUSION ACT OF 1997

Mr. GRAHAM. Mr. President, today I introduce the Principal Residence Tax Exclusion Act of 1997. Earlier this year, Representatives ROB PORTMAN and BEN CARDIN introduced similar legislation, styled H.R. 1391, in the House of Representatives. In addition, both President Clinton and former Senator Dole have expressed strong support for a capital gains exclusion for our Nation's homeowners.

This is a proposal that enjoys widespread bipartisan support. Now is the time to make good on our promises to help our Nation's families.

As everyone knows, moving is a stressful and complicated process. Besides worrying about whether to take advantage of a job opportunity in another State or to move closer to family members or to accept some other reason for relocation, such as a change of residence at retirement, people should not have added to all of those complex decisions the worry about paying taxes on the sale of their permanent residence.

This act will get the tax code out of the family's decisionmaking process. It will allow the family to make decisions based on the family's specific circumstances, not based on constraints imposed by the tax law.

What is the current law? Under the current law, capital gains from the sale of principal residences are subject to taxation. However, two provisions exclude many homeowners from the effect of that taxation.

First, under the so-called rollover provision, taxpayers can roll over gains from the sale of a principal residence into a new residence and defer any capital gains tax under certain conditions. One of those is that the purchase price of the new residence must exceed the adjusted sales price of the previous principal residence. The new residence must be purchased within 2 years of the date of sale of the first home.

There is a second provision which results in many homeowners not paying a capital gains tax on a principal residence. And that is the age 55 exclusion, a taxpayer is eligible for a one-time permanent exclusion of up to $125,000 on any accumulated gain from the sale of their principal residence. In addition to meeting the age 55 requirement to qualify for this exclusion, the taxpayer must have owned the residence and used it as their principal residence for at least 3 years during the 5 years prior to the sale.

A taxpayer is eligible for the exclusion only if neither the taxpayer nor the taxpayer's spouse has previously benefited from this exclusion. Consequently, Mr. President, to avoid the tax, most people wait until they are eligible for the one-time exclusion or they make what may be uneconomic decisions regarding the sale of their home.

Mr. President, this is not right. People should be able to move when they want to, not when the tax code makes it financially possible. They should be able to buy a smaller home, if that is what they desire, without having to pay a tax on the difference between their profit on the sale of the first home and the price of the new home.

Mr. President, this is an issue of removing governmental intrusion from family matters. This is an issue of allowing Americans to be free from unnecessarily burdensome requirements. This is an issue of permitting people to make decisions that will ultimately have a positive impact on the American economy.

The Principal Residence Tax Exclusion Act would go a long way toward resolving each of these issues. I hope that my colleagues will join me in supporting this proposal.

Under this act, the Principal Residence Tax Exclusion Act, taxpayers of any age—I underscore ''any age''—could exclude the gain on the sale of a principal residence of up to $500,000 for a married couple filing a joint return, and up to $250,000 for a single taxpayer.

To be eligible, the taxpayer must have owned and used the home as the principal residence for at least 2 of the last 5 years prior to the sale. The exclusion will generally be available once every 2 years.

This legislation would have a far-reaching impact on the families of our Nation. Under the current law, approximately 150,000 families annually have taxable gain on the sale of their homes. This number would be even higher. However, concern about the tax causes most people to wait until they are eligible for the one-time exclusion or to buy increasingly more expensive homes over time regardless of whether such purchases are economically wise or otherwise meet the family's needs.

Under the new proposal, the Department of the Treasury estimates that only about 10,000 transactions annually would be subject to taxation. So nearly all families would be relieved of the burdensome recordkeeping requirements and constraints on decisionmaking which are part of the current law.

Mr. President, I would like to bring to your attention one such family, a family who I believe represents the concerns of many American families. Rudy and Lynn Saumell of Valrico, FL, retired and moved to Florida several years ago after working for a combined total of 60 years in the Connecticut school system. Lynn taught remedial math in the elementary school for 25 years. Rudy taught for 15 years before serving as an assistant principal for 20 more years. The Saumells lived in their Connecticut home with their two daughters for 23 years. When the Saumells retired 5 years ago, their girls had long since left home; the family's needs had changed.

Lynn and Rudy decided to move to Florida to be near some of their relatives and to enjoy the warm climate and a hospitable neighborhood. They no longer needed such a large home. They were moving to a lower cost area. But the Saumells were concerned about being taxed on the sale of their Connecticut home. So, upon their accountant's advice, they bought a more expensive home than they needed and used both the one-time exclusion and the rollover provision to avoid paying tax on their previous residence's sale.

In order to qualify under current law, the Saumells had to keep extensive records of all of the improvements they made to their previous residence. For over two decades, they complied with the law to the best of their abilities despite the difficulties they encountered in doing so.

I commend the Saumells for their diligence. I agree with them that these requirements seem unnecessarily burdensome and nearly impossible to fulfill without error, omission, or honest misunderstanding.

The act I propose would eliminate the need to keep these detailed records for 99 percent-plus of all Americans. After spending 5 years in their new home, the Saumells still want to move to a smaller home in a retirement community. They are paying more than they would like in property taxes. Their heat, water, and electric bills would be greatly reduced. Instead, Rudy and Lynn would rather spend the money they have saved for traveling and helping their daughters buy homes for their new families. Lynn and Rudy do not need such a big home for just the two of them.

But the Saumells are stuck between a rock and a hard place. Under the current law, if they keep their house they will not be able to spend their savings as they would like. But if they sell their home and buy a less expensive one, they cannot use the over-55 exemption again since it is only available once in a lifetime and the rollover provision would not apply since they are not moving to a more expensive home.

Thus their savings would be eaten up by a large capital gains tax, defeating the purpose of selling their current residence. So they are locked in the dilemma: Do we stay in a home that is larger than we need, more expensive than we can afford, or do we sell the home and suffer a substantial capital gains tax?

Mr. President, why should the Saumells have to base their housing decisions on the Tax Code rather than their family requirements? Why should they be prevented from spending their savings on what they deem to be important?

Like many Americans who are affected by the capital gains tax on home sales, Rudy and Lynn have spent their entire lives working and saving for their retirement and to assist their daughters in starting their new families' lives. It is unfair to deny them the freedom to spend these savings as they wish. So I offer this legislation to allow the Saumells and all of our Nation's families more freedom in their decisionmaking, to be able to decide where to live based on their families' circumstances, not on the Tax Code.

Rudy now volunteers with a local television station to help people recover money that has been wrongfully withheld from them. Isn't it time that we remove the Tax Code restraints on Rudy and help him get back the free use of his own money?

Mr. President, we have the means, the opportunity, and the support to help our Nation's families in a very significant way. Passing this legislation is more than providing relief to our Nation's homeowners. It is the right thing to do.

Mr. President, I ask unanimous consent that a letter from the ERC, the Employee Relocation Council, be printed in the RECORD.

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

THE EMPLOYEE RELOCATION COUNCIL,
Washington, DC, June 4, 1997.

Hon. BOB GRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: The Employee Relocation Council (''ERC'') strongly supports your efforts to introduce legislation that would provide a $500,000 exclusion of gain on the sale of a principal residence and we urge that this proposal be included as part of the tax package to be assembled by Congress in the coming weeks. Reducing the tax cost of relocations and improving the economics of home purchase decisions would be beneficial not only to individual taxpayers, but to companies and the economy as well.

Currently, taxpayers can rollover gains from their principal residence into a new residence and defer any capital gains tax to the extent that the purchase price is equal to or greater than the adjusted sales price of the old residence. Additionally, a one time $125,000 exclusion ($62,500 for separated individuals) is provided at age 55. These tax rules are extremely complex; encourage relocating employees to purchase increasingly expensive homes regardless of their economic situation and can prevent companies from relocating those employees because of increased relocation costs (attached is an analysis of the benefits to employers and employees that would result from enactment of this proposal).

ERC is an association whose members are concerned with employee transfers, the sale and purchase of real estate related to the movement of household goods and other aspects of relocation. ERC's members include some sixty percent (60%) of Fortune 1000 corporations as well as real estate brokers, appraisers, van lines, relocation management companies and other industry professionals. ERC supports initiatives that case the constraints and reduce the costs of moving employees and that allow companies and individuals to relocate based on sound economic decisions. ERC believes that one of the keys to success in today's international marketplace is workforce mobility, which enhances the ability of companies to compete internationally and is reflected in improved national productivity and efficiency. The complexity and costs imposed by the current tax rules act as a detriment and forces employers and employees to make decisions based on tax law and not economic soundness. Accordingly, ERC endorses your efforts to enact legislation that would provide for a $500,000 exclusion of gain on the sale of a principal residence.

Sincerely,

H. CRIS COLLIE,
Executive Vice President.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 841. A bill to authorize construction of the Fort Peck Reservation Rural Water System in the State of Montana, and for other purposes; to the Committee on Energy and Natural Resources.

THE FORT PECK RESERVATION RURAL WATER SYSTEM ACT OF 1997

Mr. BURNS. Madam President, today I introduce a bill that will ensure the Assiniboine and Sioux people of the Fort Peck Reservation in Montana a safe and reliable water supply system. The Fort Peck Reservation is located in northeastern Montana. It is one of the largest reservations in the United States, and has a population of more than 10,000. The Fort Peck Reservation faces problems similar to all reservations in the country, that of remote rural areas. This reservation also suffers from a very high unemployment rate, 75 percent. Added to all this, the populations on the reservation suffer from high incidents of heart disease, high blood pressure, and diabetes. A safe and reliable source of water is needed to both improve the health status of the residents and to encourage economic development and thereby self-sufficiency for this area.

This legislation would authorize a reservation-wide municipal, rural, and industrial water system for the Fort Peck Reservation. It would provide a much needed boost to the future of the region and for economic development, and ultimately economic self-sufficiency for the entire area. My bill has the support of the residents of the reservation and the endorsement of the tribal council of the Assiniboine and Sioux Tribes.

The residents of the Fort Peck Reservation are now plagued with major drinking water problems. In one of the communities, the sulfate levels in the water are four times the standard for safe drinking water. In four of the communities the iron levels are five times

the standard. Sadly, some families were forced to abandon their homes as a result of substandard water quality. Basically, the present water supply system is inadequate and unreliable to supply a safe water supply to those people that live on the reservation.

Several of the local water systems have had occurrences of biological contamination in recent years. As a result, the Indian Health Service has been forced to issue several health alerts for drinking water. In many cases, residents of reservation communities are forced to purchase bottled water. Not a big deal to those who can afford it, but difficult to a population that has the unemployment rate found on the Reservation. All this, despite the fact that within spitting distance is one of the largest man-made reservoirs in the United States, built on the Missouri River.

Agriculture continues to maintain the No. 1 position in terms of economic impact in Montana. In a rural area like the Fort Peck Reservation agriculture plays the key role in the economy, more so than in many areas of the State. The water system authorized by the legislation will not only provide a good source of drinking water, but also a water supply necessary to protect and preserve the livestock operations on the reservation. A major constraint on the growth of the livestock industry around Fort Peck has been the lack of an adequate watering site for cattle. This water supply system would provide the necessary water taps to fill watering tanks for livestock, which in normal times would boost the local economy of the region and the State. An additional benefit of this system would be more effective use of water for both water and soil conservation and rangeland management.

The future water needs of the reservation are expanding. Data shows that the reservation population is growing, as many tribal members are returning to the reservation. It is clear that the people that live on the reservation, both tribal and nontribal members, are in desperate need of a safe and reliable source of drinking water.

The solutions to this need for an adequate and safe water supply is a reservation wide water pipeline that will deliver a safe and reliable source of water to the residents. In addition this water project will be constructed in size to allow communities off the reservation the future ability to tap into the system. A similar system for water distribution is currently in use on a reservation in South Dakota.

The surrounding communities have also agreed with the importance of this system. Last year when I introduced this bill, there were no additional communities signed on to the system. Today, the surrounding communities have signed on and look at this system as a means of supplying clean, safe drinking water to their residents.

The people of the Fort Peck Reservation, and the State of Montana are only asking for one basic life necessity. Good, clean, safe drinking water. This is something that the more developed regions of the Nation take for granted, but in rural America we still seek to develop.

I realize the importance of getting this bill introduced and placed before the proper committee. This action will allow us to move forward and provide a basic necessity to the people of this region in Montana. Good, clean, safe drinking water.

Mr. BAUCUS. Mr. President, I am pleased to join Senator BURNS today in introducing legislation that authorizes the construction of a municipal, rural, and industrial water system for the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

The reservation has long been plagued by major drinking water problems including both inadequate supplies and unacceptable water quality. Ground water, the primary source of drinking water for many reservation residents, often exceeds the standards for total dissolved solids, iron, sulfates, nitrates, and in some cases for selenium, manganese and fluorine.

Bacterial contamination of domestic water supplies has also been a recurring problem. On several occasions the Indian Health Service and Tribal Health Office have had to issue public health alerts regarding drinking water. In short, the very health of residents of the Fort Peck Reservation depends on construction of this pipeline.

A safe and adequate supply of water is a necessity if the Fort Peck Nation is to realize its dream of economic development and full employment. The reservation economy is based on ranching and farming but expansion of agricultural operations is severely limited by the lack of adequate stockwater supplies. Additionally more effective distribution of water would result in more effective soil conservation and improvement of the native rangeland.

The Bureau of Reclamation has determined that a regional MR&I water supply system using water from the Missouri River is a feasible alternative for addressing the serious water problems facing Fort Peck. This legislation will make that alternative a reality for the people of the Fort Peck Reservation.

I urge my colleagues to join me in supporting authorization of this critical project.

By Mr. INHOFE (for himself, Mr. BREAUX, Mr. CRAIG, and Mr. HUTCHINSON):

S. 842. A bill to provide for the immediate application of certain orders relating to the amendment, modification, suspension, or revocation of certificates under chapter 447 of title 49, United States Code; to the Committee on Commerce, Science, and Transportation.

REVOCATION OF CERTIFICATIONS LEGISLATION

Mr. INHOFE. Mr. President, I have been working with representatives of the aviation industry on legislation that will address a problem with the Federal Aviation Administration. Let me, first of all, say that back in real life I have been a professional pilot for some 40 years. I am a little bothered, too, at some of the things taking place in the aviation industry. I have seen great injustice done many, many times, having to do with the emergency revocation powers of the FAA. In a revocation action, brought on an emergency basis, the certificate holder loses use of his certificate immediately, without an intermediary review by an impartial third party. The result is that the certificate holder is grounded and, in most cases, is out of work until the issue is adjudicated. I believe the FAA unfairly uses this necessary power to prematurely revoke certificates when the circumstances do not support such drastic action. A more reasonable approach, Mr. President, when safety is not an issue, would be to adjudicate the revocation on a nonemergency basis, allowing the certificate holder to continue use of his certificate.

Please don't misunderstand me. In no way do I want to suggest that the FAA should not have emergency revocation powers. I believe it is critical to safety that the FAA can ground unsafe airmen and other certificate holders. However, I also believe that the FAA must be judicious in its use of this extraordinary power. A review of recent emergency cases clearly demonstrates a pattern by which the FAA uses their emergency powers as standard procedure rather than an extraordinary measure.

Perhaps the most visible case is that of Bob Hoover, who happens to probably be the best pilot in America today. He is up in age. I have watched him and have been in a plane with him. He can set a glass of water on the panel of an airplane and do a barrel roll without spilling any of the water. He is highly regarded as an aerobatic pilot. In 1992, his medical certificate was revoked based on alleged questions regarding his cognitive abilities. After getting a clean bill of health from four separate sets of doctors—just one of the many tests cost Bob $1,700—and over the continuing objections of the Federal air surgeon, who never even examined Bob Hoover personally, his medical certificate was reinstated only after then-Administrator David Henson intervened. And I want to take this opportunity to tell David Henson what a great job he did for aviation, and for one person.

Unfortunately, Bob Hoover is not out of the woods yet.

His current medical certificate expires on September 30, 1997. Unlike most airmen who can renew their medical certificate with a routine application and exam, Bob has to furnish the FAA with a report of a neurological evaluation every 12 months.

It is a very expensive and unnecessary process.

Mr. President, Bob Hoover's experience is just one of many. In a way, his wasn't as bad, because some of them do this—like professional airline pilots—for a living.

I have several other examples of pilots who have had their licenses revoked on an emergency basis. Pilots such as Ted Stewart who has been an American Airlines pilot for more than 12 years and is presently a Boeing 767 captain. Until January 1995, Mr. Stewart had no complaints registered against him or his flying. In January 1995 the FAA suspended Mr. Stewart's examining authority as part of a larger FAA effort to respond to a problem of falsified ratings. The full NTSB board exonerated Mr. Stewart in July 1995. In June 1996, he received a second revocation. One of the charges in this second revocation involved falsification of records for a flight instructor certificate with multiengined rating and his air transport pilot [ATP] certificate dating back to 1979.

Like most, I have questioned how an alleged 17½-year-old violation could constitute an emergency; especially, since he has not been cited for any cause in the intervening years. Nonetheless, the FAA vigorously pursued this action. On August 30, 1996, the NTSB issued its decision in this second revocation and found for Mr. Stewart. A couple of comments in the Stewart decision bear closer examination. First, the board notes that:

The administrator's loss in the earlier case appears to have prompted further investigation of respondent . . .

I find this rather troubling that an impartial third party appears to be suggesting that the FAA has a vendetta against Ted Stewart. This is further emphasized with a footnote in which the Board notes:

[We,] of course, [are] not authorized to review the Administrator's exercise of his power to take emergency certificate action . . . We are constrained to register in this matter, however, our opinion that where, as here, no legitimate reason is cited or appears for not consolidating all alleged violations into one proceeding, subjecting an airman in the space of a year to two emergency revocations, and thus to the financial and other burdens associated with an additional 60-day grounding without prior notice and hearing, constitutes an abusive and unprincipled discharge of an extraordinary power.

Joining with me today is JOHN BREAUX of Louisiana. JOHN has a constituent, Frank Anders who has taken the lead gathering other examples of FAA abuses with regard to their emergency revocation authority. One in particular is Raymond A. Williamson who was a pilot for Coca-Cola Bottling Co. Like Ted Stewart, he was accused of being part of a ring of pilots who falsified type records for vintage aircraft.

As in all of the cases received by my office, Mr. Williamson biggest concern is that the FAA investigation and subsequent revocation came out of the blue. In November 1994, he was notified by his employer—Coca-Cola—that FAA inspectors had accused him of giving illegal check rides in company owned aircraft. He was fired. In June 1995, he received an emergency order of revocation. In over 30 years as an active pilot, he had never had an accident, incident, or violation. Nor had he ever been counseled by the FAA for any action or irregularities as a pilot, flight instructor or FAA designated pilot examiner.

In May 1996, FAA proposed to return all his certificates and ratings, except his flight instructor certificate. As in the Ted Stewart case, it would appear that FAA found no real reason pursue an emergency revocation.

Mr. President, I obviously cannot read the collective minds of the NTSB board, but I believe a reasonable person would conclude that in the Ted Stewart case the Board, believes as I do, that there is an abuse of emergency revocation powers by the FAA.

This is borne out further by the fact that since 1989, emergency cases as a total of all enforcement actions heard by the NTSB has more than doubled. In 1989 the NTSB heard 1,107 enforcement cases. Of those, 66 were emergency revocation cases or 5.96 percent. In 1995, the NTSB heard 509 total enforcement cases, of those 160 were emergency revocation cases or 31.43 percent. I believe it is clear that the FAA has begun to use an exceptional power as a standard practice.

In response, I and Senators CRAIG, HUTCHINSON, and BREAUX are introducing legislation that would establish a procedure by which the FAA must show just cause for bringing an emergency revocation action against a certificate holder. Many within the aviation community have referred to this needed legislation as the Hoover bill.

Not surprisingly, Mr. President, the FAA opposes this language. They also opposed changes to the civil penalties program where they served as the judge, jury, and executioner in civil penalty actions against airmen. Fortunately, we were able to change that so that airmen can now appeal a civil penalty case to the NTSB. This has worked very well because the NTSB has a clear understanding of the issues.

Our proposal allows an airman within 48 hours of receiving an emergency revocation order to request a hearing before the NTSB on the emergency nature of the revocation. NTSB then has 48 hours to hear the arguments. Within 5 days of the initial request, NTSB must decide if a true emergency exists. During this time, the emergency revocation remains in effect.

That means that the pilot does not have his certificate and cannot fly an airplane. In many cases, this is a means of a living. But that is for 7 days.

In other words, the certificate holder loses use of his certificate for a maximum of 7 days. However, should the NTSB decide an emergency does not exist, then the certificate would be returned and the certificate holder could continue to use it while the FAA pursued their revocation case against him in an expedited appeal process as provided for by the bill. If the NTSB decides that an emergency does exist, then the emergency revocation remains in effect and the certificate holder cannot use his certificate while the case is adjudicated.

This bill is supported by: the Air Line Pilots Association, International; the Air Transport Association; the Allied Pilots Association, Aircraft Owners and Pilots Association; the Experimental Aircraft Association; National Air Carrier Association; National Air Transportation Association; National Business Aircraft Association; the NTSB Bar Association; and the Regional Airline Association.

Mr. President, I ask unanimous consent that a letter dated March 11, 1997, to me from the above mentioned organizations be printed in the RECORD.

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

MARCH 11, 1997.

Hon. JAMES M. INHOFE,
U.S. Senator,
Washington, DC.

DEAR SENATOR INHOFE: The undersigned associations and organizations endorse and support your proposed legislation, the FAA Emergency Revocation Act of 1997, to reform the Federal Aviation Administration enforcement process in an important respect.

It has become apparent to us in recent years that the FAA has significantly increased its use of its emergency authority to immediately suspend or revoke airmen, air carrier, and air agency certificates, thereby avoiding the automatic stay of such action provided by law pending appeal to the National Transportation Safety Board. This legislation will accord due process to certificate holders by providing a more adequate forum for promptly adjudicating the appropriateness of the FAA's use of this authority. The forum, the same one which will adjudicate the merits of the FAA action, will also adjudicate, on a more timely basis, whether aviation safety requires the immediate effectiveness of a certificate action. The effect will be that in an appropriate case, a certificate holder will be able to exercise the privileges of its certificate while an FAA certificate action is on appeal, all without compromise of aviation safety.

We thank you for introducing this legislation, and we look forward to working with you toward its passage.

Sincerely,

Air Line Pilots Association, International; Allied Pilots Association; Experimental Aircraft Association; National Air Transportation Association; NTSB Bar Association; Air Transport Association; AOPA Legislative Action; National Air Carrier Association; National Business Aircraft Association; Regional Airline Association.

Mr. INHOFE. Mr. President, in closing, this bill will provide due process to certificate holders where now none exists, without compromising aviation safety. This is a reasonable and prudent response to an increasing problem for certificate holders. I hope our colleagues will support our efforts in this regard.

By Mr. HATCH (for himself, Mr. BAUCUS, and Mr. MACK):

S. 843. A bill to amend the Internal Revenue Code of 1986 to simplify certain rules relating to the taxation of United States business operating abroad, and for other purposes; to the Committee on Finance.

INTERNATIONAL TAX SIMPLIFICATION FOR AMERICAN COMPETITIVENESS LEGISLATION

Mr. HATCH. Mr. President, I rise today to introduce a bill that would provide much-needed tax relief for American-owned companies that are attempting to compete in the world marketplace. I am joined by Senator BAUCUS in introducing the International Tax Simplification for American Competitiveness Act.

Mr. President, our country's economy has entered into an environment like no other in our history. The success of the American economy is becoming more and more intertwined with the success of our businesses in the global marketplace. As the economic boundaries from country to country merge closer together, and competition begins to arise from previously lesser-developed nations, it is imperative that American owned businesses be able to compete from the most advantageous position possible.

There are already barriers the U.S. economy must overcome to remain competitive that Congress cannot hurdle by itself. I know that we have international trade negotiators working hard to eliminate those obstacles, such as barriers to foreign markets, but we can do more than just open barriers. We can reform our Tax Code in such a way that would ensure continued success by American-owned companies in today's highly competitive international market. There is no need to further impede the economy by saddling it with an outdated and extremely complex Tax Code.

If we pass on this opportunity, Mr. President, we run the risk of jeopardizing the international competitiveness of the U.S. economy, as American companies are lured to other countries with simple, more favorable tax treatment.

The business world is changing at a more rapid pace than any other time in history. Tax laws, unfortunately, have failed to keep pace with the rapid changes in the world economy. The last time the international provisions of the Internal Revenue Code were substantially debated and revised was in 1986. Since that time, existing economies have changed, and new economies have been created, all while our tax policy regarding this changing market has remained the same. And in several cases, our foreign competitors operate under simpler, fairer, and more logical tax regimes. The continued use of a confusing, archaic tax code results in a mismatch with commercial reality and creates a structural bias against the international activities of U.S. companies. We cannot, and should not, continue to impede the progress of our economy.

Mr. President, the bill that I am introducing today seeks to simplify and correct various areas in the Internal Revenue Code that are unnecessarily restraining American businesses competing in today's global market. Some of these provisions are similar to those contained in the President's recently released simplification package. Some changes come in areas that are in dire need of repair, and others are changes that take into consideration international business operations that exist today, but were either nonexistent, or limited to domestic soil in 1986, when the tax reform laws were put into place.

An important correction to current rules relates to Foreign Sales Corporation [FSC] treatment for software. When the current FSC rules were implemented 11 years ago, the level of software exports was nowhere near the level it is today. Because the Tax Code was not modified with the evolution of the high-technology business world, American software exports are currently discriminated against. This proposal would clarify that computer software qualifies as export property eligible for FSC benefits. These benefits are currently available for films, records, and tapes, but not software.

The United States is currently the global leader in software production and development and employs nearly 400,000 people in high-paying software development and servicing jobs. The industry has experienced a great deal of growth in the past decade, primarily due to increased exports. If the FSC benefits to software continue to be denied, we are creating another obstacle to the competitiveness of American manufactured software, ultimately harming the U.S. economy, and putting American jobs at risk.

Another important change included in the bill would repeal the 10/50 tax credit rules. Currently, the code requires U.S. companies to calculate separate foreign tax credit limitations for each of its foreign joint venture businesses in which the U.S. owner owns at least 10 percent but no more than 50 percent. In addition to creating administrative headaches for American owned companies that may have hundreds of such foreign joint venture operations, these rules impede the ability of U.S. companies to compete in foreign markets.

It is necessary for businesses in the United States to operate in joint ventures worldwide, particularly in emerging, previously closed markets such as the former Soviet Union and the People's Republic of China. Many times, the joint ventures are needed to assist the United States investor to overcome significant local country and political obstacles involved with taking a controlling interest in foreign companies. This applies particularly to regulated businesses, such as telecommunications companies. While this type of joint venture is necessary for companies to enter and compete in foreign markets, the current tax law in our country discourages such operations.

The bill would permit U.S. owners to compute foreign tax credits with respect to dividends from such entities based on the underlying character of the income of these entities, or the so-called look-through treatment, provided that the necessary information is available. Moreover, the bill includes a provision that would eliminate the overlap in the rules between passive foreign investment companies [PFIC] and controlled foreign companies [CFC]. PFIC rules were never intended to apply to CFC's. In the Tax Act of 1993, changes were made that created unnecessary duplication in PFIC and CFC rules. Currently, there are several CFC's that are caught under both sets of rules. This proposal would eliminate these duplications. If a PFIC is also a CFC, the proposal generally would treat the foreign corporation as a non-PFIC with respect to certain 10-percent U.S. shareholders of the CFC.

Mr. President, I ask that my colleagues take a close look at this bill. This is not partisan legislation. It is an attempt to give fair tax treatment to American companies who operate abroad, and that, I think, is an objective we all support. The bill is truly a technical correction and simplification, designed to correct the inequities in our Tax Code, and to help place U.S. companies on a level playing field with their competitors in the foreign market. If we do not step up and make these corrections, American companies will lose ground to their foreign counterparts, eventually losing their power to operate successfully at home and harm our Nation's economic potential. American workers are the most creative, competitive, and hard-working in the world. It is our duty, Mr. President, to release them from any unnecessary constraints at home. Their hard work and perseverance will enable us to maintain and strengthen our lead in the global marketplace, resulting in more quality, high-paying jobs on American soil, and an even stronger national economy.

I ask unanimous consent that a section-by-section summary be printed in the RECORD.

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

THE INTERNATIONAL TAX SIMPLIFICATION FOR AMERICAN COMPETITIVENESS ACT—SUMMARY OF PROVISIONS

TITLE I—TREATMENT OF PASSIVE FOREIGN INVESTMENT COMPANIES

Section 101. PFIC/CFC overlap: The overlap between the PFIC and CFC rules would be eliminated. In the case of a PFIC that is also a CFC, the proposal generally would treat the foreign corporation as a non-PFIC with respect to certain 10-percent U.S. shareholders of the CFC. The change generally would be effective for taxable years of U.S. persons beginning after December 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of U.S. persons, subject to certain holding period requirements.

Section 102. PFIC mark-to-market election: A shareholder of a PFIC would be allowed to make a mark-to-market election for PFIC

stock that is regularly traded on a qualifying national securities exchange or is otherwise treated as marketable. A similar election generally would be available for regulated investment companies. The provision would be effective for taxable years of U.S. persons beginning after December 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of U.S. persons.

Section 103. Clarification of passive income definition: The definition of passive income would be amended for purposes of PFIC provisions by clarifying that the exceptions from the definition of foreign personal holding company income under section 954(c)(3) (regarding certain income received from related persons) do not apply in determining passive income for purposes of the PFIC definition. The change would be effective for taxable years of U.S. persons beginning after December 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of U.S. persons.

Section 104. Effective date of new PFIC provisions: The changes made by the new PFIC provisions (sections 101–103, above) would apply to taxable years of U.S. persons beginning after December 31, 1997, and to taxable yeas of foreign corporations ending with or within such taxable years of U.S. persons.

TITLE II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

Section 201. Extension of divided treatment to dispositions of lower-tier CFCs: Section 1248 dividend treatment would be extended to the sale of a CFC by a CFC where such dividend treatment is provided under current law upon the sale of a CFC by a U.S. shareholder. In addition, a provision added to section 904(d)(2)(E) by the 1988 Act (TAMRA) would be repealed. That provision requires the recipient of a CFC distribution to have been a U.S. shareholder in the CFC when the related earnings were generated to avoid subjecting the distributions to the separate foreign tax credit basket applicable to section 902 corporations. The changes would be effective for gains recognized on transactions or distributions occurring after the date of enactment.

Section 202. Miscellaneous modifications to subpart F: The following changes would be made to subpart F:

Subpart F inclusions in year of acquisition: The subpart F inclusions of an acquirer of CFC stock would be reduced in the year of acquisition by a portion of the dividend deemed recognized by the transferor under section 1248. The provision would apply to dispositions after the date of enactment.

Adjustments to basis of stock: The income inclusion to a U.S. shareholder resulting from an upper-tier CFC's sale of stock in a lower-tier CFC that earns subpart F income would be adjusted, under regulations, to account for previous inclusions by adjusting the basis of the stock. The provision would apply for purposes of determining inclusions for taxable years of U.S. shareholders beginning after December 31, 1997.

Certain distributions of previously taxed income: The IRS would be authorized to issue regulations to prevent multiple inclusions in income or to provide appropriate basis adjustments in the case of cross-chain section 304 dividends out of the earnings of CFCs that were previously included in the income of a U.S. shareholder under subpart F, or in other circumstances in which there would otherwise be a multiple inclusion or a failure to adjust basis. The provision would be effective on the date of enactment.

U.S. income earned by a CFC: A treaty exemption or reduction of the branch profits tax that would be imposed under section 884 with respect to a CFC would not affect the general statutory exemption from subpart F income that is granted for U.S. source effectively connected income. The provision would apply to taxable years beginning after December 31, 1986.

Section 203. Indirect foreign tax credit allowed for lower tiers: The availability of indirect foreign tax credits would be extended to certain taxes paid or accrued by certain fourth-, fifth-, and sixth-tier foreign corporations. The provision generally would be effective for taxes of a CFC with respect to its taxable years beginning after December 31, 1997.

Section 204. Exemption for active financing income: Income earned in the active conduct of a banking, financing, or similar business by a CFC would not be treated as foreign personal holding company income if (1) a significant portion of the CFC's income for that business is derived from transactions with unrelated customers in the jurisdiction in which the CFC is organized and the CFC is predominantly engaged in the active conduct of such business, or (2) the CFC's income is derived in the active conduct of a securities or banking business within the meaning of the PFIC rules. In addition, the bill would exclude from subpart F income a qualifying insurance CFC's income from the investment of its assets, subject to certain limitations. The provision would apply to taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Section 205. Provide look-through treatment for 10/50 companies: Current law requires U.S. companies operating joint ventures in foreign countries to calculate separate foreign tax credit basket limitations for income earned from each joint venture in which the U.S. owner owns at least 10 percent but no more than 50 percent. The proposal would permit U.S. owners to compute foreign tax credits with respect to dividends from such entities based on the underlying character of the income of these entities (i.e., ''look-through'' treatment), provided that the necessary information is available. Dividends from entities for which the necessary information is unavailable would be aggregated in a single foreign tax credit basket. The provision would apply to dividends paid out of earnings and profits accumulated during taxable years of foreign corporations beginning after December 31, 1997.

Section 206. Study of treating European Union as a single country: The Treasury Department would be directed to conduct a study on the feasibility of treating all members of the European Union as a single country for purposes of applying the same country exceptions under subpart F. This study would include consideration of methods of ensuring that taxpayers are subject to a substantial effective rate of foreign tax if such treatment is adopted. A report would be required within six months.

Section 207. Expand subpart F de minimis rule: The subpart F de minimis rule under current law excludes all gross income from foreign base company income or insurance income if the sum of the gross foreign base company income and the gross insurance income of the CFC for the taxable year is less than the lesser of five percent of gross income or $1 million. The proposal would expand this rule to the lesser of 10 percent of gross income or $2 million. The provision would apply to taxable years beginning after December 31, 1997.

Section 208. Use U.S. GAAP for determining subpart F earnings and profits: Taxpayers would be allowed to use U.S. generally accepted accounting principles to determine subpart F earnings and profits. The provision would apply to distributions during, and the determination of the inclusion under section 951 with respect to, taxable years of foreign corporations beginning after December 31, 1997.

Section 209. Clarify treatment of pipeline transportation income: The proposal would exclude income from the pipeline transportation of oil or gas within a foreign country from the statutory definition of ''foreign base company oil related income.'' The provision would apply to taxable years beginning after December 31, 1997.

Section 210. Expand deduction for dividends from foreign corporations with U.S. income: Under the proposal, the constructive ownership rules of section 318 would apply in determining whether the 80-percent ownership threshold of section 245(a)(5) is satisfied, and the term ''dividend'' would include subpart F inclusions. The provision would apply to taxable years beginning after December 31, 1997.

TITLE III—OTHER PROVISIONS

Section 301. Translation, redetermination of foreign taxes: Current law requires U.S. taxpayers making foreign tax payments to translate each payment made during the year into U.S. dollars at the exchange rate on the day of payment. The proposal would simplify this rule by generally permitting accrual-basis taxpayers to translate foreign taxes at the average exchange rate for the taxable year to which such taxes relate. In addition, it generally would provide for any subsequent adjustments to or refunds of accrued foreign taxes to be taken into account for the taxable year to which they relate. The provision would apply to taxes paid or accrued in taxable years beginning after December 31, 1997, and to taxes that relate to taxable years beginning after December 31, 1997.

Section 302. Election to use simplified foreign tax credit calculation under AMT: Taxpayers would be permitted to elect (with certain limitations) to use, as their alternative minimum tax (AMT) foreign tax credit limitation fraction, the ratio of foreign source regular taxable income to entire AMT income. This would eliminate the need to calculate a separate AMT foreign tax credit limitation. The election would apply to all subsequent taxable years and could be revoked only with IRS consent. The provision would apply to taxable years beginning after December 31, 1997.

Section 303. Outbound transfers: The excise tax under section 1491 on certain outbound transfers would be repealed and, in its place, full recognition of gain would be required on a covered transfer of property by a U.S. person to a foreign corporation, foreign partnership, or foreign estate or trust. The provision would apply to transfers after December 31, 1997.

Section 304. Inbound transfers: Regulatory authority generally would be provided to require income recognition, to the extent necessary to prevent U.S. federal income tax avoidance, in the case of certain otherwise tax-free corporate organizations, reorganizations, and liquidations in which the status of a foreign corporation as a corporation is a condition for nonrecognition by a party to the transaction. The provision would apply to transfers after December 31, 1997.

Section 305. Increase in reporting threshold: The ownership threshold triggering the requirement to file information returns regarding the organization or reorganization of foreign corporations and the acquisition of their stock would be increased from 5 percent to 10 percent, effective January 1, 1998.

Section 306. Exempt foreign corporations from uniform capitalization rules: Under the proposal, the uniform capitalization rules would apply to foreign taxpayers only for the purposes of subpart F or the taxation of income effectively connected with the conduct of a U.S. trade or business. The provision would

apply to taxable years beginning after December 31, 1996. Section 481 would not apply to any change in a method of accounting by reason of the provision.

Section 307. Extend FTC carryforward: The proposal would extend the carryforward period for excess foreign income taxes and extraction taxes form five years to 10 years. The provision would apply to excess foreign taxes for taxable years beginning after December 31, 1997.

Section 308. Domestic loss recapture: The proposal would make symmetrical the overall foreign loss provisions by recharacterizing overall domestic losses recaptured in subsequent years as foreign source income. The provision would apply to losses for taxable years beginning after December 31, 1997.

Section 309. FSC rules for computer software and military property: The proposal would clarify that computer software, whether or not patented, qualifies as export property eligible for FSC benefits. The provision would apply to sales, exchanges, or other dispositions after the date of enactment. Also, the proposal would remove the 50-percent limitation on foreign trading gross receipts attributable to military property. This amendment would apply to taxable years beginning after December 31, 1997.

Section 310. Special rules for financial services income: The foreign tax credit limitation provisions generally would be amended to exclude from high withholding tax interest any interest on a security held by a dealer in connection with its activities as such. The foreign tax credit limitation for financial services income would be amended to include the entire gross income of any person for which financial services income exceeds 80 percent of gross income. In addition,the section 904(g) source rules for U.S.-owned foreign property would be amended to exclude income derived by a securities dealer on securities. The proposals generally would apply to taxable years beginning after December 31, 1997. In the case of deemed paid credits, the proposal would apply to taxable years of foreign corporations beginning after December 31, 1997 and to taxable years of U.S. shareholders in such corporations with or within which such taxable years of foreign corporations end.

Section 311. Exclusion of certain dealers' assets from section 956 definition of U.S. property: The provision would exclude from the definition of ''United States property'' under section 956 certain assets acquired by a dealer in securities or commodities in the ordinary course of its trade or business. Excluded assets would include certain assets posted as collateral or margin, certain obligations of U.S. persons acquired in connection with a sale and repurchase agreement, and certain securities acquired and held by a CFC primarily for sale to customers. The provision would be effective for taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Section 312. Foreign investment in mutual funds: The proposal generally would exempt from U.S. taxation certain dividends received by nonresident aliens or foreign corporations from regulated investment companies (RICs) to the extent the dividends are attributable to interest or short-term capital gains. Also, for U.S. estate tax purposes, the proposal would treat stock in certain RICs as property without the United States. Finally, the proposal would expand the special rules for REITs under section 897(h) to cover domestically controlled RICs as well. The first provision would apply to dividends with respect to taxable years of RICs beginning after the date of enactment; the other provisions generally would take effect on the date of enactment.

Section 313. Exclude preliminary agreements from definition of intangible property: The proposal would exclude from the section 936(h)(3)(B) definition of intangible property any ''preliminary agreement'' that is not legally enforceable. This provision would apply to agreements entered into after the date of enactment.

Section 314. Study of affiliated group interest allocation: The Treasury Department would be directed to conduct a study of the rules under section 864(e) for allocating interest expense of members of an affiliated group. This study would include an analysis of the effect of such rules, including the effects such rules have on different industries. A report would be required within six months.

Mr. BAUCUS. Mr. President, I am very pleased today to join my colleague, Senator HATCH, to introduce a bill to help American-owned companies compete in the world marketplace by simplifying our overly complicated international tax rules.

America's economic success depends more than ever before on our ability to succeed in the international economy. When I came to the Senate, imports and exports together made up about 12 percent of our economy. Today it is 30 percent and growing every day. So more jobs than ever depend on exports and overseas operations.

I have worked through the Trade Subcommittee to lower foreign trade barriers and encourage agreements to keep trade free and fair. I have sought to open foreign markets for Montana products like beef to wheat. And this work pays off.

According to a report prepared by the accounting firm Price Waterhouse last month, exports of goods alone in the United States in 1996 supported almost 7 million direct and indirect jobs and account for over 11 percent of our Gross Domestic Product. In Montana, these exports totaled almost one-half billion dollars and supported 58,000 jobs in 1996.

But while our trade policies have been successful in many areas, our Tax Code has failed to keep up. Its international provisions are outdated, unclear, complex, and duplicative. And the result is fewer jobs and less prosperity here at home.

So Senator HATCH and I have joined in an effort to simplify our Code, remove duplicative or outmoded provisions, and provide incentives for trade whenever possible.

This bill does not by any means cure all of the problems in the international tax arena. But it is a good starting point which simplifies existing law, reduces the cost of compliance, and begins to make rules more rational and more mindful of the competitiveness of U.S. businesses. The major provisions include:

Putting U.S. companies entering into joint ventures in foreign markets on an equal footing with their foreign competitors by eliminating the so-called 10–50 foreign tax credit basket rules.

Rationalizing the anti-deferral rules by eliminating provisions that duplicate other clauses of the Internal Revenue Code. This is essential if U.S. financial services companies are to keep their leading edge in foreign markets.

Guaranteeing that the export tax incentive provided by the foreign sales corporation rules would apply to U.S. software sold overseas, and to approved sales of U.S.-made military goods overseas.

Putting mutual funds on the same footing as individual companies in their ability to attract foreign investors, increasing their investment capital.

And making it easier for utilities to bid for construction projects overseas.

These things will make us more efficient and more competitive. It will allow companies to put less effort into accounting and filling out tax forms, and more into producing, competing, and creating jobs. And that is what we need, today, and even more so tomorrow.

We live in a global economy, Mr. President, and we must help American companies compete in this economy if we hope to continue an expansion in which a quarter of our growth already comes from exports. The International Tax Simplification for American Competitiveness Act is a major step in that direction.

I look forward to working with Senator HATCH and my other colleagues on the Finance Committee to have its provisions incorporated into the reconciliation bill we will soon be considering.

By Mr. LUGAR (for himself, Mr. HARKIN, Mr. MCCONNELL, Mr. SANTORUM, Mr. ROBERTS, Mr. COCHRAN, Mr. CRAIG, Mr. GRASSLEY, Mr. DASCHLE, Mr. LEAHY, Mr. KERREY, Mr. BAUCUS, Ms. LANDRIEU, Mr. JOHNSON, and Mr. CONRAD):

S. 845. A bill to transfer to the Secretary of Agriculture the authority to conduct the census of agriculture, and for other purposes; to the Committee on Governmental Affairs.

THE CENSUS OF AGRICULTURE ACT OF 1997

Mr. LUGAR. Mr. President, today I rise to introduce legislation that will transfer the census of agriculture from the Department of Commerce to the Department of Agriculture [USDA]. I am pleased that the distinguished ranking member of the Agriculture Committee, Senator HARKIN, as well as Senators MCCONNELL, SANTORUM, DASCHLE, ROBERTS, LEAHY, KERREY, BAUCUS, LANDRIEU, COCHRAN, CONRAD, JOHNSON, CRAIG, and GRASSLEY have joined me as cosponsors of this bill.

In recent years the census of agriculture has been conducted every 5 years. Agricultural producers nationwide are asked questions regarding their production and sales. The census of agriculture is the only source of consistent, county level statistics on agricultural operations throughout the United States. It also provides national and State data. The census of agriculture is useful in monitoring the current status of, as well as documenting changes in, the agricultural industry. The number of farms, a major piece of data resulting from the census, is taken into account in the allocation of funding for several USDA programs.

Last year Congress provided funds to USDA to allow USDA, in cooperation with the Department of Commerce, to conduct the next census without any substantive changes in scope, coverage, or timing. This transfer of funding necessitates the transfer of the authority.

Transferring the authority for the census of agriculture to the USDA makes common sense. This move would integrate the agricultural statistics programs of the two Departments and eliminate duplication. USDA states that cost savings will result with one agency given primary authority over the content of the census as well as dissemination of its results.

The issue of moving the census surfaced during final conference committee deliberations on the 1996 Federal Agricultural Improvement and Reform Act. Given the time constraints of that conference, a provision to transfer the census of agriculture to USDA was not included in the bill. Subsequent legislation was passed by the House, but did not receive approval from the Senate before the end of the session.

Last year, the Department of Commerce expressed some interest in changing the definition of a farm, which is now defined as sales of $1,000 or more per year. While USDA has stated there will be no substantive changes with how the upcoming census is carried out, it is more logical to provide the authority to set the definition to the Department whose programs would be most affected by a change.

Many agricultural associations and organizations, including the American Farm Bureau Federation, support the transfer of the census of agriculture to USDA. Last month, USDA proposed legislation which is virtually identical to this bill.

I ask my colleagues for their support of this legislation. I ask unanimous consent that the bill and a section-by-section analysis of the bill be printed in the RECORD.

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

S. 845

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 ''Census of Agriculture Act of 1997''.

SEC. 2. TRANSFER TO THE SECRETARY OF AGRICULTURE OF THE AUTHORITY TO CONDUCT THE CENSUS OF AGRICULTURE.

(a) IN GENERAL.—Section 526 of the Revised Statutes (7 U.S.C. 2204) is amended by adding at the end the following:

''(c) CENSUS OF AGRICULTURE.—

''(1) IN GENERAL.—In 1998 and every 5th year thereafter, the Secretary of Agriculture shall take a census of agriculture.

''(2) METHODS.—In connection with the census, the Secretary may conduct any survey or other data collection, and employ any sampling or other statistical method, that the Secretary determines is appropriate.

''(3) YEAR OF DATA.—The data collected in each census taken under this subsection shall relate to the year immediately preceding the year in which the census is taken.

''(4) ENFORCEMENT.—

''(A) FRAUD.—A person over 18 years of age who willfully gives an answer that is false to a question submitted to the person in connection with a census under this subsection shall be fined not more than $500.

''(B) REFUSAL OR NEGLECT TO ANSWER QUESTIONS.—A person over 18 years of age who refuses or neglects to answer a question submitted to the person in connection with a census under this subsection shall be fined not more than $100.

''(C) SOCIAL SECURITY NUMBER.—The failure or refusal of a person to disclose the person's social security number in response to a request made in connection with any census or other activity under this subsection shall not be a violation under this paragraph.

''(D) RELIGIOUS INFORMATION.—Notwithstanding any other provision of this subsection, no person shall be compelled to disclose information relative to the religious beliefs of the person or to membership of the person in a religious body.

''(5) GEOGRAPHIC COVERAGE.—A census under this subsection shall include—

''(A) each of the several States of the United States;

''(B) as determined by the Secretary, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and Guam; and

''(C) with the concurrence of the Secretary and the Secretary of State, any other possession or area over which the United States exercises jurisdiction, control, or sovereignty.

''(6) COOPERATION WITH THE SECRETARY OF COMMERCE.—

''(A) INFORMATION PROVIDED TO THE SECRETARY OF AGRICULTURE.—The Secretary of Commerce may, on a written request by the Secretary of Agriculture, provide to the Secretary of Agriculture any information collected under title 13, United States Code, that the Secretary of Agriculture considers necessary for the taking of a census or survey under this subsection.

''(B) INFORMATION PROVIDED TO THE SECRETARY OF COMMERCE.—The Secretary of Agriculture may, on a written request by the Secretary of Commerce, provide to the Secretary of Commerce any information collected in a census taken under this subsection that the Secretary of Commerce considers necessary for the taking of a census or survey under title 13, United States Code.

''(C) CONFIDENTIALITY.—

''(i) IN GENERAL.—Information obtained under this paragraph may not be used for any purpose other than the statistical purposes for which the information is supplied.

''(ii) CENSUS INFORMATION.—For purposes of sections 9 and 214 of title 13, United States Code, any information provided under subparagraph (B) shall be considered information furnished under the provisions of title 13, United States Code.

''(7) REGULATIONS.—A regulation necessary to carry out this subsection may be promulgated by—

''(A) the Secretary of Agriculture, to the extent that a matter under the jurisdiction of the Secretary is involved; and

''(B) the Secretary of Commerce, to the extent that a matter under the jurisdiction of the Secretary of Commerce is involved.''.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subchapter II of chapter 5 of title 13, United States Code, is amended by striking the subchapter heading and inserting the following:

''SUBCHAPTER II—POPULATION, HOUSING, AND UNEMPLOYMENT''.

(B) Section 142 of title 13, United States Code, is repealed.

(C) The analysis of chapter 5 of title 13, United States Code, is amended—

(i) by striking the item relating to the heading for subchapter II and inserting the following:

''SUBCHAPTER II—POPULATION, HOUSING, AND UNEMPLOYMENT'';

(ii) by striking the item relating to section 142; and

(iii) by inserting after the item relating to section 161 the following:

''163. Authority of other agencies.''.

(2) Section 343(a)(11)(F) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(11)(F)) is amended by striking ''taken under section 142 of title 13, United States Code''.

SEC. 3. CONFIDENTIALITY OF INFORMATION.

(a) INFORMATION PROVIDED TO THE SECRETARY OF AGRICULTURE.—

(1) AUTHORITY TO PROVIDE INFORMATION.—Section 9(a) of title 13, United States Code, is amended by inserting after ''chapter 10 of this title'' the following: ''or section 526(c)(6) of the Revised Statutes (7 U.S.C. 2204(c)(6))''.

(2) CONFIDENTIALITY OF INFORMATION.—Section 1770(d) of the Food Security Act of 1985 (7 U.S.C. 2276(d)) is amended by striking paragraph (5) and inserting the following:

''(5) subsections (a) and (c) of section 526 of the Revised Statutes (7 U.S.C. 2204);''.

(b) INFORMATION PROVIDED TO THE SECRETARY OF COMMERCE.—Section 1770 of the Food Security Act of 1985 (7 U.S.C. 2276) is amended by adding at the end the following:

''(e) INFORMATION PROVIDED TO THE SECRETARY OF COMMERCE.—This section shall not prohibit the release of information under section 526(c)(6) of the Revised Statutes (7 U.S.C. 2204(c)(6)).''.

AG CENSUS BILL—SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. Section 1 would provide that the act may be cited as the ''Census of Agriculture Act of 1997.''

Section 2. Transfer to the Secretary of Agriculture of the Authority To Conduct the Census of Agriculture. Section 2(a) would amend section 526 of the Revised Statutes (7 U.S.C. 2204) to require the Secretary of Agriculture to take a census of agriculture in 1998 and every 5th year thereafter. The data collected in each census would relate to the year preceding the year that the census was taken. Any person who refuses to answer or provides false answers to questions in connection with the census would be subject to penalties, except if the refusal is to disclose the person's social security number.

Section 2(a) also would authorize the Secretaries of Agriculture and Commerce to share information necessary for taking a census. Upon written request by the Secretary of Agriculture, the Secretary of Commerce would be authorized to furnish certain information to be used for statistical purposes. Upon written request by the Secretary of Commerce, the Secretary of Agriculture would be authorized to furnish census information to be used for statistical purposes.

Section 2(b) would repeal section 142 of title 13, United States Code. Section 142 of title 13, United States Code, requires the Secretary of Commerce to take the census of agriculture. This repeal is a confirming amendment necessary to effectuate the transfer of the authority to conduct the census of agriculture from the Secretary of Commerce to the Secretary of Agriculture. Section 2(b) also would make a conforming amendment to the Consolidated Farm and Rural Development Act to refer to the census of agriculture as under section 526(c) of the Revised Statutes.

Section 3. Confidentiality of Information. Section 3 would make amendments to ensure

the confidentiality of information furnished for the census of agriculture.

By Mr. AKAKA:

S. 846. A bill to amend the Federal Power Act to remove the jurisdiction of the Federal Energy Regulatory Commission to license projects on fresh waters in the State of Hawaii; to the Committee on Energy and Natural Resources.

THE FEDERAL POWER ACT AMENDMENT ACT OF 1997

Mr. AKAKA. Madam President, the State of Hawaii, its delegation in Congress, and conservation organizations throughout the State are deeply concerned about Federal efforts to regulate hydroelectric projects on State waters. Across the United States, the question of who should have authority for hydropower regulation—the State or the Federal Government—is very contentious. But in the case of the fresh water streams of Hawaii, the answer is clear. The State of Hawaii, not the Federal Energy Regulatory Commission, should have the authority for hydropower regulation in Hawaii, if the Commission finds it has no mandatory jurisdiction under the Federal Power Act.

Those who care for Hawaii's rivers and streams recognize that unnecessary Federal intervention may have serious repercussions for our fresh water resources and the ecosystems that depend upon them.

The State of Hawaii has demonstrated its commitment to protect stream resources by instituting a new water code, adopting instream flow standards, launching a comprehensive Hawaii stream assessment, and organizing a steam protection and management task force.

The Federal interest in protecting the vast interconnected river system of North America is misplaced in our isolated mid-Pacific locale. The issues of interstate commerce, protecting military ports, or long interstate rivers are not applicable.

Therefore, I am introducing legislation to terminate FERC's voluntary jurisdiction over hydropower projects on the fresh waters of the State of Hawaii. This legislation is nearly identical to one passed by the Senate during the 103d Congress. In 104th Congress, the Senate Energy and Natural Resources Committee again approved the bill. I will continue to fight for the passage of this legislation in the 105th Congress.

By Mr. COATS (for himself, Mr. LIEBERMAN, Mr. BROWNBACK, Mr. ASHCROFT, Mr. COVERDELL, and Mr. GREGG):

S. 847. A bill to provide scholarship assistance for District of Columbia elementary and secondary school students; to the Committee on Governmental Affairs.

THE DISTRICT OF COLUMBIA STUDENT OPPORTUNITY SCHOLARSHIP ACT OF 1997

Mr. COATS. Mr. President, today is a very important day for students in the District of Columbia. Today, I join Senator LIEBERMAN, Senator BROWNBACK, Senator ASHCROFT, and Senator GREGG in introducing the District of Columbia Student Opportunity Scholarship Act of 1997, also known as the DC SOS Act. The DC SOS Act provides immediate relief to thousands of the District's neediest students who are consigned to failing, violent public schools. This bill is a direct response to the needs of thousands of families in our Capital City who have, for too long, been expected to accept underperforming and often violent schools for their children. The DC SOS Act provides real educational opportunities to almost 4,000 District students.

Many of you may remember that a very similar initiative was introduced by former Representative Gunderson, and included in the 1996 D.C. appropriations bill. At that time, a majority of the Senate, 56 Senators in all, were supportive of the idea to provide scholarships to poor students in the District of Columbia. Tragically, that program, which would have benefited 5,000 of our Nation's most needy students, was blocked by the threat of a filibuster.

During the 1996 D.C. Appropriations debate, many of those who opposed providing scholarships for poor District students argued that the initiative was opposed by the residents of the District. That argument cannot be used this time. A recent bipartisan survey conducted in the District of Columbia found that fully 64 percent of Washingtonians would send their children to private school if they had the option and if money were not an issue; 61 percent of single parents think that creating a school choice program for the District is an excellent or good use of taxpayer dollars. And those most likely to opt out of the public system are residents of the wards 7 and 8, the areas with the most troubled public schools. Clearly, the residents of the District are ready for a change.

But these surveys should not surprise us. The D.C. schools have not improved since the defeat of the D.C. scholarship program in 1996. Rather, the schools got so bad that the D.C. Control Board fired Superintendent Franklin Smith, stripped control of the school from the D.C. Board of Education, and installed a new Chief Executive and Superintendent, retired Army Gen. Julius W. Becton, Jr. Perhaps General Becton can turn the D.C. school system around. But I am not willing to tell a family who fears for the safety of their child that they should wait and given General Becton 5 or 10 years to test his approaches, especially because changes have been promised by five new superintendents in the last 15 years.

In February of this year, the Washington Post ran a five-part series on the D.C. school system, chronicling its complete breakdown. A school system where jobs for bureaucrats are more important than providing textbooks. A school system that employs almost nine times more central office administrators than the national average, despite a decreasing student population, and a shortage of qualified teachers and principals.

Many of the district's 152 schools are in a state of terrible disrepair. Students and teachers contend with leaking roofs, bitterly cold classrooms, and thousands of fire code violations. Yet, in 1996, the D.C. Board of Education allocated $1.4 million for its own use, an amount far greater than that spent by neighboring counties, and $200,000 more than is spent by the Chicago school system, which is five times larger.

Unfortunately, these problems of infrastructure are minor concerns compared to violence and basic educational failure. Violence in the schools is at an alltime high—both student on student, and student on teacher—even as the violent crime rate in the country as a whole drops. And stories of academic mediocrity have become so common that they have lost their power to shock. Why is there no public outcry that the D.C. school district, which spends the most per pupil of any district in the country, has the Nation's lowest reported scores on the NAEP exams? Where is the outrage that only 35 percent of students are reading at grade level?

Students are routinely promoted regardless of whether they have progressed in their studies and graduate from the school system with little to show for their 12 years of schooling. Eighty-five percent of D.C. public school graduates who enter the University of the District of Columbia need 2 years of remedial education before beginning their course work toward degrees. And more than half of all graduates who took the U.S. Armed Forces Qualification Test in 1994 failed. This last statistic is particularly troubling, because it blocks a traditional escape route from disadvantage.

We are asking poor, inner-city children and their parents to tolerate circumstances that most middle-class and affluent Americans would not tolerate for one moment. Why should these families have to suffer violence and the lack of educational opportunities for another week, let alone the years that General Becton himself admits it will be before reform has any effect?

But those of us concerned about this issue face an obstacle. No one seems outraged enough about the betrayal of these children by indifferent adults to make major changes. Not suburban whites, who are often satisfied with their schools. Not politicians, some of whom are either blindly obedient to teachers unions or may simply have different political constituencies than these kids and their parents.

The DC SOS Act is an attempt to end this conspiracy of complacency. In introducing this bill today, I join with a coalition of members in both House of Congress who seek to provide scholarships for low-income students in the District of Columbia to enable them to attend the public or private school of

their choice or to receive tutoring assistance. This bill is the single most practical, immediate, effective way to help actual children, with flesh and blood and futures, rather than continuing to ignore this very serious situation.

I find it inconceivable that anyone, in good conscience, could condemn the District's low income children to attend schools that not only fail to educate them, but cannot even assure their personal safety. Some of the public schools in this city have become wastelands of violence and despair. We cannot begin to imagine the fears of a mother who is forced, required, compelled to send her child through barbed wire and metal detectors into a combat zone, masquerading as an educational institution.

The introduction, and ultimate passage of this bill, will signal a fundamental shift in priorities. It would indicate to parents in the District of Columbia and all across America that we care about their children more than we care about maintaining the status quo; that we understand the depth of the problem in our Nation's public schools and that we are finally willing to address it.

Opponents of this bill should carefully consider what they would do if they had a child assigned to a school where physical attacks, robberies, and drug sales were rampant. Low-income parents, who face this circumstance every day, deserve a voice and a choice.

I urge my colleagues to join me in supporting the D.C. Student Opportunity Scholarship Act of 1997. With this bill we signal our intention to provide a safe and effective school for every child in the District of Columbia.

Mr. President, I ask unanimous consent that this act, the District of Columbia Student Opportunity Scholarship Act of 1997, be printed in the RECORD.

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

S. 847

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

SECTION 1. SHORT TITLE; FINDINGS; PRECEDENTS.

(a) SHORT TITLE.—This Act may be cited as the ''District of Columbia Student Opportunity Scholarship Act of 1997''.

(b) FINDINGS.—Congress makes the following findings:

(1) Public education in the District of Columbia is in a crisis, as evidenced by the following:

(A) The District of Columbia schools have the lowest average of any school system in the Nation on the National Assessment of Education Progress.

(B) 72 percent of fourth graders in the District of Columbia tested below basic proficiency on the National Assessment of Education Progress in 1994.

(C) Since 1991, there has been a net decline in the reading skills of District of Columbia students as measured in scores on the standardized Comprehensive Test of Basic Skills.

(D) At least 40 percent of District of Columbia students drop out of or leave the school system before graduation.

(E) The National Education Goals Panel reported in 1996 that both students and teachers in District of Columbia schools are subjected to levels of violence that are twice the national average.

(F) Nearly two-thirds of District of Columbia teachers reported that violent student behavior is a serious impediment to teaching.

(G) Many of the District of Columbia's 152 schools are in a state of terrible disrepair, including leaking roofs, bitterly cold classrooms, and numerous fire code violations.

(2) Significant improvements in the education of educationally deprived children in the District of Columbia can be accomplished by—

(A) increasing educational opportunities for the children by expanding the range of educational choices that best meet the needs of the children;

(B) fostering diversity and competition among school programs for the children;

(C) providing the families of the children more of the educational choices already available to affluent families; and

(D) enhancing the overall quality of education in the District of Columbia by increasing parental involvement in the direction of the education of the children.

(3) The 350 private schools in the District of Columbia and the surrounding area offer a more safe and stable learning environment than many of the public schools.

(4) Costs are often much lower in private schools than corresponding costs in public schools.

(5) Not all children are alike and therefore there is no one school or program that fits the needs of all children.

(6) The formation of sound values and moral character is crucial to helping young people escape from lives of poverty, family break-up, drug abuse, crime, and school failure.

(7) In addition to offering knowledge and skills, education should contribute positively to the formation of the internal norms and values which are vital to a child's success in life and to the well-being of society.

(8) Schools should help to provide young people with a sound moral foundation which is consistent with the values of their parents. To find such a school, parents need a full range of choice to determine where their children can best be educated.

(c) PRECEDENTS.—The United States Supreme Court has determined that programs giving parents choice and increased input in their children's education, including the choice of a religious education, do not violate the Constitution. The Supreme Court has held that as long as the beneficiary decides where education funds will be spent on such individual's behalf, public funds can be used for education in a religious institution because the public entity has neither advanced nor hindered a particular religion and therefore has not violated the establishment clause of the first amendment to the Constitution. Supreme Court precedents include—

(1) Wisconsin v. Yoder, 406 U.S. 205 (1972); Pierce v. Society of Sisters, 268 U.S. 510 (1925); and Meyer v. Nebraska, 262 U.S. 390 (1923) which held that parents have the primary role in and are the primary decision makers in all areas regarding the education and upbringing of their children;

(2) Mueller v. Allen, 463 U.S. 388 (1983) which declared a Minnesota tax deduction program that provided State income tax benefits for educational expenditures by parents, including tuition in religiously affiliated schools, does not violate the Constitution;

(3) Witters v. Department of Services for the Blind, 474 U.S. 481 (1986) in which the Supreme Court ruled unanimously that public funds for the vocational training of the blind could be used at a Bible college for ministry training; and

(4) Zobrest v. Catalina Foothills School District, 509 U.S. 1 (1993) which held that a deaf child could receive an interpreter, paid for by the public, in a private religiously affiliated school under the Individual with Disabilities Education Act (20 U.S.C. 1400 et seq.). The case held that providing an interpreter in a religiously affiliated school did not violate the establishment clause of the first amendment of the Constitution.

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term ''Board'' means the Board of Directors of the Corporation established under section 3(b)(1);

(2) the term ''Corporation'' means the District of Columbia Scholarship Corporation established under section 3(a);

(3) the term ''eligible institution''—

(A) in the case of an eligible institution serving a student who receives a tuition scholarship under section 4(d)(1), means a public, private, or independent elementary or secondary school; and

(B) in the case of an eligible institution serving a student who receives an enhanced achievement scholarship under section 4(d)(2), means an elementary or secondary school, or an entity that provides services to a student enrolled in an elementary or secondary school to enhance such student's achievement through activities described in section 4(d)(2); and

(4) the term ''poverty line'' means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

SEC. 3. DISTRICT OF COLUMBIA SCHOLARSHIP CORPORATION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—There is authorized to be established a private, nonprofit corporation, to be known as the ''District of Columbia Scholarship Corporation'', which is neither an agency nor establishment of the United States Government or the District of Columbia Government.

(2) DUTIES.—The Corporation shall have the responsibility and authority to administer, publicize, and evaluate the scholarship program in accordance with this Act, and to determine student and school eligibility for participation in such program.

(3) CONSULTATION.—The Corporation shall exercise its authority—

(A) in a manner consistent with maximizing educational opportunities for the maximum number of interested families; and

(B) in consultation with the District of Columbia Board of Education or entity exercising administrative jurisdiction over the District of Columbia Public Schools, the Superintendent of the District of Columbia Public Schools, and other school scholarship programs in the District of Columbia.

(4) APPLICATION OF PROVISIONS.—The Corporation shall be subject to the provisions of this Act, and, to the extent consistent with this Act, to the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–501 et seq.).

(5) RESIDENCE.—The Corporation shall have its place of business in the District of Columbia and shall be considered, for purposes of venue in civil actions, to be a resident of the District of Columbia.

(6) FUND.—There is established in the Treasury a fund that shall be known as the District of Columbia Scholarship Fund, to be administered by the Secretary of the Treasury.

(7) DISBURSEMENT.—The Secretary of the Treasury shall make available and disburse to the Corporation, before October 15 of each fiscal year or not later than 15 days after the date of enactment of an Act making appropriations for the District of Columbia for such year, whichever occurs later, such funds as have been appropriated to the District of Columbia Scholarship Fund for the fiscal year in which such disbursement is made.

(8) AVAILABILITY.—Funds authorized to be appropriated under this Act shall remain available until expended.

(9) USES.—Funds authorized to be appropriated under this Act shall be used by the Corporation in a prudent and financially responsible manner, solely for scholarships, contracts, and administrative costs.

(10) AUTHORIZATION.—

(A) IN GENERAL.—There are authorized to be appropriated to the District of Columbia Scholarship Fund—

(i) $7,000,000 for fiscal year 1998;

(ii) $8,000,000 for fiscal year 1999; and

(iii) $10,000,000 for each of fiscal years 2000 through 2002.

(B) LIMITATION.—Not more than $500,000 of the amount appropriated to carry out this Act for any fiscal year may be used by the Corporation for any purpose other than assistance to students.

(b) ORGANIZATION AND MANAGEMENT; BOARD OF DIRECTORS.—

(1) BOARD OF DIRECTORS; MEMBERSHIP.—

(A) IN GENERAL.—The Corporation shall have a Board of Directors (referred to in this Act as the ''Board''), comprised of 7 members with 6 members of the Board appointed by the President not later than 30 days after receipt of nominations from the Speaker of the House of Representatives and the majority leader of the Senate.

(B) HOUSE NOMINATIONS.—The President shall appoint 3 of the members from a list of 9 individuals nominated by the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives.

(C) SENATE NOMINATIONS.—The President shall appoint 3 members from a list of 9 individuals nominated by the majority leader of the Senate in consultation with the minority leader of the Senate.

(D) DEADLINE.—The Speaker of the House of Representatives and majority leader of the Senate shall submit their nominations to the President not later than 30 days after the date of the enactment of this Act.

(E) APPOINTEE OF MAYOR.—The Mayor shall appoint 1 member of the Board not later than 60 days after the date of the enactment of this Act.

(F) POSSIBLE INTERIM MEMBERS.—If the President does not appoint the 6 members of the Board in the 30-day period described in subparagraph (A), then the Speaker of the House of Representatives and the Majority Leader of the Senate shall each appoint 2 members of the Board, and the Minority Leader of the House of Representatives and the Minority Leader of the Senate shall each appoint 1 of the Board, from among the individuals nominated pursuant to subparagraphs (A) and (B), as the case may be. The appointees under the preceding sentence together with the appointee of the Mayor, shall serve as an interim Board with all the powers and other duties of the Board described in this Act, until the President makes the appointments as described in this subsection.

(2) POWERS.—All powers of the Corporation shall vest in and be exercised under the authority of the Board.

(3) ELECTIONS.—Members of the Board annually shall elect 1 of the members of the Board to be chairperson of the Board.

(4) RESIDENCY.—All members appointed to the Board shall be residents of the District of Columbia at the time of appointment and while serving on the Board.

(5) NONEMPLOYEE.—No member of the Board may be an employee of the United States Government or the District of Columbia Government when appointed to or during tenure on the Board, unless the individual is on a leave of absence from such a position while serving on the Board.

(6) INCORPORATION.—The members of the initial Board shall serve as incorporators and shall take whatever steps are necessary to establish the Corporation under the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–501 et seq.).

(7) GENERAL TERM.—The term of office of each member of the Board shall be 5 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of such term.

(8) CONSECUTIVE TERM.—No member of the Board shall be eligible to serve in excess of 2 consecutive terms of 5 years each. A partial term shall be considered as 1 full term. Any vacancy on the Board shall not affect the Board's power, but shall be filled in a manner consistent with this Act.

(9) NO BENEFIT.—No part of the income or assets of the Corporation shall inure to the benefit of any Director, officer, or employee of the Corporation, except as salary or reasonable compensation for services.

(10) POLITICAL ACTIVITY.—The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(11) NO OFFICERS OR EMPLOYEES.—The members of the Board shall not, by reason of such membership, be considered to be officers or employees of the United States Government or of the District of Columbia Government.

(12) STIPENDS.—The members of the Board, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this Act, shall be provided a stipend. Such stipend shall be at the rate of $150 per day for which the member of the Board is officially recorded as having worked, except that no member may be paid a total stipend amount in any calendar year in excess of $5,000.

(c) OFFICERS AND STAFF.—

(1) EXECUTIVE DIRECTOR.—The Corporation shall have an Executive Director, and such other staff, as may be appointed by the Board for terms and at rates of compensation, not to exceed level EG–16 of the Educational Service of the District of Columbia, to be fixed by the Board.

(2) STAFF.—With the approval of the Board, the Executive Director may appoint and fix the salary of such additional personnel as the Executive Director considers appropriate.

(3) ANNUAL RATE.—No staff of the Corporation may be compensated by the Corporation at an annual rate of pay greater than the annual rate of pay of the Executive Director.

(4) SERVICE.—All officers and employees of the Corporation shall serve at the pleasure of the Board.

(5) QUALIFICATION.—No political test or qualification may be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, or employees of the Corporation.

(d) POWERS OF THE CORPORATION.—

(1) GENERALLY.—The Corporation is authorized to obtain grants from, and make contracts with, individuals and with private, State, and Federal agencies, organizations, and institutions.

(2) HIRING AUTHORITY.—The Corporation may hire, or accept the voluntary services of, consultants, experts, advisory boards, and panels to aid the Corporation in carrying out this Act.

(e) FINANCIAL MANAGEMENT AND RECORDS.—

(1) AUDITS.—The financial statements of the Corporation shall be—

(A) maintained in accordance with generally accepted accounting principles for nonprofit corporations; and

(B) audited annually by independent certified public accountants.

(2) REPORT.—The report for each such audit shall be included in the annual report to Congress required by section 13(c).

SEC. 4. SCHOLARSHIPS AUTHORIZED.

(a) ELIGIBLE STUDENTS.—The Corporation is authorized to award tuition scholarships under subsection (d)(1) and enhanced achievement scholarships under subsection (d)(2) to students in kindergarten through grade 12—

(1) who are residents of the District of Columbia; and

(2) whose family income does not exceed 185 percent of the poverty line.

(b) SCHOLARSHIP PRIORITY.—

(1) FIRST.—The Corporation shall first award scholarships to students described in subsection (a) who—

(A) are enrolled in a District of Columbia public school or preparing to enter a District of Columbia kindergarten, except that this subparagraph shall apply only for academic years 1997, 1998, and 1999; or

(B) have received a scholarship from the Corporation in the year preceding the year for which the scholarship is awarded.

(2) SECOND.—If funds remain for a fiscal year for awarding scholarships after awarding scholarships under paragraph (1), the Corporation shall award scholarships to students described in subsection (a) who are not described in paragraph (1).

(c) SPECIAL RULE.—The Corporation shall attempt to ensure an equitable distribution of scholarship funds to students at diverse academic achievement levels.

(d) USE OF SCHOLARSHIP.—

(1) TUITION SCHOLARSHIPS.—A tuition scholarship may be used for the payment of the cost of the tuition and mandatory fees at a public, private, or independent school located within the geographic boundaries of the District of Columbia or the cost of the tuition and mandatory fees at a public, private, or independent school located within Montgomery County, Maryland; Prince Georges County, Maryland; Arlington County, Virginia; Alexandria City, Virginia; Falls Church City, Virginia; or Fairfax County, Virginia.

(2) ENHANCED ACHIEVEMENT SCHOLARSHIP.—An enhanced achievement scholarship may be used only for the payment of the costs of tuition and mandatory fees for, or transportation to attend, a program of instruction provided by an eligible institution which enhances student achievement of the core curriculum and is operated outside of regular school hours to supplement the regular school program.

(e) NOT SCHOOL AID.—A scholarship under this Act shall be considered assistance to the student and shall not be considered assistance to an eligible institution.

SEC. 5. SCHOLARSHIP PAYMENTS AND AMOUNTS.

(a) AWARDS.—From the funds made available under this Act, the Corporation shall award a scholarship to a student and make payments in accordance with section 10 on behalf of such student to a participating eligible institution chosen by the parent of the student.

(b) NOTIFICATION.—Each eligible institution that desires to receive payment under

subsection (a) shall notify the Corporation not later than 10 days after—

(1) the date that a student receiving a scholarship under this Act is enrolled, of the name, address, and grade level of such student;

(2) the date of the withdrawal or expulsion of any student receiving a scholarship under this Act, of the withdrawal or expulsion; and

(3) the date that a student receiving a scholarship under this Act is refused admission, of the reasons for such a refusal.

(c) TUITION SCHOLARSHIP.—

(1) EQUAL TO OR BELOW POVERTY LINE.—For a student whose family income is equal to or below the poverty line, a tuition scholarship may not exceed the lesser of—

(A) the cost of tuition and mandatory fees for, and transportation to attend, an eligible institution; or

(B) $3,200 for fiscal year 1998, with such amount adjusted in proportion to changes in the Consumer Price Index for all urban consumers published by the Department of Labor for each of fiscal years 1999 through 2002.

(2) ABOVE POVERTY LINE.—For a student whose family income is greater than the poverty line, but not more than 185 percent of the poverty line, a tuition scholarship may not exceed the lesser of—

(A) 75 percent of the cost of tuition and mandatory fees for, and transportation to attend, an eligible institution; or

(B) $2,400 for fiscal year 1998, with such amount adjusted in proportion to changes in the Consumer Price Index for all urban consumers published by the Department of Labor for each of fiscal years 1999 through 2002.

(d) ENHANCED ACHIEVEMENT SCHOLARSHIP.—An enhanced achievement scholarship may not exceed the lesser of—

(1) the costs of tuition and mandatory fees for, or transportation to attend, a program of instruction at an eligible institution; or

(2) $500 for 1998, with such amount adjusted in proportion to changes in the Consumer Price Index for all urban consumers published by the Department of Labor for each of fiscal years 1999 through 2002.

SEC. 6. CERTIFICATION OF ELIGIBLE INSTITUTIONS.

(a) APPLICATION.—An eligible institution that desires to receive a payment on behalf of a student who receives a scholarship under this Act shall file an application with the Corporation for certification for participation in the scholarship program under this Act. Each such application shall—

(1) demonstrate that the eligible institution has operated with not less than 25 students during the 3 years preceding the year for which the determination is made unless the eligible institution is applying for certification as a new eligible institution under subsection (c);

(2) contain an assurance that the eligible institution will comply with all applicable requirements of this Act;

(3) contain an annual statement of the eligible institution's budget; and

(4) describe the eligible institution's proposed program, including personnel qualifications and fees.

(b) CERTIFICATION.—

(1) IN GENERAL.—Except as provided in paragraph (3), not later than 60 days after receipt of an application in accordance with subsection (a), the Corporation shall certify an eligible institution to participate in the scholarship program under this Act.

(2) CONTINUATION.—An eligible institution's certification to participate in the scholarship program shall continue unless such eligible institution's certification is revoked in accordance with subsection (d).

(c) NEW ELIGIBLE INSTITUTION.—

(1) IN GENERAL.—An eligible institution that did not operate with at least 25 students in the 3 years preceding the year for which the determination is made may apply for a 1-year provisional certification to participate in the scholarship program under this Act for a single year by providing to the Corporation not later than July 1 of the year preceding the year for which the determination is made—

(A) a list of the eligible institution's board of directors;

(B) letters of support from not less than 10 members of the community served by such eligible institution;

(C) a business plan;

(D) an intended course of study;

(E) assurances that the eligible institution will begin operations with not less than 25 students;

(F) assurances that the eligible institution will comply with all applicable requirements of this Act; and

(G) a statement that satisfies the requirements of paragraphs (2) and (4) of subsection (a).

(2) CERTIFICATION.—Not later than 60 days after the date of receipt of an application described in paragraph (1), the Corporation shall certify in writing the eligible institution's provisional certification to participate in the scholarship program under this Act unless the Corporation determines that good cause exists to deny certification.

(3) RENEWAL OF PROVISIONAL CERTIFICATION.—After receipt of an application under paragraph (1) from an eligible institution that includes a statement of the eligible institution's budget completed not earlier than 12 months before the date such application is filed, the Corporation shall renew an eligible institution's provisional certification for the second and third years of the school's participation in the scholarship program under this Act unless the Corporation finds—

(A) good cause to deny the renewal, including a finding of a pattern of violation of requirements described in section 7(a); or

(B) consistent failure of 25 percent or more of the students receiving scholarships under this Act and attending such school to make appropriate progress (as determined by the Corporation) in academic achievement.

(4) DENIAL OF CERTIFICATION.—If provisional certification or renewal of provisional certification under this subsection is denied, then the Corporation shall provide a written explanation to the eligible institution of the reasons for such denial.

(d) REVOCATION OF ELIGIBILITY.—

(1) IN GENERAL.—The Corporation, after notice and hearing, may revoke an eligible institution's certification to participate in the scholarship program under this Act for a year succeeding the year for which the determination is made for—

(A) good cause, including a finding of a pattern of violation of program requirements described in section 7(a); or

(B) consistent failure of 25 percent or more of the students receiving scholarships under this Act and attending such school to make appropriate progress (as determined by the Corporation) in academic achievement.

(2) EXPLANATION.—If the certification of an eligible institution is revoked, the Corporation shall provide a written explanation of its decision to such eligible institution and require a pro rata refund of the payments received under this Act.

SEC. 7. PARTICIPATION REQUIREMENTS FOR ELIGIBLE INSTITUTIONS.

(a) REQUIREMENTS.—Each eligible institution participating in the scholarship program under this Act shall—

(1) provide to the Corporation not later than June 30 of each year the most recent annual statement of the eligible institution's budget; and

(2) charge a student that receives a scholarship under this Act not more than the cost of tuition and mandatory fees for, and transportation to attend, such eligible institution as other students who are residents of the District of Columbia and enrolled in such eligible institution.

(b) COMPLIANCE.—The Corporation may require documentation of compliance with the requirements of subsection (a), but neither the Corporation nor any governmental entity may impose additional requirements upon an eligible institution as a condition of participation in the scholarship program under this Act.

SEC. 8. CIVIL RIGHTS.

(a) IN GENERAL.—An eligible institution participating in the scholarship program under this Act shall comply with title IV of the Civil Rights Act of 1964 and not discriminate on the basis of race, color, or national origin.

(b) REVOCATION.—Notwithstanding section 7(b), if the Secretary of Education determines that an eligible institution participating in the scholarship program under this Act is in violation of any of the laws listed in subsection (a), then the Corporation shall revoke such eligible institution's certification to participate in the program.

SEC. 9. CHILDREN WITH DISABILITIES.

Nothing in this Act shall affect the rights of students, or the obligations of the District of Columbia public schools, under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

SEC. 10. SCHOLARSHIP PAYMENTS.

(a) IN GENERAL.—

(1) PROPORTIONAL PAYMENT.—The Corporation shall make scholarship payments to participating eligible institutions for an academic year in 2 installments. The Corporation shall make the first payment not later than October 15 of the academic year in an amount equal to one-half the total amount of the scholarship assistance awarded to students enrolled at such institution for the academic year. The Corporation shall make the second payment not later than January 15 of the academic year in an amount equal to one-half of such total amount.

(2) PRO RATA AMOUNTS FOR STUDENT WITHDRAWAL.—

(A) BEFORE PAYMENT.—If a student receiving a scholarship withdraws or is expelled from an eligible institution before a scholarship payment is made, the eligible institution shall receive a pro rata payment based on the amount of the scholarship and the number of days the student was enrolled in the eligible institution.

(B) AFTER PAYMENT.—If a student receiving a scholarship withdraws or is expelled after a scholarship payment is made, the eligible institution shall refund to the Corporation on a pro rata basis the proportion of any scholarship payment received for the remaining days of the school year. Such refund shall occur not later than 30 days after the date of the withdrawal or expulsion of the student.

(b) FUND TRANSFERS.—The Corporation shall make scholarship payments to participating eligible institutions by electronic funds transfer. If such an arrangement is not available, then the eligible institution shall submit an alternative payment proposal to the Corporation for approval.

SEC. 11. APPLICATION SCHEDULE AND PROCEDURES.

The Corporation shall implement a schedule and procedures for processing applications for awarding student scholarships under this Act that includes a list of certified eligible institutions, distribution of information to parents and the general public

(including through a newspaper of general circulation), and deadlines for steps in the scholarship application and award process.

SEC. 12. REPORTING REQUIREMENTS.

(a) IN GENERAL.—An eligible institution participating in the scholarship program under this Act shall report not later than July 30 of each year in a manner prescribed by the Corporation, the following data:

(1) Student achievement in the eligible institution's programs.

(2) Grade advancement for scholarship students.

(3) Disciplinary actions taken with respect to scholarship students.

(4) Graduation, college admission test scores, and college admission rates, if applicable for scholarship students.

(5) Types and amounts of parental involvement required for all families of scholarship students.

(6) Student attendance for scholarship and nonscholarship students.

(7) General information on curriculum, programs, facilities, credentials of personnel, and disciplinary rules at the eligible institution.

(8) Number of scholarship students enrolled.

(9) Such other information as may be required by the Corporation for program appraisal.

(b) CONFIDENTIALITY.—No personal identifiers may be used in such report, except that the Corporation may request such personal identifiers solely for the purpose of verification.

SEC. 13. PROGRAM APPRAISAL.

(a) STUDY.—Not later than 4 years after the date of enactment of this Act, the Comptroller General shall enter into a contract, with an evaluating agency that has demonstrated experience in conducting evaluations, for an independent evaluation of the scholarship program under this Act, including—

(1) a comparison of test scores between scholarship students and District of Columbia public school students of similar backgrounds, taking into account the students' academic achievement at the time of the award of their scholarships and the students' family income level;

(2) a comparison of graduation rates between scholarship students and District of Columbia public school students of similar backgrounds, taking into account the students' academic achievement at the time of the award of their scholarships and the students' family income level;

(3) the satisfaction of parents of scholarship students with the scholarship program; and

(4) the impact of the scholarship program on the District of Columbia public schools, including changes in the public school enrollment, and any improvement in the academic performance of the public schools.

(b) PUBLIC REVIEW OF DATA.—All data gathered in the course of the study described in subsection (a) shall be made available to the public upon request except that no personal identifiers shall be made public.

(c) REPORT TO CONGRESS.—Not later than September 1 of each year, the Corporation shall submit a progress report on the scholarship program to the appropriate committees of Congress. Such report shall include a review of how scholarship funds were expended, including the initial academic achievement levels of students who have participated in the scholarship program.

(d) AUTHORIZATION.—There are authorized to be appropriated for the study described in subsection (a), $250,000, which shall remain available until expended.

SEC. 14. JUDICIAL REVIEW.

(a) IN GENERAL.—The United States District Court for the District of Columbia shall have jurisdiction in any action challenging the scholarship program under this Act and shall provide expedited review.

(b) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States.

Mr. LIEBERMAN. Mr. President, I rise today to join my colleagues Senators COATS and BROWNBACK in introducing the District of Columbia Student Opportunity Scholarship Act of 1997, also known as the DCSOS Act.

This legislation is quite similar to the provision that passed the House last year as part of the D.C. appropriations bill but failed to make it through conference. It would create a modest tuition scholarship fund that would enable 2,000 low-income students in the District to attend the public, private, or parochial school of their choice. It would also provide direct aid to an additional 2,000 public school students who want to improve their academic skills through after-school tutoring.

But the circumstances surrounding this proposal have changed dramatically since it was considered last year, and I think it's important to make our colleagues aware of what's happened over the course of the last several months as they consider the bill we're introducing today.

Most immediately, the deeply troubled D.C. school system has now hit rock-bottom. Last fall, the District Control Board officially declared the schools in crisis, stripped the elected school board of its authority, and authorized an emergency board of trustees to take over the city's public schools.

In taking these drastic steps, the Control Board issued a report documenting the utter dysfunction of this school system—test scores ranking among the worst in the Nation, students and teachers subjected to violence at twice the national average, gross mismanagement of budget and personnel, buildings literally falling apart, and a tragic misplacement of priorities that puts job preservation ahead of the job of educating the city's children.

But perhaps the most damning indictment of the D.C. schools came in a single sentence included in the report: the longer students stay in the District's public school system, the Control Board concluded, the less likely they are to succeed educationally. I would urge my colleagues to think about the import of that statement. Instead of helping these children learn more with each passing year, the D.C. schools in many cases have actually become hazardous to the academic health of its students.

This conclusion should not be all that surprising when you take a closer look at the environment in which these kids are trying to learn. For instance, in April we saw a shocking breakdown of discipline at the Winston Education Center. Several fourth-graders slipped unnoticed into a sideroom right outside an ongoing class and engaged in oral sex, with two of the children's parents claiming their children were sexually assaulted. When the principal learned of the incident, his first reaction was to judge the sexual activity consensual. And earlier this month, Washington Post columnist Colbert King reported that a fifth-grade class at the Harrison Elementary School had gone without a teacher for the past 4 months. This outrageous situation may well have continued had King not exposed it and put pressure on the administration to correct it.

To force children to attend these schools, where the breakdown is so complete a class can go four months without a teacher, is simply unconscionable. But that is exactly what is happening in the District of Columbia, where thousands of students are trapped in decrepit, dangerous, and disenfranchising schools simply because they cannot afford any alternative.

That is why we believe there is an urgent need to pass the DCSOS Act. That acronym is not an accident, for this program would provide at least 2,000 of the most disadvantaged families in the District with an educational lifeline, a chance to seek out a school that they believe will offer their child a brighter future. It would give these families the same option that thousands of other families have already exercised by pulling their children from the D.C. public schools or moving out of town altogether.

Some defenders of the status quo have tried for some time to get us to believe that the residents of this city don't want that kind of choice. But a poll that was released this week should shatter that misguided myth once and for all. This survey found that nearly two-thirds of public school parents would send their kids to private schools if money weren't an issue. The poll also shows that there is a strong base of support for the scholarship program we're proposing right out of the gate, before we've done anything to educate the public about it. And most important, it shows that the families we're trying to help would welcome this assistance, with 62 percent of low-income parents saying that the kind of choice we're offering would improve the quality of education for District children.

Some of the opponents of this legislation will continue to argue that this program, like other attempts to expand opportunities for poor families, will harm or actually ruin the public schools. To suggest that this modest program could make a school system already in crisis any worse defies common sense. In truth, this is a case of the only thing we have to fear is fear itself—that is, the fear of moving beyond the status quo. Knowing that the D.C. schools have hit rock bottom, we shouldn't be closing off any options,

which is exactly what influential columnist William Raspberry wrote last week when he endorsed giving choice a chance in the District.

We need to get past the red herring argument that we must choose between choice and the public schools. Simply put, supporting this scholarship program is not the same as abandoning the public school system. This is not an either-or equation. And to help prove that to the citizens of the District, we have gone out of the way in this legislation to make sure that the funding for these scholarships does not come at the expense of the city's public schools. This is new money and that point should not be overlooked.

Mr. President, the truth is that we fervently hope that the Board of Trustees and CEO Gen. Julius Becton can rescue this system and make the fundamental reforms necessary to give these students the education they deserve, and we will do what we can to support their efforts. Senator BROWNBACK and I, as chairman and ranking member of the Senate's D.C. Oversight Subcommittee, made that very pledge to General Becton at a hearing we held in April.

But this mission is at a minimum going to take several years, which begs the question, what happens to those many students who have no choice but to attend schools that most parents who could afford it have long since abandoned?

We believe that we have a moral obligation to offer those children a way out. That is why many of us view this question not just as a matter of education, but a question of fairness. This is all about our values, specifically the value we place on giving every child—no matter their income, where they live or how they live—the opportunity to fulfill their God-given promise.

No one is claiming that this scholarship program is a magic bullet. But we strongly believe it will give at least 2,000 disadvantaged students a shot at a better life. We also believe that by providing some competition to the public schools, this program will accelerate the pace of reform within the D.C. school system. Across the country, the growing numbers of charter schools and private scholarship programs are forcing public school systems to confront their failures and building pressure on them to take radical actions to improve the quality of their educational programs. This is starting to happen already in the District, and we are optimistic that this legislation will intensify that movement here.

If nothing else, this legislation will create a program that will help us test what impact choice has on improving the educational opportunities of poor families in urban areas, and thereby help us make informed decisions in the future about whether to expand this kind of initiative to other cities. There have been some promising signs coming out of the choice programs in Milwaukee and Cleveland, but the reality is we don't know with much certainty whether expanding choice will produce noticeable results. This legislation could establish a national experiment, and provide us with some real answers to the critical questions we've been wrestling with. It's for that very reason we call for a thorough evaluation of the D.C. scholarship program in our legislation.

The bottom line, Mr. President, is that it is time to give choice a chance in the District. We cannot in conscience continue to ignore the plight of these children any longer. They deserve an opportunity to break out of the nightmarish cycle of poverty, dependency, and violence and to live the American dream. This bipartisan legislation will begin to restore hope to some of these families, and I would strongly urge my colleagues to support it.

Mr. BROWNBACK. Mr. President, one of my highest priorities as the chairman of the Senate Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia, is to make sure the children in the Nation's capital are receiving the quality education they deserve. The District's public schools, unfortunately, have failed too many students in providing the education they deserve. The District of Columbia Student Opportunity Scholarship Act of 1997 would change this by giving low-income students the chance to get the education they need.

Our subcommittee held a hearing a few weeks ago to explore options to improve public education in the District. Mr. President, I know there are schools which are working and where students are thriving in their learning environment. I had the privilege to visit Stuart-Hobson Middle School. I was impressed by the success of the program at Stuart-Hobson and how the students took pride in their education. This school, however, is one of a few exceptions in the District Public School System.

The facts about the District public schools speak for themselves: only 22 percent of fourth grade students are at or above basic reading achievement levels; students on average consistently score below the national average of the Comprehensive Test of Basic Skills; students consistently score below the national Scholastic Aptitude Test [SAT]. We cannot continue to trap these students in an educational system that is failing them.

Gen. Julius Becton, chief executive officer and Superintendent of the District of Columbia Public Schools, and the District of Columbia Emergency Transitional School Board of Trustees have said that they will make significant improvements by the year 2000, and I recognize and respect the work that lies ahead of them. But, Mr. President, the year 2000 is 3 school years away. In 3 school years, a child progresses through grades one through three in which they learn to read, write, add, subtract, etc. In 3 school years, a high school student gains the skills and preparation they need for college or for a job. These 3 school years are too valuable to trap these students in the public school system that has not delivered.

Mr. President, I am pleased to join my colleagues Senator COATS and Senator LIEBERMAN in introducing this legislation that focuses on the individual student in the District of Columbia Public Schools. By providing up to $3,200 in individual scholarships to low-income families who will choose the school for their children, this bill would give these students the chance to make sure the next 3 school years do not go to waste. Improving the chances for these children to get the education they need is one of the most fundamental elements to restore the Nation's capital into the shining city the United States deserves.

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

S. 848. A bill to direct the Secretary of Health and Human Services, through the Health Care Financing Administration, to expand and strengthen the demonstration project known as the Medicare Telemedicine Demonstration Program; to the Committee on Finance.

THE RURAL TELEMEDICINE DEMONSTRATION ACT OF 1997

Mr. MURKOWSKI. Mr. President, I rise today to introduce, along with my colleague, Senator BAUCUS of Montana, the Rural Telemedicine Demonstration Act of 1997.

The vast potential of telemedicine technology is clearly under-utilized. I believe that the answer to growing concerns regarding access and affordability of quality health care services in rural America is telemedicine. Let me describe just a few of the difficulties of rural health care in my home State of Alaska and explain why telemedicine is our long-awaited answer.

Alaska encompasses 586,412 square miles. It is one-fifth the size of the contiguous United States; 120 times larger than the State of Rhode Island; and larger than the three largest States in the union combined. If a map of Alaska were superimposed on a map of the lower 48 States, Alaska would touch South Carolina, Mexico, California, and the United States-Canadian border. In short, Alaska has 1 million acres of land for every day of the year.

Geography is another defining characteristic of Alaska. My State has a climate characterized by significant season fluctuations in temperature and precipitation and a topography characterized by mountains, wetlands, forests, and rugged coastlines.

Communities and villages are scattered throughout the vast regions of Alaska. And though Alaska contains 586,412 square miles, it only has 12,200 miles of roads. Vast areas are completely unconnected by roads, with access only available by airplane, boat, snowmachine, or dogsled.

Meeting the health care needs of these communities and villages is a daunting task. Residents have difficulty due to geography, lack of providers and poverty. Although excellent medical facilities and tertiary care centers are available in Anchorage, direct connection to these facilities from most of the State is not possible other than by air transportation. Consequently, geographically, 74 percent of the State is in medically underserved areas.

Telemedicine is the cost-effective and practical answer to the Alaska dilemma. Currently, there is an exciting project underway known as the Alaska Telemedicine project. This consortium of Alaskan health care providers and telecommunication carriers has been diligently working to unite health care in Alaska. This project has successfully united the Native health corporations, military medical facilities, and public and private hospitals of Alaska.

The fragmented nature of health care delivery in Alaska and Alaska satellite-based narrow-band telecommunications infrastructure, along with the geography and climate of Alaska, make Alaska an ideal place for the Alaska Telemedicine project to flourish.

In 1995, the Health Care Financing Administration [HCFA], pursuant to a mandate in 42 U.S.C. 1395(b)(1) which directs HCFA to establish demonstration projects that explore innovative methodologies of Medicare cost-savings, developed a telemedicine Medicare reimbursement project for rural America. Five demonstration sites were established in four States: Iowa, West Virginia, North Carolina, and Georgia. The purpose of these programs was to investigate Medicare reimbursement for telemedicine in rural locations.

Unfortunately, the HCFA study of rural telemedicine contains a glaring omission: The study does not include any sites in rural Western locations. The omission of the rural West, which contains extremely remote and frontier locations will result in a deficient and likely inaccurate study for rural telemedicine.

Our legislation will expand the HCFA project to better represent rural America. A site in Alaska and in Montana will be included. Montana, like Alaska, experiences significant difficulties in providing health care services in rural areas. Montana's five independent telemedicine projects that have formed a united alliance will also be included in the HCFA project.

Mr. President, the goal of telemedicine Medicare reimbursement is to ensure that the elderly of America who reside in inaccessible rural areas will be allowed to have access to quality health care in the most cost-effective manner—via telecommunication networks. Establishing Medicare reimbursement stabilizes telemedicine technology, and will likely lead to widespread coverage of telehealth services by private insurers.

Senator BAUCUS and my bill, will merely expand the current demonstration project conducted by HCFA. By this expansion, the HCFA study will better represent rural telemedicine in the Nation. I ask that my colleagues support the Rural Telemedicine Demonstration Act of 1997.

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. 848

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 ''Rural Telemedicine Demonstration Act of 1997''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Access to health care providers is critically important to improving the health of individuals residing in rural areas.

(2) Individuals residing in the rural areas of the Western United States are severely underserved by both primary and specialty health care providers.

(3) Telecommunications technology has made it possible to provide a wide range of vital health care services to individuals residing in remote locations and over vast distances at a fraction of the costs associated with the provision of such services without such technology.

(4) On February 17, 1997, the General Accounting Office reported that Federal involvement in telehealth systems is needed for the success of such systems.

(5) In order for telehealth systems to continue to benefit rural communities, the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) must eventually reimburse the provision of health care services to remote locations via telecommunication.

(6) The current Medicare telemedicine demonstration program conducted by the Secretary of Health and Human Services, through the Health Care Financing Administration, does not include any sites in rural areas of the Western United States. Without such sites, such demonstration program will not provide accurate indicators of the success of telemedicine.

(7)(A) The fragmented nature of Alaska's transportation infrastructure, as well as extremes in geography, climates, and ethnography create severe problems for health care providers to provide health care services to the individuals residing in Alaska.

(B) The Alaska Telemedicine Project is a statewide telehealth project which overcomes infrastructure problems within Alaska by uniting 40 public and private health care providers across Alaska to provide health care services to the residents of Alaska.

(8)(A) Health care providers in Montana also experience significant difficulties in providing health care services in rural areas. Five independent telemedicine networks in Montana have formed the Montana Healthcare Telecommunications Alliance (MHTA), an association of telemedicine service providers representing not-for-profit and public medical and mental health facilities throughout the State.

(B) The goal of the MHTA is to promote cost effective statewide deployment of telemedicine services thereby supporting public and private health care providers and improving access to quality medical and mental health services for all individuals residing in Montana.

SEC. 3. EXPANSION OF DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary, through the Health Care Financing Administration, shall expand the demonstration project known as the Medicare telemedicine demonstration program to include within such demonstration program the Alaska Telemedicine Project (described in section 2(7)) and the Montana Healthcare Telecommunications Alliance (described in section 2(8)).

(b) REPORT TO CONGRESS.—Not later than March 1 of each year that the demonstration project described in subsection (a) is being conducted, the Secretary, through the Health Care Financing Administration, shall submit a report to Congress that contains—

(1) an evaluation of the effectiveness of such demonstration project; and

(2) any legislative recommendations determined appropriate by the Secretary.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $2,000,000 to the Secretary of Health and Human Services to carry out the purposes of the demonstration project described in subsection (a).

ADDITIONAL COSPONSORS

S. 98

At the request of Mr. HUTCHINSON, the name of the Senator from Alabama [Mr. SESSIONS] was added as a cosponsor of S. 98, a bill to amend the Internal Revenue Code of 1986 to provide a family tax credit.

S. 100

At the request of Mr. KERRY, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 100, a bill to amend title 49, United States Code, to provide protection for airline employees who provide certain air safety information, and for other purposes.

S. 127

At the request of Mr. MOYNIHAN, the names of the Senator from Ohio [Mr. DEWINE], the Senator from Illinois [Mr. DURBIN], and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of S. 127, a bill to amend the Internal Revenue Code of 1986 to make permanent the exclusion for employer-provided educational assistance programs, and for other purposes.

S. 220

At the request of Mr. GRASSLEY, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 220, a bill to require the United States Trade Representative to determine whether the European Union has failed to implement satisfactorily its obligations under certain trade agreements relating to United States meat and pork exporting facilities, and for other purposes.

S. 224

At the request of Mr. WARNER, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 224, a bill to amend title 10, United States Code, to permit covered beneficiaries under the military health care system who are also entitled to medicare to enroll in the Federal Employees Health Benefits program, and for other purposes.