the subsidy program will be so successful it will be used as a model for reform of the Medicaid program. Savings through other health care reforms detailed later in this statement will provide the funds needed to implement the essential effort to take care of the health of our Nation's children.

I have also added a new title VIII to establish a national fund for health research within the Department of Treasury. This fund will supplement the moneys appropriated for the National Institutes of Health. It is to be on budget, but the financing mechanism is not specified. This proposal was first developed by my distinguished colleagues, Senators Mark Hatfield and TOM HARKIN. Senator Hatfield, who retired after the 104th Congress, worked closely with me on medical research funding issues. The concept of a national fund for health research was incorporated into the National Institutes of Health Revitalization Act of 1996, which was passed by the Senate, but not by the House.

Responding to decreases in discretionary funding, in the 104th Congress, Senators Hatfield and HARKIN introduced S. 1251, the National Fund for Health Research Act. They wisely anticipated that we cannot continue to look solely to the appropriations process for the necessary resources to sustain sufficient growth in biomedical research. The great advancements made by the United States in biomedical research are part of what makes this country among the best in the world when it comes to medical care. Their idea is a sound one and ought to be adopted. I look forward to working together with Senator HARKIN to enact a biomedical research fund this Congress.

Taken together, I believe the reforms proposed in this bill will both improve the quality of health care delivery and will bring down the escalating costs of health care in this country. These proposals represent a blueprint which can be modified, improved and expanded. In total, I believe this bill can significantly reduce the number of uninsured Americans, improve the affordability of care, ensure the portability and security of coverage between jobs, and yield cost savings of billions of dollars to the Federal Government, which can be used to cover the remaining uninsured and underinsured Americans.

INCREASING COVERAGE

According to the U.S. Bureau of the Census, in 1995, 224 million Americans derived their health insurance coverage as follows: approximately 64 percent from employer plans; 14.3 percent from Medicare and Medicaid; 4 percent from other public sources; and about 7 percent from other private insurance. However, 40.3 million people were not covered by any type of health insurance.

Statistics from the Employment Benefit Research Institute November 1996 show that small businesses generally provide less health insurance coverage than larger businesses or the public sector. About 73 percent of employees in the public sector are provided with health insurance; while 55.5 percent of employees in the private sector are covered. Both levels are far higher than businesses with fewer than 10 employees (25.8%); with 10 to 24 employees (38.8%); or with 25 to 99 employees (54.4%).

As I mentioned previously, title I of the bill gives federal subsidies to provide health care coverage for our Nation's children. Early estimates are that the total cost of these vouchers will be approximately $24 billion over 5 years. This $24 billion is a worthwhile investment because it will mean healthier children and substantially reduced anxiety for millions of parents who cannot afford to pay for needed medical care for their children.

Title II contains provisions to make it easier for small businesses to buy health insurance for their workers by establishing voluntary purchasing groups. It also obligates employers to offer, but not pay for, at least two health insurance plans that protect individual freedom of choice and that meet a standard minimum benefits package. It extends COBRA benefits and coverage options to provide portability and security of affordable coverage between jobs. While it is not possible to predict with certainty how many additional Americans will be covered as a result of the reforms in title II, a reasonable expectation would be that these reforms will cover approximately 10 million Americans. This estimate encompasses the provisions included in title II which I will discuss in further detail.

Specifically, title II extends the COBRA benefit option from 18 months to 24 months. COBRA refers to a measure which was enacted in 1985 as part of the Consolidated Omnibus Budget Reconciliation Act [COBRA '85] to allow employees who leave their job, either through a layoff or by choice, to continue receiving their health care benefits by paying the full cost of such coverage. By extending this option, such unemployed persons will have enhanced coverage options.

In addition, options under COBRA are expanded to include plans with lower premiums and higher deductibles of either $1,000 or $3,000. This provision is incorporated from legislation introduced in the 103d Congress by Senator PHIL GRAMM and will provide an extra cushion of coverage options for people in transition. According to Senator GRAMM, with these options, the typical monthly premium paid for a family of four would drop by as much as 20 percent when switching to a $1,000 deductible and as much as 52 percent when switching to a $3,000 deductible.

With respect to the uninsured and underinsured, my bill would permit individuals and families to purchase guaranteed, comprehensive health coverage through purchasing groups. Health insurance plans offered through the purchasing groups would be required to meet basic, comprehensive standards with respect to benefits. Such benefits must include a variation of benefits permitted among actuarially equivalent plans to be developed by the National Association of Insurance Commissioners. The standard plan would consist of the following services when medically necessary or appropriate: First, Medical and surgical devices; second, medical equipment; third preventive services; and fourth, emergency transportation in frontier areas. It is estimated that for businesses with fewer than 50 employees, voluntary purchasing cooperatives such as those included in my legislation could cover up to 10 million people who are currently uninsured.

My bill would also create individual health insurance purchasing groups for individuals wishing to purchase health insurance on their own. In today's market, such individuals often face a market where coverage options are not affordable. Purchasing groups will allow small businesses and individuals to buy coverage by pooling together within purchasing groups, and choose from among insurance plans that provide comprehensive benefits, with guaranteed enrollment and renewability, and equal pricing through community rating adjusted by age and family size. Community rating will assure that no one small business or individual will be singularly priced out of being able to buy comprehensive health coverage because of health status. With community rating, a small group of individuals and businesses can join together, spread the risk, and have the same purchasing power that larger companies have today.

For example, Pennsylvania has the ninth lowest rate of uninsured in the Nation, with 90 percent of all Pennsylvanians enrolled in some form of health coverage. Lewin and Associates found that one of the factors enabling Pennsylvania to achieve this low rate of uninsured persons is that Pennsylvania's Blue Cross-Blue Shield plans provide guaranteed enrollment and renewability, an open enrollment period, community rating, and coverage for persons with preexisting conditions. My legislation seeks to enact reforms to provide for more of these types of practices. The purchasing groups, as developed and administered on a local level, will provide small businesses and all individuals with affordable health coverage options.

Unique barriers to coverage exist in both rural and urban medically underserved areas. Within my State of Pennsylvania, such barriers result from a lack of health care providers in rural areas, and other problems associated with the lack of coverage for indigent populations living in inner cities. This bill improves access to health care services for these populations by: First, Expanding Public Health Service programs and training more primary care

providers to serve in such areas; second, increasing the utilization of nonphysician providers, including nurse practitioners, clinical nurse specialists, and physician assistants, through direct reimbursements under the Medicare and Medicaid Programs; and third, increasing support for education and outreach.

Title II of my bill also includes an important provision to give the self-employed 100-percent deductibility of their health insurance premiums. The Kassebaum-Kennedy bill extended the deductibility of health insurance for the self-employed to 80 percent by 2006. My bill would extend this to 100 percent in 2007. Under current law, all other employers can deduct 100 percent of the cost of health care insurance for their workers. It is unfair not to give the self-employed the same tax benefit as other employers receive. The self-employed are every bit in need of this benefit and we should be doing everything we can to support this important group which is the backbone of the American economy.

While I reiterate the difficulty of making definitive conclusions regarding the reforms put forth under this legislation and accomplishing universal health coverage for all Americans, I believe this is a promising starting point. Admittedly, the figures are inexact, but by my rough calculations, potentially 17.6 million of the 40.3 million uninsured will be able to obtain affordable health care coverage under my bill. I arrive at this figure by estimating that at least 7.6 million children will receive health insurance under the title I voucher system. In addition, 10 million will be able to purchase insurance by encouraging individuals and small employers to purchase insurance through voluntary purchasing cooperatives.

I welcome any and all suggestions that make sense within our current constraints to increase coverage. I am committed to enacting reforms this year and would like to determine a time certain when Congress must revisit this issue. We should act on these reforms and correct problems related to coverage where they still exist.

COST SAVINGS

It is anticipated that the increased costs to employers electing to cover their employees as provided under title II in my bill would be offset by the administrative savings generated by development of the small employer purchasing groups. Such savings have been estimated at levels as high as $9 billion annually. In addition, by addressing some of the areas within the health care system that have exacerbated costs, significant savings can be achieved and then redirected toward direct health care services.

While examining the issues that have contributed to our health care crisis, I was struck by the fact that so much attention has been focused on treating symptoms and very little attention has been given to the root causes. Although our existing health care system suffers from very serious structural problems, commonsense steps can be taken to head off the remaining problems before they reach crisis proportions. Title III of my bill includes three initiatives which will enhance primary and preventive care services aimed at preventing disease and ill-health.

Each year about 7 percent, or 273,000, of the approximately 3.9 million babies born in the United States are born with a low birth weight, multiplying their risk of death and disability. Approximately 29,338 of those born die before their first birthday, but about 1,000 of those deaths are preventable. Although the infant mortality rate in the United States fell to an all-time low in 1989, an increasing percentage of babies still are born of low birth weight. The Executive Director of the National Commission To Prevent Infant Mortality put it this way: ''More babies are being born at risk and all we are doing is saving them with expensive technology.''

It is a human tragedy for a child to be born weighing 16 ounces with attendant problems which last a lifetime. I first saw 1-pound babies in 1984 when I was astounded to learn that Pittsburgh, PA, had the highest infant mortality rate of African-American babies of any city in the United States. I wondered how that could be true of Pittsburgh, which has such enormous medical resources. It was an amazing thing for me to see a 1-pound baby, about as big as my hand.

Beyond the human tragedy of a low birth weight, there are serious financial consequences which result. Although low birth weight infants represent only about 7 percent of all births, the National Center for Health Statistics reports that in 1994, the expenditures for their care totaled about 57 percent of costs incurred for all newborns. In addition, the Department of Health and Human Services states that care for each premature baby costs from $10,000 to $25,000 with a total national cost estimate of $2 billion a year. Low birth weight children, those who weigh less than 5.5 pounds, account for 16 percent of all costs for initial hospitalization, rehospitalization, and special services up to age 35.

The short- and long-term costs of saving and caring for infants of low birth weight is staggering. A study issued by the Office of Technology Assessment in 1988 concluded that $8 billion was expended in 1987 for the care of 262,000 low birth weight infants in excess of that which would have been spent on an equivalent number of babies born of normal birth weight, averted by earlier or more frequent prenatal care. If adequate prenatal care had been provided, especially to women at-risk for delivering low birth weight babies, the U.S. health care system could have saved between $14,000 and $30,000 per child in the first year in addition to the projected savings over the lifetime of each child. The Department of Health and Human Services has also estimated that between $1.1 billion and $2.5 billion per year could be saved if the number of low birth weight children were reduced by 82,000 births.

We know that in most instances, prenatal care is effective in preventing low birth weight babies. Numerous studies have demonstrated that low birth weight that does not have a genetic link is most often associated with inadequate prenatal care or the lack of prenatal care. To improve pregnancy outcomes for women at risk of delivering babies of low birth weight, title III of my bill authorizes the Secretary of Health and Human Services to award grants to States for Healthy Start projects to reduce infant mortality and the incidence of low birth weight births, as well as to improve the health and well-being of mothers and their families, pregnant women and infants. The funds would be awarded to community-based consortia, made up of State and local governments, the private sector, religious groups, community health centers, and hospitals and medical schools, whose goal would be to develop and coordinate effective health care and social support services for women and their babies.

I initiated action that led to the creation of the Healthy Start Program in 1991, working with the Bush administration and Senator HARKIN. As chairman of the Appropriations Subcommittee with jurisdiction over the Department of Health and Human Services, I have worked with my colleagues to ensure the continued growth of this important program. In 1991, we allocated $25 million for the development of 15 demonstration projects. This number grew to 22 in 1994, and the Health Resources and Services Administration expects the number of projects to increase again in 1997. For fiscal year 1997, we secured $96 million for the program, which is currently undergoing a formal evaluation by Mathematica Policy Research, Inc. However, preliminary results from the projects themselves suggest these programs have been enormously successful. In Pennsylvania, our Pittsburgh Healthy Start project estimates that infant mortality has decreased 20 percent in the overall project area as a result of this program. For those women in Pittsburgh who have taken advantage of the case management offered by the program, infant mortality has been reduced by as much as 61 percent. Similarly, our Philadelphia project reports that infant mortality has been reduced by 25 percent.

The second initiative under title III involves the provision of comprehensive health education and prevention initiatives for our Nation's children. The Carnegie Foundation for the Advancement of Teaching recently conducted a survey of teachers. More than half of the respondents said that poor nourishment among students is a serious problem at their schools; 60 percent cited poor health as a serious problem. Another study issued in 1992 by the

Children's Defense Fund reported that children deprived of basic health care and nutrition are ill-prepared to learn. Both studies indicated that poor health and social habits are carried into adulthood and often passed on to the next generation.

To interrupt this tragic cycle, our Nation must invest in proven preventive health education programs. My legislation provides increased support to local educational agencies to develop and strengthen comprehensive health education programs, and to Head Start resource centers to support health education training programs for teachers and other day care workers.

Title III further expands the authorization of a variety of public health programs, such as breast and cervical cancer prevention, childhood immunizations, family planning, and community health centers. These existing programs are designed to improve the public health and prevent disease through primary and secondary prevention initiatives. It is essential that we invest more resources in these programs now if we are to make any substantial progress in reducing the costs of acute care in this country.

As chairman of the Appropriations Subcommittee with jurisdiction over the Department of Health and Human Services, I have greatly encouraged the development of prevention programs which are essential to keeping people healthy and lowering the cost of health care in this country. In my view, no aspect of health care policy is more important. Accordingly, my prevention efforts have been widespread. Specifically, I joined my colleagues in efforts to ensure that funding for the Centers for Disease Control and Prevention [CDC] increased $1.3 billion or 132 percent since 1989. Fiscal year 1997 funding for the CDC totals $2.304 billion. We have also worked to elevate funding for CDC's breast and cervical cancer early detection program to $140 million in fiscal year 1997, a 40 percent increase in 2 years. In addition, I have supported providing funding to CDC to improve the detection and treatment of re-emerging infectious diseases.

I have also supported programs at CDC which help children. CDC's childhood immunization program seeks to eliminate preventable diseases through immunization and to ensure that at least 90 percent of 2 year olds are vaccinated. The CDC also continues to educate parents and care givers on the importance of immunization for children under 2 years. Along with my colleagues on the Appropriations Committee, I have helped to ensure that funding for this important program increased by $172 million, or 58 percent. The CDC's lead poisoning prevention program annually identifies about 50,000 children with elevated blood levels and places those children under medical management. The program prevents children's blood levels from reaching dangerous levels and is currently funded at over $38 million.

In recent years, we have also strengthened funding for community and migrant health centers, which provide immunizations, health advice, and health professions training. For fiscal year 1997, over $800 million was provided for these centers, an increase of about $44 million over fiscal year 1996.

As chairman of the Select Committee on Intelligence and Chairman of the Appropriations Subcommittee with jurisdiction over the Department of Health and Human Services, I have worked to transfer CIA imaging technology to the fight against breast cancer. Through the Office of Women's Health within the Department of Health and Human Services, I secured a $2 million contract in fiscal year 1996 for the University of Pennsylvania and a consortium to perform the first clinical trials testing the use of intelligence community technology for breast cancer detection. For fiscal year 1997, an additional $2 million was appropriated to continue the clinical trials.

Finally, I have been a strong supporter of funding for AIDS research, education, and prevention programs. In fiscal year 1997, AIDS funding increased 14 percent, $392 million above the fiscal year 1996 level, for a total of $3.115 billion. Within this amount, $617 million was allocated for prevention, testing, and counseling at the CDC.

The proposed expansions in preventive health services included in title III of my bill are conservatively projected to save approximately $2.5 billion per year or $12.5 billion over 5 years. However, I believe the savings will be higher. Again, it is impossible to be certain of such savings—only experience will tell. For example, how do you quantify today the savings that will surely be achieved tomorrow from future generations of children that are truly educated in a range of health-related subjects including hygiene, nutrition, physical and emotional health, drug and alcohol abuse, and accident prevention and safety? I have suggested these projections, subject to future modification, to give a generalized perspective on the potential impact of this bill.

Title IV of my bill would establish a Federal standard and create uniform national forms concerning a patient's right to decline medical treatment. Nothing in my bill mandates the use of uniform forms, rather, the purpose of this provision is to make it easier for individuals to make their own choices and determination regarding their treatment during this vulnerable and highly personal time. Studies have also indicated that advance directives do not increase health care costs. According to recent data from the Journal of the American Medical Association authored by Ezekiel Emmanuel of the Center for Outcomes and Policy Research of the Dana Farber Cancer Institute, end-of-life costs account for about 10 percent of total health care spending and 27 percent of total Medicare expenditures. It has been projected that a 10 percent savings made in the final days of life would result in approximately $10 billion of savings in medical costs per year, and about $4.7 billion in savings for Medicare alone.

However, economic considerations are not and should not be the primary reasons for using advance directives. They provide a means for patients to exercise their autonomy over end-of-life decisions. A study done at the Thomas Jefferson University Medical College in Philadelphia cited research which found that about 90 percent of the American population has expressed interest in discussing advance directives, but only 8 to 15 percent of adults have prepared a living will. My bill would provide information on an individual's rights regarding living wills and advanced directives, and would make it easier for people to have their wishes known and honored. In my view, no one has the right to decide for anyone else what constitutes appropriate medical treatment. Encouraging the use of advance directives will ensure that patients are not needlessly and unlawfully treated against their will. No health care provider would be permitted to treat an adult contrary to the adult's wishes as outlined in an advance directive. However, in no way would the use of advance directives condone assisted suicide or any affirmative act to end human life.

Incentives to improve the supply of generalist physicians and increase the utilization of nonphysician providers, such as nurse practitioners, clinical nurse specialists and physician assistants, through direct reimbursement under the Medicare and Medicaid Programs are contained in title V of my bill. I believe these provisions will also yield substantial savings. A study of the Canadian health system utilizing nurse practitioners projected savings of 10 to 15 percent of all medical costs. While our system is dramatically different from that of Canada, it may not be unreasonable to project annual savings of 5 percent, or $55 billion, from an increased number of primary care providers in our system. Again, experience will raise or lower this projection. Assuming these savings, based on an average expenditure for health care of $3,821 per person in 1995, it seems reasonable that we could cover over 10 million uninsured persons with these savings.

Outcomes research, included in title VI of my bill, is another area where we can achieve considerable long term health care savings while also improving the quality of care. According to most outcomes management experts, it is estimated that about 25 to 30 percent of medical care is inappropriate or unnecessary. Dr. Marcia Angell, former editor-in-chief of the New England Journal of Medicine, also stated that 20 to 30 percent of health care procedures are either inappropriate, ineffective or unnecessary. In 1995, health care expenditures totaled $1.1 trillion annually. A cost of illness model published in the October 1995 issue of Archives of

Internal Medicine estimated that $76.6 billion annually is for drug-related morbidity and mortality in the ambulatory setting. It is not unreasonable to anticipate that with the implementation of medical practice guidelines and enhanced appropriateness of care, 10 to 20 percent of costs could be eliminated, resulting in savings between $8 and $15 billion in drug-related morbidity and mortality alone. Ideally, if all inappropriate care could be removed, between $110 and $220 billion in savings could be realized annually for all health care expenditures. A reasonable estimate is that with the implementation of medical practice guidelines, we may achieve savings of 20 to 30 percent of the lower range end—$110 billion—which amounts to $22 to $33 billion in savings annually.

A well-funded program for outcomes research is therefore essential, and is supported by Dr. C. Everett Koop, former Surgeon General of the United States. Title V of my bill would establish such a program by imposing a one-tenth of one cent surcharge on all health insurance premiums. Based on the Health Care Financing Administration's 1995 health spending review, private health insurance premiums totaled $325.4 billion. As provided in my bill, a surcharge would generate $325.4 million for an outcomes research fund, in addition to the $144 million appropriated in this area for fiscal year 1997.

It is also vital to reduce the administrative costs incurred by our health care system. According to the Health Care Financing Administration, in 1994, about 6.2 percent of our total national health care expenditures were for administrative costs—over $58 billion annually. We can reasonably expect to reduce administrative costs by 5 percent, or $2.9 billion annually. While the development of a national electronic claims system to handle the billions of dollars in claims is complex and will take time to implement fully, I believe it is an essential component in the operation of a more efficient health care system, and for achieving the necessary savings to provide insurance for the remaining uninsured Americans. Title VI of my bill is intended to improve consumer access to health care information. True cost containment and competition cannot occur if purchasers of health care services do not have the information available to them to compare cost and quality.

Title VI also authorizes the Secretary of Health and Human Services to award grants to States to establish or improve a health care data information system. Currently, 38 States have a mandate to establish such a system, and 23 States are in various stages of implementation. In my own State, the Pennsylvania Health Care Cost Containment Council has received national recognition for the work it has done to help control health care costs through the promotion of competition in the collection, analysis and distribution of uniform cost and quality data for all hospitals and physicians in the Commonwealth. Consumers, businesses, labor, insurance companies, health maintenance organizations, and hospitals have utilized this important information. Specifically, hospitals have used this information to become more competitive in the marketplace; businesses and labor have used this data to lower their health care expenditures; health plans have used this information when contracting with providers; and consumers have used this information to compare costs and outcomes of health care providers and procedures.

The States have not yet produced any figures on statewide savings resulting from the implementation of health information systems, however, there are many examples of savings experienced by users of these systems across the country. For example, the Pennsylvania Health Care Cost Containment Council [PHC4] has been utilized by the Hershey Foods Corp., which provides health insurance coverage for its employees, their dependents, and retirees, totaling roughly 17,000 persons. Hershey has offered a flexible benefits package since 1988, but saw health care expenditures increase in the late 1980's and early 1990's. The company used the PHC4 data as part of its health care plan reengineering efforts and created its own Health Maintenance Organization [HMO] called HealthStyles as another alternative to the four traditional HMO's already offered to employees and retirees. The PHC4 data were used to help Hershey define its specialized hospital network within this new HMO. Hershey states that the company has seen costs decline for some of the services provided by the other HMO plans offered to its employees. This is just one example of how health data information can be used wisely to inform the public and consumers and allow the market to control costs. There are many other examples of savings being achieved, and I believe that if these systems were implemented in every State, the savings could be substantial.

Home nursing care is another significant issue which must be addressed. The cost of this care is exorbitant. Title VII of my bill therefore would provide a tax credit for premiums paid to purchase private long-term care insurance. It also proposes home and community-based care benefits as less costly alternatives to institutional care. The Joint Tax Committee estimates that the cost of this long term care tax credit to the Treasury would be approximately $14 billion over 5 years. Other tax incentives and reforms provided in my bill to make long term care insurance more affordable include: First, allowing employees to select long-term care insurance as part of a cafeteria plan and allowing employers to deduct this expense; second, excluding from income tax the life insurance savings used to pay for long term care; and third, setting standards for long term care insurance that reduce the bias that currently favors institutional care over community and home-based alternatives.

While precision is again impossible, it is reasonable to project that my proposal could achieve a net annual savings of between $94 and $105 billion. I arrive at this sum by totaling the projected savings of $101 to $112 billion annually—$9 billion in small employer market reforms coupled with employer purchasing groups; $2.5 billion for preventive health services; $22 to $33 billion for reducing inappropriate care through outcomes research; $10 billion from advanced directives; $55 billion from increasing primary care providers; and $2.9 billion by reducing administrative costs and netting this against the $2.8 billion for long term care; and $4.8 billion for increasing childrens' coverage. I ask unanimous consent that a list of anticipated savings and costs associated with the bill be included in the RECORD.

Although there are no precise savings estimates for each of these areas, I propose this bill as a starting point to address the remaining problems with our health care system. Experience will require modification of these projections, and I am prepared to work with my colleagues to develop implementing legislation and to press for further action in the important area of health care reform.

CONCLUSION

The provisions which I have outlined today contain the framework for providing affordable health care for all Americans. I am opposed to rationing health care. I do not want rationing for myself, for my family, or for America. The question is whether we have the essential resources—doctors and other health care providers, hospitals, and pharmaceutical products—to provide medical care for all Americans. I am confident that we do. The issue is how to pay for and deliver such health care.

In my judgment, we should not scrap, but rather we should build on our current health delivery system. We do not need the overwhelming bureaucracy that President Clinton and other Democratic leaders proposed in 1993 to accomplish this. I believe we can provide care for the 40.3 million Americans who are now not covered and reduce health care costs for those who are covered within the currently growing $1.1 trillion in health care spending.

With the savings projected in this bill, I believe it is possible to provide access to comprehensive affordable health care for 17.6 million Americans. This bill is a significant next step in obtaining that objective. It is obvious that reforming our health care system will not be achieved immediately or easily, but the time has come for concerted action in this arena.

I understand that there are several controversial issues presented in this bill and I am open to suggestions on possible modifications. I urge the congressional leadership, including the appropriate committee chairmen, to

move this legislation and other health care bills forward promptly.

I ask unanimous consent that a summary and other material be printed in the RECORD.

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

HEALTH CARE ASSURANCE ACT OF 1997

SUMMARY OF THE BILL

Title I: Health Care Coverage for Children: Title I ensures health care coverage for all eligible children in the United States under the age of 18. States complying with rules approved by the Secretary shall receive federal funds to provide vouchers to families with eligible children. This will enable the states to enroll children in health plans that provide coverage for preventive, primary care, and acute care services. Payments to states will be calculated based upon the average annual cost of enrollment in a health care plan providing those types of services to children in the state. Children in families with a combined income of 185% of poverty level ($28,860 for a family of four) and not eligible for Medicaid will receive a full subsidy for enrollment in health plans, and children who are in families with incomes up to 235% of poverty level ($36,660 for a family of four) will receive a partial subsidy reduced on a sliding scale based on poverty level. States will have the flexibility to design and implement their programs as they see fit.

Title II: Health Care Insurance Coverage: Tax Equity for the Self-Employed: Provides self-employed individuals and their families 100 percent tax deductibility for the cost of health insurance coverage beginning in 2007. Under current law, beginning in 1997, self-employed persons may deduct 40 percent of cost; 45 percent in 1998 through 2002; 50 percent in 2003; 60 percent in 2004; 70 percent in 2005; and 80 percent in 2006 and thereafter. However, all other employers may deduct 100 percent of such costs. Title II corrects this inequity for the self-employed, 3.9 million of which are currently uninsured.

Small Employer and Individual Purchasing Groups: Establishes voluntary small employer and individual purchasing groups designed to provide affordable, comprehensive health coverage options for such employers, their employees, and other uninsured and underinsured individuals and families. Health plans offering coverage through such groups will: (1) provide a standard health benefits package; (2) adjust community rated premiums by age and family size in order to spread risk and provide price equity to all; and (3) meet certain other guidelines involving marketing practices.

Standard Benefits Package: The standard package of benefits would include a variation of benefits permitted among actuarially equivalent plans developed through the National Association of Insurance Commissioners (NAIC). The standard plan will consist of the following services when medically necessary or appropriate: (1) medical and surgical services; (2) medical equipment; (3) preventive services; and (4) emergency transportation in frontier areas.

COBRA Portability Reform: For those persons who are uninsured between jobs and for insured persons who fear losing coverage should they lose their jobs, Title II reforms the existing COBRA law by: (1) extending to 24 months the minimum time period in which COBRA covers individuals through their former employers' plans; and (2) expanding coverage options to include plans with a lower premium and a $1,000 deductible—saving a typical family of four 20 percent in monthly premiums—and plans with a lower premium and a $3,000 deductible—saving a family of four 52 percent in monthly premiums.

Title III: Primary and Preventive Care Services: Authorizes the Secretary of Health and Human Services to provide grants to States for projects (healthy start initiatives) to reduce infant mortality and low weight births and to improve the health and well-being of mothers and their families, pregnant women and infants. Title III also would provide assistance through a grant program to local education agencies and pre-school programs to provide comprehensive health education. In addition, Title III increases authorization of several existing preventive health programs such as, breast and cervical cancer prevention, childhood immunizations, and community health centers. In addition, Title II reauthorizes the Adolescent Family Life program (Title XX) for the first time since 1984. It has been funded annually in Labor, Health and Human Services and Education appropriations, but without authorization or reform. This program provides demonstration grants and contracts for initiatives focusing directly on issue of abstinence education.

Title IV: Patient's Right to Decline Medical Treatment: Improves the effectiveness and portability of advance directives by strengthening the federal law regarding patient self-determination and establishing uniform federal forms with regard to self-determination.

Title V: Primary and Preventive Care Providers: Utilizes non-physician providers such as nurse practitioners, physician assistants, and clinical nurse specialists by providing direct reimbursement without regard to the setting where services are provided through the Medicare and Medicaid programs. Title V also seeks to encourage students early on in their medical training to pursue a career in primary care and it provides assistance to medical training programs to recruit such students.

Title VI: Cost Containment: Cost containment provisions include: Outcomes Research: Expands funding for outcomes research necessary for the development of medical practice guidelines and increasing consumers' access to information in order to reduce the delivery of unnecessary and overpriced care.

New Drug Clinical Trials Program: Authorizes a program at the National Institutes of Health to expand support for clinical trials on promising new drugs and disease treatments with priority given to the most costly diseases impacting the greatest number of people.

National Health Insurance Data and Claims System: Authorizes the development of a National Health Insurance Data System to curtail the escalating costs associated with paperwork and bureaucracy. The Secretary of Health and Human Services is directed to create a system to centralize health insurance and health outcomes information incorporating effective privacy protections. Standardizing such information will reduce the time and expense involved in processing paperwork, increase efficiency, and reduce costs.

Health Care Cost Containment and Quality Information Project: Authorizes the Secretary of Health and Human Services to award grants to States to establish a health care cost and quality information system or to improve an existing system. Currently 39 States have State mandates to establish an information system, and of those 39, approximately 20 States have information systems in operation. Information such as hospital charge data and patient procedure outcomes data, which the State agency or council collects is used by businesses, labor, health maintenance organizations, hospitals, researchers, consumers, States, etc. Such data has enabled hospitals to become more competitive, businesses to save health care dollars, and consumers to make informed choices regarding their care.

Title VII: Tax Incentives for Purchase of Qualified Long-Term Care Insurance: Increases access to long-term care by: (1) establishing a tax credit for amounts paid toward long-term care services of family members; (2) excluding life insurance savings used to pay for long-term care from income tax; (3) allowing employees to select long-term care insurance as part of a cafeteria plan and allowing employers to deduct this expense; (4) setting standards that require long-term care to eliminate the current bias that favors institutional care over community and home-based alternatives.

Title VIII: National Fund for Health Research: Authorizes the establishment of a National Fund for Health Research to supplement biomedical research through the National Institutes of Health. Funds will be distributed to each of the member institutes and centers in the same proportion as the amount of appropriations they receive for the fiscal year.

NET ANNUAL HEALTH CARE SYSTEM SAVINGS FROM THE HEALTH CARE ASSURANCE ACT OF 1997

[In billions of dollars]

Bill title	Annual savings	Annual cost
I—Increase health insurance coverage for children	.....	(4.8)
II—Small businesses group purchasing	9.0	
III—Preventive care services	2.5	
IV—Advanced directives	10	
V—Increase use of non-physician providers	55	
VI—Outcomes research	33	
—national electronic claims system	2.9	
VII—Long term care	.....	(2.8)
Net Annual Total Savings	104.	

[From the Pittsburgh Post Gazette, Oct. 12, 1996]

RAY ATTACKS NEW SPECTER BRAIN TUMOR

(By Steve Twedt)

U.S. Sen. Arlen Specter greeted well-wishers in spirited fashion yesterday, hours after undergoing a specialized radiation treatment at the University of Pittsburgh Medical Center to stop the regrowth of a benign brain tumor.

And, after answering reporters' questions at a hastily scheduled press conference, Specter, his wife, Joan, and son, Shanin, left the hospital, declining his doctor's suggestion that he stay overnight.

''I feel fine,'' he assured everyone. ''I've had a tougher time when I've gone to the dentist.'''

Specter, 66, revealed yesterday that, during a routine magnetic resonance imaging scan in June, doctors discovered that a tumor surgically removed three years earlier had reappeared at the left front part of his brain. He said he never felt any symptoms.

The tumor was one-tenth the size of the one found in 1993 and, because it grew slowly, Specter waited until the end of the congressional session to seek treatment.

He said he came to UPMC because of the experience and reputation of Dr. L. Dade Lunsford's gamma knife program, the first of its kind in North America when it began in 1987. The program has treated more than 2,000 patients during the past nine years.

The gamma knife is used to treat tumors and malformed blood vessels in sensitive areas of the brain. Without making a surgical cut, the machine precisely shoots 201 beams of cobalt-60 photon radiation at the tumor while the patient lies on a bed with a special helmet covering his head. Only a local anesthetic is used.

Specter's procedure took less than four hours. When the Philadelphia Republican met with reporters a few hours later, the only evidence of his treatment was a faint red mark on each side of his forehead from the pins used to hold his head still.

Lunsford, who is chief of neurosurgery at UPMC, said he saw no evidence that the tumor in Specter's brain, called a meningioma, was malignant, nor any indication of other tumors.

On the basis of his experience with other patients, Lunsford said, there's a 98 percent chance the gamma knife will accomplish its goal—halting the tumor's growth. Nearly half the time, the tumors will even shrink, he said.

Patients undergoing $12,000 gamma knife treatment usually do not experience nausea or headaches, and typically leave the hospital within 24 hours.

[From the East Penn Press, Nov. 4–10, 1996]

SOMETIMES PATIENTS SHOULD BE IMPATIENT

I can personally report on the miracles of modern medicine.

Three years ago, an MRI detected a benign tumor (meningioma) at the outer edge of my brain. It was removed by conventional surgery with five days of hospitalization and five more weeks of recuperation.

When a small regrowth was detected by a follow-up MRI this June, it was treated with high powered radiation from the ''Gamma Knife.'' I entered the hospital in the morning and left the same afternoon, ready to resume my regular schedule. Like the MRI, the Gamma Knife is a recent invention, coming into widespread use in the past decade.

My own experience as a patient has given me deeper insights into the American health care system beyond the U.S. Senate hearings where I preside as chairman of the Appropriations Subcommittee with jurisdiction over health and human services. I have learned: (1) our health care system, the best in the world, is worth every cent we pay for it; (2) patients sometimes have to press their own cases beyond the doctors' standard advice; (3) greater flexibility must be provided on testing and treatment; and (4) our system has the resources to treat the 40 million Americans not now covered, but we must find the way to pay for it.

Health care in America costs $1 trillion out of our $7 trillion economy. The Senate and House Subcommittees on Health have taken the lead to raise funding for medical research for the National Institutes of Health.

Notwithstanding budget cuts generally, we added $820 million this year to bring the total research budget to $12.7 billion.

For that investment, we have seen dramatic breakthroughs in gene therapy and advances in treatment for heart disease, cancer, AIDS, diabetes, Alzheimers, etc. Scanning devices such as satellite imaging used by the CIA are now applied to detect breast cancer. Complex computerization assists MRIs to define the scope of treatment.

It isn't enough to have such machines. We have to use them more extensively.

In the spring of 1993, I complained to many doctors about a tightness in my collar and light pains running up the sides of my head. All tests proved negative. The symptoms persisted.

I asked for an MRI scan. The doctor said it wasn't indicated. I insisted. I got it. The MRI showed a benign tumor the size of a golf ball between my brain and skull.

While MRIs are expensive, those costs can be reduced by around-the-clock use of the machine. The marginal cost of operating it from midnight to 8 a.m. are small.

The inconvenience to the patient is worth it. The extra cost to insurance companies would be more than made up by preventing more serious illness and higher costs later.

While my June 1993 operation was performed by one of the finest surgeons at one of the best hospitals, I was among the approximately 15 percent where tiny calls at the margin apparently caused a small regrowth. The general recommendation was surgery.

A minority of doctors suggested consideration of a relatively new procedure known as the Gamma Knife. Since there was no urgency. I took some time to study the alternatives.

Most doctors, even some with extensive experience with the Gamma Knife, insisted on conventional surgery. Why? (1) Because that was the traditional approach; (2) because there was more long-term follow-up data on surgery even though successful Gamma Knife procedures were on record for more than 20 years; and (8) because the tumor was in a good location for surgery.

Somehow the Gamma Knife, it was argued, should be reserved for locations the surgeon's knife could not reach. But my tumor was also in a good spot for radiation.

My inquiries among doctors in the United States and Sweden (where the Gamma Knife was invented) disclosed almost universal agreement that the Gamma Knife, if unsuccessful, would not make the tumor more difficult to treat. Later surgery could always be utilized. The non-invasive Gamma Knife eliminated the risk of anesthesia and infection from surgery.

With a high success rate from the worldwide experience of 40,000 Gamma Knife procedures and 5,000 meningioma like my own, it was hard to understand why it was not used more. I found Dr. Dade Lunsford at the University of Pittsburgh Presbyterian Hospital had to most experience in the United States with the Gamma Knife.

Since 1987, his team had used the procedure 2,100 times. Only one of his 270 memingioma patients had required later surgery. Dr. Lunsford estimated the overall success rate at 98 percent.

So I checked into the hospital at 6:15 one morning, had a brace attached to my head and took another MRI. All I required was local anesthesia before pins were pressed to my head to make the brace secure.

I then watched the computer calculate how much radiation should be applied to the tumor and its margins as shown on the MRI scan.

At about 9:30 a.m., my head was inserted into a 500 pound helmet with 201 holes which directed cobalt beams from all directions to focus on the meningioma. Each beam was relatively minute, but the confluence was high powered.

There were seven bombardments of radiation for three minutes or less. In between, my position was altered with one change of the helmet.

At about 10:50 a.m., the radiation was completed and a head compress was applied for two hours. After lunch and a brief conversation with Dr. Lunsford, we briefed the news media. I left the hospital in mid-afternoon to spend the night in a local hotel and then resume my schedule the next day.

Now, five days later, I feel fine. I am back on the squash court. I am back to my 14-hour days traveling across Pennsylvania.

An MRI will be taken in six months. I have some apprehension as to how it will all work out, but so far, so good. I feel very lucky!

Nothing is more important than a person's health. We have done a great job in the United States in producing the greatest health care system in the world. I am aware that it is better for some, like myself, than for others. I am convinced that America has the doctors, nurses, hospitals, medical equipment, pharmaceuticals, etc. to provide for all our people. My pending legislation provides a plan to do that with the current $1 trillion expenditure.

Informed, aggressive patients can do much to help themselves.

By Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. THOMPSON, Mr. WELLSTONE, Mr. GRAHAM, Mr. KERREY, Mr. DODD, Mr. KERRY, Mr. BINGAMAN, Mr. GLENN, Mrs. MURRAY, Mr. KOHL, Mr. WYDEN, Ms. MOSELEY-BRAUN, Mr. REID, Mr. FORD, Mr. LEAHY, Mr. CLELAND, Mr. JOHNSON, and Mr. DURBIN):

S. 25. A bill to reform the financing of Federal elections; to the Committee on Rules and Administration.

THE BIPARTISAN CAMPAIGN FINANCE BILL OF 1997

Mr. MCCAIN. Mr. President, I am pleased to be joined by Senators FEINGOLD, THOMPSON, and WELLSTONE in introducing the Bipartisan Campaign Finance Reform bill of 1997. This measure is similar to last year's bill that we introduced on the same subject. I will not lay out all the details of the bill at this time, but will submit for the record a summary of our bill at a later date.

Passage of campaign finance reform is necessary if we are to curb the public's growing cynicism for politics and Congress in particular. We can no longer wait to address this issue.

I am under no illusions that this will be an easy fight. No other issue is felt more personally by Members of this body. No other issue stirs the emotions of Members of the Senate more. But we were sent here to make tough decisions and we must address this subject.

The public demands that we achieve three goals: limit the role of money in politics, make the playing field more level between challengers and incumbents, and to pass a legislative initiative that will become law.

To pass a bill will require principled compromise and a great deal of work. I want the members of my party to know that I am willing to work with you to address your concerns regarding this legislation. I want to let my friends know on the other side of the aisle that the offer also stands for them. The cosponsors for this bill are willing to negotiate technical aspects of the bill. The three principals I just outlined, however, are not negotiable.

Twenty-five years after Watergate, the electoral system is out of control. Our elections are awash in money which is flowing into the system at record levels. Some public interest groups estimate that when all is said and done, that nearly $1 billion will have been spent during this last election cycle. Something must be done.

Do we have the perfect solution? No. I do not know if a perfect solution even exists. But our bill, the McCain-Feingold-Thompson bill is a good first step toward reform. I hope that soon we will be on the floor debating this measure. I look forward to working

with all my colleagues as we move forward. It is only in a bipartisan manner, putting parochial interests aside, that we will be able to do the people's business—that we will pass meaningful campaign finance reform.

Mr. FEINGOLD. I rise today to join with my colleague from Arizona [Mr. MCCAIN] in introducing the Bipartisan Campaign Reform Act.

I want to acknowledge the Democratic and Republican Senators who have agreed to join myself and the Senator from Arizona [Mr. MCCAIN] as original co-sponsors in introducing this historic legislation. Those co-sponsors include the Senator from Tennessee [Mr. THOMPSON], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Florida [Mr. GRAHAM], the Senator from Connecticut [Mr. DODD], the Senator from Nebraska [Mr. KERREY], the Senator from Massachusetts [Mr. KERRY], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Washington [Mrs. MURRAY], the Senator from Wisconsin [Mr. KOHL], the Senator from Oregon [Mr. WYDEN], the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from Kentucky [Mr. FORD], the Senator from Vermont [Mr. LEAHY], the Senator from Nevada [Mr. REID], the Senator from Georgia [Mr. CLELAND], the Senator from South Dakota [Mr. JOHNSON] and the Senator from Illinois [Mr. DURBIN].

I think it is clear Mr. President, that the few remaining pillars holding up our crumbling election system finally collapsed. According to the latest figures provided by the Federal Election Commission, congressional candidates spent a total of $742 million in the 1996 elections, a noticeable increase over the 1994 levels despite the absence of a single Senate contest in any of the largest States including California, New York, Florida, Pennsylvania, or Ohio. And that $742 million figure does not even include the record amounts of so-called ''soft money'' contributions raised and spent by the national political parties in the last election cycle.

Every campaign year we are hit with these astonishing spending figures and every year we acknowledge that a new record has been set. And just when the spending and abuses seem like they cannot get any worse, they do. Last November, our campaign finance system lurched out of control, filling the headlines and airwaves with charges and countercharges about which candidates and parties were abusing our laws and loopholes the worst. Another cadre of millionaires spent vast sums of personal wealth on their campaigns, 94 percent of House and Senate challengers lost their election bids, and the smallest percentage of Americans went to the ballot box in 72 years.

Coupled with the continued need to reduce the Federal budget deficit, there may be no more fundamentally important issue than the need to pass meaningful reform of our campaign finance system.

The bill we are introducing today has several components, but is centered primarily on what I believe are the two cornerstones of reform. The first cornerstone is the creation of a voluntary system that offers qualified candidates an opportunity to participate in the electoral process without being compelled to raise and spend outrageous sums of money.

This voluntary system merely says to candidates that if you agree to follow a set of ground rules, we will provide you with the tools that will not only reduce the high costs associated with campaigning, but at the same time enhance your ability to sufficiently convey your message to the voters of your State.

What are those ground rules and benefits, Mr. President.

First, candidates who elect to voluntarily participate in the system must agree to limit the overall amount of money they spend on their campaigns. This spending cap is based on the voting-age population in each State. For example, in my State of Wisconsin the primary spending limit would be about $1 million while the general election cap would be about $1.5 million. In a larger State such as New York, the primary limit would be about $2.7 million while the general election limit would be about $4 million.

The second rule candidates must follow is to limit how much of their personal wealth they contribute to their campaigns. Again, this would be based on the size of each State. In Wisconsin, it would be about $150,000 and in no State would it be higher than $250,000.

Finally, candidates must agree to raise 60 percent of their contributions from individuals within their home States. This rule is grounded in our belief that anyone wishing to receive the benefits of the bill should be able to demonstrate a strong base of support from the people they intend to represent. Moreover, candidates and officeholders will be compelled to focus their campaign and fundraising activities on the people who matter most—the voters back home.

If candidates elect to participate in the system and follow these simple ground rules, they are entitled to certain benefits.

The first benefit is a postage discount. Eligible candidates would be given a special postage rate, currently only available to non-profit organizations and political parties, for a number of mailings equal to two times the voting-age population of the candidate's State.

Second, the bill provides each eligible candidate with up to 30 minutes of free television advertising time from the broadcast stations in the candidate's State and any adjoining States.

Third, and most importantly, the bill offers eligible candidates a 50-percent discount off of the lowest unit rate for their television advertising 60 days before their general election and 30 days before the primary. Current law merely provides Federal candidates with the lowest unit rate—our bill would cut the costs of television advertising for eligible candidates almost in half.

That, Mr. President, is the first foundation of meaningful reform, creating a voluntary system—purely voluntary—that provides candidates who agree to limit their campaign spending with the means to convey their ideas and message to the voters and also significantly reduce their campaign costs, therefore reducing the need to raise millions and millions of dollars.

The second foundation of reform is to ban so-called ''soft money,'' those contributions to the national parties from corporations, labor unions and wealthy individuals that are unlimited and unregulated by federal election law and yet are funneled into federal campaigns around the country.

It was soft money, Mr. President, that garnered so much outrage in the last election. To illustrate how expansive of a loophole soft money has become, consider how much of this unregulated money the national parties have raised over the last two election cycles in which we had a presidential election. In 1992, the Republican National Committee raised $50 million in soft money while the Democratic National Committee raised $36 million. In 1996, the RNC raised $141 million while the DNC raised $122 million. Overall, soft money contributions to the two parties went from $86 million in 1992 to $263 million in 1996. That is a staggering increase.

In the wake of the countless media reports documenting this abuse, Americans were left wondering why an individual who is limited to contributing $1,000 to a federal candidate by federal election law is somehow able to contribute $100,000 or $1 million to the Democratic or Republican National Committees. They want to understand why labor unions and corporations, which are prohibited by law from using their treasury funds to make contributions or expenditures to advocate for or against a federal candidate, are able to funnel millions and millions of their treasury dollars directly into the two national parties and indirectly into various House and Senate elections. Clearly, a ban on soft money contributions to the political parties must be a part of a serious reform proposal.

The Supreme Court has spoken clearly on the constitutionality of limiting campaign contributions from individuals and organizations. They have upheld the statutes barring corporate and labor union direct contributions. They have upheld the statute limiting individuals to contributing $1,000 to federal candidates per election and $20,000 to national parties per year. And yet the soft money loophole has allowed interested parties to blow these limits away, leaving the average citizen who wishes to contribute $25 to their local congressman wondering just how much of a voice they have in the electoral process.

The McCain-Feingold proposal simply bans all soft money contributions

to the national parties. Individuals can still contribute to the national parties, but they will have to abide by the current law $20,000 ''hard money'' limit. Corporations and labor unions will also be able to contribute to the national parties, but they too will have to follow the ''hard money'' limits. That means they will have to contribute through their separate segregate funds, also known as PAC's, rather than using their general treasury funds, and their contributions to the national parties will be limited to $15,000 per party committee per year.

We heard considerable debate in the last election about foreign money—both coming from foreign nationals oversees, which is clearly illegal, and from noncitizens residing in the United States, which is not. This is a problem and we have a new provision in our legislation to address this abuse. But I have always said that the problem is whether anyone should be permitted to contribute $400,000 in our election system, whether it is from Jakarta or Janesville, WI. And the soft money ban in our legislation will prohibit any future such contributions, regardless of their source.

The legislation includes a new proposal that bars anyone who is not eligible to vote in a federal election from contributing to a federal candidate. This will affect noncitizens, minors under 18 years of age and certain convicted felons. Simply put, if our laws and Constitution do not allow an individual to participate in the political process with their ballot, there is no reason the same individual should be permitted to participate with their checkbook.

The McCain-Feingold bill includes a number of other important provisions as well. For example, we propose a new definition of what constitutes ''express advocacy'' in a federal election. ''Express advocacy'' is the standard used to determine to what extent election activities may be limited and regulated. If a particular activity, such as an independent expenditure, is deemed to expressly advocate the election or defeat of a particular federal candidate, then that activity must be paid for with fully disclosed and limited ''hard money'' dollars. Labor unions, corporations and other political organizations would have to fund such activities through a PAC, comprised of voluntary, limited and disclosed contributions.

If on the other hand, an expenditure is used for an activity that does not expressly advocate the election or defeat of a particular candidate, such as a television ad that attempts to raise important issues without advocating a candidate, then that expenditure may be funded with ''soft money'' dollars—undisclosed and unlimited monies, such as corporation's profits or a labor union's member dues.

Unquestionably, the largest abuse in recent elections is the use of non-party soft money to fund huge electioneering activities under the guise that there is an absence of express advocacy. Current FEC regulations defining express advocacy are so weak that these organizations are able to channel unlimited resources into activities that are thinly veiled as ''voter education'' or ''issue ads'' when in truth they seek to directly advocate the election or defeat of a candidate.

These activities, outside the scope of federal election law, have come to dominate many House and Senate campaigns. And while political parties and outside organizations have poured unlimited resources into these ''issue ads,'' candidates have found their role in their own elections shockingly diminished.

If we are to have any control of our election process, we must have a clear standard in the law that defines what sort of activities are an attempt to influence the outcome of a federal election.

The McCain-Feingold proposal includes a new definition of what constitutes ''express advocacy.'' Under this proposal, the definition of ''express advocacy'' will include any general public communication that advocates the election or defeat of a clearly identified candidate for federal office by using such expressions as ''vote for'', ''support'' or ''defeat''. Further, any disbursement aggregating $10,000 or more for a communication that is made within 30 days of a primary election or 60 days of a general election shall be considered express advocacy if the communication refers to a clearly identified candidate and a reasonable person would understand it as advocating the election or defeat of that candidate.

If such a communication is made outside of the 30 day period before the primary election or the 60 day period before the general election, it shall be considered express advocacy if the communication is made with the purpose of advocating the election or defeat of a candidate as shown by one or more factors including a statement or action by the person making the communication, the targeting or placement of the communication, or the use by the person making the communication of polling or other similar data relating to the candidate's campaign or election.

This will ensure that a much larger proportion of the expenditures made by political parties and independent organizations with the intent to influence the outcome of a federal election will be covered by federal law and subject to the appropriate restrictions and disclosure requirements.

The McCain-Feingold proposal will also protect candidates who are targeted by independent expenditures. First, the legislation requires groups who fund independent expenditures to immediately disclose those expenditures. The FEC would then be required to transmit a copy of that report to any candidate who has agreed to limit their spending and has been targeted by such an expenditure. This will give candidates advance notice that they have been targeted. The legislation also allows candidates to respond to such expenditures without these ''response expenditures'' counting against their overall spending limit. This will ensure that targeted candidates are not bound by the spending caps and unable to respond. And finally, the bill tightens statutory language to ensure that independent expenditures made by political parties are truly independent and not coordinated with campaigns in any way.

The legislation also includes a ban on Political Action Committee [PAC] contributions to federal candidates. In case such a ban is held to be unconstitutional by the Supreme Court, the legislation includes a ''back-up'' provision that lowers the PAC contribution limit from $5,000 to $1,000 and limits Senate candidates to accepting no more than 20% of the applicable overall spending limit in aggregate PAC contributions.

The bipartisan bill is further helpful to challengers in that it prohibits Senators from sending out taxpayer-financed, unsolicited franked mass mailings in the calendar year of an election. Often, these mass mailings are thinly disguised ''newsletters'' that help to bolster an incumbent's name recognition and inform constituents of their accomplishments. Such unsolicited activity by officeholders can be unfair in an election year.

The final major piece of this reform effort is our enhanced enforcement provisions. There is legitimate criticism that our federal election laws are not adequately enforced, and much of this problem can be directly attributed to Congress' unwillingness to provide adequate funding to what is supposed to be the government's watchdog agency, the Federal Election Commission. Regardless, there are reforms we can pass that will allow the FEC to better enforce the current laws we have on the books as well as the new laws enacted as part of this legislation.

First and foremost is a provision that will require all federal campaigns to file their disclosure reports with the FEC electronically. Currently, this is optional and the result is a disclosure system that is marginally reliable. We need a disclosure system that is readily accessible to the public and will allow the American people to know where from and to whom the money is flowing. The bill also requires candidates to disclose the name and address of every contributor who gives more than $50 to a candidate. Currently, that threshold is only for contributions over $200 and the result is millions of dollars of undisclosed contributor information.

Second, we allow the FEC to conduct random audits of campaigns. This will provide a mechanism to make sure candidates are complying with all of the limitations and restrictions in federal election law.

The bill toughens penalties for ''knowing and willful'' violations of the law. If such a standard is met, the FEC is permitted to triple the amount of the civil penalty. We must send a message to candidates and campaigns that deliberate attempts to evade the law will be met with serious penalties.

Mr. President, the support the McCain-Feingold proposal garnered last year was bipartisan and broad based. It was strongly supported by President Clinton, who first endorsed the McCain-Feingold proposal in his State of the Union Address almost one year ago and has recently reaffirmed his strong commitment to the legislation this year. It was endorsed by Ross Perot, Common Cause, Public Citizen, United We Stand America, the American Association of Retired Persons and some 30 other grassroots organizations. It received editorial support from over 60 newspapers nationwide.

This legislation is also bicameral. Republican Representative CHRIS SHAYS, Democratic Representative MARTY MEEHAN and a number of others will soon be introducing a House version of the McCain-Feingold proposal in the 105th Congress.

Recently, the Wall Street Journal conducted a poll on this issue. They found that 92 percent of the American people believe we spend too much money on political campaigns. This is consistent with numerous other polls that have found similar results. Coupled with the troubling fact that the smallest percentage of Americans went to the ballot box in 72 years, it is clear that the American people want meaningful reform of our electoral process. It is also clear that they want less polarization in the Congress, and for Democrats and Republicans to work together and find effective solutions to our common problems.

For years, campaign finance reform has stalled because of the inability of the two parties to join together and craft a reform proposal that was fair to both sides. We believed we have bridged those differences, and produced a proposal that calls for mutual disarmament and will lead to fair and competitive elections.

It is my hope that the distinguished majority leader will recognize how important this issue is to the American people and our democratic system and will allow this legislation to be considered in the coming weeks. I want to thank my friend from Arizona [Mr. MCCAIN] for his dedication to this issue.

Mr. THOMPSON. Mr. President I join my colleagues in reintroducing our campaign finance reform legislation with mixed emotions. On the one hand, I am more optimistic about the chances of our being able to enact reforms than I was when we introduced our bill over a year ago. On the other hand, I regret that it has taken another round of public disappointment and anger over the role of money in federal elections to bring us to this point.

The factors which led us to introduce this legislation in the last Congress have become even more prominent. Too much money is needed, too much time must be spent raising it, too much is asked of a limited number of special interests, and too much is going on outside of the regulatory system we established—some within the bounds of the law, some allegedly not.

Most importantly, in my view, the public is increasingly concerned by what they see happening here. If they have no faith in the system which put us here, if they are turned off by what we do to get elected, how are they going to trust us to carry out our work in their best interests?

Next, money raising consumes an inordinate amount of office-holders' and candidates' time and effort. Candidates should be reaching out to as broad a spectrum of people and interests as possible, and not feel they must concentrate on those who can afford to make a donation.

Last, it is difficult for a challenger to raise sufficient funds to get his or her message out. Congress needs to move away from professionalism and more toward a citizen legislature. The process should be more open, instead of more closed. Because of the role money plays, unless a candidate has access to large sums of money, he or she is pretty much cut out of the process.

I believe the revised legislation I am joining my colleagues Senators MCCAIN and FEINGOLD in introducing provides some solutions to these problems. It doesn't provide all the solutions, or perfect solutions, but it is a good faith effort and, in my view, a good place to start.

This legislation reduces the appearance and reality of special interests buying and selling political favors by prohibiting federal PACs, restricting contribution ''bundling'', prohibiting so-called ''soft money'', and putting a cap on out-of-state fundraising. I do not believe PACs are inherently evil. There are other ways special interests can enhance their financial influence in a campaign. Contributions are bundled, or the word just goes out that a particular interest—be it business, or social, or labor—is concentrating donations on a particular race. PACs are a more formal association of people with common interests. Our test in legislating reforms should be whether the public feels they continue to serve an acceptable purpose.

Furthermore, in this revised bill we have tightened up on the definitions of independent and coordinated expenditures, as well as those for express advocacy. Today we have a system under which, in many cases, the majority of the expenditures in an election are outside the system and the candidate's control. In 1992, ''soft money'' expenditures by the Republican and Democratic parties totaled $86 million. In 1996, they totaled $263 million. It is little wonder that we are looking at where some of it came from.

I look forward to working with our colleagues on both sides of the aisle, in the House of Representatives, and with the President to fashion and pass meaningful reform. I believe a successful effort will renew the public's faith in our system and in us, and thus in our ability to do what they sent us here to do.

Mr. WELLSTONE. Mr. President. I am extremely pleased to be an original cosponsor of the McCain-Feingold-Thompson-Wellstone campaign finance reform bill. I hope the Senate will bring it to the floor very early in this Congress—preferably during the first three months of this year. Campaign finance reform is clearly one of the most crucial issues we face, and the public is more than ready for fundamental reform.

I have been working hard with my colleagues on this bipartisan bill, which we hope becomes the vehicle for genuine reform this year. I hope that public dissatisfaction with campaign politics-as-usual, especially as exemplified by the abuses of the campaign season just past, will push this Congress to act decisively. We should choose the best aspects of the various bills that will be introduced this year and fix the problems which have made themselves so apparent. We know there will opposition to any significant changes in the way we organize and finance campaigns for federal office, but if there is sufficient pressure from around the country, we can pass real reform.

So let us bring this bill to the floor and amend it. No reform bill is perfect. Let Republicans and Democrats offer their changes. As the only viable, bipartisan campaign finance reform bill, this proposal represents our best hope for taking a significant step toward genuine reform.

In some ways this bill does not go as far as I believe will be necessary in order to repair our damaged campaign finance system. But it would ban ''soft money'' contributions to parties. It would impose voluntary spending limits and require greater disclosure of independent expenditures. It would restrict PAC contributions and ''bundling,'' and it would place more restrictions on foreign contributions. It is a good bill. Its enactment would be an excellent start toward restoring integrity to our political process.

We must enact comprehensive reform. But I am especially committed this year to addressing the striking abuses in the areas of ''soft money'' and issue-advocacy ads. A system which invites circumvention mocks itself.

Mr. President, I intend to speak at greater length in the coming days on the subject of campaign finance reform. Today, I enthusiastically endorse this bipartisan effort to move real reform and to begin to restore Americans' belief in our democratic institutions.

By Mr. DASCHLE (for himself, Mr. JOHNSON, Mr. DORGAN, Mr.

CONRAD, Mr. KERREY, and Mr. BINGAMAN):

S. 26. A bill to provide a safety net for farmers and consumers and to promote the development of farmer-owned value added processing facilities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

AGRICULTURAL SAFETY NET ACT OF 1997

Mr. DASCHLE. 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. 26

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 ''Agricultural Safety Net Act of 1997''.

SEC. 2. MARKETING ASSISTANCE LOANS.

(a) IN GENERAL.—Section 132 of the Agricultural Market Transition Act (7 U.S.C. 7232) is amended—

(1) in subsection (a)(1)—

(A) by striking ''be—'' and all that follows through ''(A) not'' and inserting ''be not''; and

(B) by striking ''; but'' and all that follows through ''per bushel'';

(2) in subsection (b)(1)—

(A) by striking ''be—'' and all that follows through ''(A) not'' and inserting ''be not''; and

(B) by striking ''; but'' and all that follows through ''per bushel'';

(3) in subsection (c)(2), by striking ''or more than $0.5192 per pound'';

(4) in subsection (d)—

(A) by striking ''be—'' and all that follows through ''(1) not'' and inserting ''be not''; and

(B) by striking ''; but'' and all that follows through ''per pound''; and

(5) in subsection (f)—

(A) in paragraph (1)(B), by striking ''or more than $5.26''; and

(B) in paragraph (2)(B), by striking ''or more than $0.093''.

(b) TERM OF LOAN.—Section 133 of the Agricultural Market Transition Act (7 U.S.C. 7233) is amended by striking subsection (c) and inserting the following:

''(c) EXTENSIONS.—The Secretary may extend the term of a marketing assistance loan for any loan commodity for a period not to exceed 6 months.''.

SEC. 3. EXPANSION OF CROP REVENUE INSURANCE.

Section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) is amended—

(1) in subsection (b)—

(A) by striking paragraph (9); and

(B) by redesignating paragraph (10) as paragraph (9); and

(2) by adding at the end the following:

''(o) CROP REVENUE INSURANCE.—

''(1) IN GENERAL.—The Secretary shall offer a producer of wheat, feed grains, soybeans, or such other commodity as the Secretary considers appropriate insurance against loss of revenue from prevented or reduced production of the commodity, as determined by the Secretary.

''(2) ADMINISTRATION.—Revenue insurance under this subsection shall—

''(A) be offered by the Corporation or through a re-insurance arrangement with a private insurance company;

''(B) offer at least a minimum level of coverage that is an alternative to catastrophic crop insurance; and

''(C) be actuarially sound''.

SEC. 4. PRIORITY FOR FARMER-OWNED VALUE-ADDED PROCESSING FACILITIES.

Section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) is amended by adding at the end the following:

''(h) PRIORITY FOR FARMER-OWNED VALUE-ADDED PROCESSING FACILITIES.—In approving applications for loans and grants authorized under this section, section 306(a)(11), and other applicable provisions of this title (as determined by the Secretary), the Secretary shall give a high priority to applications for projects that encourage farmer-owned value-added processing facilities.''.

By Mr. THURMOND:

S. 27. A bill to amend title 1 of the United States Code to clarify the effect and application of legislation; to the Committee on the Judiciary.

AN ACT TO CLARIFY THE APPLICATION AND EFFECT OF LEGISLATION

Mr. THURMOND. Mr. President, I rise today to introduce an act to clarify the application and effect of legislation which the Congress enacts. My act provides that unless future legislation expressly states otherwise, new enactments would be applied prospectively, would not create private rights of action, and would be presumed not to preempt existing State law. This will significantly reduce unnecessary litigation and court costs, and will benefit both the public and our judicial system.

The purpose of this legislation is quite simple. Many congressional enactments do not indicate whether the legislation is to be applied retroactively, whether it creates private rights of action, or whether it preempts existing State law. The failure or inability of the Congress to address these issues in each piece of legislation results in unnecessary confusion and litigation. Additionally, this contributes to the high cost of litigation and the congestion of our courts.

In the absence of action by the Congress on these critical threshold questions of retroactivity, private rights of action and preemption, the outcome is left up to the courts. The courts are frequently required to resolve these matters without any guidance from the legislation itself. Although these issues are generally raised early in a lawsuit, a decision that the lawsuit can proceed generally cannot be appealed until the end of the case. If the appellate court eventually rules that one of these issues should have prevented the trial, the litigants have been put to substantial burden and unnecessary expense which could have been avoided.

Trial courts around the country often reach conflicting and inconsistent results on these issues, as do appellate courts when the issues are appealed. As a result, many of these cases eventually make their way to the Supreme Court. This problem was dramatically illustrated after the passage of the Civil Rights Act of 1991. District courts and courts of appeal all over this Nation were required to resolve whether the 1991 act should be applied retroactively, and the issue ultimately was considered by the U.S. Supreme Court. However, by the time the Supreme Court resolved the issue in 1994, well over 100 lower courts had ruled on this question, and their decisions were split. Countless litigants across the country expended substantial resources debating this threshold procedural issue.

In the same way, the issues of whether new legislation creates a private right of action or preempts State law are frequently presented in courts around the country, yielding expensive litigation and conflicting results.

The bill I am introducing today eliminates this problem by providing the rule of construction that, unless future legislation specifies otherwise, newly enacted laws are not to be applied retroactively, do not create a private right of action, and are presumed not to preempt State law. Of course, my bill does not in any way restrict the Congress on these important issues. The Congress may override this ordinary rule by simply stating when it wishes legislation to be retroactive, create new private rights of action or preempt existing State law.

This act will eliminate uncertainty and provide rules which are applicable when the Congress fails to specify its position on these important issues in legislation it passes. One U.S. District Judge in my State informs me that he spends 10 to 15 percent of his time on these issues. It is clear that this legislation would save litigants and our judicial system millions and millions of dollars by avoiding much uncertainty and litigation which currently exists over these issues.

Mr. President, if we are truly concerned about relieving the backlog of cases in our courts and reducing the costs of litigation, we should help our judicial system to focus its limited resources, time and effort on resolving the merits of disputes, rather than deciding these preliminary matters.

By Mr. LUGAR:

S. 29. A bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers; to the Committee on Finance.

S. 30 A bill to increase the unified estate and gift tax credit to exempt small businesses and farmers from inheritance taxes; to the Committee on Finance.

S. 31. A bill to phase out and repeal the Federal estate and gift taxes and the tax on generation-skipping transfers; to the Committee on Finance.

ESTATE TAX LEGISLATION

Mr. LUGAR. Mr. President, I am pleased to introduce three bills aimed at eliminating the burden that estate and gift taxes place on our economy. My first bill would repeal the estate and gift taxes outright. My second bill would phase out the estate tax over 5 years by gradually raising the unified credit each year until the tax is repealed after the fifth year. My third bill would immediately raise the effective unified credit from $600,000 to $5

million in an effort to address the disproportionate burden that the estate tax places on farmers and small businesses.

I believe the best option is a simple repeal of the estate tax. I am hopeful that during this Congress, as Members become more aware of the effects of this tax, we can eliminate it from the Tax Code. However, even if the estate tax is not repealed, the unified credit must be raised. The credit has not been increased since 1987 when it was established at the $600,000 level. Since then, inflation has caused a growing percentage of estates to be subjected to the estate tax. My second bill is intended to highlight this point and provide a gradual path to repeal.

Finally, my third bill focuses on relieving the estate tax burden that falls disproportionately on farmers and small business owners. By raising the exemption amount from $600,000 to $5 million, 96 percent of estates with farm assets and 90 percent of estates with noncorporate business assets would not have to pay estate taxes, according to the IRS.

The estate tax began as a temporary tax in 1916, limited to 10 percent of one's inheritance. The tax intended to prevent the accumulation of wealth in the hands of a few families. Today, however, the effect is often the opposite. The estate tax forces many family-owned farms and small businesses to sell to larger corporations, further concentrating the wealth.

The estate tax has mushroomed into an exorbitant tax on death that discourages savings, economic growth and job formation by blocking the accumulation of entrepreneurial capital and by breaking up family businesses and farms. With the highest marginal rate at 55 percent, more than half of an estate can go directly to the government. By the time the inheritance tax is levied on families, their assets have already been taxed at least once. This form of double taxation violates perceptions of fairness in our tax system.

In addition to tax liabilities, families often must pay lawyers, accountants and planners to untangle one of the most complicated areas of our tax code. In 1996, a Gallup poll estimated that a small family-owned business spent an average of $33,138 for lawyers and accountants to settle estates with the IRS. Larger family-owned businesses averaged $70,000. Families averaged 167 hours complying with the Byzantine rules of the estate tax, and the IRS estimates that they must audit nearly 40 percent of estate tax returns—a much higher rate than the 1.7 percent audit rate on incomes taxes.

Let us consider the consequences of the estate tax on the American economy. The estate tax is counterproductive because it falls so heavily on our most dynamic job creators—small businesses. About two out of every three new jobs in this country are created by small business. From 1989 to 1991, a period of unusually slow economic growth, virtually all new net jobs were created by firms with fewer than twenty employees.

Recent economic studies and surveys of small business owners support the thesis that the estate tax discourages economic growth. A 1994 study by the Tax Foundation concluded that the estate tax may have roughly the same effect on entrepreneurial incentives as would a doubling of income tax rates. A 1996 report prepared by Price Waterhouse found that even more family business owners were concerned about estate taxes than about capital gains taxes. A Gallup poll found that one-third of family-owned businesses expect to sell their family's firm to pay estate tax liability. Sixty-eight percent said the estate tax makes them less likely to make investments in their business, and 60 percent said that without an estate tax, they would have expanded their workforce.

If we are sincere about boosting economic growth, we must consider what effect the estate tax has on a business owner deciding whether to invest in new capital goods or hire a new employee. We must consider its affect on a farmer deciding whether to buy new land, additional livestock or a new tractor. If you know that when you die your children will probably have to sell the business you build up over your lifetime, does that make you more likely to take the risk of starting a new business or enlarging your present business? It is apparent that the estate tax does discourage business and farm investments.

One might expect that for all the economic disincentives caused by the estate tax, it must at least provide a sizable contribution to the U.S. Treasury. But in reality, the estate tax only accounts for about 1 percent of federal taxes. It cannot be justified as an indispensable revenue raiser. Given the blow delivered to job formation and economic growth, the estate tax may even cost the Treasury money. Our nation's ability to create new jobs, new opportunities and wealth is damaged as a result of our insistence on collecting a tax that earns less than 1 percent of our revenue.

But this tax affects more than just the national economy. It affects how we as a nation think about community, family and work. Small businesses and farms represent much more than assets. They represent years of toil and entrepreneurial risk taking. They also represent the hopes that families have for their children. Part of the American Dream has always been to build up a business, farm or ranch so that economic opportunities and a way of life can be passed on to one's children and grandchildren.

I have some personal experience in this area. My father died when I was in my early thirties, leaving his 604-acre farm in Marion County, Indiana, to his family. I managed the farm, which built up considerable debts during my father's illness at the end of his life. Fortunately, after a number of years, we were successful in working out the financial problems and repaying the money. We were lucky. That farm is profitable and still in the family. But many of today's farmers and small business owners are not so fortunate. Only about 30 percent of businesses are transferred from parent to child, and only about 12 percent of businesses make it to a grandchild.

The strongest negative effects of the estate tax are felt by the American family farmer. Currently, proprietorships and partnerships make up about 95 percent of farms and ranches. In the vast majority of cases, family farms do not produce luxurious lifestyles for their owners. Farmers have large assets but relatively little income. The income of a family-run farm depends on modest returns from sizable amounts of invested capital. Much of what the farmer makes after taxes in reinvested into the farm, bolstering the estate-tax-derived ''paper value'' even more.

As happens so often, family farms cannot maintain the cash assets necessary to pay estate taxes upon the death of the owner. Frequently, selling part of a farm is not an option, either because there is no suitable buyer or because reducing acreage would make the operation inviable. In these cases, a fire-sale of the family farm or business is required to pay the estate tax. Devastating to any business, such a forced sale hits farm families particularly hard because they frequently must sell at a price far below the invested value. Entire lifetimes of work are liquidated, and the skills of family members experienced in agriculture are lost to the American economy.

Mr. President, I introduce today a set of bills to repeal the estate tax in an effort to expand investment incentives and job creation and to reinvigorate an important part of the American Dream. I am hopeful that Senators will join me in the effort to free small businesses, family farms and our economy from this counterproductive tax.

By Mr. THURMOND:

S. 32. A bill to amend title 28 of the United States Code to clarify the remedial jurisdiction of inferior Federal courts; to the Committee on the Judiciary.

JUDICIAL TAXATION PROHIBITION ACT

Mr. THURMOND. Mr. President, I rise today to introduce legislation to prohibit Federal judges from ordering new taxes or ordering increases in existing tax rates as a judicial remedy.

In 1990, the Supreme Court decided in Missouri versus Jenkins to allow Federal judges to order new taxes or increases as a judicial remedy. It is my firm belief that this narrow 5 to 4 decision permits Federal judges to exceed their proper boundaries of jurisdiction and authority under the Constitution.

Mr. President, this ruling and congressional response raises two constitutional issues which warrant discussion. One is whether Federal courts

have authority under the Constitution to inject themselves into the legislative area of taxation. The second constitutional issue arises in light of the Judicial Taxation Prohibition Act which I am now introducing to restrict the remedial jurisdiction of the Federal courts. This narrowly drafted legislation would prohibit Federal judges from ordering new taxes or ordering increases in existing tax rates. I believe it is clear under article III that the Congress has the authority to restrict the remedial jurisdiction of the Federal courts in this fashion.

First, I want to speak on the issue of judicial taxation. Not since Great Britain's ministry of George Grenville in 1765 have the American people faced the assault of taxation without representation as now authorized in the Jenkins decision.

As part of his imperial reforms to tighten British control in the colonies, Grenville pushed the Stamp Act through the Parliament in 1765. This Act required excise duties to be paid by the colonists in the forms of revenue stamps affixed to a variety of legal documents. This action came at a time when the colonies were in an uproar over the Sugar Act of 1764 which levied duties on certain imports such as sugar, indigo, coffee, linens and other items.

The ensuing firestorm of debate in America centered on the power of Britain to tax the colonies. James Otis, a young Boston attorney, echoed the opinion of most colonists stating that the Parliament did not have power to tax the colonies because Americans had no representation in that body. Mr. Otis had been attributed in 1761 with the statement that ''taxation without representation is tyranny.''

In October, 1765, delegates from nine states were sent to New York as part of the Stamp Act Congress to protest the new law. It was during this time that John Adams wrote in opposition to the Stamp Act, ''We have always understood it to be a grand and fundamental principle . . . that no freeman shall be subject to any tax to which he has not given his own consent, in person or by proxy.'' A number of resolutions were adopted by the Stamp Act Congress protesting the acts of Parliament. One resolution stated, ''It is inseparably essential to the freedom of a people . . . that no taxes be imposed on them, but with their own consent, given personally or by their representatives.'' The resolutions concluded that the Stamp Act had a ''manifest tendency to subvert the rights and liberties of the colonists.''

Opposition to the Stamp Act was vehemently continued through the colonies in pamphlet form. These pamphlets asserted that the basic premise of a free government included taxation of the people by themselves or through their representatives.

Other Americans reacted to the Stamp Act by rioting, intimidating tax collectors, and boycotts directed against England. While Grenville's successor was determined to repeal the law, the social, economic and political climate in the colonies brought on the American Revolution. The principles expressed during the earlier crisis against taxation without representation became firmly embedded in our Federal Constitution of 1787.

Yet, the Supreme Court has overlooked this fundamental lesson in American history. The Jenkins decision extends the power of the judiciary into an area which has traditionally been reserved as a legislative function within the Federal, State, and local governments. In the Federalist No. 48, James Madison explained that in our democratic system, ''the legislative branch alone has access to the pockets of the people.''

This idea has remained steadfast in America for over 200 years. Elected officials with authority to tax are directly accountable to the people who give their consent to taxation through the ballot box. The shield of accountability against unwarranted taxes has been removed now that the Supreme Court has sanctioned judicially imposed taxes. The American citizenry lacks adequate protection when they are subject to taxation by unelected, life tenured Federal judges.

There are many programs and projects competing for a finite number of tax dollars. The public debate surrounding taxation is always intense. Sensitive discussions are held by elected officials and their constituents concerning increases and expenditures of scarce tax dollars. To allow Federal judges to impose taxes is to discount valuable public debate concerning priorities for expenditures of a limited public resource.

Mr. President, the dispositive issue presented by the Jenkins decision is whether the American people want, as a matter of national policy, to be exposed to taxation without their consent by an independent and insulated judiciary. I most assuredly believe they do not.

This brings us to the second Constitutional issue which we must address in light of this Jenkins decision. That issue is Congressional authority under the Constitution to limit the remedial jurisdiction of lower Federal courts established by the Congress. Article III, Section 1, of the Constitution provides jurisdiction to the lower Federal courts as the ''Congress may from time to time ordain and establish.'' There is no mandate in the Constitution to confer equity jurisdiction to the inferior Federal courts. Congress has the flexibility under Article III to ''ordain and establish'' the lower Federal courts as it deems appropriate. This basic premise has been upheld by the Supreme Court in a number of cases including Lockerty versus Phillips, Lauf versus E.G. Skinner and Co., Kline versus Burke Construction Co., and Sheldon versus Sill.

This legislation would preclude the lower Federal courts from issuing any order or decree requiring imposition of ''any new tax or to increase any existing tax or tax rate.'' I firmly believe that this language is wholly consistent with Congressional authority under Article III, Section 1 of the Constitution.

There is nothing in this legislation which would restrict the power of the Federal courts from hearing constitutional claims. It accords due respect to all provisions of the Constitution and merely limits the availability of a particular judicial remedy which has traditionally been a legislative function. The objective of this legislation is straightforward, to prohibit Federal courts from increasing taxes. The language in this bill applies to the lower Federal courts and does not deny claimants judicial access to seek redress of any Federal constitutional right.

Mr. President, how long will it be before a Federal judge orders tax increases to build new highways or prisons? I do not believe the Founding Fathers had this type of activism in mind when they established the judicial branch of government. The role of the judiciary is to interpret the law. The power to tax is an exclusive legislative right belonging to the Congress and governments at the state level. We are accountable to the citizens and must justify any new taxes. The American people deserve a timely response to the Jenkins decision and we must provide protection against the imposition of taxes by an independent judiciary.

By Mr. THURMOND:

S. 33. A bill to provide that a Federal justice or judge convicted of a felony shall be suspended from office without pay, to amend the retirement age and service requirements for Federal justices and judges convicted of a felony, and for other purposes; to the Committee on the Judiciary.

FEDERAL JUDGE LEGISLATION

Mr. THURMOND. Mr. President, today I am introducing legislation which provides that a justice or judge convicted of a felony shall be suspended from office without pay pending the disposition of impeachment proceedings.

I believe that the citizens of the United States will agree that those who have been convicted of felonies should not be allowed to continue to occupy positions of trust and responsibility in our Government. Nevertheless, under current constitutional law it is possible for judges to continue to receive a salary and to still sit on the bench and hear cases even after being convicted of a felony. If they are unwilling to resign, the only method which may be used to remove them from the Federal payroll is impeachment.

Currently, the Congress has the power to impeach officers of the Government who have committed treason,

bribery, or other high crimes and misdemeanors. Even when a court has already found an official guilty of a serious crime, Congress must then essentially retry the official before he or she can be removed from the Federal payroll. The impeachment process is typically very time consuming and can occupy a great deal of the resources of Congress.

Mr. President, one way to solve this problem would be to amend the Constitution. Today, I am also introducing a Senate resolution proposing a constitutional amendment providing for forfeiture of office by Government officials and judges convicted of felonies involving moral turpitude. While I believe that a constitutional amendment may be the best solution to the problem, I am also introducing this statutory remedy to address the current situation.

This legislation will provide that a judge convicted of a felony involving moral turpitude shall be suspended from office without pay. The legislation specifies that the suspension begins upon conviction and that no additional time accrues toward retirement from that date. However, the judge would be reinstated if the criminal conviction is reversed upon appeal or if articles of impeachment do not result in conviction by the Senate.

Mr. President, the framers of the Constitution could not have intended convicted felons to continue to serve on the bench and to receive compensation once they have seriously violated the law and the trust of the people. I urge my colleagues to carefully consider this legislation.

By Mr. FEINGOLD:

S. 34. A bill to phase out Federal funding of the Tennessee Valley Authority; to the Committee on Environment and Public Works.

TENNESSEE VALLEY AUTHORITY LEGISLATION

Mr. FEINGOLD. Mr. President, today I am introducing legislation, similar to that which I sponsored in the 104th Congress, to terminate funding for little known activities of the Tennessee Valley Authority [TVA], the TVA's nonpower programs, that are funded by appropriated funds. In fiscal year 1997, Congress appropriated a total of $106 million to support these programs.

The TVA was created in 1933 as a government-owned corporation for the unified development of a river basin comprised of parts of seven States. Those activities included the construction of an extensive power system, for which the region is now famous, and regional development or ''nonpower'' programs. TVA's responsibilities in the nonpower programs include maintaining its system of dams, reservoirs and navigation facilities, and managing TVA-held lands. In addition, TVA provides recreational programs, makes economic development grants to communities, promotes public use of its land and water resources, and operates an Environmental Research Center. Only the TVA power programs are intended to be self-supporting, by relying on TVA utility customers to foot the bill. The expense of these ''nonpower'' programs, on the other hand, are covered by appropriated taxpayer funds.

This legislation terminates funding for all appropriated programs of the TVA after fiscal year 2000. While I understand the role that TVA has played in our history, I also know that we face tremendous Federal budget pressure to reduce spending in many areas. I believe that TVA's discretionary funds should be on the table, and that Congress should act, in accordance with this legislation, to put the TVA appropriated programs on a glide path toward dependence on sources of funds other than appropriated funds. I think that this legislation is a reasonable phased-in approach to achieve this objective, and explicitly codifies both the fiscal year 1996 President's Budget and TVA's own recommendations regarding activities at the TVA's Environmental Research Center in Alabama.

I am introducing this legislation to terminate TVA'S appropriated programs because there are lingering concerns, brought to light in a 1993 Congressional Budget Office [CBO] report, that nonpower program funds subsidize activities that should be paid for by non-Federal interests. When I ran for the Senate in 1992, I developed an 82+ point plan to eliminate the Federal deficit and have continued to work on the implementation of that plan since that time. That plan includes a number of elements in the natural resource area, including the termination of TVA's appropriations-funded programs.

In its 1993 report, CBO focused on two programs: The TVA Stewardship Program and the Environmental Research Center. Stewardship activities receive the largest share of TVA's appropriated funds. The funds are used for dam repair and maintenance activities. According to 1995 testimony provided by TVA before the House Subcommittee on Energy and Water Appropriations, when TVA repairs a dam it pays 70 percent, on average, of repair costs with appropriated dollars and covers the remaining 30 percent with funds collected from electricity ratepayers.

This practice of charging a portion of dam repair costs to the taxpayer, CBO highlighted, amounts to a significant subsidy. If TVA were a private utility, and it made modifications to a dam or performed routine dredging, the ratepayers would pay for all of the costs associated with that activity.

TVA also runs an Environmental Research Center, formerly a Fertilizer Research Center, that received $15 million in funding in fiscal year 1997. The Center formerly developed and tested about 80 percent of commercial fertilizers developed in the United States, which CBO identified as a direct research cost subsidy to fertilizer companies. The measure I am introducing today phases out Federal funding for the Center by the year 2000.

In fiscal year 1996, I successfully sponsored an amendment to cap funding for the TVA Environmental Research Center. The amendment also required the Center to examine its research program, and evaluate how it could reduce its dependence on appropriated funds. Though the funding cap was eliminated in conference on the fiscal year 1996 Energy and Water Appropriations, TVA did complete an assessment of its research program. The Center proposes to make a complete transition to competing for Federal grants by fiscal year 2000. My measure would codify such a transition.

I have included specific language on the Environmental Research Center in this legislation because I believe that it is important certain regions do not receive earmarked preference over others in receiving scarce environmental research, natural resource management and economic development dollars from the Federal Government. In this time of tight budgets, I believe that all opportunities to decrease and supplement Federal support for projects and leverage additional private, local and State government funds should be examined and implemented when feasible.

Again, while I understand the important role that TVA played in the development of the Tennessee Valley, many other areas of the country have become more creative in Federal and State financing arrangements to address regional concerns. Specifically, in those areas where there may be excesses within TVA, I believe we can do better to curb subsidies and eliminate the burden on taxpayers without completely eliminating the TVA, as some in the other body have suggested.

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

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

S. 34

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

SECTION 1. TENNESSEE VALLEY AUTHORITY.

(a) DISCONTINUANCE OF APPROPRIATIONS.—Section 27 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831z) is amended—

(1) by inserting ''for fiscal years through fiscal year 2000'' before the period; and

(2) by adding at the end the following: ''No appropriations may be made available for the Tennessee Vally Authority Environmental Research Center for fiscal year 2000.''.

(b) PLAN.—No later than January 1, 1998, the Director of the Office of Management and Budget shall develop and submit a plan to Congress that—

(1) provides for the Tennessee Valley Authority Environmental Research Center to make a transition to sources of funds other than appropriated funds by fiscal year 2000; and

(2) recommends any legislation that may be appropriate to carry out the objectives of this Act.

By Mr. FEINGOLD:

S. 35. A bill to amend the Reclamation Reform Act of 1982 to clarify the

acreage limitations and incorporate a means test for certain farm operations, and for other purposes; to the Committee on Energy and Natural Resources.

IRRIGATION SUBSIDY REDUCTION ACT OF 1997

Mr. FEINGOLD. Mr. President, I am introducing a measure that I sponsored in the 104th Congress to reduce the amount of Federal irrigation subsidies received by large agribusiness interests. I believe that reforming Federal water pricing policy by reducing subsidies is an important area to examine as a means to achieve our deficit reduction objectives. This legislation is also needed to curb fundamental abuses of reclamation law that cost the taxpayer millions of dollars every year.

In 1901, President Theodore Roosevelt proposed legislation, which came to be known as the Reclamation Act of 1902, to encourage development of family farms throughout the western United States. The idea was to provide needed water for areas that were otherwise dry and give small farms—those no larger than 160 acres—a chance, with a helping hand from the Federal Government, to establish themselves. According to a 1996 General Accounting Office report, since the passage of the Reclamation Act, the Federal Government has spent $21.8 billion to construct 133 water projects in the west which provide water for irrigation. Irrigators, and other project beneficiaries, are required under the law to repay to the Federal Government their allocated share of the costs of constructing these projects.

However, as a result of the subsidized financing provided by the Federal Government, some of the beneficiaries of Federal water projects repay considerably less than their full share of these costs. According to the 1996 GAO report, irrigators generally receive the largest amount of Federal financial assistance. Since the initiation of the irrigation program in 1902, construction costs associated with irrigation have been repaid without interest. The GAO further found, in reviewing the Bureau of Reclamation's financial reports, that $16.9 billion, or 78 percent, of the $21.8 billion of Federal investment in water projects is considered to be reimbursable. Of the reimbursable costs, the largest share—$7.1 billion—is allocated to irrigators. As of September 30, 1994 irrigators have repaid only $941 million of the $7.1 billion they owe. GAO also found that the Bureau of Reclamation will likely shift $3.4 billion of the debt owed by irrigators to other users of the water projects for repayment.

There are several reasons why irrigators continue to receive such significant subsidies. Under the Reclamation Reform Act of 1982, Congress acted to expand the size of the farms that could receive subsidized water from 160 acres to 960 acres. The RRA of 1982 expressly prohibits farms that exceed 960 acres in size from receiving federally-subsidized water. These restrictions were added to the reclamation law to close loopholes through which Federal subsidies were flowing to large agribusinesses rather than the small family farmers that reclamation projects were designed to serve. Agribusinesses were expected to pay full cost for all water received on land in excess of their 960 acre entitlement. Despite the express mandate of Congress, regulations promulgated under the Reclamation Reform Act of 1982 have failed to keep big agricultural water users from receiving federal subsidies. The General Accounting Office and the Inspector General of the Department of the Interior continue to find that the acreage limits established in law are circumvented through the creation of arrangements such as farming trusts. These trusts, which in total acreage will exceed the 960 acre limit, are comprised of smaller units that are not subject to the reclamation acreage cap. These smaller units are farmed under a single management agreement often through a combination of leasing and ownership.

In a 1989 GAO report, the activities of six agribusiness trusts were fully explored. According to GAO, one 12,345 acre cotton farm (roughly 20 square miles), operating under a single partnership, was reorganized to avoid the 960 acre limitation into 15 separate land holdings through 18 partnerships, 24 corporations, and 11 trusts which were all operated as one large unit. A seventh very large trust was the sole topic of a 1990 GAO report. The Westhaven Trust is a 23,238 acre farming operation in California's Central Valley. It was formed for the benefit of 326 salaried employees of the J.G. Boswell Company. Boswell, GAO found, had taken advantage of section 214 of the RRA, which exempts from its 960 acre limit land held for beneficiaries by a trustee in a fiduciary capacity, as long as no single beneficiary's interest exceeds the law's ownership limits. The RRA, as I have mentioned, does not preclude multiple land holdings from being operated collectively under a trust as one farm while qualifying individually for federally subsidized water. Accordingly, the J.G. Boswell Company reorganized 23,238 acres it held as the Boston Ranch by selling them to the Westhaven Trust, with the land holdings attributed to each beneficiary being eligible to receive federally subsidized water.

Before the land was sold to Westhaven Trust, the J.G. Boswell Company operated the acreage as one large farm and paid full cost for the Federal irrigation water delivered for the 18-month period ending in May 1989. When the trust bought the land, due to the loopholes in the law, the entire acreage became eligible to receive federally subsidized water because the land holdings attributed to the 326 trust beneficiaries range from 21 acres to 547 acres—all well under the 960 acre limit.

In the six cases the GAO reviewed in 1989, owners or lessees paid a total of about $1.3 million less in 1987 for Federal water than they would have paid if their collective land holdings were considered as large farms subject to the Reclamation Act acreage limits. Had Westhaven Trust been required to pay full cost, GAO estimated in 1990, it would have paid $2 million more for its water. The GAO also found, in all seven of these cases, that reduced revenues are likely to continue unless Congress amends the Reclamation Act to close the loopholes allowing benefits for trusts.

The legislation that I am introducing today combines various elements of proposals introduced during previous attempts by other Members of Congress to close loopholes in the 1982 legislation and to impose a $500,000 means test. This new approach limits the amount of subsidized irrigation water delivered to any operation in excess of the 960 acre limit which claimed $500,000 or more in gross income, as reported on their most recent IRS tax form. If the $500,000 threshold were exceeded, an income ratio would be used to determine how much of the water should be delivered to the user at the full-cost rate, and how much at the below-cost rate. For example, if a 961 acre operation earned $1 million dollars, a ratio of $500,000 (the means test value) divided by their gross income would determine the full cost rate, thus the water user would pay the full cost rate on half of their acreage and the below cost rate on the remaining half.

This means testing proposal will be featured, for the second year in a row, in this year's 1997 Green Scissors report which is scheduled for release next month. This report is compiled by Friends of the Earth and Taxpayers for Common Sense and supported by a number of environmental and consumer groups, including the Concord Coalition, and the Progressive Policy Institute. The premise of the report is that there are a number of subsidies and projects that could be cut to both reduce the deficit and benefit the environment. This report underscores what I and many others in the Senate have long known: we must eliminate practices that can no longer be justified in light of our enormous annual deficit and national debt. The Green Scissors recommendation on means testing water subsidies indicates that if a test is successful in reducing subsidy payments to the highest grossing 10% of farms, then the Federal Government would recover between $440 million and $1.1 billion per year, or at least $2.2 billion over 5 years.

When countless Federal programs are subjected to various types of means tests to limit benefits to those who truly need assistance, it makes little sense to continue to allow large business interests to dip into a program intended to help small entities struggling to survive. Taxpayers have legitimate concerns when they learn that their

hard earned tax dollars are being expended to assist large corporate interests in select regions of the country who benefit from these loopholes, particularly in tight budgetary times. Other users of Federal water projects, such as the power recipients, should also be concerned when they learn that they will be expected to pick up the tab for a portion of the funds that irrigators were supposed to pay back. The Federal water program was simply never intended to benefit these large interests, and I am hopeful that legislative efforts, such as the measure I am introducing today, will prompt Congress to fully reevaluate our Federal water pricing policy.

In conclusion, Mr. President, it is clear that the conflicting policies of the Federal Government in this area are in need of reform, and that Congress should act. Large agribusinesses should not be able to continue to soak the taxpayers, and should make their fair share of payments to the Federal Government. We should act to close these loopholes and increase the return to the Treasury from irrigators as soon as possible.

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. 35

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 ''Irrigation Subsidy Reduction Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Federal reclamation program has been in existence for over 90 years, with an estimated taxpayer investment of over $70,000,000,000;

(2) the program has had and continues to have an enormous effect on the water resources and aquatic environments of the western States;

(3) irrigation water made available from Federal water projects in the West is a very valuable resource for which there are increasing and competing demands;

(4) the justification for providing water at less than full cost was to benefit and promote the development of small family farms and exclude large corporate farms, but this purpose has been frustrated over the years by inadequate implementation of subsidy and acreage limits;

(5) below-cost water prices tend to encourage excessive use of scarce water supplies in the arid regions of the West, and reasonable price increases to the wealthiest western farmers would provide an economic incentive for greater water conservation;

(6) the Federal Government has increasingly applied eligibility tests based on income for Federal entitlement and subsidy programs, measures that are consistent with the historic approach of the reclamation program's acreage limitations that seek to limit water subsidies to smaller farms; and

(7) including a means test based on gross income in the reclamation program will increase the effectiveness of carrying out the family farm goals of the Federal reclamation laws.

SEC. 3. AMENDMENTS.

(a) DEFINITIONS.—Section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb) is amended—

(1) in paragraph (6), by striking ''owned or operated under a lease which'' and inserting ''that is owned, leased, or operated by an individual or legal entity and that'';

(2) by redesignating paragraphs (7), (8), (9), (10), and (11) as paragraphs (8), (10), (11), (12), and (13), respectively;

(3) by inserting after paragraph (6) the following:

''(7) LEGAL ENTITY.—The term 'legal entity' includes a corporation, association, partnership, trust, joint tenancy, or tenancy in common, or any other entity that owns, leases, or operates a farm operation for the benefit of more than 1 individual under any form of agreement or arrangement.'';

(4) by inserting after paragraph (8) (as redesignated by paragraph (2)) the following:

''(9) OPERATOR.—

''(A) IN GENERAL.—The term 'operator'—

''(i) means an individual or legal entity that operates a single farm operation on a parcel (or parcels) of land that is owned or leased by another person (or persons) under any form of agreement or arrangement (or agreements or arrangements); and

''(ii) if the individual or legal entity—

''(I) is an employee of another individual or legal entity, includes each such other individual or legal entity; or

''(II) is a legal entity that controls, is controlled by, or is under common control with another legal entity, includes each such other legal entity.

''(B) OPERATION OF A FARM OPERATION.—For the purposes of subparagraph (A), an individual or legal entity shall be considered to operate a farm operation if the individual or legal entity is the person that performs the greatest proportion of the decisionmaking for, and supervision of, the farm operation on land served with irrigation water.''; and

(5) by adding at the end the following:

''(14) SINGLE FARM OPERATION.—

''(A) IN GENERAL.—The term 'single farm operation' means the total acreage of land served with irrigation water for which an individual or legal entity is the operator.

''(B) RULES FOR DETERMINING WHETHER SEPARATE PARCELS ARE OPERATED AS A SINGLE FARM OPERATION.—

''(i) EQUIPMENT- AND LABOR-SHARING ACTIVITIES.—The conduct of equipment- and labor-sharing activities on separate parcels of land by separate individuals or legal entities shall not by itself serve as a basis for concluding that the farm operations of the individuals or legal entities constitute a single farm operation.

''(ii) PERFORMANCE OF CERTAIN SERVICES.—The performance by an individual or legal entity of an agricultural chemical application, pruning, or harvesting for a farm operation on a parcel of land shall not by itself serve as a basis for concluding that the farm operation on that parcel of land is part of a single farm operation operated by the individual or entity on other parcels of land.''.

(b) IDENTIFICATION OF OWNERS, LESSEES, AND OPERATORS OF SINGLE FARM OPERATIONS.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) is amended by inserting after section 202 the following:

''SEC. 202A. IDENTIFICATION OF OWNERS, LESSEES, AND OPERATORS OF SINGLE FARM OPERATIONS.

''(a) IN GENERAL.—Subject to subsection (b), for each parcel of land to which irrigation water is delivered or proposed to be delivered, the Secretary shall identify a single individual or legal entity as the owner, lessee, or operator.

''(b) SHARED DECISIONMAKING AND SUPERVISION.—If the Secretary determines that no single individual or legal entity is the owner, lessee, or other individual that performs the greatest proportion of decisionmaking for, and supervision of, the farm operation on a parcel of land—

''(1) all individuals and legal entities that own, lease, or perform a proportion of decisionmaking and supervision that is equal as among themselves but greater than the proportion performed by any other individual or legal entity shall be considered jointly to be the owner, lessee, or operator; and

''(2) all parcels of land of which any such individual or legal entity is the owner, lessee, or operator shall be considered to be part of the single farm operation of the owner, lessee, or operator identified under paragraph (1).''.

(c) PRICING.—Section 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390ee) is amended by adding at the end the following:

''(d) SINGLE FARM OPERATIONS GENERATING MORE THAN $500,000 IN GROSS FARM INCOME.—

''(1) IN GENERAL.—Notwithstanding subsections (a), (b), and (c), in the case of—

''(A) a qualified recipient that reports gross farm income from a single farm operation in excess of $500,000 for a taxable year; or

''(B) a limited recipient that received irrigation water on or before October 1, 1981, and that reports gross farm income from a single farm operation in excess of $500,000 for a taxable year;

irrigation water may be delivered to the single farm operation of the qualified recipient or limited recipient at less than full cost to a number of acres that does not exceed the number of acres determined under paragraph (2).

''(2) MAXIMUM NUMBER OF ACRES TO WHICH IRRIGATION WATER MAY BE DELIVERED AT LESS THAN FULL COST.—The number of acres determined under this paragraph is the number equal to the number of acres of the single farm operation multiplied by a fraction, the numerator of which is $500,000 and the denominator of which is the amount of gross farm income reported by the qualified recipient or limited recipient in the most recent taxable year.

''(3) INFLATION ADJUSTMENT.—

''(A) IN GENERAL.—For any taxable year beginning in a calendar year after 1997, the $500,000 amount under paragraphs (1) and (2) shall be equal to the product of—

''(i) $500,000; and

''(ii) the inflation adjustment factor for the taxable year.

''(B) INFLATION ADJUSTMENT FACTOR.—The term 'inflation adjustment factor' means, with respect to any calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for 1996. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

''(C) GDP IMPLICIT PRICE DEFLATOR.—In subparagraph (B), the term 'GDP implicit price deflator' means the first revision of the implicit price deflator for the gross domestic product as computed and published by the Secretary of Commerce.

''(D) ROUNDING.—If any adjustment of the $500,000 amount determined under subparagraph (A) is not a multiple of $100, the adjustment shall be rounded to the next lowest multiple of $100.''.

(d) CERTIFICATION OF COMPLIANCE.—Section 206 of the Reclamation Reform Act of 1982 (43 U.S.C. 390ff) is amended to read as follows:

''SEC. 206. CERTIFICATION OF COMPLIANCE.

''(a) IN GENERAL.—As a condition to the receipt of irrigation water for land in a district that has a contract described in section 203,

each owner, lessee, or operator in the district shall furnish the district, in a form prescribed by the Secretary, a certificate that the owner, lessee, or operator is in compliance with this title, including a statement of the number of acres owned, leased, or operated, the terms of any lease or agreement pertaining to the operation of a farm operation, and, in the case of a lessee or operator, a certification that the rent or other fees paid reflect the reasonable value of the irrigation water to the productivity of the land.

''(b) DOCUMENTATION.—The Secretary may require a lessee or operator to submit for the Secretary's examination—

''(1) a complete copy of any lease or other agreement executed by each of the parties to the lease or other agreement; and

''(2) a copy of the return of income tax imposed by chapter 1 of the Internal Revenue Code of 1986 for any taxable year in which the single farm operation of the lessee or operator received irrigation water at less than full cost.''.

(e) TRUSTS.—Section 214 of the Reclamation Reform Act of 1982 (43 U.S.C. 390nn) is repealed.

(f) ADMINISTRATIVE PROVISIONS.—

(1) PENALTIES.—Section 224(c) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww(c)) is amended—

(A) by striking ''(c) The Secretary'' and inserting the following:

''(c) REGULATIONS; DATA COLLECTION; PENALTIES.—

''(1) REGULATIONS; DATA COLLECTION.—The Secretary''; and

(B) by adding at the end the following:

''(2) PENALTIES.—Notwithstanding any other provision of law, the Secretary shall establish appropriate and effective penalties for failure to comply with any provision of this Act or any regulation issued under this Act.''.

(2) INTEREST.—Section 224(i) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww(i)) is amended by striking the last sentence and inserting the following: ''The interest rate applicable to underpayments shall be equal to the rate applicable to expenditures under section 202(3)(C).''.

(g) REPORTING.—Section 228 of the Reclamation Reform Act of 1982 (43 U.S.C. 390zz) is amended by inserting ''operator or'' before ''contracting entity'' each place it appears.

(h) MEMORANDUM OF UNDERSTANDING.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) is amended—

(1) by redesignating sections 229 and 230 as sections 230 and 231, respectively; and

(2) by inserting after section 228 the following:

''SEC. 229. MEMORANDUM OF UNDERSTANDING.

''The Secretary, the Secretary of the Treasury, and the Secretary of Agriculture shall enter into a memorandum of understanding or other appropriate instrument to permit the Secretary, notwithstanding section 6103 of the Internal Revenue Code of 1986, to have access to and use of available information collected or maintained by the Department of the Treasury and the Department of Agriculture that would aid enforcement of the ownership and pricing limitations of Federal reclamation law.''.

By Mr. FEINGOLD:

S. 37. A bill to terminate the Uniformed Services University of the Health Sciences; to the Committee on Armed Services.

THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES TERMINATION AND DEFICIT REDUCTION ACT OF 1997

Mr. FEINGOLD. Mr. President, I am today introducing legislation terminating the Uniformed Services University of the Health Sciences [USUHS], a medical school run by the Department of Defense. The measure is one I proposed when I ran for the U.S. Senate, and was part of a larger, 82 point plan to reduce the Federal budget deficit. The Congressional Budget Office [CBO] estimates that terminating the school would save $369 million over the next six years.

USUHS was created in 1972 to meet an expected shortage of military medical personnel. Today, however, USUHS accounts for only a small fraction of the military's new physicians, less than 12 percent in 1994 according to CBO. This contrasts dramatically with the military's scholarship program which provided over 80 percent of the military's new physicians in that year.

Mr. President, what is even more troubling is that USUHS is also the single most costly source of new physicians for the military. CBO reports that based on figures from 1995, USUHS trained physicians cost the military $615,000 per person. By comparison, the scholarship program cost about $125,000 per person, with other sources providing new physicians at a cost of $60,000. As CBO noted in their Spending and Revenue Options publication, even adjusting for the lengthier service commitment required of USUHS trained physicians, the cost of training them is still higher than that of training physicians from other sources, an assessment shared by the Pentagon itself. Indeed, CBO's estimate of the savings generated by this measure also includes the cost of obtaining physicians from other sources.

The other body has voted to terminate this program on several occasions, and the Vice President's National Performance Review joined others, ranging from the Grace Commission to the CBO, in raising the question of whether this medical school, which graduated its first class in 1980, should be closed because it is so much more costly than alternative sources of physicians for the military.

Mr. President, the real issue we must address is whether USUHS is essential to the needs of today's military structure, or if we can do without this costly program. The proponents of USUHS frequently cite the higher retention rates of USUHS graduates over physicians obtained from other sources as a justification for continuation of this program, but while a greater percentage of USUHS trained physicians may remain in the military longer than those from other sources, the Pentagon indicates that the alternative sources already provide an appropriate mix of retention rates. Testimony by the Department of Defense before the Subcommittee on Force Requirements and Personnel noted that the military's scholarship program meets the retention needs of the services.

And while USUHS only provides a small fraction of the military's new physicians, it is important to note that relying primarily on these other sources has not compromised the ability of military physicians to meet the needs of the Pentagon. According to the Office of Management and Budget, of the approximately 2,000 physicians serving in Desert Storm, only 103, about 5 percent, were USUHS trained.

Mr. President, let me conclude by recognizing that USUHS has some dedicated supporters in the U.S. Senate, and I realize that there are legitimate arguments that those supporters have made in defense of this institution. The problem, however, is that the federal government can no longer afford to continue every program that provides some useful function.

In the face of our staggering national debt and annual deficits, we must prioritize and eliminate programs that can no longer be sustained with limited Federal dollars, or where a more cost-effective means of fulfilling those functions can be substituted. The future of USUHS continues to be debated precisely because in these times of budget restraint it does not appear to pass the higher threshold tests which must be applied to all Federal spending programs.

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

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

S. 37

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 ''Uniformed Services University of the Health Sciences Termination and Deficit Reduction Act of 1997''.

SEC. 2. TERMINATION OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.

(a) TERMINATION.—

(1) IN GENERAL.—The Uniformed Services University of the Health Sciences is terminated.

(2) CONFORMING AMENDMENTS.—

(A) Chapter 104 of title 10, United States Code, is repealed.

(B) The table of chapters at the beginning of subtitle A of such title, and at the beginning of part III of such subtitle, are each amended by striking out the item relating to chapter 104.

(b) EFFECTIVE DATE.—The termination referred to in subsection (a), and the amendments made by such subsection, shall take effect on the date of the graduation from the Uniformed Services University of the Health Sciences of the last class of students that enrolled in such university on or before the date of the enactment of this Act.

By Mr. FEINGOLD (for himself and Mr. MCCAIN):

S. 38. A bill to reduce the number of executive branch political appointees; to the Committee on Governmental Affairs.

PRESIDENTIAL APPOINTEES LEGISLATION

Mr. FEINGOLD. Mr. President, I am pleased to be joined by my good friend the senior Senator from Arizona [Mr. MCCAIN] in introducing legislation to reduce the number of presidential political appointees. Specifically, the bill caps the number of political appointees at 2,000. The Congressional Budget Office [CBO] estimates this measure would save $392 million over the next 6 years.

The bill is based on the recommendations of a number of distinguished panels, including most recently, the Twentieth Century Fund Task Force on the Presidential Appointment Process. The task force findings, released last fall, are only the latest in a long line of recommendations that we reduce the number of political appointees in the executive branch. For many years, the proposal has been included in CBO's annual publication Reducing the Deficit: Spending and Revenue Options, and it was one of the central recommendations of the National Commission on the Public Service, chaired by former Federal Reserve Board Chairman Paul Volcker.

Mr. President, this proposal is also consistent with the recommendations of the Vice President's National Performance Review, which called for reductions in the number of federal managers and supervisors, arguing that ''over-control and micro management'' not only ''stifle the creativity of line managers and workers, they consume billions per year in salary, benefits, and administrative costs.''

Those sentiments were also expressed in the 1989 report of the Volcker Commission, when it argued the growing number of presidential appointees may ''actually undermine effective presidential control of the executive branch.'' The Volcker Commission recommended limiting the number of political appointees to 2,000, as this legislation does.

Mr. President, it is essential that any administration be able to implement the policies that brought it into office in the first place. Government must be responsive to the priorities of the electorate. But as the Volcker Commission noted, the great increase in the number of political appointees in recent years has not made government more effective or more responsive to political leadership.

Between 1980 and 1992, the ranks of political appointees grew 17 percent, over three times as fast as the total number of executive branch employees and looking back to 1960 their growth is even more dramatic. In his recently published book Thickening Government: Federal Government and the Diffusion of Accountability, author Paul Light reports a startling 430 percent increase in the number of political appointees and senior executives in Federal Government between 1960 and 1992.

In recommending a cap on political appointees, the Volcker Commission report noted that the large number of Presidential appointees simply cannot be managed effectively by any President or White House. This lack of control is aggravated by the often competing political agendas and constituencies that some appointees might bring with them to their new positions. Altogether, the commission argued that this lack of control and political focus ''may actually dilute the President's ability to develop and enforce a coherent, coordinated program and to hold cabinet secretaries accountable.''

The Volcker Commission also reported that the excessive number of appointees are a barrier to critical expertise, distancing the President and his principal assistants from the most experienced career officials. Though bureaucracies can certainly impede needed reforms, they can also be a source of unbiased analysis. Adding organizational layers of political appointees can restrict access to important resources, while doing nothing to reduce bureaucratic impediments.

Author Paul Light says, ''As this sediment has thickened over the decades, presidents have grown increasingly distant from the lines of government, and the front lines from them.'' Light adds that ''Presidential leadership, therefore, may reside in stripping government of the barriers to doing its job effectively* * *''

Finally, the Volcker Commission also asserted that this thickening barrier of temporary appointees between the President and career officials can undermine development of a proficient civil service by discouraging talented individuals from remaining in Government service or even pursuing a career in Government in the first place.

Mr. President, former Attorney General Elliot Richardson put it well when he noted:

> But a White House personnel assistant sees the position of deputy assistant secretary as a fourth-echelon slot. In his eyes that makes it an ideal reward for a fourth-echelon political type—a campaign advance man, or a regional political organizer. For a senior civil servant, it's irksome to see a position one has spent 20 or 30 years preparing for preempted by an outsider who doesn't know the difference between an audit exception and an authorizing bill.

Mr. President, the report of the Twentieth Century Fund Task Force on the Presidential Appointment Process identified another problem aggravated by the mushrooming number of political appointees, namely the increasingly lengthy process of filling these thousands of positions. As the task force reported, both President Bush and President Clinton were into their presidencies for many months before their leadership teams were fully in place. The task force noted that ''on average, appointees in both administrations were confirmed more than eight months after the inauguration—one-sixth of an entire presidential term.'' By contrast, the report noted that in the presidential transition of 1960, ''Kennedy appointees were confirmed, on average, two and a half months after the inauguration.''

In addition to leaving vacancies among key leadership positions in Government, the appointment process delays can have a detrimental effect on potential appointees. The Twentieth Century Fund Task Force reported that appointees can ''wait for months on end in a limbo of uncertainty and awkward transition from the private to the public sector.''

Mr. President, a story in the National Journal in November of 1993, focusing upon the delays in the Clinton administration in filling political positions, noted that in Great Britain, the transition to a new government is finished a week after it begins, once 40 or so political appointments are made. That certainly is not the case in the United States, recognizing, of course, that we have a quite different system of government from the British parliament form of government.

Nevertheless, there is little doubt that the vast number of political appointments that are currently made creates a somewhat cumbersome process, even in the best of circumstances. The long delays and logjams created in filling these positions under the Bush and Clinton administrations simply illustrates another reason why the number of positions should be cut back.

Mr. President, let me also stress that the problem is not simply the initial filling of a political appointment, but keeping someone in that position over time. In a recent report, the General Accounting Office reviewed a portion of these positions for the period of 1981 to 1991, and found high levels of turnover—7 appointees in 10 years for one position—as well as delays, usually of months but sometimes years, in filling vacancies.

Mr. President, while I recognize that this legislative proposal is not likely to be popular with some in both parties, I want to stress that this effort to reduce the number of political appointees is bipartisan. The sponsorship of this bill reflects this, and the bill itself applies not only to the current Democratic administration, but to all future administrations as well, whatever their party affiliation.

The sacrifices that deficit reduction efforts require must be spread among all of us. This measure requires us to bite the bullet and impose limitations upon political appointments that both parties may well wish to retain. The test of commitment to deficit reduction, however, is not simply to propose measures that impact someone else.

As we move forward to implement the NPR recommendations to reduce the number of government employees, streamline agencies, and make government more responsive, we should also right size the number of political appointees, ensuring a sufficient number to implement the policies of any administration without burdening the Federal budget with unnecessary, possibly counterproductive political jobs.

Mr. President, when I ran for the U.S. Senate in 1992, I developed an 82 point

plan to reduce the Federal deficit and achieve a balanced budget. Since that time, I have continued to work toward enactment of many of the provisions of that plan and have added new provisions on a regular basis.

The legislation I am introducing today reflects one of the points included on the original 82 point plan calling for streamlining various Federal agencies and reducing agency overhead costs. I am pleased to have this opportunity to continue to work toward implementation of the elements of the deficit reduction plan.

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

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

S. 38

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

SECTION 1. REDUCTION IN NUMBER OF POLITICAL APPOINTEES.

(a) DEFINITION.—In this section, the term ''political appointee'' means any individual who—

(1) is employed in a position on the executive schedule under sections 5312 through 5316 of title 5, United States Code;

(2) is a limited term appointee, limited emergency appointee, or noncareer appointee in the senior executive service as defined under section 3132(a) (5), (6), and (7) of title 5, United States Code, respectively; or

(3) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under Schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(b) LIMITATION.—The President, acting through the Office of Management and Budget and the Office of Personnel Management, shall take such actions as necessary (including reduction in force actions under procedures established under section 3595 of title 5, United States Code) to ensure that the total number of political appointees shall not exceed 2,000.

(c) EFFECTIVE DATE.—This section shall take effect on October 1, 1997.

Mr. McCAIN. Mr. President, I am pleased to join with my good friend, the junior Senator from Wisconsin [Mr. FEINGOLD] to introduce legislation that will limit the number of political appointees in the executive branch a total of 2000. This legislation could save an estimated $400 million over the next five years.

There is no doubt that our Government is bloated. In recent years, the number of political appointees has grown exponentially. Author Paul Light, in his book Thickening Government: Federal Government and the Diffusion of Accountability, reports a 430 percent increase in the number of political appointees and senior executives in the Federal Government between 1960 and 1992. The Congressional Research Service also found that from 1980 to 1992, the number of political appointees in the executive branch grew 3 times faster than the total number of executive branch employees 17 percent compared to 5.6 percent.

The Government must continue to tighten its belt, and the executive branch must not protect itself from needed cuts. Our current $5 trillion debt and our efforts to reach a balance budget by the year 2002 call for immediate action. No area of Government spending should be overlooked, not the least of which is funding for Government employees. I am hopeful that this administration will live up to their rhetoric about reducing the deficit and balancing the budget by supporting this and other measures that get us closer to a balanced budget.

Since this measure is consistent with the recommendations of the Vice President's National Performance Review [NPR], the administration should not have a problem endorsing this legislation. NPR called for reducing Federal managers and supervisors, arguing that ''over-control and micromanagement'' not only ''stifle the creativity of line managers and workers, they consume billions per year in salary, benefits, and administrative costs.''

Limiting the number of political appointees to 2000 was recommended by former Federal Reserve Board Chairman Paul Volcker who chaired The National Commission on Public Service. His report supported reducing the number of Presidential appointees, stating that the number of political appointees may ''actually undermine effective presidential control of the executive branch.''

Despite all this compelling evidence, Senator FEINGOLD and I have yet to be successful in actually getting this legislation enacted. Last year, we passed an amendment to the Treasury-Postal appropriations bill that would have placed a 2300 cap on political appointees. Unfortunately, however, the cap was dropped in conference. Given the new era of bipartisanship and the President's repeated statements that he wants to balance the budget, I am hopeful that we will be successful in this Congress.

I look forward to working with my friend from Wisconsin to enact this important legislation that will streamline Government operations and save the taxpayers money.

By Mr. STEVENS (for himself, Mr. BREAUX, Mr. THURMOND, and Mr. MURKOWSKI):

S. 39. A bill to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

Mr. STEVENS. Mr. President, during the 104th Congress, Senators BREAUX, CHAFEE, MOSELEY-BRAUN, MURKOWSKI, THURMOND, SIMPSON and I introduced legislation (S. 1420) to implement the ''Panama Declaration,'' an agreement under which twelve nations would comply with a new regime to reduce dolphin mortality and conserve marine resources in the Eastern Tropical Pacific Ocean (ETP). Our bill was approved by voice vote in the Senate Commerce Committee, and its companion (H.R. 2823) was passed overwhelmingly in the House of Representatives.

Because of our focus in the second session of the 104th Congress on reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act, we were not able to turn to the International Dolphin Conservation Program Act until the closing weeks, and opponents of the measure were able to prevent its passage simply by objecting on the Senate floor. We believe the bill would have passed in the Senate by a large majority if they had not objected.

I am pleased today to be joined by Senators BREAUX, THURMOND, and MURKOWSKI in reintroducing the bill. On September 30, 1996, Majority Leader LOTT committed to us that he will do everything he can to provide time on the Senate floor if it is necessary to pass this important measure.

The Panama Declaration would cap dolphin mortality in the ETP at 5,000 dolphin per year and set a goal of eventually eliminating dolphin mortality altogether in that area. Only twenty years ago, hundreds of thousands of dolphin were being killed each year in the ETP. The Declaration presents the opportunity to lock in a maximum of 5,000 dolphin mortalities per year and strengthen other conservation measures, including measures relating to fishery observers, bycatch reduction, and the protection of specific stocks of dolphins in the ETP.

The dolphin mortality cap and new conservation measures under the Panama Declaration will only take effect if specific changes are made to U.S. law. The two key changes are: (1) a change to allow tuna caught in compliance with the Panama Declaration (including through the encirclement of dolphins) to be imported into the United States; and (2) a change so that ''dolphin Safe'' in the U.S. will mean tuna caught in a set in which no dolphin mortality occurred (rather than through non-encirclement). Our bill would make these changes and allow the new regime under the Panama Declaration to go forward. If the U.S. does not make the changes, other nations will move forward without adequate conservation measures and significant increases in dolphin mortality may occur.

Our legislation would guarantee U.S. consumers that no dolphin were killed during the harvest of tuna that is labeled as ''dolphin safe.'' Under existing law, dolphins may have been killed, but as long as the tuna was not harvested by intentionally encircling dolphins, it can be labeled as ''dolphin safe.'' To avoid consumer confusion and increase confidence in the ''dolphin safe'' label, other labels with respect to marine mammals will not be allowed. Only ETP tuna caught without killing any dolphins would be labeled as ''dolphin safe.''

The Administration helped negotiate the Panama Declaration, and the

President and Vice President strongly support our legislation to implement it. The bill is also supported by the U.S. tuna boat owners, mainstream environmental groups such as Greenpeace, the Center for Marine Conservation, the Environmental Defense Fund, the National Wildlife Federation, and the World Wildlife Fund, the American Sportfishing Association, the National Fisherman's Union, Seafarers International, and United Industrial Workers, the 12 nations who signed the Panama Declaration (Belize, Columbia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela), and the editorial boards of a number of the major U.S. newspapers.

I ask for unanimous consent that the following material related to the bill be printed in the RECORD immediately following my statement: First, the Panama Declaration; second, letter from President Clinton to the President to the Mexico supporting the legislation; third, letter from Vice President GORE supporting the legislation; fourth, article by State Department Under Secretary Tim Wirth supporting the legislation; and fifth, editorials, op-eds, and opinion pieces from USA Today, the Washington Post, the Dallas Morning News, the Houston Chronicle, the New York Times, and the Christian Science Monitor supporting the legislation; sixth, letters from numerous environmental, fishing, and labor organizations supporting the legislation.

I look forward to working with the Chairman and Ranking Member of the Senate Commerce Committee to secure the expeditious approval of the Committee of this important bill, and with the majority leader once the bill has been reported by the Committee.

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

DECLARATION OF PANAMA

The Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, United States of America, Vanuatu and Venezuela, meeting in Panama City, Republic of Panama on October 4, 1995, hereby reaffirm the commitments and objectives of the La Jolla Agreement of (1) progressively reducing dolphin mortality in the eastern Pacific Ocean (EPO) fishery to levels approaching zero through the setting of annual limits and (2) with a goal of eliminating dolphin mortality in this fishery, seeking ecologically sound means of capturing large yellowfin tunas not in association with dolphins.

Recognizing the strong commitments of nations participating in the La Jolla Agreement and the substantial successes realized through multilateral cooperation and supporting national action under that Agreement, the Governments meeting in Panama, including those which are, or have announced their intention to become, members of the Inter-American Tropical Tuna Commission (IATTC), announce their intention to formalize by January 31, 1996, the La Jolla Agreement as a binding legal instrument which shall be open to all nations with coastlines bordering the EPO or with vessels fishing for tuna in this region. This shall be accomplished by adoption of a binding resolution of the IATTC or other legally binding instrument. The adoption of the IATTC resolution or other legally binding instrument, that utilizes to the maximum extent possible the existing structure of the IATTC, is contingent upon the enactment of changes in United States law as envisioned in Annex I to this Declaration. The binding legal instrument shall build upon the strengths and achievements of the La Jolla Agreement, the working groups established under it, and the actions of the Governments participating in that Agreement. This binding legal instrument shall consist of the La Jolla Agreement, its appendices, and the decisions of the governments under that Agreement as modified to achieve the objectives and commitments contained herein.

The Governments meeting in Panama agree that in concluding, adopting, and implementing this binding legal instrument, they will:

Commit to the conservation of ecosystems and the sustainable use of living marine resources related to the tuna fishery within the EPO. Adopt conservation and management measures that ensure the long-term sustainability of tuna stocks and other stocks of living marine resources in the EPO. Such measures shall be based on the best scientific evidence, including that based on a precautionary methodology, and shall be designed to maintain or restore the biomass of harvested stocks at or above levels capable of producing maximum sustainable yield, and with the goal to maintain or restore the biomass of associated stocks at or above levels capable of producing maximum sustainable yield. These measures and methodology should take into consideration, and account for, natural variation, recruitment rate, natural mortality rate, population growth rate, individual growth rate, population parameters K and r, and scientific uncertainty.

Commit, according to their capacities and in coordination with the IATTC, to the assessment of the catch and bycatch of juvenile yellowfin tuna and other stocks of living marine resources related to the tuna fishery in the EPO and the establishment of measures to, inter alia, avoid, reduce and minimize the bycatch of juvenile yellowfin tuna and bycatch of non-target species, in order to ensure the long-term sustainability of all these species, taking into consideration of the interrelationships among species in the ecosystem.

Commit in the exercise of their national sovereignty to enact and enforce this instrument through domestic legislation and/or regulation, as appropriate.

Adopt cooperative measures to ensure compliance with this instrument, building upon decision IGM 6/93, Appendix IV, ''Guiding Principles Respecting Relationships between Stats Both Party and Non-Party to the Agreement,'' taken by the nations participating in the La Jolla Agreement Working Group in Vanuatu in June 1993, and advance the work of the Working Group on Compliance, building upon decision IGM 6/93, Appendix V, ''Options for Action Against Nations Not Complying With the Agreement.'' (Annex II)

Enhance the practice of reviewing and reporting on compliance with this instrument, building upon past practices under the La Jolla Agreement.

Establish a per-stock per-year cap of between 0.2% of the Minimum Estimated Abundance (Nmin) (as calculated by the U.S. National Marine Fisheries Service or equivalent calculation standard) and 0.1% of Nmin, but in no event shall the total annual mortality exceed 5000 consistent with the commitments and objectives stated in the preamble above. In the year 2001, the per-stock, per-year cap shall be 0.1% of Nmin.

Conduct in 1998 a scientific review and assessment of progress toward the year 2001 objective, and consider recommendations as appropriate. Up to the year 2001, in the event that annual mortality of 0.2% of Nmin is exceeded for any stock, all sets on that stock and on any mixed schools containing members of that stock shall cease for that fishing year. Beginning in the year 2001, in the event that annual mortality of 0.1% of Nmin for any stock is exceeded, all sets on that stock and on any mixed schools containing members of that stock shall cease for that fishing year. In the event that annual mortality of 0.1% of Nmin is exceeded for either Eastern Spinner or Northeastern Spotted dolphin stocks, the governments commit to conduct a scientific review and assessment and consider further recommendations.

Establish a per-vessel maximum annual DML consistent with the established per-year mortality caps.

Establish a system that provides incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality in the EPO.

Establish or strengthen National Scientific Advisory Committees (NATSAC), or the equivalent, of qualified experts, operating in their individual capacities, which shall advise their respective governments on mechanisms to facilitate research, and on the formulation of recommendations for achieving the objectives and commitments contained herein, or strengthen existing structures in order to conform with the requirements delineated herein. Membership to NATSACs shall include, inter alia, qualified scientists from the public and private sector and NGOs. The NATSACs shall:

1. Receive and review data, including data provided to national authorities by the LATTC;

2. Advise and recommend to their governments measures and actions that should be undertaken to conserve and manage the stocks of living marine resources of the EPO;

3. Make recommendations to their governments regarding research needs, including ecosystems; fishing practices; and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear; and the coordination and facilitation of such research;

4. Conduct scientific reviews and assessments by the year 1998 regarding progress toward the year 2001 objective stated above, and make appropriate recommendations to their governments concerning these reviews and assessments, as well as additional assessments in the year 2001 as provided above;

5. Consult other experts as needed;

6. Assure the regular and timely full exchange of data among the parties and the NATSACs on catch of tuna and associated species and bycatch, including dolphin mortality data, for the purposes of developing conservation and management recommendations to their governments as well as recommendations for enforcement and scientific research while not violating the confidentiality of business-confidential data;

7. Establish procedures to, inter alia, hold public meetings and maintain the confidentiality of business-confidential data.

Reports of the NATSACs, including of their cooperative meetings, shall be available to the parties and the public.

The NATSACs shall cooperate, through regular and timely meetings, including at a minimum in conjunction with the meetings of the LATTC, in the review of data and the status of stocks, and in the development of advice for achieving the objectives and commitments contained herein.

Promote transparency in their implementation of this Declaration, including through public participation as appropriate.

As soon as possible, the nations of the Intergovernmental Group convened under the auspices of the LATTC will initiate discussions related to formulation of a new, permanent, binding instrument.

ANNEX I

Envisioned changes in United States law:

1. Primary and Secondary Embargoes. Effectively lifted for tuna caught in compliance with the La Jolla Agreement as formalized and modified through the processes set forth in the Panama Declaration.

2. Market Access. Effectively opened to tuna caught in compliance with the La Jolla Agreement as formalized and modified through the processes set forth in the Panama Declaration with respect to States to include: IATTC Member States and other States that have initiated steps, in accordance with Article 5.3 of the IATTC Convention, to become members of that organization.

3. Labeling. The term ''dolphin safe'' may not be used for any tuna caught in the EPO by a purse seine vessel in a set in which a dolphin mortality occurred as documented by observers by weight calculation and well location.

ANNEX II

Guiding Principles respecting relationships between States both Party and Non-Party to the Agreement.

The Parties to the Agreement incorporate into the Agreement a guiding principle that no Party shall act in a manner that assists non-parties to avoid compliance with the objectives of the Agreement.

When a coastal state that is a Party issues a license to engage in fishing in its Exclusive Economic Zone portion of the eastern Pacific Ocean (EPO), either directly or through a licensing agreement, to a vessel of a non-party, the license should be subject to the provisions of the Agreement.

The Parties should consider prohibiting persons under their jurisdiction from assisting in any way vessels of non-complying Parties or non-parties operating in the fishery.

Any state whose vessels are conducting purse-seine tuna-fishing operations in the EPO should be invited to join the Agreement. The Parties should draw the attention of any state that is not a party to the Agreement to any activity undertaken by its nationals or vessels which, in the opinion of the Parties, affects the implementation of the objectives of the Agreement.

Options for Action With Respect to Nations Party to the Agreement

Diplomatic actions:

Collective representation to the non-complying nation. This would constitute a communication emanating from plenary meeting of the participating nations after consultation with the non-complying nation.

Diplomatic communication. Each participating nation, acting individually or in concert with other nations, would undertake a diplomatic demarche to the non-complying nation.

Public opinion actions:

Dissemination of information regarding the non-compliance of the nation to the public through appropriate media, e.g., a press conference.

Operational restrictions:

Denial of access to the Exclusive Economic Zones of nations party to the agreement for fishing operations by tuna fishing vessels of the non-complying nation. The scope of this action have to be determined by the International Review Panel (IRP) by defining what constitutes a tuna-fishing vessel, i.e., vessels covered by the Agreement, or other tuna-fishing vessels as well. This action should not restrict freedom of navigation or other rights of vessels under international law.

Restriction of access to ports and port servicing facilities for tuna fishing vessels of the non-complying nation. This would not apply to vessels in distress.

Refusal of logistical support and/or supplies to tuna-fishing vessels of the non-complying nation. Reduction of Dolphin Mortality Limits (DMLs) to all vessels of the non-complying Party by specified percentages. DMLs would be restored immediately upon a determination that the nation is in compliance.

Economic sanctions:

Trade measures. The Working Group discussed at length trade measures against non-complying nations. These might include embargoes or other restrictions on the imports of, for example, tuna, other fish products, other marine products, or other products.

The consideration of such measures was recognized to be an extremely delicate and evolving policy issue for which few guidelines exist in international law. The Working Group noted ongoing discussions concerning this issue in other international fora. In light of these considerations, the Working Group agreed that trade measures should receive further review by the Parties prior to making any recommendation in this respect.

Fines (monetary penalties). The Working Group considered that the IRP should identify procedures for imposing fines, including defining the value of the fines (this could be based on a percentage of the amount of the commercial value of the catch), and the destination of the fines (e.g., an international trust fund) as issues that the Parties should discuss. The Working Group noted that there apparently is no precedent for such fines.

B. Options for Action With Respect to Nations Not Party to the Agreement

Diplomatic actions:

Collective representation to the non-party. This would constitute a communication emanating from a plenary meeting of the participating nations after consultations with the non-party.

Diplomatic communication. Each participating nation, acting individually or in concert with other nations, would undertake a diplomatic demarche to the non-party.

Public opinion actions:

Dissemination of information regarding the non-compliance of the non-party to the public through appropriate media, e.g., a press conference.

Operational restrictions:

Restriction of access to ports and port servicing facilities for tuna-fishing vessels of the non-party. The scope of this action would have to be determined by the IRP by defining what constitutes a tuna-fishing vessel, i.e., solely vessels covered by the Agreement, or other tuna-fishing vessels as well. This action should not restrict freedom of navigation and other rights of vessels under international law, and particularly would not apply to vessels in distress.

Refusal of logistical support and/or supplies to tuna fishing vessels of the non-party nation.

Prohibiting nationals from assisting in any way vessels of the non-party operating in the fishery.

Economic sanctions:

The Working Group noted that economic sanctions with respect to non-parties call into consideration all the issues raised above with respect to the imposition of such sanctions on Parties, and noted that the imposition of such sanctions with respect to non-parties involves additional complex legal considerations. The Working Group recommends that the Parties consider whether such sanctions against non-parties are an appropriate means of promoting compliance with the objectives of the Agreement and whether they are consistent with international law.

THE WHITE HOUSE,
Washington, October 7, 1996.

His Excellency, ERNESTO ZEDILLO PONCE DE LEON,
President of the United Mexican States, Mexico, D.F.

DEAR MR. PRESIDENT: As you know, our governments have been working diligently for several years to protect dolphins and other marine life in the Eastern Tropical Pacific. The adoption of the Panama Declaration last year brought with it the promise of further international cooperation in these efforts.

This year, the United States Congress considered legislation to implement the Panama Declaration. The House of Representatives passed such legislation by a large majority. However, despite the considerable efforts of my Administration and many others in our country who support the Panama Declaration, we were unable to secure final passage of the legislation.

I wanted to express my deep disappointment with the failure to enact legislation to implement the Panama Declaration this year. Let me assure you that passing such legislation is a top priority for my Administration and for me personally. We will work with members of the bipartisan coalition supporting the Panama Declaration to introduce implementing legislation in the first 30 days of the new Congress and to pass such legislation as soon as possible thereafter.

I believe it is important for us to continue to work together on this issue.

Sincerely,

BILL CLINTON.

THE VICE PRESIDENT,
Washington, June 3, 1996.

Hon. TED STEVENS,
Chairman, Subcommittee on Oceans and Fisheries, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR TED: I am writing to thank you for your leadership on the International Dolphin Conservation Program Act, S. 1420. As you know, the Administration strongly supports this legislation, which is essential to the protection of dolphins and other marine life in the Eastern Tropical Pacific.

In recent years, we have reduced dolphin mortality in the Eastern Tropical Pacific tuna fishery far below historic levels. Your legislation will codify an international agreement to lock these gains in place, further reduce dolphin mortality, and protect other marine life in the region. This agreement was signed last year by the United States and 11 other nations, but will not take effect unless your legislation is enacted into law.

As you know, S. 1420 is supported by major environmental groups, including Greenpeace, the World Wildlife Fund, the National Wildlife Federation, the Center for Marine Conservation, and the Environmental Defense Fund. The legislation is also supported by the U.S. fishing industry, which has been barred from the Eastern Tropical Pacific tuna fishery.

Opponents of this legislation promote alternative fishing methods, such as ''log fishing'' and ''school fishing,'' but these are environmentally unsound. These fishing methods involve unacceptably high by-catch of juvenile tunas, billfish, sharks, endangered sea turtles and other species, and pose long-term threats to the marine ecosystem.

I urge your colleagues to support this legislation. Passage of this legislation this session is integral to ensure implementation of an important international agreement that protects dolphins and other marine life in the Eastern Tropical Pacific.

Sincerely,

AL GORE.

[From the Christian Science Monitor]

TAKE THE FINAL STEP TO PROTECT DOLPHINS

(By Timothy E. Wirth)

One of the sharpest criticisms of the environmental movement is that it is forever emphasizing major ecological ailments while refusing to acknowledge even the slightest environmental progress.

Make no mistake, the magnitude of the world's environmental challenges is as immense as it is ominous. Yet in only a flash of human history, we have begun to take on these challenges. There are successes about which we can be optimistic; and they demonstrate that reason and resolve, partnership and passion, can get the better of dangerous ecologist trends.

Almost 10 years ago, horrific footage of dolphins being slaughtered in large numbers drove home the need for efforts to prevent dolphin mortality in the tuna fishing industry. Having adopted a Marine Mammal Protection Act for domestic fishing operations, the US began working with international partners through the Inter-American Tropical Tuna Commission (IATTC), with the aim of reducing dolphin mortality. Congress also enacted legislation that included a domestic ban on the sale of tuna not caught in a manner deemed ''dolphin safe.''

The results: Dolphin mortality has been virtually eliminated, cut by more than 90 percent in what is known as the Eastern Tropical Pacific tuna fishery. This dramatic decline in dolphin mortality is attributable to American leadership and international cooperation. The IATTC has evolved into one of the best and most rigorously enforced conservation regimes in the world.

It's time the United States and all conservationists recognize the enormous drop in dolphin mortality, strengthen this international program, and set the stage for further progress. To do this we must reopen our market to trade in tuna with cooperative nations in the hemisphere.

Fortunately, last fall a coalition of environmental groups and Latin American countries reached an agreement in Panama that will accomplish these goals. The ''Panama Declaration,'' endorsed by Greenpeace, the Center for Marine Conservation, the Environmental Defense Fund, National Wildlife Federation, and the World Wildlife Fund, is a model agreement not only for international cooperation, but also as a way to acknowledge our accomplishments even as we aim to do better in the future.

The Panama Declaration sets a goal of eliminating dolphin mortality altogether, establishes a binding program to protect a wide variety of species throughout the Eastern Tropical Pacific ecosystem, and requires that internationally trained observers are on all tuna vessels, as well as additional measures to ensure compliance.

The US will enable the Panama agreements to take effect by reopening the US market to tuna caught in compliance with the IATTC program, lifting the tuna embargo, and requiring that labels for ''dolphin safe'' tuna define fish caught without incidental deaths of dolphins. A bipartisan coalition—led by Sens. John Breaux (D) of Louisiana and Ted Stevens (R) of Alaska—has introduced legislation to implement these agreements, and the Clinton administration is working with Congress to ensure their immediate passage.

Gains of this magnitude in the conservation of marine mammals are difficult enough for one nation to achieve. Brokering resolution to these challenges on an international scale is far more challenging. It means persuading other nations, particularly those less fortunate than our own, to sacrifice short-term political and economic interests in the name of long-term ecological and economic health. This is particularly true with dolphin conservation. Without the Panama Declaration, most observers say, the IATTC will collapse.

There are some environmental organizations who understandably say we should aim for an even higher moral standard, one where no dolphins are killed during tuna fishing (the Panama agreements would allow incidental deaths totalling less than one-tenth of 1 percent of all dolphins in the Eastern Tropical Pacific). Yet the Panama Declaration is more than a moral victory. It celebrates an environmental success story and rewards international partners for their cooperation and commitment in conserving marine mammals. It aims for no dolphin deaths in the future.

There is little alternative to the agreements signed in Panama. Countries throughout the hemisphere have made it clear they are losing patience with what they see as an unfair trade barrier—particularly in light of the progress made in reducing dolphin mortalities. If the US fails to take the steps necessary to implement the Panama Declaration, these countries intend to return to fishing methods that kill more dolphins.

At a time when our environmental laws and commitments are under attack, it is essential that we consolidate gains made in protecting the global environment. It's time to declare victory with swift congressional enactment of legislation that will implement the Panama Declaration.

[From USA Today, Jan. 6, 1997]

HELP SAVE DOLPHINS

I was pleased to see your Dec. 27 editorial supporting enactment of legislation for the protection of dolphins accidentally caught during fishing operations for tuna (''Dolphin law has served its purpose; reform it,'' Our View, Debate).

This legislation would implement a strong international agreement among the nations fishing for tuna in the eastern Pacific—one of the best international marine resource agreements in the world.

The agreement locks into place the dramatic reduction in dolphin mortalities, which is highlighted in the editorial, and includes a commitment by the nations involved in the fishery to work toward a goal of eliminating all dolphin deaths. The agreement also provides for comprehensive monitoring by observers and strict penalties for violations.

Because the tuna fishery in the eastern Pacific Ocean is conducted almost entirely by foreign vessels on the high seas or in their own waters, it can be regulated effectively only by international agreement. Yet, as your editorial recognizes, the dolphin protection agreement is in jeopardy because tuna trade embargoes imposed before the agreement was negotiated continue against those nations participating in the program. The administration strongly supports your call for legislative reform to remove the trade embargoes and implement this important international program.

[From USA Today, Jan. 3, 1997]

INTERNATIONAL COOPERATION NEEDED TO PROTECT DOLPHINS, OTHER OCEAN LIFE

The editorial ''Dolphin law has served its purpose; reform it'' (Our View, Debate, Dec. 27) hit the nail on the head by pointing out that so-called dolphin-safe fishing methods are harmful to other wildlife including sharks, billfish and sea turtles, which are as much a part of the oceans as dolphins.

That is a major reason the Center for Marine Conservation (CMC), Environmental Defense Fund, Greenpeace, National Wildlife Federation and World Wildlife Fund all support legislation in Congress to implement the Panama Declaration, a binding international agreement signed by the United States and 11 Latin American nations. The agreement will ensure continued reduction of dolphin deaths in the Eastern Tropical Pacific (ETP) tuna fishery and also protect other ocean wildlife.

As one of the organizations that led the fight for dolphin-safe labeling, CMC agrees with USA TODAY that we should benefit from experience and recognize that the current law is having some unintended and unacceptably harmful impacts on ocean life.

Our commitment to conserving dolphins and all ocean creatures leads us to support legislation to implement the Panama Declaration. The legislation would lock in the dramatic progress that has been made in reducing dolphin deaths in the ETP by more than 95 percent. It would reduce unintended catches of sharks, billfish and sea turtles in tuna nets and assure U.S. consumers no dolphins died, regardless of fishing method, in capturing the tuna found on the shelves.

While those who oppose the agreement might like to live in a world where the U.S. dictates international environmental policy, the reality is far different. Increasingly, we are seeing the need to promote international cooperation, which can be a tremendous boon to environmental protection.

Failure to adopt this legislation could result in loss of controls on dolphin deaths. The choice is between the rule of law and anarchy on the seas.

[From the USA Today, Dec. 27, 1996]

DOLPHIN LAW HAS SERVED ITS PURPOSE; REFORM IT

Last year, fewer than 3,300 dolphins died in the gigantic nets used to catch yellowfin tuna in the eastern tropical Pacific Ocean. That sounds like a lot, but it's down from more than 130,000 in 1986, and it's compelling evidence that it's time to reform the federal ban on tuna that is not ''dolphin safe.''

For some unknown reason, tuna swim beneath dolphins. So for years, fishers set their tuna nets around dolphins. Unfortunately, the dolphins would get tangled in the nets with the tuna. Hundreds of thousands drowned each year.

That slaughter inspired Congress to begin passing laws to protect marine mammals as early as 1972. And the tuna industry has responded, designing dolphin-friendly nets and developing tactics for herding dolphins out before winching tuna in. Most recently, in 1992, Congress embargoed all tuna caught by encircling dolphins and made the ''dolphin-safe'' label a condition for all tuna sold in the country.

The result has been both satisfying and troubling. The industry has developed safe ways of netting the tuna that run with dolphins. But the embargo also encourages fishers to set their nets around ocean debris and schools of smaller tuna. This is ''dolphin safe,'' but it nets and kills thousands of tons a year of other creatures—sharks, marlin, even endangered sea turtles.

That's a fast way to trash an ecosystem. Yet the practice continues because otherwise—no label. And no label, no market.

It's time to sing a different tuna. First, lift the embargo, which applies only to tuna caught by encircling dolphins, even though other tactics may kill some dolphins, too. Instead, embargo fish when strict dolphin mortality rates are exceeded. And redefine ''dolphin safe'' to mean fish caught without a single dolphin death. This will:

Help ease testy trade relations with countries like Mexico, which has lost market share because of the embargo.

Give the industry a reason to fish with methods that are ''ocean safe'' as well as dolphin safe.

And help recover some of the American jobs that fled to Asia when the embargo made it difficult to compete.

Contrary to some claims, the reforms would not put dolphins in greater peril. In fact, without these changes, nations that now voluntarily follow dolphin-safe practices have threatened to stop. That *would* increase dolphin mortality.

There's another reason to reform the law. To be effective, the nation's enviroregs need to harness market forces. And to be credible, they must also acknowledge success. Tuna reform would satisfy both requirements while proving to skeptics that Congress can indeed capitalize on and reward compliance. Doing so should be at the top of the new Congress' fish-list.

DOLPHINS SAFER

The number of dolphins killed in tuna nets in the eastern tropical Pacific Ocean has fallen steeply.

1989	96,979
1990	52,531
1991	27,292
1992	15,539
1993	3,601
1994	4,096
1995	[1]3,274

[1]Estimated. Source: Marine Mammal Commission.

[From the Washington Post, Dec. 16, 1995]

SAVING DOLPHINS

American law tries to protect dolphins even in international waters, and the time has come to revise that law. In its present form, it will be much less effective in the future. But the opposed revisions now moving through Congress sharply divide environmentalists.

Tuna have the habit of swimming under the dolphins, and to get the tuna, fishermen encircle the dolphins with their nets. In the past this has led to an immense slaughter of dolphins—three decades ago, more than 700,000 a year died in those nets in the great fishing grounds of the eastern Pacific. American law now bans the importation not only of tuna caught by encirclement but tuna from any country that permits its fishermen to use those nets. That includes Mexico, but Mexican fishermen, hoping to regain access to the U.S. market, have greatly improved their practices. The dolphin kill last year was under 5,000—a triumph of conservation.

But it won't last. For one thing, the alternative methods of catching tuna, while sparing the dolphins, are wasteful of other valuable and sometimes rare marine life. More important, admission to the U.S. market is becoming less effective as an incentive. Other markets are opening up rapidly in Asian and Latin American countries that have no rules whatever on the tuna catch.

To lock in the recent progress, the United States has negotiated a binding agreement among all the countries that have fishing fleets in the eastern Pacific. It would continue to press for lower dolphin mortality, but it would permit the use of the encircling nets. They can be manipulated to spill out the dolphin before the tuna are hauled aboard, and international observers are on every tuna boat in the eastern Pacific. The new agreement would allow into this country tuna taken in any supervised haul that did not result in the death of dolphins.

Some environmental organizations object vehemently to encircling nets on any terms and point out that, while the number of dolphin deaths would be small, it wouldn't be zero. They demand zero. Other environmentalists reply that if Congress doesn't accept this deal, the new international agreement will come unraveled and old-style fishing, cruder and cheaper, will reappear along with much higher dolphin deaths. They're right. This agreement, carried out by the bill that Sens. Ted Stevens (R-Alaska) and John Breaux (D-La.) are sponsoring, can provide permanent protection—as present law does not—to the Pacific's dolphins.

[From the Dallas Morning News, July 30, 1996]

FOUL FISHING

U.S. SHOULD ACT TO MAKE TUNA TRULY ''DOLPHIN-SAFE''

Congratulations, Flipper!

Your chances of surviving to old age have improved greatly since the United States began to embargo tuna caught in dolphin-killing nets and the food industry began to entice environmentally conscious consumers with ''dolphin-safe'' tuna.

The proof is in the numbers: Dolphin deaths related to tuna fishing in the eastern Pacific Ocean fell to fewer than 5,000 in 1994 from 600,000 in 1972.

However, you probably think that 5,000 dolphin deaths are still too many. And you're probably concerned that the methods used to trap tuna still end up killing hundreds of thousands of pounds of other species, including sharks, marlins and endangered sea turtles.

Furthermore, you probably worry that the ''dolphin-safe'' label on tuna cans is misleading. The label means only that dolphins were not encircled by nets in the eastern Pacific. It does not mean that no dolphins were killed, or that dolphin-deadly methods were not used elsewhere in the Pacific or in other waters.

So, you probably like the new international agreement designed to drastically reduce the killing. So do we. Emphatically.

The Panama Declaration, which was signed last year by the United States and 11 other countries, would allow fleets to return to the old encirclement method of catching tuna. But it would require signatories to use techniques that allow dolphins to escape. Those countries also would investigate ways to avoid killing other species.

The best thing about the new agreement is that it is multilateral rather than unilateral. In other words, it involves many countries rather than just the United States.

Current U.S. law is well meaning, but it puts the heaviest burden on U.S. fleets by forbidding them alone from using the ancirclement method. And it puts the United States in the awkward position of heavy-handedly denying its market to foreigners to compel good behavior.

Bills to approve the agreement have passed unanimously in Senate and House committees. They have President Clinton's support. Despite opposition from some environmental groups, who cling to the outdated notion that unilateral action by the United States is best, there is no good reason why both houses of Congress should not pass the bills and send them to Mr. Clinton for his signature.

[From the Houston Chronicle, July 13, 1996]

DOLPHIN SAFE

Consumers who choose only tuna marked ''dolphin safe'' because they believe it means these highly intelligent mammals are not being harmed in the tuna fishing process may not be getting what they are paying for.

A bill now before Congress that has broad support from environmental groups and the tuna fishing industry will ensure that ''dolphin safe'' means what it implies. The bill would also help safeguard the delicate ecosystem of prime tuna fishing waters, ensuring a healthy tuna fishery to future generations.

The pending legislation in the House and Senate would undo damage from a well-intentioned 1988 embargo that banned tuna from any nation that fished in the Eastern Tropic Pacific Ocean (ETP) that killed dolphin at rates higher than did the U.S. fleet, The hope was to stop the annual drowning of hundreds of thousands of dolphins in nets cast around them for the tuna that tend to swim with dolphins. It backfired. Within two years, all foreign nations had been embargoed.

Then, in 1990, Congress said any fishing boats that stopped using the dangerous encircling net technology in the ETP could label their product ''dolphin safe.'' This too has been a disaster because other fishing methods tend to kill great numbers of other animals, such as endangered sea turtles, sharks, billfish and juvenile tuna.

Moreover, these attempts to protect dolphins in the ETP prompted a mass exodus of the U.S. tuna fleet in those waters, leaving foreign fishing boats, which were embargoed in the U.S. anyway to continue their harmful fishing practices in the ETP and the U.S. fleet to continue ensnaring dolphins elsewhere.

Under the proposal before Congress, only tuna catches that involved no dolphin kills whatsoever—and that fact must be certified by an independent inspector aboard ship—could be labeled ''dolphin safe.'' Such observers are already aboard many ships as a result of voluntary measures adopted by 12 countries, including the United States and Mexico. The bill also seeks to lift the tuna embargo to give foreign fishermen the incentive to continue those voluntary measures.

The voluntary agreement, which induced tuna fishermen to actually free ensnared dolphins by hand, are set to expire in 1999. Best estimates show only 5,000 dolphins were killed under the voluntary protection measures. Congress should continue this progress by passing this vital legislation.

[From the New York Times, July 7, 1996]

THE BEST WAY TO SAVE DOLPHINS

The environmental community is engaged in a rare and bitter brawl over competing Congressional bills aimed at protecting a beloved environmental symbol—the bottlenosed dolphin. Each side thinks it has the better scheme to protect dolphins that are incidentally trapped and killed by the giant nets used by tuna fleets. This is a complex, emotional issue and all the disputants are animated by the best of intentions. But the approach contained in a measure sponsored by Representative Wayne Gilchrest, a Maryland Republican, and supported by the Clinton Administration, offers the dolphin a better chance than the alternatives.

Mr. Gilchrest's bill rubs a lot of people the wrong way because it seems to endorse the very fishing methods that got the dolphin in trouble in the first place. For reasons that are not fully understood by scientists, adult tuna in the rich fishing grounds of the eastern Pacific tend to congregate underneath dolphins. Tuna vessels follow a school of dolphins, cast their mile-long nets and haul in the tuna below. Until a few years ago, thousands of dolphins routinely drowned in the nets or were crushed when the boats winched them in.

In 1990, Congress placed an embargo on all tuna caught by this method, known as ''encirclement,'' costing big tuna-fishing countries like Mexico, Ecuador and Costa Rica hundreds of millions of dollars. In 1992, these countries convened in La Jolla, Calif., with United States officials and pledged to adopt safer fishing methods. They did not abandon the encirclement method, but they vastly

improved it. They installed dolphin ''safety panels'' in their nets, which acted as escape hatches. They deployed divers to assist dolphins who could not find their way out. They learned how to dip their nets deeper into the water to allow dolphins to escape while retaining the tuna. These new techniques led to a stunning drop in dolphin mortality in the eastern Pacific—from 133,000 killed in 1986 to 3,274 last year, a figure calculated by independent monitors on boats that used the improved encirclement techniques. Even so, the tuna caught by encirclement have remained embargoed.

Mr. Gilchrest's bill, which has the endorsement of Vice President Al Gore, would reward these efforts by lifting the embargo. The bill would also reward any batch of tuna caught without a single dolphin death—a fact to be verified by on-board monitors—with the coveted and commercially important ''dolphin-safe'' label.

The Gilchrest measure has the support of Greenpeace, the Environmental Defense Fund and several other advocacy groups. It is opposed by the Sierra Club and the Defenders of Wildlife, and by the Earth Island Institute in San Francisco, which has done more than any other group to call attention to dolphin mortality. Earth Island's champion in the Senate is Barbara Boxer, the California Democrat, whose bill would continue to ban all tuna caught by the encirclement method.

Unfortunately, the other methods of trapping tuna carry serious disadvantages. Under one approach, fishermen cast their nets around logs and other debris floating near the shoreline, which often attract tuna. That is safe for dolphins, but it kills a huge ''bycatch'' of sharks, turtles and other valuable marine life, not to mention tons of juvenile tuna whose demise imperils future tuna stocks.

Senator John Chafee, a Republican environmentalist who is sponsoring a Senate bill comparable to Mr. Gilchrest's, believes that not just the dolphin but an entire marine ecosystem is at stake. He has concluded, rightly, that the best response is the once-reviled but much-improved encirclement method.

[From the Washington Post, July 4, 1996]

SAVE MOST OF THE DOLPHINS

For reasons humans have yet to understand, dolphins in the eastern Pacific Ocean often swim above schools of yellowfin tuna. This made them for years the unintended victims of tuna fishermen, innocent bystanders killed at a rate of perhaps half a million per year. In 1990, when American consumers saw videotape of dolphins suffering in giant tuna nets, an outcry led to a movement for ''dolphin-safe'' tuna. The largest canneries pledged not to buy any fish captured alongside dolphin, and Congress enacted an embargo against countries engaging in the kind of fishing that endangers these highly intelligent animals.

Since then, an international effort led by the United States has led to a remarkable change in the behavior of the fishing fleet. Boats in the eastern Pacific still use circle nets that capture dolphins, but their operators have developed gear and methods that allow most of the dolphins to escape. During the past two years, the number of dolphins killed has fallen to about 4,000 per year. International observers posted on every boat makes these figures credible. The dolphin population of 9.5 million is believed to be stable or increasing.

Now the Clinton administration, with bipartisan backing in Congress and the support of Greenpeace, the World Wildlife Fund and other environmental groups, wants the embargo lifted. The argument is simple: If fleets do not receive some reward for their changed behavior soon, they will revert to their old and easier ways of fishing, and dolphin casualties will rise. Under the proposal, the international monitoring program would remain in effect.

But opponents in Congress may stall any action. The opponents are backed by other environmental groups, such as the Sierra Club and Earth Island Institute. They argue for zero-tolerance in dolphin-killing, and they also believe that the chasing and encirclement may harm dolphins without killing them.

Unfortunately, alternative methods of tuna fishing appear to produce large ''bycatches'' of immature tuna, thus raising questions of depletion, and of other species, including endangered turtles. More to the point, an insistence on zero dolphin deaths could squander the progress made so far, since virtually all of the fishing in question takes place in international waters by foreign fleets. And alternative markets exist.

Sen. Barbara Boxer (D-Calif.), who helped lead the campaign for dolphin-free tuna, is right to insist on research on the effects on the dolphin population of circle-net fishing. Further studies also should be conducted on the bycatch dangers of alternative methods. But this is one case where a quest for perfection could unravel the substantial progress that has been achieved.

ATTENTION REPRESENTATIVES—OPEN LETTER TO REPRESENTATIVES ON H.R. 2823, THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT AND THE PANAMA DECLARATION, JANUARY 3, 1996

DEAR REPRESENTATIVE: Recently, twelve nations, including the United States, signed the Declaration of Panama, an historic international agreement to protect dolphins and biodiversity in the Eastern Tropical Pacific Ocean. The Panama Declaration, endorsed by the Clinton Administration, the Center for Marine Conservation, Environmental Defense Fund, Greenpeace, National Wildlife Federation, and World Wildlife Fund, will continue progress in reducing dolphin deaths in these waters and will extend protection to other marine life as well.

Further, the Center for Marine Conservation, the Environmental Defense Fund, Greenpeace, National Wildlife Federation, and World Wildlife Fund support H.R. 2823, the International Dolphin Conservation Protection Act. H.R. 2823, if enacted, will implement the Panama Declaration which will:

Achieve a legally binding agreement on all fishing nations, mandating progressive reductions in dolphin mortality toward zero through the setting of annual limits;

Build upon recent gains in dolphin protection, accelerate the current schedule for reducing dolphin mortality by several years, impose mortality limits that are more restrictive than those currently in place, and lock in the goal of eliminating dolphin mortality in the tuna fishery;

Establish mortality limits and protection for individual dolphin stocks to ensure their growth and recovery;

Preserve and strengthen the existing dolphin conservation program which makes it illegal to set nets around dolphins after dark or use explosives to disorient dolphins;

Expand and further develop enforceable onboard observer programs and tracking systems that guarantee that no dolphins died to catch ''dolphin-safe'' tuna from the Eastern Tropical Pacific Ocean;

Prevent the dismantlement of existing international agreements and the Inter-American Tropical Tuna Commission which have effectively reduced dolphin mortality and managed the tuna fishery in the Eastern Tropical Pacific;

Link enforcement of the binding international agreement to strong embargo provisions;

Protect the ecosystem of the Eastern Tropical Pacific Ocean by reducing bycatch of other marine species such as juvenile tuna, sharks, and endangered sea turtles in the tuna fishery; and

Strengthen the scientific basis for the conservation and management of the tuna fishery, as well as research into assessing the impact of chase and encirclement on dolphins and developing gear and techniques that do not require setting nets around dolphins to catch tuna.

In short, the current voluntary international regime is not durable. Accordingly, it is essential that we act now to lock in long term protections for dolphin populations, rather than wait until the international commitments for dolphin conservation unravel. This legislation will resolve the long-standing tuna/dolphin controversy and establish measures that will protect dolphins and the ecosystem. We urge you to cosponsor H.R. 2823. If you have questions, please contact: Rodrigo Prudencio, National Wildlife Federation, 202–797–6603; Nina Young, Center for Marine Conservation, 202–857–3276; Annie Petsonk, Environmental Defense Fund, 202–387–3500; Gerry Leape, Greenpeace, 202–462–1177; Scott Burns/David Schorr, World Wildlife Fund, 202–293–4800.

CENTER FOR MARINE CONSERVATION, ENVIRONMENTAL DEFENSE FUND GREENPEACE, NATIONAL WILDLIFE FEDERATION, WORLD WILDLIFE FUND

''GREEN'' POINTS IN SUPPORT OF H.R. 2823

From a conservation and environmental perspective, H.R. 2823 (the International Dolphin Conservation Program Act) merits full House passage because (not prioritized):

1. It's Better for Dolphins:

Locks into place binding international legal protections for dolphins in the Eastern Tropical Pacific (ETP) Ocean. The current ETP dolphin protection is entirely voluntary, based on the 1992 ''La Jolla'' program. In October 1995, all of the ETP fishing nations signed the ''Panama Declaration.'' That Declaration strengthens further the ''La Jolla'' program, and sets in motion a process to make the program legally binding, contingent on changes in U.S. law that are part and parcel of H.R. 2823's reforms, including observers and other monitoring, verification and tracking of catch; research and enforcement.

Allows dolphin stocks to recover. The remarkable success of the MMPA and the voluntary La Jolla agreement have resulted in an almost 99 percent reduction in dolphin mortality in the ETP. Up until the early 1990s, though, many dolphin species in the ETP suffered annual mortality rates high enough to hamper or retard their recovery. But now, those stocks are stable, with mortality rates (for all stocks) below 0.2% of the population abundance—a level more than four times lower than that recommended by the National Research Council to allow recovery. Moreover, H.R. 2823 requires that these annual mortality rates be further reduced to less than 0.1% of the population abundance, with the goal of eliminating mortality entirely. These new levels of protection for dolphins have been endorsed by leading scientists.

Addresses effectively the issue of ''chase and encirclement'' of dolphins, establishing a process for investigation and further action, as merited, regarding the health-related impacts of capture stress. Concerns have been raised that the chase and encirclement

of dolphins causes harm and stress levels that can impede dolphin reproduction or result in dolphin deaths. While dolphins that are chased and encircled probably experience some level of stress, there is no conclusive scientific evidenced that chase and encirclement reduces reproductive capacity, causes dolphins to die after release, or develop stress-related diseases. In fact, there is evidence that some dolphins have habituated to encirclement and have developed behaviors that reduce their risks in the net. Nevertheless, the stress issue should be further investigated, followed by a report and recommendations to Congress—as called for in H.R. 2823 (Sec. 302(d)(4)).

2. It's Better for Other Sea Life:

Contains tough provisions that require fishers to protect not only the dolphins, but also the tuna stocks on which the fishery depends, as well as other species, like sharks, bill fish and sea turtles that get caught in the purse seine nets used in the ETP fishery. One of the MMPA's stated objectives is to maintain the health and stability of marine ecosystems, but to date little attention has been given to this objective. H.R. 2823 requires observers stationed on every vessel to record bycatch of all species, and requires fishers to minimize that bycatch.

Recognizes that ''dolphin-safe'' and ''ecosystem-safe'' fishing go hand-in-hand. Recent data indicate that fishing methods that do not involve setting nets around dolphins, such as setting nets on schools of tuna or logs, have 10 to 100 times greater bycatch of other sea life. This bycatch is alarming, especially for species that reproduce slowly, such as sharks, sea turtles and billfish. In addition, the IATTC estimates that, if sets on dolphin were replaced by school and log sets, from 10 to 25 million juvenile tuna would be discarded. Domestic and international fisheries conservation efforts have made bycatch reduction a priority. H.R. 2823 provides the best vehicle to develop immediate measures to avoid, reduce, and minimize bycatch of juvenile yellowfin tuna and other marine life. In contrast, the Miller substitute (H.R. 2856) unfortunately promotes a substantial increase in the waste of immature tuna and other bycatch species, by encouraging shifts to those non-encirclement fishing methods.

3. It's Better for Consumers:

Strengthens the popular ''dolphin-safe'' label, assuring consumers that no dolphins died in the catch of labelled tuna. Under the current definition (carried forward in the Miller substitute), consumers are misled into believing the current ''dolphin-safe'' label has solved the tuna-dolphin issue, and that dolphins no longer die in tuna sets. Sadly, this is not the case. Fishers continue to encircle dolphins at the same rate as prior to the establishment of the ''dolphin-safe'' label. Truth-in-labeling lies in the passage of H.R. 2823, because it tells the consumer whether or not a dolphin died, and not just about what fishing technique was used. It gives consumers the ability to choose tuna caught without killing dolphins, and that power of choice, in turn, gives fishers the incentive to reduce dolphin mortality further toward zero.

4. It's Better for International Environmental Policy:

Raises other countries' environmental performance to the U.S. level, and to more sustainable levels, by ensuring that foreign-caught tuna sold in foreign countries will meet the same strong dolphin and other species/ecosystem protection requirements that we apply to tuna sold in our country. Moreover, H.R. 2823 provides that if ETP fishing nations fail to meet the multilaterally-agreed standards, their tuna will be banned from import into the United States—a trade sanction that serves as one of the means of ensuring compliance with and enforcement of the proposed legally binding agreement called for in the Panama Declaration.

Makes possible stronger international conservation policy for dolphins, as well as other marine species impacted in the ETP fishery. The Panama Declaration, and the resulting multilateral environmental agreement (MEA) made possible by H.R. 2823's passage, will result in strengthened conservation and enforcement measures applicable to all ETP fishing nations. At the same time, that MEA, once agreed by all ETP fishing nations, will be far less vulnerable to a WTO-type trade challenge than have been the unilateral MMPA sanctions like those challenged by Mexico in 1991.

A Dolphin-Safe Label That Really Means It

What's in a label? Well, if you have eaten tuna in the past five years, take note: the ''dolphin-safe'' label you have grown to trust is neither as dolphin-safe nor ecologically-sound as you may think. Our nation's landmark dolphin protection and product labeling laws have resulted in unintended consequences which have actually exacerbated some marine resource problems, while failing to guarantee that dolphins were not killed when harvesting your tuna.

The campaign to save dolphins had all the right intentions. Combined with the 25-year effort to enact and strengthen the Marine Mammal Protection Act (MMPA), the campaign educated the public about a serious problem. Since its 1972 passage, the MMPA went on to spur a reduction in dolphin mortalities in the Eastern Tropical Pacific ocean (ETP) from as many as 600,000 a year to fewer than 5,000 by 1994.

The effort to continue this success resulted in the landmark 1992 dolphin-safe laws, which encompassed three key elements: disallowing the common fishing practice of encircling dolphins to catch the tuna that migrate with them, monitoring and reporting of any dolphin deaths that did occur, and an embargo on imports of non-dolphin-safe tuna. These principles were the backbone of what American consumers recognize as the ''dolphin-safe'' label.

More than three years later, however, the failings of the 1992 law are evidenced not only in the continuing deaths of dolphins, but of the damage to the ocean ecosystem as a whole. To understand why this destruction of marine life persists, it is necessary to examine the shortcomings of the 1992 laws—and the recent and most promising attempt to address these problems on an international level, the Panama Declaration.

At the root of the problem is the fact that while tuna is caught around the world, U.S. dolphin protection laws are applicable only in the ETP. As strong as the laws may be, they do not uniformly apply in other regions, which yield as much as 80 percent of the world's tuna. Unfortunately, this policy is based on the unproven assumption that tuna outside the ETP do not migrate with marine mammals. Hence, tuna sold in the U.S. from other regions are also afforded the ''dolphin-safe'' label, amounting to little more than a p.r. gimmick here and abroad.

Furthermore, the ''dolphin-safe'' label only means that no dolphins were ''encircled'' by fishing nets in the ETP; it does not mean that no dolphins or other marine mammals were harmed or killed during tuna harvests. The prohibition of dolphin encirclement by American vessels in the ETP sparked a mass exodus of more than 95 percent of the U.S. fleet. Most vessels headed for the Southern Pacific, while some owners simply sold their boats to citizens of other nations. So while few if any recent dolphin deaths are attributable to U.S. tuna vessels, these deaths continue in regions where U.S. law is irrelevant.

Disallowing encirclement of dolphins, with whom adult tuna migrate, put fishermen in the position of focusing their effort or juvenile tuna which tend to congregate near shore in schools, or under floating debris such as logs. This breaks the cardinal rule of successful fisheries management; harvest only mature fish which have spawned at least once. Biologists are concerned that a currently well-managed, healthy fishery will begin to decline if efforts continue to focus on young tuna.

Equally alarming is a Greenpeace study showing that methods considered ''dolphin-safe'' under U.S. law have resulted in hundreds of thousands of pounds of by-catch (incidental harvest) of other species in the past 3 years alone. Sharks, sea turtles, other fish, and yes, even dolphins, congregate with juvenile tuna and are unavoidably killed in the fishery. From an ecosystem perspective, this is intolerable.

So what needs to be done to protect dolphins? Switching from one fishing method to another in a small section of the world's ocean has not solved the problem. And simply shutting down the tuna fishery altogether would threaten the survival of fishing communities and the ability to feed a growing world population. Tuna is the leading seafood product consumed in America, and a renewable protein source for poor and low-income persons the world over.

Unilateral embargoes by the U.S. alone also have proved unable to save the world's dolphins. Indeed, the unilateral embargo on imports of ''dolphin-unsafe'' tuna has led to a trade dispute under the General Agreement on Tariffs and Trade (GATT).

Clearly, there has long been a need for a strong international approach. Recognizing this, international negotiators began developing an alternative, multilateral agreement which put observers on all tuna vessels fishing in the ETP, regardless of nationality and method of fishing. That program also set progressively declining caps on dolphin mortality.

This plan has now been strengthened and extended in a recent accord known as the ''Panama Declaration.'' Supported by Greenpeace, the Seafarers International Union (SIU), the Clinton administration and a growing contingent in Congress, this accord take a significant step towards achieving the twin goals of saving dolphins and other marine species from extinction while insuring a sustainable and healthy tuna fishery.

Hammered out through difficult negotiations between government representatives, environmentalists, and fishermen, this agreement would legally bind countries to require mandatory enforcement measures and reporting internationally, while rewarding fishermen who do not kill dolphins. The agreement would mandate continued reductions of dolphin deaths, and would bring many new boats under a regulatory framework to reduce by-catch of all marine species.

To take the next step, U.S. laws on dolphin-safe labeling requirements must be rewritten in accord with the Panama Declaration. Also, the current unilateral embargo must be replaced with internationally agreed upon enforcement measures which allow the U.S. to impose trade sanctions on nations failing to live up to their commitment to dolphins. Congress is now considering these changes. Greenpeace and the SIU strongly opposed passage of the NAFTA and GATT treaties last year. We believed then as now that those agreements fundamentally weaken a nation's ability to pass and enforce strong environmental, health, safety, and labor protection laws.

At the same time, many environmental crises know no borders, and the unnecessary killing of marine mammals is one such crisis. One country acting alone cannot save the oceans and protect their bounty. Once we succeed in getting governments and fishermen to agree to a goal of zero dolphin deaths, we will achieve real truth in labeling, and more importantly, a package dolphins can truly live with.

BARBARA DUDLEY,
Executive Director, Greenpeace U.S.
JOSEPH SACCO,
Executive Vice President, Seafarers International Union of North America.
STEVE EDNEY,
National Director, United Industrial Workers.
TERRY HOINSKY,
President, Fishermen's Union of America.

Mr. BREAUX. Mr. President, today, along with Senator STEVENS and others, I am introducing legislation that will implement the Panama Declaration for the protection of dolphins in the tuna fishery of the eastern tropical Pacific Ocean. The United States signed the Panama Declaration on October 4, 1995, along with the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela. by agreeing to the Panama Declaration, these countries have demonstrated their commitment to the conservation of ecosystems and the sustainable use of living resources related to the tuna fishery in the eastern tropical Pacific.

By implementing the Panama Declaration, we will strengthen the Inter-American Tropical Tuna Commission [IATTC], which has proven to be an extremely effective international resource management organization. Implementing the Panama Declaration will ensure the reduction of dolphin mortalities associated with tuna fishing in the eastern tropical Pacific Ocean. In addition, we will enable American tuna fishermen to re-enter that tuna fishery on the same footing as foreign fishermen.

Since 1949, the IATTC has served as the regional fishery management organization for the tuna fishery of the eastern tropical Pacific Ocean, managing that fishery in an exemplary manner. Managing migratory species requires a multilateral approach, one which the IATTC is well-suited to perform. The yellowfin tuna fishery of the eastern tropical Pacific Ocean, which the Panama Declaration addresses, falls under the auspices of the IATTC. In that fishery, tuna fishermen use dolphins to locate schools of large, mature yellowfin tuna which, for unknown reasons, associate with schools of dolphin. Once the schools of dolphin have been located, the fishermen use purse seine nets to encircle the dolphins with the objective of catching the tuna swimming below. The dolphins are then safely released before the tuna is hauled abroad.

In recent years, there has been some concern about these fishing practices which, in the past, have resulted in excessive incidental mortality to dolphins. In 1992, in an effort to address this problem, 10 nations with tuna vessels operating in the eastern tropical Pacific signed an agreement known as the La Jolla Agreement. The La Jolla Agreement established the International Dolphin Conservation Program [IDCP], which is administered by the IATTC.

The regional objective of the IDCP is to reduce dolphin mortalities to insignificant levels approaching zero, with a goal of eliminating them entirely. Pursuant to that program, the number of dolphins killed accidentally in the tuna fishery has been reduced to less than 4,000. annually from a previous average of over 300,000 killed annually. The current dolphin mortality represents approximately four one-hundredths of 1 percent of the 9.5 million dolphins of the eastern tropical Pacific. Thus, the IDCP has been remarkably successful in achieving its goal of reducing unintended dolphin mortalities to biologically insignificant levels approaching zero.

This legislation will implement the Panama Declaration, formalize the 1992 La Jolla Agreement and make it a legal agreement binding on the member countries of the IATTC. The Panama Declaration strengthens the IDCP and furthers its goals by placing a cap of 5,000 per year on dolphin mortalities.

Although U.S. fishermen developed the techniques now used in capturing tuna and safely releasing dolphins, they effectively have been forced from fishing in the eastern tropical Pacific since the 1992 amendments to the Marine Mammal Protection Act, which prohibit the encirclement of dolphins. The legislation to implement the Panama Declaration will eliminate the inequitable treatment of United States tuna fishermen and enable them to re-enter this important fishery on an equal footing with foreign fishermen.

The 1992 ban on encirclement of dolphins has required fishermen to use alternative fishing practices which have serious environmental consequences. Alternative fishing practices lead to excessive bycatch of endangered sea turtles, sharks, billfish, and great numbers of immature tuna and other fish species. In an attempt to manage a single species, in this case dolphins, we have caused serious harm to the entire ecosystem. This legislation will result in a reduction of this bycatch problem as well as permit fishermen to encircle dolphins as long as they comply with the stringent regulations imposed by the IATTC.

The purpose of this bill is to improve and solidify efforts to protect dolphins in the eastern tropical Pacific Ocean, eliminate the bycatch problems caused by alternative fishing methods, and recognize the tremendous gains by other countries in reducing dolphin mortality. The Panama Declaration establishes a common environmental standard for all countries fishing in the region. By formalizing the La Jolla Agreement, U.S. and foreign fishermen in the eastern tropical Pacific will be subject to the most stringent fishery regulations in the world.

The Panama Declaration represents a tremendous environmental achievement, and it enjoys support from such diverse interests as major, mainstream environmental groups, the U.S. tuna fishing fleet, the Clinton administration, and other countries whose fishermen operate in the eastern tropical Pacific.

Mr. President, I ask unanimous consent that a letter of support from Vice President GORE be entered into the RECORD.

I am encouraged that the majority leader, on the Senate floor on September 30, 1996, had promised to provide floor time at the beginning of this Congress to vote on this legislation. I urge my colleagues to join me in supporting this legislation in order that we may implement this important international agreement.

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

THE VICE PRESIDENT,
Washington, June 3, 1996.

Hon. JOHN B. BREAUX,
U.S. Senate,
Washington, DC.

DEAR JOHN: I am writing to thank you for your leadership on the International Dolphin Conservation Program Act, S. 1420. As you know, the Administration strongly supports this legislation, which is essential to the protection of dolphins and other marine life in the Eastern Tropical Pacific.

In recent years, we have reduced dolphin mortality in the Eastern Tropical Pacific tuna fishery far below historic levels. Your legislation will codify an international agreement to lock these gains in place, further reduce dolphin mortality, and protect other marine life in the region. This agreement was signed last year by the United States and 11 other nations, but will not take effect unless your legislation is enacted into law.

As you know, S. 1420 is supported by major environmental groups, including Greenpeace, the World Wildlife Fund, the National Wildlife Federation, the Center for Marine Conservation, and the Environmental Defense Fund. The legislation is also supported by the U.S. fishing industry, which has been barred from the Eastern Tropical Pacific tuna fishery.

Opponents of this legislation promote alternative fishing methods, such as ''log fishing'' and ''school fishing,'' but these are environmentally unsound. These fishing methods involve unacceptably high by-catch of juvenile tunas, billfish, sharks, endangered sea turtles and other species, and pose long-term threats to the marine ecosystem.

I urge your colleagues to support this legislation. Passage of this legislation this session is integral to ensure implementation of an important international agreement that protects dolphins and other marine life in the Eastern Tropical Pacific.

Sincerely,

AL GORE.

By Mr. HELMS:

S. 41. A bill to prohibit the provision of Federal funds to any State or local

educational agency that denies or prevents participation in constitutional prayer in schools; read twice and placed on the calendar.

VOLUNTARY SCHOOL PRAYER PROTECTION

Mr. HELMS. Mr. President, this year marks the 200th anniversary of George Washington's departure from public life. A few months before the end of his Presidency, in his farewell address to the Nation, he included a parting word of advice—and a final warning—that is just as significant and relevant today as it was then. Washington counseled the new Nation:

> Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute to patriotism who should labor to subvert these great pillars of human happiness.

Our Founding Fathers understood well the intricate relationship between freedom and responsibility. They knew that the blessings of liberty engendered certain obligations on the part of a free people—namely, that citizens conduct their actions in such a way that society can remain cohesive without excessive government intrusion. The American experiment would never have succeeded without the traditional moral and spiritual values of the American people—values that allow people to govern themselves, rather than be governed.

Not long ago, my friend, Margaret Thatcher, highlighted for us the words of another of our Nation's founders, John Adams, who said, ''Our Constitution was designed only for a moral and religious people. It is wholly inadequate for the government of any other.'' Yet over the last 30 years, our society has evidenced increasing apathy—and, in some cases, outright hostility—toward the spiritual principles upon which our Nation was founded.

Mr. President, Bill Bennett once observed to me that America has become the kind of country that civilized countries once dispatched missionaries to centuries ago. If we care about cleaning up the streets and classrooms, if we care about the long-term survival of our Nation—how could there be anything more important for Congress to protect than the right of America's children to participate in voluntary, constitutionally protected prayer in their schools?

Mr. President, the legislation I am introducing today will ensure that student-initiated prayer is treated the same as all other student-initiated free speech—which the U.S. Supreme Court has upheld as constitutionally protected as long as it is done in an appropriate time, place, and manner such that it ''does not materially disrupt the school day''. [*Tinker* v. *Des Moines School District*, 393 U.S. 503.]

Under this bill, school districts could not continue—in constitutional ignorance—enforcing blanket denials of students' rights to voluntary prayer and religious activity in the schools. For the first time, schools would be faced with real consequences for making uninformed and unconstitutional decisions prohibiting all voluntary prayer. The bill creates a complete system of checks and balances to ensure that school districts do not shortchange their students one way or the other.

This proposal, Mr. President, prevents public schools from prohibiting constitutionally protected voluntary student-initiated prayer. It does not mandate school prayer and suggestions to the contrary are simply in error. Nor does it require schools to write any particular prayer, or compel any student to participate in prayer. It does not prevent school districts from establishing appropriate time, place, and manner restrictions on voluntary prayer—the same kind of restrictions that are placed on other forms of speech in the schools.

What this proposal will do is prevent school districts from establishing official policies or procedures with the intent of prohibiting students from exercising their constitutionally protected right to lead, or participate in, voluntary prayer in school.

Mr. President, this bill is especially noxious to school prayer opponents because it explodes the myth popular among school administrators and bureaucrats—a myth perpetuated by liberal groups such as the American Civil Liberties Union—that the U.S. Constitution somehow prohibits every last vestige of religion from the public schools.

Seldom is it heard on the issue of school prayer that the Constitution also forbids governmental restrictions on the free exercise of religion, or that the Constitution protects students' free speech—whether religious or not—and that student-initiated, voluntary prayer expressed at an appropriate time, place and manner, has never been outlawed by the Supreme Court.

Mr. President, I find it more than a little ironic that I am forced to revisit this issue on the floor of the Senate. I remind Senators that in 1994, this same proposal—offered in amendment form by Senator LOTT and myself—passed this body overwhelmingly, 75 to 22. In the House of Representatives, this language was approved on two different occasions by similar 3-to-1 margins. Yet this simple protection of constitutional rights was dropped in the closing 60 seconds of a conference with no debate, no discussion, and no vote—just a wink and a nod between the senior Senator from Massachusetts and his counterpart on the House side.

So I am obliged to offer this measure once again to protect the constitutional rights of America's children to participate in voluntary school prayer. Indeed, standing here brings to mind the words of the legendary New York Yankee catcher, manager, and philosopher Yogi Berra: ''it's deja vu all over again.''

Well, this time, Mr. President, I hope Congress will accede to the wishes of a huge majority of the American people, and enact this legislation. A Wirthlin poll reported in Reader's Digest indicates that 75 percent of our citizens favor prayer in public schools. My legislation ensures that the American people's will to protect constitutionally sanctioned prayer in our Nation's schools is accomplished—and shows Congress's respect for the moral and spiritual values that make our Nation whole.

By Mr. HELMS:

S. 42. A bill to protect the lives of unborn human beings; read twice, and placed on the calendar.

THE UNBORN CHILDREN'S CIVIL RIGHTS ACT

Mr. HELMS. Mr. President, 2 years ago—and on five occasions prior to that—I have offered the Unborn Children's Civil Rights Act, proposing that the Senate go on record in favor of reversing the Roe versus Wade decision. That wrongful U.S. Supreme Court decision, handed down 24 years ago tomorrow, paved the way for the destruction of more than 35 million innocent children—1.5 million little innocent, helpless lives every year.

An enormous number of men and women of all ages will descend upon Washington tomorrow—as they have every year since the fateful Roe versus Wade decision—pleading with Congress to remember that a nation which fails to value the God-given gifts of life and liberty will one day find itself in the dustbin of history.

So, as the 105th Congress begins its work, I do hope that all Senators will give thought to the need to put an end to the legalized deliberate destruction of the lives of innocent, helpless little human beings.

The Unborn Children's Civil Rights Act proposes four things:

First, to put Congress clearly on record as declaring that one, every abortion destroys deliberately, the life of an unborn child; two, that the U.S. Constitution sanctions no right to abortion; and three, that Roe versus Wade was improperly decided.

Second, this legislation will prohibition Federal funding to pay for, or to promote, abortion. Further, this legislation proposes to defund abortion permanently, thereby relieving Congress of annual legislative battles about abortion restrictions in appropriation bills.

Third, the Unborn Children's Civil Rights Act proposes to end indirect Federal funding for abortions by one, prohibiting discrimination, at all federally funded institutions, against citizens who as a matter of conscience object to abortion and two, curtailing attorney's fees in abortion-related cases.

Fourth, this legislation proposes that appeals to the Supreme Court be provided as a right if and when any lower Federal court declares restrictions on abortion unconstitutional, thus effectively assuring Supreme Court reconsideration of the abortion issue.

Mr. President, it has become fashionable today for America's courts to discard the Constitution in order to create rights and protect freedoms founded upon mankind's depraved nature instead of God's eternal and moral truths.

Yet, never has a court handed down such a misguided decision than when it created the right of a woman to choose to terminate the life of her child. Roe versus Wade has no foundation whatsoever in the text or history of the Constitution. It was a callous invention. Justice White said it best in his dissent: Roe, he declared, was an exercise in raw judicial power.

Why has this Supreme Court's exercise in raw judicial power been allowed to stand? Why has Congress stood idly by for 24 years while 4,000 unborn babies are deliberately, intentionally destroyed every day as a result of legalized abortion?

The answer is simple, Mr. President. Even though Roe versus Wade was and is an unconstitutional decision, Congress has been unwilling to exercise its powers to check and balance a Supreme Court that deliberately allows the destruction of the most defenseless, most innocent humanity imaginable.

So, Mr. President, Roe versus Wade still stands; millions of children continue to be deprived of their right to live, to love, and to be loved. It is not a failure of the U.S. Constitution. It is a failure of both the Supreme Court and the Congress for 24 years to overturn Roe versus Wade.

By Mr. HELMS (for himself, Mr. DEWINE, Mr. HATCH, Mr. NICKLES, Mr. ABRAHAM, and Mr. FAIRCLOTH):

S. 43. A bill to throttle criminal use of guns; read twice and placed on the calendar

THROTTLE CRIMINAL USE OF GUNS

Mr. HELMS. Mr. President, on December 6, 1995, the U.S. Supreme Court handed down an opinion that has undermined the prosecution of literally hundreds of violent and drug trafficking criminals. There could not have been a worse time to go soft on criminals, but when the Supreme Court's decision was announced, hardened convicts across America were overjoyed by the prospect of prison doors swinging open for them.

Sure enough, since the Court's decision just over 1 year ago, hundreds of criminals have indeed been set free.

The bill I am introducing today will correct the Supreme Court's blunder, and it will crack down on gun-toting thugs who commit all manner of unspeakable crimes. I am advised that my bill is being numbered S. 43, and it provides that a 5-year mandatory minimum sentence shall be imposed upon any criminal possessing a gun during and in relation to the commission of a violent or drug trafficking crime. If the criminal fires the weapon, the mandatory penalty is elevated to 10 years. If there is a killing during the crime, the punishment is life imprisonment or the death penalty.

This is just common sense, Mr. President; violent felons who possess firearms are demonstrably more dangerous than those who do not. This legislation, of course, does not apply to anyone lawfully possessing a gun.

Current Federal law provides that a person who, during a Federal crime of violence or drug trafficking crime, uses or carries a firearm shall be sentenced to 5 years in prison. That law has been used effectively by Federal prosecutors across the country to add 5 additional years to the prison sentences of criminals who use or carry firearms.

But along came the Supreme Court's unwise decision thwarting prosecutors' effective use of this statute. The Court, in Bailey versus United States, interpreted the law to require that a violent felon actively employ a firearm as a precondition of receiving an additional 5-year sentence. The Court held that the firearm must be brandished, fired or otherwise actively used; so if a criminal merely possesses a firearm, but doesn't fire or otherwise use it, he escapes the additional 5 year penalty.

Someone put it this way: As a result of the Court's decision, any thug who hides a gun under the back seat of his car, or who stashes a gun with his drugs, may now get off with a slap on the wrist. The fact is, Mr. President, that firearms are the tools of the trade of most drug traffickers. Weapons clearly facilitate the criminal transactions and embolden violent thugs to commit their crimes.

Mr. President, this Supreme Court decision poses serious problems for law enforcement. It has weakened the Federal criminal law and has already led to the early release of hundreds of violent criminals.

After the word got out about the Bailey decision, prisoners frantically began preparing and filing motions to get out of jail as fast as they could write. Prosecutors were inundated with petitions from criminals. One example is a man named Lancelot Martin, who ran a Haitian drug trafficking operation out of Raleigh, my hometown, the capital city of North Carolina. Martin used the U.S. Postal Service to receive and sell drugs. Police seized his drugs and recovered a 9 mm semiautomatic pistol that Martin used to protect his drug business.

Lancelot Martin was convicted of drug trafficking charges and received a 5-year sentence for using the gun. But on March 11 of last year, years before his sentence expired, Martin walked free, simply because while his gun and a hefty supply of drugs were found—the gun was not actively employed at the time he was caught.

So, Mr. President, this bill will ensure that future criminals possessing guns, like Lancelot Martin, serve real time when they possess a gun in furtherance of a violent or drug trafficking crime.

The Supreme Court, recognizing the consequences of its decision, issued this invitation to us: ''Had Congress intended possession alone to trigger liability * * * it easily could have so provided.'' That, Mr. President, is precisely the intent of this legislation—to make clear that possession alone does indeed trigger liability.

Mr. President, a modified version of this legislation passed the Senate last year, only to be blocked in the House of Representatives. This bill is a necessary and appropriate response to the Supreme Court's judicial limitation of the mandatory penalty for gun-toting criminals. According to Sentencing Commission statistics, more than 9,000 armed violent felons were convicted from April 1991, through October 1995. In North Carolina alone, this statute was used to help imprison over 800 violent criminals. We must strengthen law enforcement's ability to use this strong anticrime provision.

Fighting crime is, and must be, a prime concern in America. It has been estimated that in the United States one violent crime is committed every 16 seconds. We must fight back with the most severe punishment possible for those who terrorize law-abiding citizens. Enactment of this legislation is a necessary step toward recommitting our Government and our citizens to a real honest-to-God war on crime.

Mr. ABRAHAM. Mr. President, I rise to cosponsor Senator HELMS' bill to amend section 924 of title 18 of the United States Code. This bill would ensure that stiff, mandatory sentences are imposed on criminals who possess firearms while committing a crime of violence or drug trafficking offense.

As currently written, title 18 of section 924(c) already mandates that a sentence of 5 years or more be imposed on any defendant who uses or carries a firearm while committing a crime of violence or drug trafficking offense. Over the past several years, however, courts have struggled with the issue of whether a defendant uses a weapon for purposes of section 924(c) if he technically possesses the weapon but does not actually employ it in committing the underlying offense.

This issue was recently taken up by the Supreme Court in the case of Bailey versus United States. Hewing closely to the ordinary meaning of ''use,'' the Court unanimously held that ''use'' in section 924(c) signifies ''an active employment of the firearm by the defendant.'' After observing that the term ''possess'' is frequently used elsewhere in Federal gun-crime statutes, the Court reasoned that, ''[h]ad Congress intended possession alone to trigger liability under section 924(c)(1), it easily could have so provided.''

The bill I cosponsor today does so provide, as it would amend section 924(c)(1) to apply to any defendant who ''uses, carries, or possesses'' a firearm while committing a crime of violence or drug trafficking offense. This is a worthwhile change. Any crime becomes far more dangerous when committed by a criminal who controls a firearm.

Such a criminal should not be rewarded if, in a particular case, it turns out that he has no need actually to employ the weapon. The fact that he so augmented the danger attending his crime is reason enough to impose the stiff sentences set forth in section 924.

Thus, in short, this bill closes a dangerous loophole in current law. I applaud the Senator from North Carolina for his leadership on this issue, and look forward to the bill's speedy enactment.

By Mr. HELMS:

S. 44. A bill to make it a violation of a right secured by the Constitution and laws of the United States to perform an abortion with the knowledge that the abortion is being performed solely because of the gender of the fetus; read twice and placed on the calendar.

CIVIL RIGHTS OF INFANTS ACT

Mr. HELMS. Mr. President, the distinguished Senator from New Hampshire, Mr. ROBERT SMITH, introduced legislation in the 104th Congress prohibiting the destruction of helpless, unborn babies by a procedure called partial-birth abortions.

Congress heeded the outcry of the American people against this shameful abuse of the most innocent humans imaginable; the Partial-Birth Abortion Ban Act was passed by both the House and the Senate only to have it vetoed by President Clinton.

Mr. President, another stalwart Senator of New Hampshire, Mr. Humphrey brought to the attention of the Senate in 1989 incredibly brutal practice in America—abortions performed solely because prospective mothers prefer a child of a gender from the babies in their womb.

Senator Humphrey, in the 1989 debate called attention to the New York Times article published Christmas morning the year before. It was titled ''Fetal Sex Test Used as Step to Abortion.'' Sadly, Senator Humphrey's remarks and subsequent legislation were met with general disinterest among those who sanctimoniously defend what they regard as a woman's right to destroy her unborn child. Those holding such views never discuss an unborn child's right to live, to love and be loved.

Mr. President, it was typical for The New York Times, that the Times article which Senator Humphrey deplored began as follows:

> In a major change in medical attitudes and practices, many doctors are providing prenatal diagnoses to pregnant women who want to abort a fetus on the basis of the gender of the unborn child.
>
> Geneticists say that the reasons for this change in attitude are an increased availability of diagnostic technologies, a growing disinclination of doctors to be paternalistic, deciding for patients what is best, and an increasing tendency for patients to ask for the tests. Many geneticists and ethicists say they are disturbed by the trend.

Mr. President, this rhetorical horseradish is simply another measurement of how far the moral and spiritual priorities of America have fallen. Professor George Annas of the Boston University School of Medicine was quoted as saying:

> I think the [medical] profession should set limits and I think most people would be outraged, and properly so, at the notion that you would have an abortion because you don't want a boy or you don't want a girl. If you are worried about a woman's right to an abortion, the easiest way to lose it is not set any limits on this technology.

Mr. President, how sad it is that any mother in a civilized society would be willing to destroy the unborn female child she is carrying simply because she happens to prefer a male child—or vice-versa. But believe it. It is happening without the Government of the United States lifting an eyebrow, let alone a finger.

And that, Mr. President, is why I am again offering legislation to limit this incredibly inhumane practice.

As I mentioned at the outset of my remarks, the 104th Congress acted on legislation to outlaw the brutal killings of unborn babies subjected to partial-birth abortions. I pray the 105th Congress will take action to end another callous cruelty against the unborn—gender-selection abortions.

Specifically, the legislation I have sent to the desk proposes to amend title 42 of the United States Code governing civil rights. Anyone who administers an abortion for the purpose of choosing the gender of the infant will protect unborn children as title 42 presently protects any other citizen who is a victim of discrimination.

Mr. President, the American people are clearly opposed to this practice. A Boston Globe poll reports that 93 percent of the American people reject the taking of life as a means of gender selection. Another poll conducted by Newsweek/Gallup showed that four out of every five Americans oppose gender selection abortions.

Even radical feminists cannot ignore the absurdity of denying a child the right to life simply because the parents happened to prefer a child of the opposite gender. The Associated Press reported on August 22, 1996, that the platform adopted by last year's U.N. women's conference in Beijing included a provision condemning sex-selection abortions.

Of course, feminists proclaim that gender selection abortions are atrocities in China—or in India where a survey was taken 7 years ago which revealed that of 8,000 abortions, 7,999 were female.

Now, Mr. President, I do not believe—even for a minute—that the pro-abortion crowd and its amen corner in Congress would want to see action on this legislation. I deliberately stated that the feminists in Beijing—led by the American coalition—could not ignore this cruel practice. But lip service is all that will be paid to this violent practice by most of those who call themselves pro-choice.

Just as they did during debate on the Partial-Birth Abortion Ban Act, I suspect NOW and NARAL supporters in the Senate will do their best to stop the Civil Rights of Infants Act. Cries will go up and the charge will be made that the Senate is somehow trying to take away the freedom of American women. In the meantime, the freedoms of life and liberty are being denied to thousands of unborn children.

Nonetheless, those of us who support the rights of the unborn must do our best. Hopefully, this 105th Congress will take early action to fulfill the desires of the overwhelming majority of the American people who rightfully believe it is immoral to destroy unborn babies simply because the mother demands freedom-of-gender choice.

By Mr. HELMS:

S. 45. A bill to amend title X of the Public Health Service Act to permit family planning projects to offer adoption services; read twice and placed on the calendar.

FEDERAL ADOPTION SERVICES ACT OF 1997

Mr. HELMS. Mr. President, there's a significant question about the use of the American taxpayers' money.

Should State and local health departments, hospitals, and other family planning organizations funded under title X of the Public Health Services Act, be specifically allowed to offer adoption services to pregnant women?

The answer, Mr. President, is: Absolutely.

And Congress should be unmistakably clear in expressing our judgment that public and private health facilities can and should offer adoption services.

The vast majority of the American people agree. Many polls have shown that people approve of their tax dollars being used by clinics to promote and encourage adoptions instead of the heinous destruction of unborn children.

Statistics emphasize the merit of the proposal that clinics and agencies receiving title X funding should explicitly be authorized to offer adoption services. The National Council for Adoption asserts that an estimated 2 million couples are today hopefully and prayerfully waiting to adopt a child. Yet, 1.5 million babies are refused the right to live every year.

Mr. President, if every abortion in this country could be prevented this year there would still be 500,000 couples ready and waiting to adopt children. Small wonder that adoption is called ''the loving option.''

But it is even more tragic, Mr. President, that women with unplanned or unwanted pregnancies are unaware of the wonderful opportunities available to their child through adoption. These women, states Jeff Rosenberg, formerly of the National Council for Adoption, ''are not hearing about adoption, and thus [are] not considering it as a possibility. Young pregnant women are frequently not told by counselors and social workers that adoption is an alternative.''

With this in mind, I offer today the Federal Adoption Services Act of 1997,

a bill that proposes to amend title X of the Public Health Services Act to permit federally-funded planning services to provide adoption services based on two factors: No. 1, the needs of the community in which the clinic is located, and No. 2, the ability of an individual clinic to provide such services.

Mr. President, those familiar with the many Senate debates of the past regarding title X will recall the excessive emphasis placed on preventing and/or spacing of pregnancies, and limiting the size of the American family.

I hope that this year, we can refocus this debate, emphasizing the need to affirm life rather than preventing or terminating it.

Sure, the radical feminists and other pro-abortionists will voice their hysterical objections. So before they raise their voices, let's make clear what this legislation will not do. For example:

No woman will be threatened or cajoled into giving up her child for adoption. Family planning clinics will not be required to provide adoption services. Rather, this legislation will make it clear that Federal policy will allow, or even encourage adoption as a means of family planning. Women who use title X services—one-third of whom are teenagers—will be in a better position to make informed, compassionate judgments about the unborn children they are carrying.

Mr. President, I contend that it is not the responsibility of civilized society to protect the rights of the most innocent and most helpless human beings imaginable. Furthermore, shouldn't we do our best to provide couples willing to love and care for these children an opportunity to do so? That question, Mr. President, answers itself—in the affirmative.

By Mr. HELMS:

S. 46. A bill to amend the Civil Rights Act of 1964 to make preferential treatment an unlawful employment practice, and for other purposes; read twice and placed on the calendar.

CIVIL RIGHTS RESTORATION ACT OF 1997

Mr. HELMS. Mr. President, I send to the desk legislation I first submitted in amendment form on June 25, 1991—which I subsequently introduced as a bill in both the 103d and 104th Congresses. But as I introduce once more the Civil Rights Restoration Act, I recall that similar antidiscrimination legislation passed this body long before 1973, when I first became a Member of the Senate.

Thirty-three years ago, Congress passed the historic Civil Rights Act of 1964. The intent of that legislation was to prohibit discrimination based on race in a broad variety of circumstances, including hiring practices. Proponents of the Civil Rights Act proclaimed that there was nothing in the bill that would require any quotas or preferential treatment.

Well, three decades later, the Federal Government's quota establishment—aided and abetted by an activist Federal judiciary—have so perverted the plain language and intent of the Civil Rights Act that it is unrecognizable. My proposal today is intended to ensure that all civil rights laws are consistent with the goal of a color-blind society.

Specifically, this legislation prevents Federal agencies, and the Federal courts, from interpreting title VII of the Civil Rights Act of 1964 to allow an employer to grant preferential treatment in employment to any group or individual on account of race.

This proposal prohibits the use of racial quotas once and for all. During the past several years, almost every Member of the Senate—and the President of the United States—have proclaimed that they are opposed to quotas. This bill will give Senators an opportunity to reinforce their statements by voting in a rollcall vote against quotas.

Mr. President, this legislation emphasizes that from here on out, employers must hire on a race neutral basis. They can reach out into the community to the disadvantaged and they can even have businesses with 80 or 90 percent minority workforces as long as the motivating factor in employment is not race.

This bill clarifies section 703(j) of title VII of the Civil Rights Act of 1964 to make it consistent with the intent of its authors, Hubert Humphrey and Everett Dirksen. Let me state it for the RECORD:

> It shall be an unlawful employment practice for any entity that is an employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or group with respect to selection for, discharge from, compensation for, or the terms, conditions, or privileges of, employment or union membership, on the basis of the race, color, religion, sex, or national origin of such individual or group, for any person, except as provided in subsection (e) or paragraph (2).
>
> It shall not be an unlawful employment practice for an entity described in paragraph (1) to recruit individuals of an underrepresented race, color, religion, sex, or national origin, to expand the applicant pool of the individuals seeking employment or union membership with the entity.

Specifically, this bill proposes to make part (j) of section 703 of the 1964 Civil Rights Act consistent with subsections (a) and (d) of that section. It contains the identical language used in those subsections to make preferential treatment on the basis of race—that is, quotas—an unlawful employment practice.

Mr. President, I want to be clear that this legislation does not make outreach programs an unlawful employment practice. Under language suggested years ago by the distinguished Senator from Kansas, Bob Dole, a company can recruit and hire in the inner city, prefer people who are disadvantaged, create literacy programs, recruit in the schools, establish day care programs, and expand its labor pool in the poorest sections of the community. In other words, expansion of the employee pool is specifically provided for under this act.

Mr. President, this legislation is necessary because in the 33 years since the passage of the Civil Rights Act, the Federal Government and the courts have combined to corrupt the spirit of the act as enumerated by both Hubert Humphrey and Everett Dirksen, who made clear that they were unalterably opposed to racial quotas. Yet in spite of the clear intent of Congress, businesses large and small must adhere to hiring quotas in order to keep the all-powerful Federal Government off their backs.

Several times before, I have directed the attention of Senators to the Daniel Lamp Co., a small Chicago lamp factory harassed by investigators from the Equal Employment Opportunity Commission. The CBS news program, ''60 Minutes,'' did a story several years back that exposed the mentality of the quota-enforcing bureaucrats at the EEOC to the Nation.

The Daniel Lamp Co. was a small, struggling business which employed 28 people when ''60 Minutes'' began its investigation—8 of whom were black and 18 of whom were Hispanic. But this obviously nondiscriminatory hiring practice was simply not enough for the EEOC. According to the ''60 Minutes'' reporter, Morley Safer, the EEOC told the owner of the Daniel Lamp Co. that ''based on other larger companies' personnel, Daniel Lamp should employ 8.45 blacks.'' In other words, this small company—which had never had over 30 people on its payroll—had failed to meet the Federal Government's hiring quotas.

The Daniel Lamp Co., which was justifiably proud of its mostly minority workforce, decided to stand up to the EEOC. For their troubles, they were forced to pay a fine of $148,000, meet the quota set by the agency, and spend $10,000 on newspaper advertisements to tell other job applicants that they might have been discriminated against—and to please contact the Daniel Lamp Co. for a potential financial windfall.

Yet through all of this outrageous conduct, the EEOC continued to insist that the agency does not set hiring quotas. And although one would have reasonably expected that ''60 Minutes'' exposure of the Daniel Lamp Co.'s predicament would embarrass the Federal Government's quota establishment into mending its ways, it is still business as usual among the bureaucrats.

For example, on November 21, 1996, my office received an unsolicited facsimile transmission from the Department of Labor's Office of Federal Contract Compliance Program [OFCCP]. For those unfamiliar with the OFCCP, this is the branch of the Department of Labor that engages in race and gender nose-counting for private businesses who have contracts with the federal government.

This facsimile was titled ''OFCCP Egregious Discrimination Cases.'' Curious as to what constituted egregious in the eyes of the Labor Department bureaucrats, I reviewed this document—and one particular case caught my eye.

During June 1993, OFCCP investigators conducted a so-called compliance review of the San Diego Marriott and Marina. In the course of their walkthrough, the OFCCP officers believed they did not see enough African-American women in visible jobs to satisfy their notion of an acceptable workplace.

This unscientific observation prompted a massive investigation of the San Diego Marriott's hiring practices. After a year-long inquiry—paid for by the American taxpayer, I might add—the OFCCP uncovered only this unremarkable revelation: that of the hotel's 1,579 employees, 950 were minorities and/or women, including 101 African-Americans.

Instead of being satisfied that over 60 percent of the workforce were minorities or women, the OFCCP found this an egregious case of race discrimination—because not enough black women were employed to suit their idea of diversity. In the view of the OFCCP, a 60 percent minority workforce is insufficient unless the ''right'' kind of minorities are represented. Mr. President, if that is not a quota, I don't know what is.

In any event, rather than trying to fight the Department of Labor, the San Diego Marriott settled to the tune of $627,000. And Mr. President, the Marriott Corporation could at least afford such an extravagant settlement. Thousands of small businesses across the country would be bankrupt by such a fine—and all it would take is one Federal bureaucrat failing to see what he or she considers the right kind of faces in the workplace.

Well, this bill is designed to put an end to all this nonsense bandied about by the Federal Government's power-hungry quota establishment.

Mr. President, as I have said at outset, this legislation should be familiar to students of history. This legislation will bring our civil rights laws full circle, putting America back on the course that Everett Dirksen and Hubert Humphrey envisioned when they sponsored the Civil Rights Act of 1964.

Speaking of Hubert Humphrey, Mr. President—he was a man admired by all of us who served with him. Senator Humphrey was one of the principal authors of the Civil Rights Act of 1964. He hated the idea of quotas and preferential treatment based on race. Senator Humphrey stood right here on the floor of this chamber and said in the strongest terms possible that the Act could not possibly be interpreted to permit quotas:

''if there is any language [in the Civil Rights Act of 1964] which provides that any employer will have to hire on the basis of percentages or quotas related to color, race, or religion or national origin, I will start eating the pages one after another because it is not there.''

Those words have become so familiar to us during the course of our debates regarding this issue, that they perhaps need a little added emphasis. The authors of the Civil Rights Act explicitly stated that the bill was not to be interpreted to require any quotas or percentage-based hiring.

Well, Mr. President, tell that to the Daniel Lamp Company. Tell that to the San Diego Marriot. Tell that to all the policemen, firemen, or small businessmen across this country who have found that, in the United States of America, merit and achievement is sometimes not good enough.

Mr. President, after 30 years, it is obvious that the social experiment known as affirmative action has outlived its usefulness. It is time for the Congress to return the civil rights laws to their original intent of preventing discrimination, and restore the principles upon which our country was built—personal responsibility, self-reliance, and hard work. The Civil Rights Restoration Act aims to do just that.

Mr. President, I ask unanimous consent that a March 20, 1995 article by Paul Craig Roberts and Lawrence M. Stratton, Jr. in National Review be printed in the RECORD.

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

[From the National Review, March 20, 1995]

HOW WE GOT QUOTAS—COLOR CODE

(By Paul Craig Roberts and Lawrence M. Stratton, Jr.)

Bureaucrats and judges have turned the 1964 Civil Rights Act on its head, creating a system of preferences based on race and sex. Can we restore equality before the law?

Forty years after *Brown* v. *Board of Education*, the civil-rights movement has strayed far from the color-blind principles of Martin Luther King Jr., Public outrage over preferential treatment for ''protected minorities'' has taken the place of guilt over segregation. Americans who supported desegration and equal rights are astonished to find themselves governed by quotas, which were prohibited by the Civil Rights Act of 1964.

In California momentum is building for a 1996 initiative, modeled on the 1964 Civil Rights Act, that would amend the state's constitution to prohibit the use of quotas by state institutions. Polls indicate that the initiative's objective of ending affirmative action is enormously popular, even in traditionally liberal bastions such as Berkeley and San Francisco. Citizens in other states are organizing to place similar measures on the ballot. The prospects for such measures are bright: surveys find that some 80 per cent of Americans oppose affirmative action in employment and education.

The hostility to race and gender preferments reflects a general sense that reverse discrimination violates fundamental norms of justice and fair play. Thomas Wood, a co-drafter of the California initiative and executive director of the California Association of Scholars, says he has been denied a teaching job because he is a white male: ''I was told by a member of a search committee at a university, 'You'd walk into this job if you were the right gender.''' Glynn Custred, a California State University anthropology professor, says he decided to join Wood in drafting the initiative because he was concerned about the destructive impact racial quotas were having on higher education, where ''diversity'' overshadows academic merit.

The California initiative has drawn support from across the political spectrum. Charles Geshekter, a teacher of African history at Chico State University and a supporter of the initiative, wrote in the August 14 *Chico Enterprise Record*: ''As a liberal Democrat, I despise those who advocate preferential treatment based on genitalia or skin color. Having taught university classes on the history of European racism toward Africa for 25 years, I am appalled to watch sexist and racist demands for equality of outcomes erode the principle of affirmative equality of opportunity.'' University of California Regent Ward Connerly, a black businessman who supports the initiative, lamented in the August 10 *Sacramento Bee* that ''we have institutionalized this preferential treatment.''

THE PERVASIVENESS OF PREFERENCES

Opposition to quotas was initially unfocused, because their impact was not widely felt. The public was aware of a few celebrated cases, but they seemed to be the exception rather than the rule. This is no longer the case. Preferential treatment based on race and sex pervades private and public employment, university admissions and hiring, and the allocation of government contracts, broadcast licenses, and research grants. Consider a few examples:

A 1989 survey by *Fortune* magazine found that only 14 per cent of Fortune 500 companies hired employees based on talent and merit alone; 18 per cent admitted that they had racial quotas, while 54 per cent used the euphemism ''goals.''

—A Defense Department memo cited on the November 18 broadcast of ABC's *20/20* declares, ''In the future, special permission will be required for the promotion of all white men without disabilities.''

—The Federal Aviation Administration officially recognizes the Council of African American Employees, the National Asian Pacific American Association, the Gay, Lesbian, or Bisexual Employees group, and the Native American/Alaska Native Coalition, granting them access to bulletin boards, photocopiers, electronic mail, voice mail, and rooms in government buildings for meetings on government time. By contrast, the Coalition of Federal White Aviation Employees has been seeking recognition from the FAA since 1992 without success; FAA employees are even forbidden to read the group's literature.

—In the 1994 case *Hapwood* v. *State of Texas*, U.S. District Court Judge Sam Sparks found that the constitutional rights of four white law-school applicants had been violated by quota policies at the University of Texas. However, he awarded them each only $1 in damages and refused to order them admitted ahead of protected minorities with substantially lower scores.

A case that came before the U.S. Supreme Court in January shows even more clearly how preferential policies have warped basic concepts of fairness. Randy Pech, owner of Adarand Constructors, lost in the bidding for a guard-rail construction project in Colorado's San Juan National Forest because of his skin color. Pech put in the lowest bid. However, the prime contractor was eligible for a bounty of $10,000 in taxpayers' money from the U.S. Department of Transportation for hiring minority-owned subcontractors, and the bounty was greater than the difference in the bids submitted by Pech and his competitor, a Hispanic-owned firm.

Pech filed a discrimination lawsuit. When it reached the Supreme Court, U.S. Solicitor General Drew S. Days III argued that Pech had no standing to sue, even though the U.S. Government had paid the prime contractor $10,000 to discriminate against him. Whatever the technical merits of the solicitor general's argument, it reveals the system of racial preferments that today passes for civil rights. ''Protected minorities'' have standing to sue without any requirement of showing that they themselves have ever suffered from an act of discrimination. Today's college-aged protected minorities have never suffered from legal discrimination, yet U.S. policy assumes they are victims and provides remedies in the form of preferments. In contrast, victims of reverse discrimination have no remedy and no legal standing.

The political repercussions of this double standard are by no means restricted to California. In November's congressional elections, white males deserted the Democratic Party in droves, voting Republican by a margin of 63 per cent to 37 per cent. The *Wall Street Journal* has identified ''angry white males'' as an important new political group.

But more is at stake than the plight of white males and the relative fortunes of political parties. At issue is equality before the law and the democratic process itself. As freedom of conscience, goodwill, and persuasion are supplanted by regulatory and judicial coercion, privilege reappears in open defiance of Justice John Marshall Harlan's dictum: ''There is no caste here. Our Constitution is color-blind.''

Color-blindness was the guiding principle of the 1964 Civil Rights Act. The basic act was full of language prohibiting quotas, and various amendments to it defined discrimination as an intentional act, insulated professionally developed employment tests from attack for disproportionately screening out racial minorities, and restricted the Equal Employment Opportunity Commission (EEOC) from issuing any substantive interpretive regulations. Senator Hubert H. Humphrey (D., Minn.), the chief sponsor of the act, confidently declared that if anyone could find ''any language which provides that an employer will have to hire on the basis of percentage or quota related to color, race, religion, or national origin, I will start eating the pages one after another, because it is not in there.'' In less than a decade, federal bureaucrats and judges had cast aside Congress's rejection of preferential treatment for minorities and stuffed the pages of the 1964 Civil Rights Act down Hubert Humphrey's throat.

TWO MODELS OF DISCRIMINATION

The Civil Rights Act of 1964 undertook to put millions of employer decisions through a government filter. Such a massive intrusion into private life had not previously occurred in a free society. Congress assumed that the EEOC, the agency created by the act to run the filter, would be like the state Fair Employment Practice (FEP) commissions that had been created in some Northern states after World War II.

Civil-rights activists regarded these commissions, many of which had more power than the EEOC, as ineffective. As University of Chicago economist Gary Becker observed, however, there was an explanation for the paucity of enforcement actions by the FEP commissions: discrimination doesn't pay. In his 1957 book, *The Economics of Discrimination,* Becker showed that racial discrimination is costly to those who practice it and therefore sets in motion forces that inexorably reduce it. Meritorious employees who are underpaid and underutilized because of their race will move to firms where they get paid according to their contributions. An employer who hires a less qualified white because of prejudice against blacks will disadvantage himself in competition against those who hire the best employees they can find.

Indeed, scholars who studied the cases handled by FEP commissions found that the complainant's problem was usually his job qualifications, not his race. Sociologist Leon Mayhew, who studied employment-discrimination complaints filed with the Massachusetts FEP commission from 1946 to 1962, found that most complaints were based on ''mere suspicion'' and usually resulted in a finding that the employer had not discriminated. He pointed out that most complainants were poor and lacked job skills. Thus, ordinary, profit-oriented business decisions ''regularly produced experiences that could be interpreted as discrimination.'' This phenomenon ''permits Negroes to blame discrimination for their troubles. Hence, some complaints represent a projection of one's own deficiencies onto the outside world.''

This argument did not appeal to those who wanted to achieve racial integration through government policy. Activists such as Rutgers law professor Alfred W. Blumrosen, who as the EEOC's first compliance chief became the de facto head of the commission in its formative years, rejected the complaint-based, ''retail'' model of FEP enforcement and envisioned a ''wholesale'' model attacking the entrenched legacy of discrimination. In 1965 Blumrosen wrote in the *Rutgers Law Review* that FEP commissions focused too much on individual acts of discrimination and ''did not remedy the broader social problems'' by reducing the disparity between black and white unemployment. Seeking to redefine discrimination in terms of statistical disparity, he dismissed other explanations of economic differences between blacks and whites, such as education and illegitimacy, as harmful ''attempt[s] to shift focus.'' Blumrosen disdained the Civil Rights Act's definition of discrimination as an intentional act, preferring a definition that Congress had rejected. In his 1971 book, *Black Employment and the Law,* he wrote:''

''If discrimination is narrowly defined, for example, by requiring an evil intent to injure minorities, then it will be difficult to find that it exists. If it does not exist, then the plight of racial and ethnic minorities must be attributable to some more generalized failures in society, in the fields of basic education, housing, family relations, and the like. The search for efforts to improve the condition of minorities must then focus in these general and difficult areas, and the answers can come only gradually as basic institutions, attitudes, customs, and practices are changed. We thus would have before us generations of time before the effects of subjugation of minorities are dissipated.

''But if discrimination is broadly defined, as, for example, by including all conduct which adversely affects minority group employment opportunities . . . then the prospects for rapid improvement in minority employment opportunities are greatly increased. Industrial relations systems are flexible; they are in control of defined individuals and institutions; they can be altered either by negotiation or by law. If discrimination exists within these institutions, the solution lies within our immediate grasp. It is not embedded in the complications of fundamental sociology but can be sharply influenced by intelligent, effective, and aggressive legal action.

''This is the optimistic view of the racial problem in our nation. This view finds discrimination at every turn where minorities are adversely affected by institutional decisions, which are subject to legal regulation. In this view, we are in control of our own history. The destruction of our society over the race question is not inevitable.''

BLUMROSEN'S AGENDA

Blumrosen figured that a redefinition of discrimination to include anything that yielded statistical disparities between blacks and whites would force employers to give preferential treatment to blacks in pursuit of proportional representation, so as to avoid liability in class-action suits. He set out to ''liberally construe'' Title VII of the Civil Rights Act, which prohibited discrimination in employment, in order to advance ''the needs of the minorities for whom the statute had been adopted.'' By promoting quotas, he could ''maximize the effect of the statute on employment discrimination without going back to the Congress for more substantive legislation.''

Blumrosen's EEOC colleagues kidded him that he was working on a textbook entitled *Blumrosen on Loopholes.* He took pride in his reputation for ''free and easy ways with statutory construction.'' He later praised the agency for being like ''the proverbial bumble bee'' that flies ''in defiance of the laws governing its operation.'' Blumrosen's strategy was based on his bet that ''most of the problems confronting the EEOC could be solved by creative interpretation of Title VII which would be upheld by the courts, partly out of deference to the administrators.'' History has proved Blumrosen right.

As inside-the-Beltway lore expresses it, ''Personnel is policy.'' Blumrosen had a free hand because Franklin Delano Roosevelt Jr., the EEOC's first chairman, spent most of his time yachting. Staffers jokingly changed the lyrics of the song ''Anchors Aweigh'' and sang ''Franklin's Away'' during his frequent absences. Roosevelt resigned before a year was out, and his successors stayed little longer. The EEOC had four chairmen in its first five years, which enhanced Blumrosen's power.

The White House Conference on Equal Employment Opportunity in August 1965 indicated what was to come. Speaker after speaker described ''deeply rooted patterns of discrimination'' and ''under-representation'' of minorities that the EEOC should counter in order to promote ''equal employment opportunity.'' The conference report stressed on its first page that the ''conferees were eager to move beyond the letter of the law to a sympathetic discussion of those affirmative actions required to make the legal requirement of equal opportunity an operating reality.'' Another telling line said that ''it is not enough to obey the technical letter of the law; we must go a step beyond in order to assure equal employment opportunity.'' One panel concluded that ''it is possible that the letter of the law can be obeyed to the fullest extent *without* eliminating discrimination in hiring and promotion. For the legislative intent of Title VII to be met, the law will have to be obeyed in spirit as well as in letter.''

The report noted that many panelists shared Blumrosen's suspicion that if the EEOC limited its activities to responding to complaints of discrimination, the agency would never ''reach the extent of discriminatory patterns.'' Blumrosen inserted a paragraph into the report suggesting that the agency should initiate proceedings against employers even in the absence of complaints of discrimination. Underutilizers of minority workers could be identified by using ''employer reports of the racial composition of the work force as a sociological 'radar net' to determine the existence of patterns of discrimination.''

Blumrosen succeeded in setting up a national reporting system of racial employment statistics despite the Civil Rights Act's

specific prohibition of such data collection. An amendment introduced by Senator Everett Dirksen (R., Ill.), said employers did not have to report statistics to the EEOC if they were already reporting them to local or state FEP commissions. Blumrosen later admitted that the requirement he imposed on employers to report the racial composition of their work forces was based on ''a reading of the statute contrary to the plain meaning.'' But what was a mere statute?

Columbia University law professor Michael Sovern predicted that the EEOC would be called on the carpet for exceeding its authority. In a study for the Twentieth Century Fund, *Legal Restraints on Racial Discrimination,* he wrote that Title VII ''cannot possibly be stretched to permit the Commission to insist on the filing of reports'' and predicted that Blumrosen would ''encounter resistance.'' But no resistance materialized. As Hugh Davis Graham observed in *The Civil Rights Era,* ''In 1965 Congress was distracted by debates over voting rights and Vietnam and Watts and inflation and scores of other issues more pressing than agency records.''

After Blumrosen got his way in forcing employers to submit reports, the agency developed the confidence to dispense with other statutory restrictions on its mission. The EEOC saw the reporting requirement as a ''calling card'' that ''gives credibility to an otherwise weak statute.'' Blumrosen knew that ''with the aid of a computer,'' the EEOC could now get ''lists of employers who, prima facie, may be underutilizing minority-group persons'' and eventually force them to engage in preferential hiring of blacks.

In mid 1965 Blumrosen sent EEOC investigators to Newport News, Virginia, to solicit discrimination complaints against the Newport News Shipbuilding & Dry Dock Company, one of the world's largest shipyards, employing 22,000 workers. Knocking on doors in black neighborhoods, the investigators found 41 complainants, later narrowed down to 4. Blumrosen then successfully pressured the company, which received 75 per cent of its business from Navy contracts, to promote 3,890 of its 5,000 black workers, designate 100 blacks as supervisors, and adopt a quota system in which the ratio of black to white apprentices in a given year would match the region's ratio of blacks to whites. One shipyard worker told *Barron's* that the EEOC had done its worst to ''set black against white, labor against management, and disconcert everybody.''

Armed with the national reporting system's racial data and the victory at Newport News, Blumrosen and his colleagues decided to build a body of case law under Title VII to impose minority-preference schemes on employers across the country. The barrier to this strategy was Title VII itself. An internal EEOC legal memorandum concluded: ''Under the literal language of Title VII, the only actions required by a covered employer are to past notices, and not to discriminate subsequent to July 2, 1965. By the explicit terms of Section 703(j), an employer is not required to redress an imbalance in his work force which is the result of past discrimination.'' Fearing a storm over quotas like the one that had occurred during the congressional debates on the Civil Rights Act, the EEOC ruled out trying to amend the Act itself. The memorandum instead urged the agency to rewrite the statute on its own and influence the courts to embrace the EEOC's ''affirmative theory of nondiscrimination,'' under which compliance with Title VII requires that ''Negroes are recruited, hired, transferred, and promoted in line with their ability and numbers.''

THE ASSAULT ON EMPLOYMENT TESTS

To implement the ''affirmative theory of non-discrimination,'' the EEOC decided to assault employment tests that failed blacks at a higher rate than whites. Commissioner Samuel Jackson told members of the NAACP that the EEOC had decided to interpret Title VII as banning not only racial discrimination per se but also employment practices ''which prove to have a demonstrable racial effect.'' EEOC lawyers formed an alliance with civil-rights attorneys at the NAACP and began a litigation drive to redefine discrimination in terms of statistical effects.

Summer riots and Vietnam protests helped activists target employment tests. The Kerner Commission's report on civil disorders described employment tests as ''artificial barriers to employment and promotion.'' The Kerner Commission blamed these ''artificial barriers'' and the ''explosive mixture which has been accumulating in our cities'' on racism and concluded, ''Our nation is moving toward two societies, one black, one white—separate and unequal.''

The EEOC's chief psychologist, William H. Enneis, attacked ''irrelevant and unreasonable standards for job applicants and upgrading of employees, [which] pose serious threats to our social and economic system. The results will be denial of employment to qualified and trainable minorities and women.'' Enneis said the EEOC would not ''stand idle in the face of this challenge. The cult of credentialism is one of our targets,'' to be fought ''in whatever form is occurs.''

The EEOC issued guidelines in 1966 and 1970 designed to abrogate the pro-testing amendment to the Civil Rights Act introduced by Senator John Tower (R., Tex.) by defining the phrase ''professionally developed ability tests'' as tests that either passed blacks and whites at an equal rate or met complex ''validation'' requirements for ''fairness'' and ''utility.'' Under the validation requirements that Enneis designed, employers had to prove that the tests measured skills they needed. The objective was to make tests so difficult to defend in court that employers would simply abandon them and hire by racial quota. Enneis testified before Congress in 1974 that he knew of only three or four test-validation studies that satisfied his guidelines. As a 1971 *Harvard Law Review* survey of developments in employment law deduced, the EEOC guidelines ''appear designed to scare employers away from any objective standards which have a differential impact on minority groups, because, applied strictly, the testing requirements are impossible for many employers to follow.'' As a result, the guidelines ''encourage many employers to use a quota system of hiring.'' An EEOC staffer told the *Harvard Law Review* that ''the anti-preferential-hiring provisions [of Title VII] are a big zero, a nothing, a nullity. They don't mean anything at all to us.''

The EEOC's attack on tests gutted not only Senator Tower's amendment but also the statutory definition of discrimination as an intentional act. The commission was well aware that it was treading on legal thin ice. A history of the EEOC during the Johnson Administration, prepared by the EEOC for the Johnson Library under the direction of Vice Chairman Luther Holcomb, detailed the EEOC's strategy of redefining discrimination and suggested that it was on a collision course with the text and legislative intent of Title VII. The history said the EEOC had rejected the ''traditional meaning'' of discrimination as ''one of intent in the state of mind of the actor'' in favor of a ''constructive proof of discrimination'' that would ''disregard intent as crucial to the finding of an unlawful employment practice'' and forbid employment criteria that have a ''demonstrable racial effect without clear and convincing business motive.''

Noting that this redefinition would conflict with Senator Dirksen's insertion of the word ''intentional'' into the statute, the history said ''courts cannot assume as a matter of statutory construction that Congress meant to accomplish an empty act by the amendment'' defining discrimination as intentional. The history predicted that ''the Commission and the courts will be in disagreement as to the basis on which they find an unlawful employment practice'' and conclude that ''eventually this will call for the reconsideration of the amendment by Congress or the reconsideration of its interpretation by the Commission.''

As things turned out neither the EEOC nor Congress had to reconsider the meaning of discrimination, because the courts also ignored the law. In the 1971 case *Griggs* v. *Duke Power,* the Supreme Court accepted the EEOC's rewrite of the Civil Rights Act. The opinion was written by Chief Justice Warren Burger, President Richard Nixon's first appointee to the Supreme Court. Coveting the fame of his predecessor, Earl Warren, Chief Justice Burger told his clerks that he wanted to ''confuse his detractors in the press'' by writing some ''liberal opinions.''

BLUMROSEN WINS HIS BET

When Burger declared that ''the administrative interpretation of the Act by the enforcing agency is entitled to great deference,'' Professor Blumrosen won his bet that the EEOC's ''creative interpretation of Title VII would be upheld by the courts, partly out of deference to the administrators.'' Burger got the acclaim he coveted. Blumrosen cheered the Chief Justice's opinion as a ''sensitive, liberal interpretation of Title VII'' that ''has the imprimatur of permanence.''

In *Griggs* the Court ignored clear statutory language and unambiguous legislative history. In fact, *Griggs* paralleled a 1964 Illinois case, *Myart* v. *Motorola,* that had troubled many of the legislators who approved the Civil Rights Act. *Myart* struck down Motorola Corporation's use of an employment test that blacks failed at a higher rate than whites. The EEOC's history for the Johnson Library noted that ''many members of Congress were concerned about this issue because the court order against Motorola was handed down during the debates. The record establishes that the use of professionally developed ability tests would not be considered discriminatory.'' Nevertheless, the Supreme Court ruled that Duke Power Company was discriminating against blacks by requiring employees seeking promotions to have a high-school diploma or a passing grade on intelligence and mechanical-comprehension tests.

The Supreme Court agreed with the lower courts that Duke Power had not adopted the requirement with any intention to discriminate against blacks. Burger admitted that the company's policy of financing two-thirds of the cost of adult high-school education for its employees suggested good intent. But the lack of a racist motive did not make any difference to the Chief Justice. He decreed that the ''absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups.'' Burger was mistaken when he wrote, ''Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation.'' It was precisely this misinterpretation of the statute that the Dirksen Amendment was crafted to prevent.

Burger viewed the promotion requirements as ''built-in-headwinds'' against blacks because blacks were less likely than whites to have completed high school or to do well on aptitude tests. He cited 1960 census statistics showing that 34 percent of white males in North Carolina had completed high school,

compared to 12 percent of black males, and EEOC findings that 58 percent of whites passed the tests used by Duke Power, compared to 6 percent of blacks. Blaming these disparities on segregation, Burger said that ''under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices.'' Burger destroyed job testing when he declared, ''The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.''

Burger's casuistry was to be given a name. In the 1976 book *Employment Discrimination Law*, EEOC District Counsel Barbara Lindemann Schlei and co-author Paul Grossman called the new emphasis on consequences ''disparate impact'' analysis. One year later, the Supreme Court used the phrase for the first time in the case *International Brotherhood of Teamsters* v. *United States*, which dealt with burdens of proof in Title VII cases attacking union seniority systems. ''Proof of discriminatory motive,'' the Court said, ''is not required under a disparate-impact theory.'' Henceforth, any requirement that had a disparate impact on the races, regardless of intent or the reasonableness of the requirement, constituted discrimination. In employment and promotions, unequals had to be treated as equals. The same was soon to follow in university admissions testing. Race-based privileges had found their way into law.

In *Griggs* Chief Justice Burger said employers could escape prima facie Title VII liability only if test requirements are ''demonstrably a reasonable measure of job performance.'' Pulling a phrase out of thin air, Burger said ''the touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.'' Burger invented a statutory hook for his ruling by asserting, falsely, that ''Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question.'' It was precisely this heavyhanded intrusion into job requirements that the Tower Amendment was designed to prevent.

Burger's deference to the EEOC meant that the agency would become the national arbiter of job tests. Following *Griggs*, the agency immediately issued manuals warning employers that unless they ''voluntarily'' increased their minority statistics, they risked costly liability. Ultimately, it became prohibitively expensive to use job tests unless they were race-normed so that blacks could qualify with lower scores.

THE IMPACT OF DISPARATE IMPACT

In a subsequent case interpreting *Griggs*, Justice Harry Blackmun expressed his concern that the EEOC's guidelines would lead to hiring based on race rather than merit. He warned that ''a too-rigid application of the EEOC guidelines will leave the employer little choice, save an impossibly expensive and complex validation study, but to engage in a subjective quota system of employment selection. This, of course, is far from the intent of Title VII.''

By then it was too late. *Griggs* had killed four birds with one stone: Senator Tower's amendment on tests, Senator Dirksen's amendment on intent, Senator Humphrey's guarantee that the Civil Rights Act could not be used to induce quotas, and the amendment introduced by Representative Emanuel Celler (D., N.Y.) prohibiting the EEOC from issuing substantive regulatory interpretations of Title VII. The EEOC wanted quotas, and thanks to *Griggs* it would get them. ''At the EEOC we believe in numbers,'' Chairman Clifford Alexander declared in 1968. In pursuit of its goal, the agency assumed powers it did not have. In 1972 Blumrosen boasted in the *Michigan Law Review* that the EEOC's power to issue guidelines ''does not flow from any congressional grant of authority.''

When Burger created what would come to be known as disparate-impact analysis he did not realize its quota implications. He thought he was just attacking ''credentialism.'' As the holder of a law degree from an obscure night school in St. Paul, Minnesota, Burger may have been thinking of himself when he wrote that ''history is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees.'' Surrounded by Court colleagues and clerks with prestigious Ivy League degrees, Burger might have tasted credential discrimination. He thought that the Court could take away the ''headwind'' of credentialism that blew against blacks without creating a privileged position for minorities.

Yet before *Griggs*, any employer who was so inclined could take the measure of prospective employees and make bets on people with obscure backgrounds who may not have had the best chances in life. After *Griggs*, no employer could risk hiring a white male from William Mitchell Law School in St. Paul over a black from Harvard. *Griggs* made race a critical factor in employment decisions. High-school diplomas, arrest records, wage garnishments, dishonorable military discharges, and grade-point averages all became forbidden considerations in hiring decisions, because they are criteria that could have a disparate impact on blacks. Farmers have even been sued for asking prospective farm hands whether they could use a hoe, on the grounds that blacks have a greater propensity to back problems. Perfectly sensible height and weight requirements for prison guards and police officers have also been struck down for having a disparate impact on women.

The EEOC strategy that led to *Griggs* was not created in a vacuum. Civil-rights activists needed a new cause, and preferences that would enable blacks to attain equality of result became the new goal. In January 1965, *Playboy* asked Martin Luther King Jr., ''Do you feel it's fair to request a multibillion-dollar program of preferential treatment for the Negro, or for any other minority group?'' King replied, ''I do indeed.'' In 1969, the U.S. Court of Appeals for the Fifth Circuit, the same court that had initiated school busing in the name of ''racial balance,'' cast aside the prohibition of quotas in Section 703(j) of the Civil Rights Act by upholding a court order that every other person admitted to a Louisiana labor union must be black. Responding to the argument that this order clearly violated Section 703(j), the three judge panel simply wrote, ''We disagree.''

President Johnson was the most prominent proponent of the shift away from the color-blind ideal. At his commencement speech at Howard University on June 4, 1965, Johnson said the disappearance of legal segregation was not enough:

''You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race, and then say, ''You are free to compete with all the others,'' and still justly believe that you have been completely fair.

''Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to work through those gates.

''This is the next and the more profound state of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result.''

To back up his speech with action, Johnson issued Executive Order 11246, which put the phrase ''affirmative action'' into common parlance. The order required all Federal Government contractors and subcontractors to ''take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.''

Johnson's equality-of-results rhetoric and his metaphor of helping a hobbled runner have provided the main emotional justification for ''affirmative action,'' but the quotas that now web federal contractors under Executive Order 11246 were not implemented by his Administration. Facing strong opposition from the Department of Defense, labor unions, members of Congress, and Comptroller General Elmer Staats, Johnson's labor secretary, Willard Wirtz, dropped his plans to impose quotas on federal construction projects in Philadelphia.

That task fell to George P. Shultz, Richard Nixon's labor secretary. Just as Burger considered *Griggs* a blow against credentialism, Shultz, a labor economist from the University of Chicago, saw the Philadelphia Plan as a way of making an end run around the Davis-Bacon Act, which inflated the cost of federal construction contracts by setting wages at ''prevailing union levels.'' Davis-Bacon meant non-union contractors and laborers (many of whom were black) could not get government contract work. Sensitive to charges that he was hostile to civil rights, Nixon wrote in his memoirs that he accepted Shultz's proposal to revive the Philadelphia Plan in order to demonstrate to blacks ''that we *do* care.''

On June 27, 1969, Assistant Secretary of Labor Arthur A. Fletcher, a black former businessman who had been a professional football player, announced the Philadelphia Plan in the City of Brotherly Love. He said that while ''visible, measurable goals to correct obvious imbalances are essential,'' the plan did not involve ''rigid quotas.'' The *Congressional Quarterly* disagreed with Fletcher's scholastic distinction, calling the Philadelphia Plan a ''nonnegotiable quota system.''

Under the plan, the Labor Department's Office of Federal Contract Compliance (OFCC) would assess conditions in the five-county Philadelphia area and set a target percentage of minorities to be employed in several construction trades, with the aim of attaining a racially proportionate work force. Potential federal contractors would have to submit complex plans detailing goals and timetables for hiring blacks within each trade to satisfy the OFCC's ''utilization'' targets. Arthur Fletcher said the Philadelphia Plan ''put economic flesh and bones on Dr. King's dream.''

In 1971 the U.S. Court of Appeals for the Third Circuit accepted the Nixon Administration's argument that ''goals and timetables'' were not quotas and that, even if they were, the Civil Rights Act's ban on quotas applied to Title VII remedies, not to executive orders. The Supreme Court avoided the controversial quota issue by refusing to review the case. Although the appeals court's ruling had no force outside the Third Circuit, the Nixon Administration interpreted the Supreme Court's lack of interest as a green light. As Laurence H. Silberman, who was undersecretary of labor at the time, later wrote, the Nixon Administration went on to spread Philadelphia Plans ''across the country like Johnny Appleseed.'' The Labor Department quickly issued Order #4, which required all federal contractors to meet

''goals and timetables'' to ''correct any identifiable deficiencies'' of minorities in their work forces. The carrot of government contracts and the stick of disparate-impact liability under *Griggs* quickly established quotas. For many corporate managers, hiring by the numbers was the only protection against discrimination lawsuits and the loss of lucrative government contracts. Contractors hired minorities to guard against the sin of ''underutilization,'' and racial proportionality became a precondition of government largesse. Arthur Fletcher estimated that the new quota regime covered ''from one-third to one-half of all U.S. workers.''

The Section 703(j) prohibition of quotas in the Civil Rights Act remained in the law but meant nothing. Reverse discrimination was in. When the liberal William O. Douglas, the only remaining member of the *Brown* Court, tried to get his Supreme Court colleagues to review the case of a white who was refused admission to the Arizona bar to make room for blacks with lower bar-exam scores, he argued that ''racial discrimination against a white was as unconstitutional as racial discrimination against a black.'' Douglas failed to persuade his fellow Justices. He reports in his autobiography that Thurgood Marshall replied: ''You guys have been practicing discrimination for years. Now it is our turn.''

THE SPREAD OF QUOTAS

Although the phrase ''federal contractor'' conjures up images of workers in hard hats busy with construction projects or weapons systems, colleges and universities are also federal contractors, receiving federal funds through research grants and financial aid to students. Following the Labor Department's lead, Nixon's Department of Health, Education, and Welfare soon required similar ''goals and timetables'' for faculty hiring. Before long the practice had spread to student admissions as well.

In 1974 Douglas tried to get the Court to address quotas in this area. Marco DeFunis challenged the University of Washington Law School's 20 per cent quota for blacks. The school had rejected DeFunis though his GPA and test scores surpassed those of 36 of the 37 admitted blacks. Using his powers as a Circuit Justice, Douglas stayed the Washington Supreme Court's ruling against DeFunis and ordered his admission.

By the time DeFunis's case came before the Supreme Court, however, he was about to receive his degree. This let the Court avoid the quota issue by declaring the case moot. Douglas dissented on the mootness ruling and addressed the case's merits. He viewed *DeFunis* just as he had *Brown:* ''There is no superior person by constitutional standards. A DeFunis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter what his race or color. Whatever his race, he had a constitutional right to have his application consideration on its individual merits in a racially neutral manner.''

But time had passed Douglas by. In Douglas's mind, discrimination was still connected with merit. DeFunis's scores showed that he met a higher objective standard than those admitted in his place. But by this time any standard that had disparate impact was ipso facto discriminatory. In the eyes of Douglas's colleagues, DeFunis was simply a beneficiary of a discriminatory standard. Douglas, who had supported the *Griggs* decision, obviously did not comprehend its implications.

The quota issue re-emerged in 1978, when Allan Bakke, a white male refused admission to the University of California Medical School, challenged the school's policy of reserving 16 per cent of its slots for minorities. Each of the accepted minorities had academic credentials inferior to Bakke's. In a 156-page opinion with 167 footnotes, the Justices reached the schizophrenic conclusion that Bakke should be admitted, but that certain skin colors could nevertheless be considered grounds for college admissions if the goal was to enhance ''educational diversity.''

A year later the Supreme Court ruled that companies could ''voluntarily'' impose quotas on themselves to avoid liability. Pressured by OFCC affirmative-action requirements and the need to forestall Title VII liability under *Griggs,* Kaiser Aluminum, like many other companies, had entered into a quota agreement with its union, the United Steelworkers of America, in 1974. The agreement stipulated that ''not less than one minority employee will enter'' apprentice and craft training programs ''for every nonminority employee'' until the percentage of minority craft workers approximated the percentage of minorities in the regions surrounding the percentage of minorities in the regions surrounding each Kaiser plant. Two seniority lists were drawn up, one white and one black, and training openings were filled alternately from the two lists.

Brian Weber, a 32-year-old white blue-collar worker who had ten years' seniority as an unskilled lab technician at Kaiser Aluminum's plant in Gramercy, Louisiana, applied for a training-program slot but was denied in favor of two blacks with less seniority. After his union denied his grievance, Weber wrote the local EEOC office requesting a copy of the 1964 Civil Rights Act. When the Civil Rights Act arrived in the mail, Weber read it through and found that it said ''exactly what I thought. Everyone should be treated the same, regardless of race or sex.'' Encouraged by the statute's words, he filed a class-action suit representing his plant's white workers and won before district and appellate courts.

During Supreme Court oral arguments in *United Steelworkers* v. *Weber* Justice Potter Stewart quipped that the Justices had to determine whether employers may ''discriminate against some white people.'' Justice William Brennan's answer, for a 5 to 2 majority, was an emphatic ''yes.'' Brennan said the meaning of the 1964 Civil Rights Act could not be found in its statutory language but resided in its spirit, which Brennan had divined. He asserted that the Act's clear statutory language and the Dirksen, Tower, and Celler amendments conveyed a meaning that was the opposite of what Congress had really intended. A literal reading of Title VII, he said, would ''bring about an end completely at variance with the purpose of the statute.'' In enacting the Civil Rights Act, Brennan continued, ''Congress's primary concern'' was with the plight of the Negro in our economy. Anything that helped minorities was broadly consistent with this purpose. This included racial quotas, as long as they were voluntarily adopted by companies and not required by the Federal Government under Title VII. Brennan denied that Kaiser's plan would lead to quotas: ''The plan is a temporary measure; it is not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance.''

BURGER HAS SECOND THOUGHTS

Chief Justice Burger had created disparate-impact analysis in his *Griggs* opinion without realizing its quota implications. Now that quotas were upon him, he found himself joining in dissent with Justice William Rehnquist. Brennan's *Weber* opinion, they said, was ''Orwellian.'' In *Griggs,* the Court had declared that ''discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed.'' But eight years had passed, and the Civil Rights Act had been fully reconstructed. Burger and Rehnquist's alarm showed in their dissenting language: ''By a tour de force reminiscent not of jurists such as Hale, Holmes, and Hughes, but of escape artists such as Houdini, the Court eludes clear statutory language, uncontradicted legislative history, and uniform precedent in concluding that employers are, after all, permitted to consider race in making employment decisions.'' The Court ''introduces into Title VII a tolerance for the very evil that the law was intended to eradicate,'' Rehnquist said. Moreover, Brennan's reading of Section 703(j) was ''outlandish'' in the light of Title VII's other ''flat prohibitions'' against racial discrimination and is ''totally belied by the Act's legislative history.'' Rehnquist cited a congressional interpretative memorandum clearly stating that ''Title VII *does not permit* the ordering of racial quotas in businesses or unions and does not permit interferences with seniority rights of employees or union members.'' But Burger had set the stage for *Weber* with *Griggs,* and it was the pot calling the kettle black when he accused Brennan of amending the Civil Rights Act ''to do precisely what both its sponsors and its opponents agreed the statute was not intended to do.''

Having ruled in *Weber* that reverse discrimination was ''benign discrimination,'' the Supreme Court upheld other quota schemes in subsequent cases. In the 1980 case *Fullilove* v. *Klutznick,* the Court said a federal spending program setting aside 10 per cent of public-works money for minority businesses violated neither the Constitution's guarantee of equal protection of the laws nor the 1964 Civil Rights Act.

In the 1987 case *Johnson* v. *Transportation Agency Santa Clara County,* the issue was the maleness rather than the whiteness of white males. The Court ruled that job discrimination against a white male in favor of a woman with lower performance ratings was perfectly legal under Title VII, even though the county's transportation agency had no record of prior discrimination requiring remedies. Rehnquist, Byron White, and Antonin Scalia didn't like the decision. Scalia said, ''We effectively replace the goal of a discrimination-free society with the quite incompatible goal of proportionate representation by race and by sex in the workplace.'' He noted that civil rights had become a cynical numbers game played by politicians, lobbyists, corporate executives, lawyers, and government bureaucrats.

In 1989 there was a brief retrenchment when the Supreme Court, with its Reagan appointees, confronted the quota implications of *Griggs* and the decisions that had followed it. In *Wards Cove* v. *Atonio,* the Court ruled that statistical disparities were insufficient to establish a prima facie case of discrimination. In this case, the racial minorities who made up a majority of the unskilled work force at two Alaskan salmon canneries brought a discrimination lawsuit based on the fact that whites held a majority of skilled office positions. The suit claimed that this constituted underutilization of preferred minorities in office positions and was evidence of racial discrimination. The majority opinion, written by Justice White, rejected the discrimination claim. White noted that:

''Any employer who had a segment of his work force that was—for some reason—racially imbalanced, could be hauled into court and forced to engage in the expensive and time-consuming task of defending the 'business necessity' of the methods used to select the other members of his work force. The only practicable option for many employers will be to adopt racial quotas, ensuring that no portion of his work force deviates in racial composition from the other portions

thereof; this is a result that Congress expressly rejected in drafting Title VII.''

A week after *Wards Cove,* the Court ruled in *Martin* v. *Wilks* that victims of reverse discrimination due to consent decrees that imposed quotas had the right to challenge the decrees in court. The Court noted that victims of reverse discrimination found their rights affected by lawsuits to which they were not parties. Citing a long-standing legal tradition, the majority held that ''a person cannot be deprived of his legal rights in a proceeding to which he is not a party.''

These rulings caused an uproar among civil-rights activists, who charged that the new Reagan Court was racist. The illegal privileges that had evolved in the 18 years since *Griggs* was decided had become a squatter's right, and Congress and the Bush Administration were bullied into enacting the new inequality into law. The 1991 Civil Rights Act in effect repealed the 1964 Act by legalizing racial preferences as the core of civil-rights law. The new Act was designed to overturn the *Wards Cove* and *Wilks* rulings and to codify the disparate-impact standard of *Griggs.*

The statute also slammed shut the courthouse doors on white male victims of reverse discrimination. If statistical disparities or racial imbalance is proof of discrimination, white males adversely affected by quotas can have no standing in court. To give them standing would necessarily imperil the quota remedies for racial imbalance. You cannot simultaneously declare that anything short of proportional racial representation is discrimination and recognize the adverse impact of the ''remedy'' on white males. Under the 1991 Civil Rights Act, white makes have no grounds for discrimination lawsuits until they are statistically underrepresented in management and line positions. They have no claims to be statistically represented as hirees, trainees, and promotees until preferred minorities are proportionately represented in management and line positions. Indeed,under Brennan's interpretation of the Civil Rights Act, which says that anything that helps preferred minorities is broadly consistent with the law, the disparate-impact standard could one day be ruled inapplicable to whites.

The 1991 Civil Rights Act added the threat of compensatory and punitive damages to the pressure for quotas. In ''Understanding the 1991 Civil Rights Act,'' an article in *The Practical Lawyer,* Irving M. Geslewitz recommended that corporations apply cost-benefit analysis to determine whether ''they are safer in hiring and promoting by numbers reflecting the percentages in the surrounding community than in risking disparate-impact lawsuits they are likely to lose,'' To counter charges of ''hostile work environments,'' company lawyers want to be able to tell juries that their clients have many minority and women employees at all levels.

The day after the Civil Rights Act of 1991 became law, a *New York Times* article, ''Affirmative Action Plans Are Part of Business Life,'' observed that quota policies are as ''familiar to American businesses as tally sheets and bottom lines.'' A 1991 *Business Week* article entitled ''Race in the Workplace: Is Affirmative Action Working?'' reported that affirmative action is ''deeply ingrained in American corporation culture.

. . . The machinery hums along, nearly automatically, at the largest U.S. corporations. They have turned affirmative action into a smoothly running assembly line, with phalanxes of lawyers and affirmative-action managers.''

The 1964 Civil Rights Act, which undertook to eliminate race and sex from private employment decisions, has instead been used to make race and sex the determining factors. Reverse discrimination is now a fact of life. Indeed, in strictly legal terms, the situation for white males today is worse than the situation for blacks under *Plessy* v. *Ferguson's* separate-but-equal doctrine. In practice, blacks suffered unequal treatment under *Plessy,* but the decision officially required equal treatment, Under today's civil-rights regime, by contrast, whites can be legally discriminated against in university admissions, employment, and the allocation of government contracts.

In his famous dissent from *Plessy,* Justice John Marshall Harlan worried that the Louisiana law requiring racial segregation on public transportation would allow class distinctions to enter the legal system, since blacks and whites were economically as well as racially distinct. Harlan was certain that he wanted no status-based distinctions in the law. Our Constitution, he said, ''is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful.'' Today, civil-rights activists reject Harlan's color-blind views. Privilege before the law has replaced equality before the law.

By Mr. HELMS:

S. 47. A bill to prohibit the executive branch of the Federal Government from establishing an additional class of individuals that is protected against discrimination in Federal employment, and for other purposes; read twice and placed on the calendar.

FREEDOM OF SPEECH ACT

Mr. HELMS. Mr. President, many readers of the Washington Times on December 31, 1996, were offended when they read an article, ''Postal Inspectors' Bias Code Seen as Silencing Anti-Gay Views.'' The article reported that the U.S. Postal Service's law enforcement branch had recently issued a new code of conduct forbidding employees from expressing their personal and religious beliefs regarding homosexuality—even during off-duty hours.

When asked about the Postal Service's decision, Robert Maginnis, an analyst at the Family Research Council, asserted correctly that ''People who have deeply-held moral beliefs * * * need not apply for the Federal jobs. Talk about discrimination! This is reverse discrimination of the worst kind.''

Mr. Maginnis was right on target: Freedom of speech is not permitted to those who deplore the favoritism shown people who have the morals of alley cats. I recall the 1994 episode in which the Senate came to the defense of a faithful and longtime employee of the Department of Agriculture, Dr. Karl Mertz, whose freedom of speech was callously violated after he dared to stand up against sodomy. Dr. Mertz did so on his own time, when he opposed his government's giving special rights to homosexuals.

Mr. President, during the incident involving Dr. Mertz, it because abundantly clear, at least to me, that the Clinton Administration had conducted and continues to conduct a concerted effort to give homosexuals special rights, privileges, and protections throughout the Federal agencies—rights not accorded to most other groups and individuals.

The fact is, no other group in America is given special rights based on its sexual behavior. To grant special rights to homosexuals would be redundant—the 1964 Civil Rights Act already protects every American from discrimination.

Moreover, the Senate, on September 10, 1996, defeated attempts by Senator KENNEDY and others to amend the Civil Rights Act in order to extend special rights to employees based exclusively on the employees' sexual preferences.

Mr. President, after Dr. Mertz's plight was brought to light in 1994, my office began to hear from Federal Government employees throughout Washington and the country who were personally concerned about the Administration's attempts to defend and promote special rights for homosexuals in the workplace.

And we continue to hear from them. These are not hate-filled or mean-spirited; they are understandably disturbed by the government's attempts to sanction and protect a lifestyle they—and many Americans—regard as immoral.

Mr. President, let's look at statements issued by three of the Administration's cabinet members regarding efforts by the Clinton Administration to confer special rights and protections upon homosexuals and lesbians.

On April 15, 1993, then-Secretary of Agriculture, Mike Espy, issued a Civil Rights Policy Statement in which he stated that the USDA would ''create a work environment free of discrimination and harassment based on gender or sexual orientation.''

On December 6, 1993, the Secretary of Health and Human Services, Donna Shalala, issued her agency's directive to celebrate cultural ''diversity'' in a workplace free of discrimination against gays and lesbians.

On August 30, 1994, Henry Cisneros, the Secretary of the Department of Housing and Urban Development, likewise informed all HUD employees that his department would not tolerate discrimination on the basis of sexual orientation.

In fact, Mr. President, Leonard Hirsch, president of Gay, Lesbian and Bisexual Employees of the Federal Government (GLOBE), told the Washington Times that every Cabinet-level department, excluding the Pentagon, now has rules barring discrimination based on sexual orientation.

Which brings us to the issue of whether the Federal Government intends to expand the definition of discrimination to include suppression of the constitutional rights of its employees to voice personal and religious beliefs regarding homosexuality. The fact is, it is already happening.

To the delight of the homosexual community, Federal employees are required to leave their moral and spiritual views at home every morning since Federal agencies and departments have unilaterally adopted a policy to treat homosexuals as a special

class protected under various titles of the Civil Rights Act of 1964.

Congress must not remain silent as the executive branch creates special protections for homosexuals without regard to the constitutional right of freedom of speech enjoyed by all Federal employees. That is the purpose of the legislation I offer today.

Under this bill, no Federal department or agency shall implement or enforce any policy creating a special class of individuals in Federal employment discrimination law. This bill will also prevent the Federal government from trampling the first amendment rights of Federal employees to express their moral and spiritual values in the workplace.

Finally, this bill will turn back the tide of the homosexual community in its efforts to force Americans to accept, and even legitimize, moral perversion.

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

By Mr. HELMS:

S. 48. A bill to abolish the National Endowment for the Arts and the National Council on the Arts; read twice placed on the calendar.

THE NATIONAL ENDOWMENT OR THE ARTS TERMINATION ACT OF 1997

Mr. HELMS. Mr. President, something more than 7 years ago, I first reported to the Senate some evidence that a war was then being waged against America's standards of decency by some self-proclaimed ''artists'' funded by the national Endowment for the Arts.

When I came to the Senate floor that day, July 26, 1989, and suggested that Senators should examine some examples of the material that the taxpayers were being required to subsidize, and that I had an amendment to put an end to it, the distinguished manager of the bill took one look and said, ''We'' take your amendment.''

And that's when the battle began. Since that time some of the know-it-all media have tried in vain to make a silk purse out of the NEA's sow's ear. They failed miserably to persuade the American people that such so-called ''art'' deserved the taxpayers' money allocated to the arrogant artists whose minds belonged in the sewer.

The names of these self-proclaimed ''artists'' consist of a wide range of curious individuals who have no regard for decency—Annie Sprinkle, Holly Hughes, and Karen Finley performing their live sex acts; Andres Serrano sticking a crucifix in a jar filled with his urine, taking a picture of it, and choosing for its title a mockery of Jesus Christ. Then there was Robert Mapplethorpe, who became noted for his filthy homosexual photographs; Joel-Peter Witken who used bodies of dead men and women to produce stomach-churning photographs; and many others.

From burning the American flag to flouting their own bodies and those of others, such depravity knows no bounds. The only religiously-oriented ''art'' funded by the NEA were scurrilous attacks on the Catholic church or blasphemous insults to the deity of Jesus Christ.

More recently, The Washington Times, in an article last June, reported that the National Endowment for the Arts had, in 1995, awarded $31,500 to a lesbian film director for her production of the film titled, ''Watermelon Woman''. In her description of the film to the NEA, the film's director boasted that with the NEA's support, she would ''be one of the first African American lesbian film makers who promotes our rarely seen lifestyles.''

Mr. President, I will not waste the Senate's time further detailing the outrageous abuse of Federal tax dollars by the National Endowment for the Arts. But it continues, despite the efforts by those in Congress to reform the agency. Sadly, the real travesty is found in the efforts of a few misguided souls to defend requiring the American taxpayers to finance the attempted to glorify perversion and immorality.

When I came to the Senate floor that day in 1989, I told Senators that the arts community and the media—because they balked at any restriction on Federal funding—had left Congress with two choices: First, absolutely no Federal presence in the arts; or second, granting artists the absolute freedom to use tax dollars as they wish, regardless of how vulgar, blasphemous, or despicable their works may be. I said at the time that if we indeed must make this choice, then the Federal Government should get out of the arts. But, I felt then that Congress could make another choice—to clean up the NEA, and merely prevent the use of Federal funds to support the creation or production of vulgar or sacrilegious works.

Well, Mr. President, as Paul Harvey says, now you know the rest of the story. For more than 7 years, I offered numerous amendments to put an end to the taxpayer-subsidized obscenity I've detailed today. But without fail, every year, the American people are shocked to hear of another instance in which the NEA has given its blessing—and the taxpayers' money—to an organization or individual determined to cross the lines of decency and morality.

The last card was played out, Mr. President, when a liberal Federal appeals court, on November 5, 1996, usurped the right of Congress to put any semblance of restrictions on the way the NEA uses the money granted to it by Congress. The U.S. 9th Circuit Court thumbed its nose at Congress—and the American people—when it upheld the right of so-called ''artists'' such as Karen Finley and Holly Hughes to continue to be subsidized for their decadent acts.

Mr. President, no more choices or compromises remain. I have concluded, as have so many Americans, that the only way Congress can stop the irresponsible use of the taxpayers' money by the NEA is to abolish it.

Moreover, there is much to be said for the priority to confront the existing $5.3 trillion Federal debt and the effect that it will have on the futures of today's young people. The sky will not fall if the Congress votes to privatize the NEA as the arts already swim in an ocean of private funds—more than $9 billion annually. Bruce Fein wrote in his editorial, ''Dollars for Depravity,'' that ''NEA funds are but a tiny fraction of national art expenditures. Thus, a denial of an NEA grant is far from tantamount to a professional death sentence.''

For these reasons, I today introduce The National Endowment for the Arts Termination Act of 1997. The bill mirrors the legislation offered in the House of Representatives this year by Phil Crane, Sam Johnson, and Charlie Norwood.

This bill finally alleviates the burden, shouldered by the American taxpayers, of allocating money every year to an agency whose mission has been sorely mistreated. The strings will be cut and the Federal government will no longer be in the business of propping up ''artists'' such as Robert Mapplethorpe and Andres Serrano. Furthermore, Congress will rid itself of the annual fight to defend the cultural high ground against a group of people who are in a lifelong crusade to destroy the Judeo-Christian foundations of this country.

Mr. President, this bill is the only solution to end the irresponsible use of the taxpayers' money by this agency. Efforts to reform it have failed. It is time to put the National Endowment for the Arts to rest.

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

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

S. 49. A bill to amend the wetlands regulatory program under the Federal Water Pollution Control Act to provide credit for the low wetlands loss rate in Alaska and recognize the significant extent of wetlands conservation in Alaska, to protect Alaskan property owners, and to ease the burden on overly regulated Alaskan cities, boroughs, municipalities, and villages; to the Committee on Environment and Public Works.

THE ALASKA WETLANDS CONSERVATION ACT

Mr. STEVENS. Mr. President, I am pleased to introduce the Alaska Wetlands Conservation Act, a bill to conform wetlands protection to the unique conditions found throughout Alaska.

My State contains more wetlands than all other States combined. Since 1780 we have developed less than 1/10 of one percent of those wetlands. According to the United States Fish and Wildlife Service, about 170.2 million acres of wetlands existed in Alaska in the 1780's

and about 170 million acres exist today. That represents a negligible loss rate over a period of 217 years. Furthermore almost ninety percent of our wetlands are publicly owned, protected by strict land use designations that guarantee these wetlands will remain intact permanently.

We Alaskans have substantially conserved our wetlands. Unfortunately Federal policies established to protect and restore wetlands in the southern forty-eight States do not recognize our unique circumstances nor do these policies provide an appropriate level of flexibility in managing the roughly one percent of land available for private or commercial development in Alaska.

My bill continues to require Alaskans who apply for discharge permits under section 404 of the Clean Water Act to avoid or minimize adverse impacts on wetlands, but it would eliminate requirements to mitigate for unavoidable impacts. It also removes the burden for an applicant to prove that no alternative sites are available. Most of Alaska's communities are surrounded by literally millions of acres of wetland. These areas are made unaccessible under the law for mitigation purposes since they are already protected. In Alaska, mitigation makes no sense except to extort compensatory concessions from applicants which would otherwise not be justified.

The threat of mitigation sends a chilling message to potential investors by artificially raising the costs of doing business in Alaska. In turn, this contributes to unemployment and weakening the economic self sufficiency of our far flung communities. In the long run, the current program wastes taxpayer money in an ill advised attempt to protect abundant wetlands that are already more than adequately protected in Alaska. The resources at risk in Alaska are not our wetlands, they are our people.

The blind application of legislation written to protect wetlands elsewhere inhibits reasonable growth by our Native villages and local governments. In effect, the section 404 program has a life threatening choke hold on Native Alaskans. It is difficult to place a stake in the ground in Alaska without impacting a wetland, let alone to build critical infrastructure. Compounding the problem, we have recently seen the Administration begin to phase out nationwide permits. This makes it increasingly difficult to address the huge task facing our local and State officials in providing safe drinking water, sanitation systems, electric power and other critical services to far flung Alaskan communities. Without this bill, the Federal wetlands bureaucracy simply lacks the authority to apply common sense.

Mr. President, many rural Alaskans are trapped living under third world conditions by well-meaning outsiders and bureaucrats narrowly focused on environmental protection. Unfortunately for Alaska, in this case the problem is larger than protecting our over abundance of wetlands. Wetlands policies conflict with other laws which were passed to promote the economic self sufficiency of Alaskans. My bill would require approval of permit applications with reasonable safeguards for ''economic base lands'' meaning those lands conveyed under the Alaska Native Claims Settlement Act or Alaska Statehood Act, both acts intended to provide the means for Alaskans to achieve economic self sufficiency.

The Alaska Wetlands Conservation Act is a common sense approach to Alaska's circumstances. It maintains flexibility to protect wetlands without hurting people. With respect to existing activities related to airport safety, logging, mining, ice pads and roads, and snow removal or storage, the bill prevents Alaskans from having to obtain section 404 permits to continue those activities. The bill would also require the Army Corps of Engineers to approve general wetlands permits with reasonable safeguards for specific categories of activities if the general permit is requested by the State of Alaska.

There has been negligible benefit to the environment in Alaska as a result of the expansive wetlands regulations issued by bureaucrats inside the beltway. On the other hand, the harm caused by overzealous Federal wetlands police is documented in many examples of bureaucratic delay, expense and irrational decision making. Ask the Mayor of Juneau how the Federal Government handled that city's application for a general permit. It is a national disgrace simply because laws intended to protect scarce wetlands elsewhere were strictly applied in an area of abundance. This bill restores rational decision making authority to those closest to the wetlands situation of Alaska. I encourage my colleagues in the Senate and the House to act expeditiously on my proposed remedy.

By Mr. FEINGOLD:

S. 51. A bill to amend the Internal Revenue Code of 1986 to eliminate the percentage depletion allowance for certain minerals; to the Committee on Finance.

DEPLETION ALLOWANCES LEGISLATION

Mr. FEINGOLD. Mr. President, I am pleased to introduce legislation to eliminate percentage depletion allowances for four mined substances—asbestos, lead, mercury, and uranium—from the Federal tax code. This measure is based on language passed as part of the Energy Policy Act of 1992 by the other body during the 102d Congress.

Analysis by the Joint Committee on Taxation on the similar legislation that passed the House estimated that, under that bill, income to the Federal treasury from the elimination of percentage depletion allowances in just these four mined commodities would total $83 million over 5 years, $20 million in this year alone. These savings are calculated as the excess amount of federal revenues above what would be collected if depletion allowances were limited to the actual costs in capital investments.

These four allowances are only a few of the percentage depletion allowances contained in the tax code for extracted fuel, minerals, metal and other mined commodities—with a combined value, according to 1994 estimates by the Joint Committee on Taxation, of $4.8 billion.

Mr. President, unlike depreciation or cost depletion, the ability to use so-called percentage depletion allows companies to deduct far more than their actual costs. The result is a generous loophole for the company, and an expensive subsidy for the taxpayer.

Historically, percentage depletion allowances were placed in the tax code to reduce the effective tax rates in the mineral and extraction industries far below tax rates on other industries, providing incentives to increase investment, exploration and output. However, unlike cost depletion or even accelerated depreciation, percentage depletion also makes it possible to recover more than the amount of the original investment. As noted in the Budget Committee's report on tax expenditures, this makes percentage depletion essentially a mineral production subsidy.

There are two methods of calculating a deduction to allow a mining companies to recover the costs of their capital investment: cost depletion, and percentage depletion. Cost depletion allows for the recovery of the actual capital investment over the period which the reserve produces income. Using cost depletion, a company deducts a portion of their original capital investment minus any previous deductions, in an amount that is equal to the fraction of the remaining recoverable reserves. Under this method, the total deductions cannot exceed the original capital investment.

However, under percentage depletion, the deduction for recovery of a company's investment is a fixed percentage of ''gross income''—namely, sales revenue—from the sale of the mineral. According to the Budget Committee's summary of tax expenditures, under this method, total deductions typically exceed the capital that the company invested.

Mr. President, given the need to reduce the deficit and balance the budget, there is just as clear a need to review the spending done through the tax code as there is to scrutinize discretionary spending and entitlement programs. All of these forms of spending must be asked to justify themselves, and be weighed against each other in seeking to reach the broader goal of a balanced budget.

In the case of these particular tax expenditures, we must decide who should bear the costs of exploration, development, and production of natural resources: all taxpayers, or the users and producers of the resource. The current

tax break provided to the users and producers of these resources increases pressure on the budget deficit, and shifts a greater tax burden onto other businesses and individuals to compensate for the special treatment provided to the few.

Mr. President, the measure I am introducing is straightforward. It eliminates the percentage depletion allowance for asbestos, lead, mercury, and uranium while continuing to allow companies to recover reasonable cost depletion.

Even as a production subsidy, the percentage depletion tax loophole is inefficient. As the Budget Committee summary of tax expenditures notes, it encourages excessive development of existing properties rather than the exploration of new ones.

Moreover, Mr. President, the four commodities covered by my bill are among some of the most environmentally adverse. The percentage depletion allowance makes a mockery of conservation efforts. The subsidy effectively encourages mining regardless of the true economic value of the resource. The effects of such mines on U.S. lands, both public and private, has been significant—with tailings piles, scarred earth, toxic by-products, and disturbed habitats to prove it.

Ironically, the more toxic the commodity, the greater the percentage depletion received by the producer. Mercury, lead, uranium, and asbestos receive the highest percentage depletion allowance, while less toxic substances receive lower rates.

Mr. President, particularly in the case of the four commodities covered by my bill, these tax breaks create absurd contradictions in government policy. While Federal public health and environmental agencies are struggling to come to grips with a vast children's health crisis caused by lead poisoning, spending millions each year to prevent lead poisoning, test young people, and research solutions, the tax code is providing a subsidy for lead production—a subsidy that is not provided for the lead recycling industry.

Asbestos, too, has posed massive public health problems, and it is indefensible that this commodity, the use of which the Federal Government will effectively ban before the year 2000, continues to receive a massive tax subsidy.

Mr. President, the time has come for the Federal Government to get out of the business of subsidizing business in ways it can no longer afford—both financially and for the health of its citizens. This legislation is one step in that direction.

Mr. President, in 1992, I developed an 82+ plan to eliminate the Federal deficit and have continued to work on implementation of the elements of that plan since that time. Elimination of special tax preferences for mining companies was part of that 82+ point plan. Just as we must cut direct spending programs, if we are to balance that budget, we must also curtail these special taxpayer subsidies to particular industries that can no longer be justified.

Finally, Mr. President, in conclusion I want to pay tribute to several elected officials from Milwaukee, Mayor John Norquist and Milwaukee Alderman Michael Murphy, who have brought to my attention the incongruity of the federal government continuing to provide taxpayer subsidies for the production of toxic substances like lead while our inner cities are struggling to remove lead-based paint from older homes and buildings where children may be exposed to this hazardous material. I deeply appreciate their support and encouragement for my efforts in this area.

Mr. President, I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 51

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

SECTION 1. CERTAIN MINERALS NOT ELIGIBLE FOR PERCENTAGE DEPLETION.

(a) IN GENERAL.—Section 613(b)(1) of the Internal Revenue Code of 1986 (relating to percentage depletion rates) is amended—

(A) in subparagraph (A), by striking ''and uranium''; and

(B) in subparagraph (B), by striking ''asbestos,'', ''lead,'', and ''mercury,''.

(b) CONFORMING AMENDMENTS.—

(1) Section 613(b)(3)(A) of the Internal Revenue Code of 1986 is amended by inserting ''other than lead, mercury, or uranium'' after ''metal mines''.

(2) Section 613(b)(4) of such Code is amended by striking ''asbestos (if paragraph (1)(B) does not apply),''.

(3) Section 613(b)(7) of such Code is amended by striking ''or'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', or'', and by inserting after subparagraph (C) the following:

''(D) mercury, uranium, lead, and asbestos.''

(4) Section 613(c)(4)(D) of such Code is amended by striking ''lead,'' and ''uranium,''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1996.

By Mr. FEINGOLD:

S. 52. A bill to amend the Agricultural Adjustment Act to prohibit the Secretary of Agriculture from basing minimum prices for Class I milk on the distance or transportation costs from any location that is not within a marketing area, except under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 55. A bill to amend the Dairy Production Stabilization Act of 1983 to prohibit bloc voting by cooperative associations of milk producers in connection with the program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 56. A bill to amend the Dairy Production Stabilization Act of 1983 to ensure that all persons who benefit from the dairy promotion and research program contribute to the cost of the program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

DOMESTIC DAIRY POLICY LEGISLATION

Mr. FEINGOLD. Mr. President, today I rise to introduce three bills which attempt to rectify three different problems with domestic dairy policy. My State of Wisconsin is home to more than 26,000 dairy farmers. Over the past 4 years during the more than 288 listening sessions I've held in Wisconsin counties, I have heard from many of those dairy farmers on the issues addressed by the legislation I am introducing today.

The first bill I am introducing today, if enacted, will be a first step towards rectifying the inequities in the Federal Milk Marketing Order system. The Federal Milk Marketing Order system, created 60 years ago, establishes minimum prices for milk paid to producers throughout various marketing areas in the United States.

My legislation is very simple. It identifies the single most inequitable and injurious provision in the current system, and corrects it. That provision—known as single basing point pricing—is USDA's practice of basing prices for fluid milk—Class I milk—in all marketing areas east of the Rocky Mountains on the distance from Eau Claire, WI, when there is little economic justification for doing so.

In general, the price for fluid milk increases at a rate of 21 cents per 100 miles from Eau Claire, WI. Fluid milk prices, as a result, are $2.98 cents higher in Florida than in Wisconsin, more than $2 higher in New England, and more than $1 higher in Texas.

While this system has been around since 1937, the practice of basing fluid milk price differentials on the distance from Eau Claire was formalized in the 1960's, when arguably the Upper Midwest was the primary reserve for additional supplies of milk. The idea was to encourage local supplies of fluid milks in areas of the country that did not traditionally produce enough fluid milk to meet their own needs. At that time, this was important because our transportation infrastructure made long distance bulk shipments of milk difficult. Thus, the only way to ensure consumers a fresh local supply of fluid milk was to provide dairy farmers in those distant regions with a milk price high enough to encourage local production. Mr. President, the system worked too well. Ultimately, it has worked to the disadvantage of the Upper Midwest, and in particular, Wisconsin dairy farmers.

The artificially inflated Class I prices have provided production incentives beyond those needed to ensure a local supply of fluid milk in some regions, leading to an increase in manufactured products in those marketing orders. Those manufactured products directly compete with Wisconsin's processed

products, eroding our markets and driving national prices down.

Under the provisions of the 1996 farm bill, the U.S. Department of Agriculture is currently undergoing an informal rulemaking process to consolidate the number of Federal Milk Marketing Orders from 32 to 10. USDA is also looking at how to set prices for milk in those consolidated orders. By statute USDA is prohibited from basing the new prices on the structure of the existing milk differentials set by the 1985 farm bill. The reforms must be completed by spring, 1999. Secretary of Agriculture Dan Glickman will no doubt be pressured by many supporters of the status quo to maintain the overall price structure that has discriminated against Wisconsin farmers for so many years. I will do everything I can to prevent that from happening. Wisconsin farmers need real Class I price reform that removes the artificial competitive advantages provided to other regions to other regions of the country and allows Upper Midwest farmers to compete on a level playing field.

The legislation that I am introducing today identifies the one change that is absolutely necessary in any outcome—the elimination of single basing point pricing. It prohibits the Secretary of Agriculture from using distance or transportation costs from any location as the basis for pricing milk, unless significant quantities of milk are actually transported from that location into the recipient market. The Secretary will have to comply with the statutory requirement that supply and demand factors be considered as specified in the Agricultural Marketing Agreement Act when setting milk prices in marketing orders.

This legislation sends a very simple message to the Secretary of Agriculture—that among all the Class I pricing reform options from which the Secretary must choose, he should in no case select on option that either by intent or effect sets prices based on distance from a single location. I will work towards enactment of this legislation prior to the completion the proposed rule on Class I pricing reform.

Mr. President, my next two bills address inequities to dairy producers throughout the country under the Dairy Promotion and Research Order—also known as the dairy checkoff. I am pleased to be joined by Senator KOHL today on these two very important bills.

The National Dairy Promotion and Research Program collect roughly $225 million every year from dairy farmers each paying a mandatory 15 cents for every hundred pounds of milk they produce. The program is designed to promote dairy products to consumers and to conduct research relating to milk processing and marketing.

While 15 cents may appear to be a small amount of money, multiplied by all the milk marketed in this country, it adds up to thousands of dollars each year for the average producer. Given the magnitude of this program, it is critical that Congress take seriously the concerns producers have about their promotion program.

Since participation in the checkoff is mandatory and producers are not allowed refunds, Congress required that producers vote in a referendum to approve the program after it was authorized. The problem is that Congress didn't provide for a fair and equitable voting process in the original act and it's time to correct our mistake. My bill does that by eliminating a process known as bloc voting by dairy cooperatives.

Under current law, dairy cooperatives are allowed to cast votes in producer referenda en bloc for all of their farmer-members, either in favor of or against continuation of the National Dairy Board. While individual dissenters from the cooperative's position are allowed to vote individually, many farmers and producer groups claim the process stacks the deck against those seeking reform of the program.

Mr. President, the problem bloc voting creates is best illustrated by the results of the August 1993 producer referendum on continuation of the National Dairy Promotion and Research Board, called for by a petition of 16,000 diary farmers. In that referendum, 59 dairy cooperatives voting en bloc, cast 49,000 votes in favor of the program. Seven thousand producers from those cooperatives went against co-op policy and voted individually against continuing the program.

While virtually all of the votes in favor of the program were cast by cooperative bloc vote, nearly 100 percent of the votes in opposition were cast by individuals. Bloc voting allows cooperatives to cast votes for every indifferent or ambivalent producer in their membership, drowning out the voices of dissenting producers. It biases the referendum in favor of the Dairy Board's supporters, whose votes should not have greater weight than the dissenters.

The inappropriate nature of bloc voting in Dairy Board referendum is even clearer given that none of the 17 other commodity promotion programs allow cooperatives to bloc vote despite the existence of marketing cooperatives for many of those commodities.

Mr. President, it is time to give dairy farmers a fair voting process for their promotion program. I urge my colleagues to support this very important legislation.

My last bill, Mr. President, provides equity to domestic producers who have been paying into the promotion program for over 10 years while importers have gotten a free ride. Since the National Dairy Promotion and Research Board conducts generic promotion and general product research, domestic farmers and importers alike benefit from these actions. The Dairy Promotion Program Equity Act requires that all dairy product importers contribute to the Dairy Promotion Program for all dairy products imported at the same rate as domestic dairy farmers. This is not an unusual proposal, Mr. President. Many of our largest generic promotion programs in agriculture already assess importers for their fair share of the program, including programs for pork, beef, and cotton.

This legislation is particularly important in light of the passage of the General Agreement on Tariffs and Trade which will result in greater imports of dairy products over the next several years. An assessment of this type on importers would also be allowed under the GATT since our own milk producers are already paying the same assessment.

We have put our own producers at a competitive disadvantage for far too long. It's high time importers paid for their fair share of the program.

I am also pleased to be an original cosponsor of the National Dairy Promotion Board Reform Act introduced today by Senator KOHL. That bill further enhances producer representation on the National Dairy Board by providing for the direct election of National Dairy Board members, rather than appointment by the Secretary. That process will allow producers to elect members to the board that represent their views on promotion and eliminates the divisive impact of the political appointment process on the Dairy Board. Direct producer election of board members should also increase the accountability to their fellow dairy farmers.

I believe that these bills together comprise a sound reform package for the National Dairy Promotion and Research Board by providing a stronger voice to dairy farmers. These reforms will create a stronger, more effective and more representative Dairy Board. I urge my colleagues to support this important legislation.

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

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 52

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

SECTION 1. LOCATION ADJUSTMENTS FOR MINIMUM PRICES FOR CLASS I MILK.

Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (A)—

(A) in clause (3) of the second sentence, by inserting after ''the locations'' the following: ''within a marketing area subject to the order''; and

(B) by striking the last 2 sentences and inserting the following: ''Notwithstanding subsection (18) or any other provision of law, when fixing minimum prices for milk of the highest use classification in a marketing area subject to an order under this subsection, the Secretary may not, directly or indirectly, base the prices on the distance from, or all or part of the costs incurred to transport milk to or from, any location that

is not within the marketing area subject to the order, unless milk from the location constitutes at least 50 percent of the total supply of milk of the highest use classification in the marketing area. The Secretary shall report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the criteria that are used as the basis for the minimum prices referred to in the preceding sentence, including a certification that the minimum prices are made in accordance with the preceding sentence.''; and

(2) in paragraph (B)(c), by inserting after ''the locations'' the following: ''within a marketing area subject to the order''.

S. 55

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

SECTION 1. PROHIBITION ON BLOC VOTING.

Section 117 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4508) is amended—

(1) in the first sentence, by striking ''Secretary shall'' and inserting ''Secretary shall not''; and

(2) by striking the second through fifth sentences.

S. 56

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 ''Dairy Promotion Equity Act''.

SEC. 2. FUNDING OF DAIRY PROMOTION AND RESEARCH PROGRAM.

(a) DECLARATION OF POLICY.—The first sentence of section 110(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501(b)) is amended—

(1) by inserting after ''commercial use'' the following: ''and on imported dairy products''; and

(2) by striking ''products produced in'' and inserting ''products produced in or imported into''.

(b) DEFINITIONS.—Section 111 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502) is amended—

(1) in subsection (k), by striking ''and'' at the end;

(2) in subsection (l), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(m) the term 'imported dairy product' means any dairy product that is imported into the United States, including—

''(1) milk and cream and fresh and dried dairy products;

''(2) butter and butterfat mixtures;

''(3) cheese;

''(4) casein and mixtures; and

''(5) other dairy products; and

''(n) the term 'importer' means a person that imports an imported dairy product into the United States.''.

(c) FUNDING.—

(1) REPRESENTATION ON BOARD.—Section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)) is amended—

(A) by designating the first through ninth sentences as paragraphs (1) through (5) and paragraphs (7) through (10), respectively;

(B) in paragraph (1) (as so designated), by striking ''thirty-six'' and inserting ''38'';

(C) in paragraph (2) (as so designated), by striking ''Members'' and inserting ''Of the members of the Board, 36 members''; and

(D) by inserting after paragraph (5) (as so designated) the following:

''(6) IMPORTERS.—

''(A) IN GENERAL.—Of the members of the Board, 2 members shall be representatives of importers of imported dairy products.

''(B) APPOINTMENT.—The importer representatives shall be appointed by the Secretary from nominations submitted by importers under such procedures as the Secretary determines to be appropriate.''.

(2) ASSESSMENT.—Section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)) is amended—

(A) by designating the first through fifth sentences as paragraphs (1) through (5), respectively; and

(B) by adding at the end of the following:

''(6) IMPORTERS.—

''(A) IN GENERAL.—The order shall provide that each importer of imported dairy products shall pay an assessment to the Board in the manner prescribed by the order.

''(B) RATE.—The rate of assessment on imported dairy products shall be determined in the same manner as the rate of assessment per hundredweight or the equivalent of milk.

''(C) VALUE OF PRODUCTS.—For the purpose of determining the assessment on imports under subparagraph (B), the value to be placed on imported dairy products shall be established by the Secretary in a fair and equitable manner.''.

(3) RECORDS.—The first sentence of section 113(k) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(k)) is amended by striking ''person receiving'' and inserting ''importer of imported dairy products, each person receiving''.

(4) REFERENDUM.—Section 116 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4507) is amended by adding at the end the following:

(d) REFERENDUM ON DAIRY PROMOTION EQUITY ACT.—

''(1) IN GENERAL.—On the request of a representative group comprising 10 percent or more of the number of producers subject to the order, the Secretary shall—

''(A) conduct a referendum to determine whether the producers favor suspension of the application of the amendments made by section 2 of the Dairy Promotion Equity Act; and

''(B) suspend the application of the amendments until the results of the referendum are known.

''(2) CONTINUATION OF SUSPENSION.—The Secretary shall continue the suspension of the application of the amendments referred to in paragraph (1)(A) only if the Secretary determines that suspension of the application of the amendments is favored by a majority of the producers voting in the referendum who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use.''.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. THURMOND, and Mr. MOYNIHAN):

S. 53. A bill to require the general application of the antitrust laws to major league baseball, and for other purposes; to the Committee on the Judiciary.

THE CURT FLOOD ACT OF 1997

Mr. HATCH. Mr. President, I am introducing today, along with Senators LEAHY, THURMOND, and MOYNIHAN, the Curt Flood Act of 1997, clarifying the applicability of antitrust law to major league baseball. This legislation, which is basically the same bill that was approved by the Judiciary Committee last Congress, marks what I hope will be the final chapter in a long and, at times, frustrating effort to correct a mistaken decision by the Supreme Court.

As was true before, the bill simply makes clear that major league baseball, like all other professional sports, is subject to our Nation's antitrust laws, except with regard to team relocation, the minor leagues, and sports broadcasting. It overturns the Court's mistaken premise that baseball is not a business involved in interstate commerce, and it eliminates the unjustifiable legal precedent that individuals who play professional baseball should be treated differently from those who participate in other professional sports.

In 1922, in *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), the Supreme Court ruled that professional baseball was immune from the reach of the Federal antitrust laws because baseball was not a business in interstate commerce. Obviously, the Court at that time could not have imagined the modern game or a 1993 World Series where Canada's Toronto Blue Jays defeated the Philadelphia Phillies in games that were televised literally around the world.

Fifty years after the Supreme Court's decision in *Federal Baseball Club*, the Court rendered its decision in *Flood* v. *Kuhn*, which repudiated the legal basis of its prior decision as an ''anomaly'' and ''aberration confined to baseball'' but, because of its reluctance to overturn long-standing decisions, left the job of remedying its mistake to Congress.

Unfortunately, Congress has been reluctant to follow the Court's instruction. In the past, it has been argued that this issue was not ripe, that it should not be considered too close to a labor dispute or, as was the case most recently, that it should not be discussed during a labor dispute. Fortunately, that now infamous dispute, which has done so much to tarnish the game, is resolved. The time has come to pass this legislation.

Moreover, for the first time, the primary impediment to passage has been eliminated. In the new collective bargaining agreement the owners have pledged to work with the players to pass legislation that makes clear that professional baseball is subject to the antitrust laws with regard to labor relations.

It is our hope that this year, Congress will finally rectify the Court's mistake and make clear once and for all that baseball no longer has any claim to antitrust immunity. It has been 25 years since Curt Flood jeopardized his career by unsuccessfully challenging baseball's reserve clause, a suit which resulted in the unfortunate decision mentioned above.

Yesterday, Curt Flood tragically died of throat cancer at the age of 59. The hearts of baseball fans all over the country go out to Mr. Flood's family. I join these fans in expressing my deepest regrets to the Flood family, and let me suggest today that the time has come to finish what Curt Flood so courageously began.

Let me emphasize that our bill does not impose a big government solution

to baseball's problems. On the contrary, it would get government out of the way by eliminating a serious government-made obstacle to resolution of the labor difficulties in baseball. Baseball's antitrust immunity has distorted labor relations in major league baseball and has sheltered baseball from the market forces that have allowed the other professional sports, such as football and basketball, to thrive.

I should note that comparable legislation has been introduced in the other body by Mr. CONYERS of Michigan, the ranking member of the House Judiciary Committee, whose bill bears Mr. Flood's number.

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

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

S. 53

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 ''Curt Flood Act of 1997''.

SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO PROFESSIONAL MAJOR LEAGUE BASEBALL.

The Clayton Act (15 U.S.C. 12 et seq.) is amended by adding at the end the following new section:

''SEC. 27. (a) Subject to subsection (b), the antitrust laws shall apply to the business of professional major league baseball.

''(b) Nothing in this section shall be construed to affect—

''(1) the applicability or nonapplicability of the antitrust laws to the amateur draft of professional baseball, the minor league reserve clause, the agreement between professional major league baseball teams and teams of the National Association of Baseball, commonly known as the 'Professional Baseball Agreement', or any other matter relating to the minor leagues;

''(2) the applicability or nonapplicability of the antitrust laws to any restraint by professional baseball on franchise relocation; or

''(3) the application of Public Law 87–331 (15 U.S.C. 1291 et seq.) (commonly known as the 'Sports Broadcasting Act of 1961').''.

Mr. THURMOND. Mr. President, I rise today in support of the Curt Flood Act of 1997, which I am cosponsoring with Senator HATCH, Senator LEAHY, and others. Our legislation would repeal the antitrust exemption which shields major league baseball from the antitrust laws that apply to all other sports and unregulated businesses in our Nation. This bill is virtually identical to S. 627 in the last Congress which was the result of discussions between myself and Senators HATCH and LEAHY following the February 1995 hearing I chaired on this important issue. The bill is a compromise which has been carefully drafted to ensure that it achieves its purpose without imposing any unnecessary hardship on major league baseball.

It is fitting that this bill is named after Curt Flood, who died yesterday, for the Supreme Court denied Mr. Flood the relief he sought by upholding the antitrust exemption which we now seek to change. In his 1972 Supreme Court case, Mr. Flood challenged baseball's reserve clause which bound players to teams for their entire careers. Although unsuccessful because of the judicially-created antitrust exemption, Mr. Flood's selfless actions paved the way for the success of other players through arbitration. It is now time for us to resolve the antitrust exemption.

The bill we are introducing today eliminates baseball's antitrust exemption, with two exceptions. The legislation maintains the status quo for franchise location, and for the relationship with the minor leagues. It is important to protect the existing minor league relationships in order to avoid disruption of the more than 170 minor league teams which exist throughout our Nation. Continuing to shield franchise relocation decisions from the antitrust laws resolves the uncertainty facing team owners in other professional sports.

Mr. President, it is my belief that the Congress should repeal the court-imposed antitrust exemption and restore baseball to the same level playing field as other professional sports and unregulated businesses. In the last Congress, we were successful in passing S. 627 in the Antitrust, Business Rights, and Competition Subcommittee and in the Committee on the Judiciary. In this Congress we should make a concerted effort to enact the Curt Flood Act.

Mr. LEAHY. Mr. President, I join today in introducing the Curt Flood Act of 1997. Like the earlier version of this legislation that I sponsored in the last Congress, this bill is intended to cut back on the unjustified, judicially created exemption from the antitrust laws. In my view no one is or should be above the law.

Last Congress for the first time in our history, the Senate Judiciary Committee favorably reported language designed to cut back baseball's judicially mandated and aberrational antitrust exemption. We did so with the support of the Clinton administration and a bipartisan coalition of Senators. This bill reflects that language.

The Senate refused to consider the measure over the last 2 years. In part that may be explained by the opposition from major league baseball team owners and perhaps by a feeling among some that we should not legislate during a time in which there was a labor-management impasse. Both those concerns have now been removed with the recent, 5-year agreement between the major league baseball team owners and the Major League Baseball Players Association. Indeed, a provision in that agreement calls for the owners to lobby Congress in support of the repeal of the antitrust exemption, at least to the extent it relates to labor-management relations.

It is time to build on the progress we made last year and long past time for the Senate to act. Congress may not be able to solve every problem or heal baseball's self-inflicted wounds, but we can do this: We can pass legislation that will declare that professional baseball can no longer operate above the law.

Our antitrust laws protect competition and benefit consumers. We are faced with an anomalous situation where the Federal antitrust laws have not applied to certain major league baseball functions and operations for over 70 years.

I hope that we will, at long last, take up the issue of major leagues baseball's antitrust exemption. The burden of proof is on those who seek to justify this exemption from the law. No other business or professional or amateur sport is possessed of the exemption from law that major league baseball has enjoyed and abused.

One of the players who testified at our hearings last Congress asked a most perceptive question: If baseball were coming to Congress today to ask us to provide a statutory exemption, would such a bill be passed? I believe the answer to that question is a resounding no.

In addition, there is and has been no independent commissioner who could look out for the best interests of baseball and its fans. Despite repeated assurances, there has been no action to restore a strong, independent commissioner to oversee the game and it has suffered the consequences. It is only now beginning to emerge from a 4-year struggle without a labor-management agreement. I see that the owners last week authorized their executive committee to begin a search for a new commissioner. In my view baseball would be well served by making a serious commitment to a strong, independent commissioner. Neither fans nor Congress will be inspired by delay, drift or lack of direction.

In Vermont when I was growing up virtually everyone was a Red Sox fan. Now loyalties are split among teams and among various sports. We have a successful minor league team, the Vermont Expos, the champions of the New York-Penn League last season. We also have businesses and jobs that depend on baseball and fans who have been hurt by its shortsightedness and mismanagement over the past several years. There is a strong public interest in baseball and it reverberates throughout the country.

I am concerned about the interests of the public and, in particular, the interests of baseball fans. To reiterate the words of baseball's last commissioner, Fay Vincent: ''Baseball is more than ownership of an ordinary business. Owners have a duty to take into consideration that they own a part of America's national pastime—in trust. This trust sometimes requires putting self-interest second.'' Baseball's fans feel that this trust had been violated over the last several years.

It is the public that is being shortchanged by the policies and practices of major league baseball and by disregard for the interests of the fans. I

look forward to moving ahead thoughtfully to reconsider major league baseball's exemption from legal requirements to which all other businesses must conform their behavior. Since the multi-billion dollar businesses that have grown from what was once our national pastime are now being run accordingly to a financial bottom line, a healthy injection of competition may be just what is needed.

I want to be reassured, for example, that the minor league teams will not be abandoned or exploited by major league owners and that the negotiations concerning the Professional Baseball Agreement proceed to a fair conclusion without being skewed by some notion of antitrust exemption. I want to consider whether there are measures we in Congress might take to strengthen the hands of cities, taxpayers and fans against the extortionate demands for new stadiums at public expense. I want to revisit the issues of antitrust immunity in connection with sports broadcasting rights and restrictions on viewers' access to programming imposed by major league owners. If I had my way, we would make progress in clarifying each of these matters.

In an effort to act expeditiously, I am cosponsoring this consensus measure. I look forward to our prompt hearings, Committee and Senate consideration and to working with others to forge a legal framework in which the public will be better served.

I am delighted and encouraged that the ranking Democratic member of the House Judiciary Committee, Rep. JOHN CONYERS, JR., also acted on the first day of legislative activity in the House to introduce H.R. 21, companion baseball antitrust legislation based on what we reported last Congress. It is right and fitting that he chose Curt Flood's number for this bill.

Mr. Flood passed away yesterday. His contributions to the game of baseball went well beyond his all star play and outstanding statistics. He was a critical part of championship teams during his years patrolling center field for the St. Louis Cardinals in the late 50's and 60's. He was an outstanding hitter, fielder and all around player in an era of great players.

His part in baseball history has even more to do with his resolve to stand up for what he knew was the right thing and his legal challenge to the reserve clause, which had bound players to teams for life. He was the plaintiff who sacrificed his career and a place in baseball's Hall of Fame by taking the matter all the way to the United States Supreme Court where, in 1972, the Court challenged Congress to correct the aberration that baseball's antitrust immunity represents in our law. There would be no more fitting tribute to Curt Flood's courage than for this Congress finally to answer that 25-year-old call to action. I hope that we will do so without further delay.

Mr. MOYNIHAN. Mr. President, I am pleased to be an original cosponsor of the Curt Flood Act of 1997, a bill drafted by the distinguished chairman of the Judiciary Committee, Senator HATCH.

This bill is designed to be a partial repeal of major league baseball's antitrust exemption. It would leave the exemption in place as it pertains to minor league baseball and the ability of major league baseball to control the relocation of franchises.

In 1922, the Supreme Court of the United States, in *Federal Baseball Club* v. *National League,* held that ''exhibitions of base ball'' were not interstate commerce and thus were exempt from the antitrust laws. Fifty years later, in *Flood* v. *Kuhn* in 1972, the Court concluded that the antitrust exemption was an ''anomaly'' and an ''aberration confined to baseball'' and that ''profession baseball is a business and it is engaged in interstate commerce.'' Even so, the Court refused to reverse its 1922 decision in *Federal Baseball.* Justice Blackmun, delivering the opinion of the Court in *Food,* wrote:

> If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.

This decision clearly laid responsibility for baseball's antitrust exemption on Congress. It also explicitly recognized baseball's evolution into a major industry. Clearly, baseball is a business engaged in interstate commerce, and should be subject to the antitrust laws to the same extent that all other businesses are. So now, in 1997, on the 75th anniversary of *Federal Baseball,* the time has come for Congress to act.

On the first day of the 104th Congress, I introduced my own legislation on the subject. My bill, S. 15, the National Pastime Preservation Act of 1995, would have applied the antitrust laws to major league baseball without the exceptions suggested by my friend from Utah.

At this time, I am pleased to support any efforts that will provide a more level playing field for baseball's labor negotiations and that should help to prevent future strikes like the one we experienced in 1994 and 1995 from interrupting the fans enjoyment of the game of baseball itself. While I am happy that both the owners and the players agreed to support this limited repeal of baseball's antitrust exemption, it is important to keep in mind that the players and owners do not write the labor laws, Congress does.

It is most appropriate that this bill has been named in honor of Curt Flood, the man responsible for the second significant challenge to baseball's antitrust immunity. Curt Flood was a battler. Sadly, he lost a different battle yesterday, to throat cancer. He was only 59.

Mr. Flood hit over .300 six times playing for the St. Louis Cardinals and he finished his 15-year career with a lifetime batting average of .293. he was also a seven-time Gold Glove winner, a three-time all-star, and he helped lead the cardinals to their World Series titles in 1964 and 1967.

After the 1969 season, however, at the age of 32, Curt Flood was traded to the Phillies. Mr. Flood did not want to move. St. Louis was his home (he had played for the Cardinals for 11 years) and he was concerned about the racial politics in Philadelphia at the time. He sent a letter to Commissioner Bowie Kuhn asking him to nullify the trade, but his request was denied. It was in response to this denial that Mr. Flood initiated his historic suit challenging baseball's antitrust exemption.

Curt Flood put his career on the line by sitting out the 1970 season as he challenged baseballs' reserve clause—rules that prohibited players from choosing which teams they wished to play for. While he resumed playing in 1971 after St. Louis and Philadelphia made a deal with the Washington Senators, the year off hurt Mr. Flood. his level of play was not the same and he retired after playing only 13 games for the Senators. The head of the players' union, Don Fehr, called Mr. Flood ''a man of quiet dignity.'' He added, ''Curt Flood conducted his life in a way that set an example for all who had the privilege to know him. When it came time to take a stand, at great personal risk and sacrifice, he proudly stood firm for what he believe was right.''

I thank my friend from Utah for inviting me to cosponsor this legislation, and hope other Senators agree with us that the time has come to act.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. D'AMATO, Mr. HARKIN, and Mr. REID):

S. 54. A bill to reduce interstate street gang and organized crime activity, and for other purposes; to the Committee on the Judiciary.

THE FEDERAL GANG VIOLENCE ACT OF 1997

Mr. HATCH. Mr. President, I rise today to introduce the Federal Gang Violence Act. I am pleased to be joined in this important effort by Senator FEINSTEIN, as well as by Senators D'AMATO, HARKIN, and REID.

Gang violence in many of our communities is reaching frightening levels. Last year, my hometown of Salt Lake City was shocked by a particularly awful example. Asipeli Mohi, a 17-year-old Utahn, was tried and convicted of the gang-related beating and shooting death of another teenager, Aaron Chapman. Why was Aaron Chapman murdered? He was wearing red, apparently the color of a rival gang. Ironically, Mr. Chapman was on his way home from attending an anti-gang benefit concert when he was killed. Before committing this murder, the killer had racked up a record of five felonies and fifteen misdemeanors in juvenile court. Sadly, this example of senseless gang violence is not an isolated incident in my State or elsewhere. It is a scene replayed with disturbing frequency.

Gang violence is now common even in places where this would have been unthinkable several years ago. Indeed,

many people find it hard to believe that Salt Lake City or Ogden could have such a problem—gangs, they think, are a problem in cities like New York, Chicago, and Los Angeles, but not in our smaller cities.

However, reality is much grimmer. Since 1992, gang activity in Salt Lake City has increased tremendously. For instance, the number of identified gangs has increased fifty-five percent, from 185 to 288, and the number of gang members has increased 146 percent, from 1,438 to 3,545.

The number of gang-related crimes has increased a staggering 196 percent, from 1,741 in 1992 to 5,158 in the first eleven months of 1996. In 1995, there were 174 gang-related drive-by shootings, and in the first eleven months of 1996, this dismaying statistic increased to 207.

Our problem is severe. Moreover, there is a significant role the federal government can play in fighting this battle. I am not one to advocate the unbridled extension of federal jurisdiction. Indeed, I often think that we have federalized too many crimes. However, in the case of criminal street gangs, which increasingly are moving interstate to commit crimes, there is a very proper role for the federal government to play.

This bill will strengthen the coordinated, cooperative response of federal, state, and local law enforcement to criminal street gangs by providing more flexibility to the federal partners in this effort. It provides the federal prosecutorial tools needed to combat gang violence. Violent crimes committed by youth continue to be the fastest growing type of crime. Indeed, even as the general crime rate has leveled off, or even declined slightly over the last couple of years, violent youth crime, much of it committed by gangs, has increased. As my colleagues know, the sophistication and the interstate nature of these gangs has increased as well.

This bill puts teeth into the federal gang statute, by adding tough penalties based on the existing Continuing Criminal Enterprise statute in title 21 [21 U.S.C. 848]. Federal prosecutors will be able to charge gang leaders or members under this section if they engage in two or more criminal gang offenses.

These offenses include violent crimes, serious drug crimes, drug money laundering, extortion, and obstruction of justice—all offenses commonly committed by gangs.

Our bill adds a one to ten year sentence for the recruitment of persons into a gang. Importantly, there are even tougher penalties for recruiting a minor into a gang, including a four year mandatory minimum sentence.

The bill adds the use of a minor in a crime to the list of offenses for which a person can be prosecuted under the federal racketeering laws, known as RICO.

It enhances the penalties for transferring a handgun to a minor, knowing that it will be used in a crime of violence, and adds a new federal sentencing enhancement for the use of body armor in the commission of a federal crime.

Finally, the legislation we introduce today adds serious juvenile drug offenses to the list of predicates under the federal Armed Career Criminal Act, and authorizes $20 million over five years to hire federal prosecutors to crack down on criminal gangs.

Mr. President, these are common sense, needed provisions. They're tough. We need to get tough with gangs who recruit kids with the lure of easy money and glamour. This legislation is not a panacea for our youth violence crisis. But it is a large and critical step in addressing this issue. I look forward to working with my colleagues on this bill, and urge their support.

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

S. 54

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 ''Federal Gang Violence Act''.

SEC. 2. INCREASE IN OFFENSE LEVEL FOR PARTICIPATION IN CRIME AS A GANG MEMBER.

(a) DEFINITION.—In this section, the term ''criminal street gang'' has the same meaning as in section 521(a) of title 18, United States Code, as amended by section 3 of this Act.

(b) AMENDMENT OF SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate enhancement, increasing the offense level by not less than 6 levels, for any offense, if the offense was both committed in connection with, or in furtherance of, the activities of a criminal street gang and the defendant was a member of the criminal street gang at the time of the offense.

(c) CONSTRUCTION WITH OTHER GUIDELINES.—The amendment made pursuant to subsection (b) shall provide that the increase in the offense level shall be in addition to any other adjustment under chapter 3 of the Federal sentencing guidelines.

SEC. 3. AMENDMENT OF TITLE 18 WITH RESPECT TO CRIMINAL STREET GANGS.

(a) IN GENERAL.—Section 521 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''(a) DEFINITIONS.—'' and inserting the following:

''(a) DEFINITIONS.—In this section:'', and

(B) by striking '' 'conviction'' and all that follows through the end of the subsection and inserting the following:

''(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means an ongoing group, club, organization, or association of 3 or more persons, whether formal or informal—

''(A) a primary activity of which is the commission of 1 or more predicate gang crimes;

''(B) any members of which engage, or have engaged during the 5-year period preceding the date in question, in a pattern of criminal gang activity; and

''(C) the activities of which affect interstate or foreign commerce.

''(2) PATTERN OF CRIMINAL GANG ACTIVITY.—The term 'pattern of criminal gang activity' means the commission of 2 or more predicate gang crimes committed in connection with, or in furtherance of, the activities of a criminal street gang—

''(A) at least 1 of which was committed after the date of enactment of the Federal Gang Violence Act;

''(B) the first of which was committed not more than 5 years before the commission of another predicate gang crime; and

''(C) that were committed on separate occasions.

''(3) PREDICATE GANG CRIME.—The term 'predicate gang crime' means an offense, including an act of juvenile delinquency that, if committed by an adult, would be an offense that is—

''(A) a Federal offense—

''(i) that is a crime of violence (as that term is defined in section 16) including carjacking, drive-by-shooting, shooting at an unoccupied dwelling or motor vehicle, assault with a deadly weapon, and homicide;

''(ii) that involves a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the penalty is imprisonment for not less than 5 years;

''(iii) that is a violation of section 844, section 875 or 876 (relating to extortion and threats), section 1084 (relating to gambling), section 1955 (relating to gambling), chapter 44 (relating to firearms), or chapter 73 (relating to obstruction of justice);

''(iv) that is a violation of section 1956 (relating to money laundering), insofar as the violation of such section is related to a Federal or State offense involving a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

''(v) that is a violation of section 274(a)(1)(A), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A), 1327, or 1328) (relating to alien smuggling);

''(B) a State offense involving conduct that would constitute an offense under subparagraph (A) if Federal jurisdiction existed or had been exercised; or

''(C) a conspiracy, attempt, or solicitation to commit an offense described in subparagraph (A) or (B).

''(3) STATE.—The term 'State' includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory of possession of the United States.''; and

(2) by striking subsections (b), (c), and (d) and inserting the following:

''(b) CRIMINAL PENALTIES.—Any person who engages in a pattern of criminal gang activity—

''(1) shall be sentenced to—

''(A) a term of imprisonment of not less than 10 years and not more than life, fined in accordance with this title, or both; and

''(B) the forfeiture prescribed in section 413 of the Controlled Substances Act (21 U.S.C. 853); and

''(2) if any person engages in such activity after 1 or more prior convictions under this section have become final, shall be sentenced to—

''(A) a term of imprisonment of not less than 20 years and not more than life, fined in accordance with this title, or both; and

''(B) the forfeiture prescribed in section 412 of the Controlled Substances Act (21 U.S.C. 853).''.

(b) CONFORMING AMENDMENT.—Section 3663(c)(4) of title 18, United States Code, is amended by inserting before ''chapter 46'' the following: ''section 521 of this title,''.

SEC. 4. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF CRIMINAL STREET GANGS.

(a) TRAVEL ACT AMENDMENTS.—

(1) PROHIBITED CONDUCT AND PENALTIES.—Section 1952(a) of title 18, United States Code, is amended to read as follows:

''(a) PROHIBITED CONDUCT AND PENALTIES.—

''(1) IN GENERAL.—Any person who—

''(A) travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

''(i) distribute the proceeds of any unlawful activity; or

''(ii) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity; and

''(B) after travel or use of the mail or any facility in interstate or foreign commerce described in subparagraph (A), performs, attempts to perform, or conspires to perform an act described in clause (i) or (ii) of subparagraph (A),

shall be fined under this title, imprisoned not more than 10 years, or both.

''(2) CRIMES OF VIOLENCE.—Any person who—

''(A) travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to commit any crime of violence to further any unlawful activity; and

''(B) after travel or use of the mail or any facility in interstate or foreign commerce described in subparagraph (A), commits, attempts to commit, or conspires to commit any crime of violence to further any unlawful activity,

shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be sentenced to death or be imprisoned for any term of years or for life.''.

(2) DEFINITIONS.—Section 1952(b) of title 18, United States Code, is amended to read as follows:

''(b) DEFINITIONS.—In this section:

''(1) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the same meaning as in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

''(2) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

''(3) UNLAWFUL ACTIVITY.—The term 'unlawful activity' means—

''(A) predicate gang crime (as that term is defined in section 521);

''(B) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances, or prostitution offenses in violation of the laws of the State in which the offense is committed or of the United States;

''(C) extortion, bribery, arson, robbery, burglary, assault with a deadly weapon, retaliation against or intimidation of witnesses, victims, jurors, or informants, assault resulting in bodily injury, possession of or trafficking in stolen property, illegally trafficking in firearms, kidnapping, alien smuggling, or shooting at an occupied dwelling or motor vehicle, in each case, in violation of the laws of the State in which the offense is committed or of the United States; or

''(D) any act that is indictable under section 1956 or 1957 of this title or under subchapter II of chapter 53 of title 31.''.

(b) AMENDMENT OF SENTENCING GUIDELINES.—

(1) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend chapter 2 of the Federal sentencing guidelines so that—

(A) the base offense level for traveling in interstate or foreign commerce in aid of a criminal street gang or other unlawful activity is increased to 12; and

(B) the base offense level for the commission of a crime of violence in aid of a criminal street gang or other unlawful activity is increased to 24.

(2) DEFINITIONS.—In this subsection—

(A) the term ''crime of violence'' has the same meaning as in section 16 of title 18, United States Code;

(B) the term ''criminal street gang'' has the same meaning as in 521(a) of title 18, United States Code, as amended by section 3 of this Act; and

(C) the term ''unlawful activity'' has the same meaning as in section 1952(b) of title 18, United States Code, as amended by this section.

SEC. 5. SOLICITATION OR RECRUITMENT OF PERSONS IN CRIMINAL GANG ACTIVITY.

(a) PROHIBITED ACTS.—Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

''§ 522. Recruitment of persons to participate in criminal street gang activity

''(a) PROHIBITED ACT.—It shall be unlawful for any person to—

''(1) use any facility in, or travel in, interstate or foreign commerce, or cause another to do so, to recruit, solicit, request, induce, counsel, command, or cause another person to be a member of a criminal street gang, or conspire to do so; or

''(2) recruit, solicit, request, induce, counsel, command, or cause another person to engage in a predicate gang crime for which such person may be prosecuted in a court of the United States, or conspire to do so.

''(b) PENALTIES.—A person who violates subsection (a) shall—

''(1) if the person recruited—

''(A) is a minor, be imprisoned for a term of not less than 4 years and not more than 10 years, fined in accordance with this title, or both; or

''(B) is not a minor, be imprisoned for a term of not less than 1 year and not more than 10 years, fined in accordance with this title, or both; and

''(2) be liable for any costs incurred by the Federal Government or by any State or local government for housing, maintaining, and treating the minor until the minor reaches the age of 18.

''(c) DEFINITIONS.—In this section—

''(1) the terms 'criminal street gang' and 'predicate gang crime' have the same meanings as in section 521; and

''(2) the term 'minor' means a person who is younger than 18 years of age.''.

(b) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend chapter 2 of the Federal sentencing guidelines to provide an appropriate enhancement for any offense involving the recruitment of a minor to participate in a gang activity.

(c) TECHNICAL AMENDMENT.—The chapter analysis for chapter 26 of title 18, United States Code, is amended by adding at the end the following:

''522. Recruitment of persons to participate in criminal street gang activity.''.

SEC. 6. CRIMES INVOLVING THE RECRUITMENT OF PERSONS TO PARTICIPATE IN CRIMINAL STREET GANGS AND FIREARMS OFFENSES AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking ''or'' before ''(F)''; and

(2) by inserting before the semicolon at the end the following: '', (G) an offense under section 522 of this title, or (H) an act or conspiracy to commit any violation of chapter 44 of this title (relating to firearms)''.

SEC. 7. PROHIBITIONS RELATING TO FIREARMS.

(a) PENALTIES.—Section 924(a)(6) of title 18, United States Code, is amended—

(1) by striking subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (A);

(3) in subparagraph (A), as redesignated—

(A) by striking ''(B) A person other than a juvenile who knowingly'' and inserting ''(A) A person who knowingly'';

(B) in clause (i), by striking ''not more than 1 year'' and inserting ''not less than 1 year and not more than 5 years''; and

(C) in clause (ii), by inserting ''not less than 1 year and'' after ''imprisoned''; and

(4) by adding at the end the following:

''(B) Notwithstanding subparagraph (A), no mandatory minimum sentence shall apply to a juvenile who is less than 13 years of age.''.

(b) SERIOUS JUVENILE DRUG OFFENSES AS ARMED CAREER CRIMINAL PREDICATES.—Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) in clause (ii), by adding ''or'' at the end; and

(3) by adding at the end the following:

''(iii) any act of juvenile delinquency that if committed by an adult would be an offense described in clause (i) or (ii);''.

(c) TRANSFER OF FIREARMS TO MINORS FOR USE IN CRIME.—Section 924(h) of title 18, United States Code, is amended by striking ''10 years, fined in accordance with this title, or both'' and inserting ''10 years, and if the transferee is a person who is under 18 years of age, imprisoned for a term of not less than 3 years, fined in accordance with this title, or both''.

SEC. 8. AMENDMENT OF SENTENCING GUIDELINES WITH RESPECT TO BODY ARMOR.

(a) DEFINITIONS.—In this section—

(1) the term ''body armor'' means any product sold or offered for sale as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment; and

(2) the term ''law enforcement officer'' means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(b) SENTENCING ENHANCEMENT.—The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate sentencing enhancement, increasing the offense level not less than 2 levels, for any crime in which the defendant used body armor.

(c) APPLICABILITY.—No Federal sentencing guideline amendment made pursuant to this section shall apply if the Federal crime in which the body armor is used constitutes a violation of, attempted violation of, or conspiracy to violate the civil rights of a person by a law enforcement officer acting under color of the authority of such law enforcement officer.

SEC. 9. ADDITIONAL PROSECUTORS.

There are authorized to be appropriated $20,000,000 for each of the fiscal years 1998, 1999, 2000, 2001, and 2002 for the hiring of Assistant United States Attorneys and attorneys in the Criminal Division of the Department of Justice to prosecute juvenile criminal street gangs (as that term is defined in section 521(a) of title 18, United States Code, as amended by section 3 of this Act).

By Mr. FEINGOLD (for himself and Mr. REID):

S. 57. A bill to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate primary and general election campaigns, to limit contributions by multicandidate political committees, to limit soft money of political party committees, and for other purposes; to the Committee on Rules and Administration.

THE SENATE CAMPAIGN FINANCING AND SPENDING REFORM ACT

Mr. FEINGOLD. Mr. President, I rise today to introduce the proposed Senate Campaign Financing and Spending Reform Act of 1997, legislation that would provide public financing for Senate elections.

The need for comprehensive campaign finance reform is unquestionable. Each election year continues to set new records for campaign spending by federal candidates, with 1996 campaign expenditures expected to surpass $1.6 billion. This explosion in campaign spending has alienated the American people from the election process, discouraged thousands of qualified yet underfunded candidates from seeking public office, and heightened public disgust with the ways of Washington to levels not seen since the dark days of Watergate.

I have long believed that we need to sever the nexus between money and politics, and end as a prerequisite for elected office a candidate's ability to raise and spend millions of dollars. The most straight forward way to achieve that result is through a system of public financing.

The legislation I am introducing today, which I also introduced at the outset of the 104th Congress, would provide qualified candidates with the means to run a credible, competitive and issue-based campaign without having to raise the average $5 million it takes to win a Senate election.

This bill will establish voluntary spending limits based on each state's individual voting age population. With the cooperation of the candidates, this will finally curtail the skyrocketing spending that has plagued political campaigns in recent years. Just as important, these spending limits will allow members of Congress to focus on their duties and responsibilities as elected officials rather than spending substantial amounts of time raising money. For those candidates that do abide by the spending limits, there will be matching funds in the primary election for contributions under $250, once a candidate has raised 15 percent of that state's spending limit in contributions of $250 or less, half of which must come from within the candidate's state. There will be a 100 percent match for contributions under $100, and a 50 percent match for contributions between $101 and $250.

These provisions, along with only providing matching funds for in-state contributions, will encourage candidates to focus on smaller contributions from their home states. I believe this focus upon raising money within our home states is critical. General election candidates will become eligible for public financing benefits equal to the general election spending limit for their state.

In addition to agreeing to limit their overall campaign spending, candidates who receive the public benefits must agree to not spend more than $25,000 of their own money.

Opponents of campaign finance reform have often suggested that voluntary spending limits are unconstitutional. That is unfounded. In fact, in the landmark Supreme Court decision in *Buckley* v. *Valeo,* the Court noted that ''Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forego private fundraising and accept public funding.''

The legislation also bans so-called ''soft money'' that has allowed corporations, labor unions, and wealth individuals to contribute unlimited funds, up to millions of dollars, to the political parties outside the scope of Federal election law. The legislation restricts Political Action Committee (PAC) contributions to Federal candidates, prohibits lawmakers from sending out franked mass mailings during the calendar year of an election, bars lobbyists from contributing to elected officials they have lobbied in a 12-month period, and codifies a recent ruling by the Federal Election Commission that bars candidates from using campaign funds for personal purposes, such as mortgage payments, country club memberships, and vacations.

Public financing of campaigns will give challengers a legitimate opportunity to run a competitive campaign, will allow incumbents to focus on their legislative responsibilities, and will help to extinguish public perceptions that the United States Congress is under the control of the Washington special interests.

Public support for this sort of reform is strong. According to a recent poll by the Mellman Group, 59 percent of the American people—the highest level since Watergate—support full public financing for congressional campaigns. Just 29 percent of the American people oppose this proposal. The Mellman Group even found two out of every three self-described Republicans supported public financing. A Gallup poll found similar results, finding 64 percent overall support for a public financing system.

And perhaps most revealing, a very recent Wall Street Journal/NBC News poll found 92 percent of the American people simply believe too much money is spent in Federal elections.

I have no illusions that a public financing proposal would win approval in the 105th Congress. I believe that one day those who have opposed public financing will finally get the message the voters are trying to send us and there will be wider support within the Congress for this approach to cleaning up election campaigns.

In the meantime, I do believe there are meaningful reforms that can be considered and enacted with bipartisan support. That is why I have joined with a number of my colleagues on both sides of the aisle, including Senators MCCAIN, THOMPSON, WELLSTONE and others in co-authoring the first bipartisan campaign finance reform proposal offered in a decade.

That legislation, strongly supported by President Clinton, Common Cause, and numerous grassroots organizations and newspapers nationwide, would begin the process of fundamentally changing and reducing the role of money in our political system. It also encourages candidates to limit their campaign spending, but instead of offering direct public financing it provides substantial discounts on broadcast media and postage rates to candidates who agree to limit their overall spending, who agree to limit their own personal spending, and who agree to raise 60 percent of their campaign funds from their home States. I look forward to working with my colleagues on passing such meaningful reform, and will press for action in the first 100 days of this new Congress.

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. 57

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Senate Campaign Financing and Spending Reform Act''.

(b) TABLE OF CONTENTS.—

SEC. 2. FINDINGS AND DECLARATIONS OF THE SENATE.

(a) NECESSITY FOR SPENDING LIMITS.—The Senate finds and declares that—

(1) the current system of campaign finance has led to public perceptions that political contributions and their solicitation have unduly influenced the official conduct of elected officials;

(2) permitting candidates for Federal office to raise and spend unlimited amounts of money constitutes a fundamental flaw in the current system of campaign finance, and has undermined public respect for the Senate as an institution;

(3) the failure to limit campaign expenditures has caused individuals elected to the Senate to spend an increasing proportion of their time in office as elected officials raising funds, interfering with the ability of the Senate to carry out its constitutional responsibilities;

(4) the failure to limit campaign expenditures has damaged the Senate as an institution, due to the time lost to raising funds for campaigns; and

(5) to prevent the appearance of undue influence and to restore public trust in the Senate as an institution, it is necessary to limit campaign expenditures, through a system which provides public benefits to candidates who agree to limit campaign expenditures.

(b) NECESSITY FOR ATTRIBUTING COOPERATIVE EXPENDITURES TO CANDIDATES.—The Senate finds and declares that—

(1) public confidence and trust in the system of campaign finance would be undermined should any candidate be able to circumvent a system of caps on expenditures through cooperative expenditures with outside individuals, groups, or organizations;

(2) cooperative expenditures by candidates with outside individuals, groups, or organizations would severely undermine the effectiveness of caps on campaign expenditures, unless they are included within such caps; and

(3) to maintain the integrity of the system of campaign finance, expenditures by any individual, group, or organization that have been made in cooperation with any candidate, authorized committee, or agent of any candidate must be attributed to that candidate's cap on campaign expenditures.

TITLE I—CONTROL OF CONGRESSIONAL CAMPAIGN SPENDING

Subtitle A—Senate Election Campaign Expenditure Limits and Benefits

SEC. 101. SENATE EXPENDITURE LIMITS AND BENEFITS.

(a) AMENDMENT OF FECA.—Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

''TITLE V—EXPENDITURE LIMITS AND BENEFITS FOR SENATE ELECTION CAMPAIGNS

''SEC. 501. DEFINITIONS.

''In this title:

''(1) ELIGIBLE SENATE CANDIDATE.—The term 'eligible Senate candidate' means a candidate who is certified under section 505 as being eligible to receive benefits under this title.

''(2) EXCESS EXPENDITURE AMOUNT.—The term 'excess expenditure amount', with respect to an eligible Senate candidate, means the amount applicable to the eligible Senate candidate under section 504(c).

''(3) EXPENDITURE.—The term 'expenditure' has the meaning given in paragraph (9) of section 301, excluding subparagraph (B)(ii) of that paragraph.

''(4) FUND.—The term 'Fund' means the Senate Election Campaign Fund established by section 509.

''(5) GENERAL ELECTION EXPENDITURE LIMIT.—The term 'general election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 503(b).

''(6) PERSONAL FUNDS EXPENDITURE LIMIT.—The term 'personal funds expenditure limit' means the limit stated in section 503(a).

''(7) PRIMARY ELECTION EXPENDITURE LIMIT.—The term 'primary election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 502(d)(1)(A).

''(8) RUNOFF ELECTION EXPENDITURE LIMIT.—The term 'runoff election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 502(d)(1)(B).

''SEC. 502. ELIGIBLE SENATE CANDIDATES.

''(a) IN GENERAL.—For purposes of this title, a candidate is an eligible Senate candidate if the candidate—

''(1) files a primary election eligibility certification and declaration under subsection (b) and is in compliance with the representations made in the certification and declaration; and

''(2) files a general election eligibility certification and declaration under subsection (c) and is in compliance with the representations made in the certification and declaration.

''(b) PRIMARY ELECTION ELIGIBILITY CERTIFICATION AND DECLARATION.—

''(1) IN GENERAL.—The requirements of this subsection are met if the candidate files with the Secretary of the Senate—

''(A) a certification, under pending of perjury, that the candidate has met the threshold contribution requirement of subsection (e); and

''(B) a declaration that the candidate and the candidate's authorized committees—

''(i)(I) will not exceed the primary election expenditure limit or runoff election expenditure limits; and

''(II) will accept only an amount of contributions for the primary election and any runoff election that does not exceed the primary election expenditure limit and, if there is a runoff election, the runoff election expenditure limit;

''(ii)(I) will not exceed the primary and runoff election multicandidate political committee contribution limits of subsection (f); and

''(II) will accept only an amount of contributions for the primary election and any runoff election from multicandidate political committees that does not exceed those limits;

''(iii) will not accept contributions for the primary or runoff election that would cause the candidate to exceed the limitation on contributions from out-of-State residents under subsection (g);

''(iv) will not exceed the personal funds expenditure limit; and

''(v) will not exceed the general election expenditure limit.

''(2) DEADLINE FOR FILING DECLARATION.—The declaration under paragraph (1) shall be filed not later than the date on which the candidate files as a candidate for the primary election.

''(c) GENERAL ELECTION ELIGIBILITY CERTIFICATION AND DECLARATION.—

''(1) IN GENERAL.—The requirements of this subsection are met if the candidate files with the Secretary of the Senate—

''(A) a certification, under penalty of perjury, that—

''(i) the candidate and the candidate's authorized committees—

''(I) did not exceed the primary election expenditure limit or runoff election expenditure limit;

''(II) did not accept contributions for the primary election or runoff election in excess of the primary election expenditure limit or runoff election expenditure limit, reduced by any amounts transferred to the current election cycle from a preceding election cycle;

''(III) did not accept contributions for the primary or runoff election in excess of the multicandidate political committee contribution limits under subsection (f);

''(IV) did not accept contributions for the primary election or runoff election that caused the candidate to exceed the limitation on contributions from out-of-State residents under subsection (g); and

''(ii) at least 1 other candidate has qualified for the same general election ballot under the law of the candidate's State; and

''(B) a declaration that the candidate and the authorized committees of the candidate—

''(i) except as otherwise provided by this title, will not make expenditures that exceed the general election expenditure limit;

''(ii) except as otherwise provided by this title, will not accept any contribution for the general election to the extent that the contribution—

''(I) would cause the aggregate amount of contributions to exceed the sum of the amount of the general election expenditure limit, reduced by any amounts transferred to the current election cycle from a previous election cycle and not taken into account under subparagraph (A)(ii);

''(II) would cause the candidate to exceed the limitation on contributions from out-of-State residents under subsection (g);

''(III) would be in violation of section 315;

''(iii) will deposit all payments received under this title in an account insured by the Federal Deposit Insurance Corporation from which funds may be withdrawn by check or similar means of payment to third parties;

''(vi) will furnish campaign records, evidence of contributions, and other appropriate information to the Commission; and

''(v) will cooperate in the case of any audit and examination by the Commission under section 506 and will pay any amounts required to be paid under that section.

''(2) DEADLINE FOR FILING DECLARATION AND CERTIFICATION.—The declaration and certification under paragraph (1) shall be filed not later than 7 days after the earlier of—

''(A) the date on which the candidate qualifies for the general election ballot under State law; or

''(B) if, under State law, a primary or runoff election to qualify for the general election ballot occurs after September 1, the date on which the candidate wins the primary or runoff election.

''(d) PRIMARY AND RUNOFF ELECTION EXPENDITURE LIMITS.—

''(1) IN GENERAL.—The requirements of this subsection are met if—

''(A) the candidate or the candidate's authorized committees did not make expenditures for the primary election in excess of the lesser of—

''(i) 67 percent of the general election expenditure limit; or

''(ii) $2,750,000;

''(B) the candidate and the candidate's authorized committees did not make expenditures for any runoff election in excess of 20 percent of the general election expenditure limit.

''(2) INDEXING.—The $2,750,000 amount under paragraph (1)(A)(ii) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c), except that, for purposes of subsection (d)(1) and section 503(b)(3), the base period shall be calendar year 1996.

''(3) INCREASE.—The limitations under subparagraphs (A) and (B) of paragraph (1) with respect to any candidate shall be increased by the aggregate amount of independent expenditures in opposition to, or on behalf of any opponent of, the candidate during the primary or runoff election period, whichever is applicable, that are required to be reported to the Secretary of the Senate or to the Commission with respect to that period under section 304.

''(4) EXCESS AMOUNT OF CONTRIBUTIONS.—

''(A) IN GENERAL.—If the contributions received by a candidate or the candidate's authorized committees for the primary election or runoff election exceed the expenditures for either election—

''(i) the excess amount of contributions shall be treated as contributions for the general election; and

''(ii) expenditures for the general election may be made from the excess amount of contributions.

''(B) LIMITATION.—Subparagraph (A) shall not apply to the extent that treatment of excess contributions in accordance with subparagraph (A)—

''(i) would result in the violation of any limitation under section 315; or

''(ii) would cause the aggregate amount of contributions received for the general election to exceed the limits under subsection (c)(1)(D)(iii).

''(e) THRESHOLD CONTRIBUTION REQUIREMENT.—

''(1) IN GENERAL.—The requirement of this subsection is met if the candidate and the candidate's authorized committees have received allowable contributions during the applicable period in an amount at least equal to the lesser of—

''(A) 10 percent of the general election expenditure limit; or

''(B) $250,000.

''(2) DEFINITIONS.—In this section and subsections (b) and (c) of section 504:

''(A) ALLOWABLE CONTRIBUTION.—

''(i) IN GENERAL.—The term 'allowable contribution' means a contribution that is made as a gift of money by an individual pursuant to a written instrument identifying the individual as the contributor.

''(ii) EXCLUSIONS.—The term 'allowable contribution' does not include—

''(I) a contribution from any individual during the applicable period to the extent that the aggregate amount of such contributions from the individual exceeds $250; or

''(II) a contribution from an individual residing outside the candidate's State to the extent that acceptance of the contribution would bring a candidate out of compliance with subsection (g).

''(iii) APPLICABILITY.—Items subclauses (I) and (II) of clause (ii) shall not apply for purposes of section 504(a).

''(B) APPLICABLE PERIOD.—The term 'applicable period' means—

''(i) the period beginning on January 1 of the calendar year preceding the calendar year of a general election and ending on—

''(I) the date on which the certification and declaration under subsection (c) is filed by the candidate; or

''(II) for purposes of subsection (a) of section 503, the date of the general election; or

''(ii) in the case of a special election for the office of United States Senator, the period beginning on the date on which the vacancy in the office occurs and ending on the date of the general election.

''(f) MULTICANDIDATE POLITICAL COMMITTEE CONTRIBUTION LIMITS.—The requirements of this subsection are met if the candidate and the candidate's authorized committees have accepted from multicandidate political committees allowable contributions that do not exceed—

''(1) during the primary election period, an amount equal to 20 percent of the primary election spending limit; and

''(2) during the runoff election period, an amount equal to 20 percent of the runoff election spending limit.

''(g) LIMITATION ON OUT-OF-STATE CONTRIBUTIONS.—

''(1) REQUIREMENTS.—The requirements of this subsection are met if at least 50 percent of the total amount of contributions accepted by the candidate and the candidate's authorized committees are from individuals who are legal residents of the candidate's State.

''(2) PERSONAL FUNDS.—For purposes of paragraph (1), amounts consisting of funds from sources described in section 503(a) shall be treated as contributions from individuals residing outside the candidate's State.

''(3) TIME FOR DETERMINATION.—A determination whether the requirements of paragraph (1) are met shall be made each time a candidate is required to file a report under section 304 and shall be made on an aggregate basis.

''SEC. 503. LIMITS ON EXPENDITURES.

''(a) PERSONAL FUNDS EXPENDITURE LIMIT.—

''(1) IN GENERAL.—The aggregate amount of expenditures that may be made during an election cycle by an eligible Senate candidate or the candidate's authorized committees from the sources described in paragraph (2) shall not exceed $25,000.

''(2) SOURCES.—A source is described in this paragraph if it is—

''(A) personal funds of the candidate or a member of the candidate's immediate family; or

''(B) proceeds of indebtedness incurred by the candidate or a member of the candidate's immediate family.

''(b) GENERAL ELECTION EXPENDITURE LIMIT.—

''(1) IN GENERAL.—Except as otherwise provided in this title, the aggregate amount of expenditures for a general election by an eligible Senate candidate and the candidate's authorized committees shall not exceed the lesser of—

''(A) $5,500,000; or

''(B) the greater of—

''(i) $950,000; or

''(ii) $400,000; plus

''(I) 30 cents multiplied by the voting age population not in excess of 4,000,000; and

''(II) 25 cents multiplied by the voting age population in excess of 4,000,000.

''(2) EXCEPTION.—In the case of an eligible Senate candidate in a State that has not more than 1 transmitter for a commercial Very High Frequency (VHF) television station licensed to operate in that State, paragraph (1)(B)(ii) shall be applied by substituting—

''(A) '80 cents' for '30 cents' in subclause (I); and

''(B) '70 cents' for '25 cents' in subclause (II).

''(3) INDEXING.—The amount otherwise determined under paragraph (1) for any calendar year shall be increased by the same percentage as the percentage increase for the calendar year under section 502(d)(2).

''(c) PAYMENT OF TAXES ON EARNINGS.—The limitation under subsection (b) shall not apply to any expenditure for Federal, State, or local income taxes on the earnings of a candidate's authorized committees.

''(d) EXPENDITURES.—For purposes of this title, the term 'expenditure' has the meaning given such term by section 301(9), except that in determining any expenditures made by, or on behalf of, a candidate or a candidate's authorized committees, section 301(9)(B) shall be applied without regard to clause (ii) or (vi).

''(e) EXPENDITURES IN RESPONSE TO INDEPENDENT EXPENDITURES..—If an eligible Senate candidate is notified by the Commission under section 304(c)(4) that independent expenditures totaling $10,000 or more have been made in the same election in favor of another candidate or against the eligible candidate, the eligible candidate shall be permitted to spend an amount equal to the amount of the independent expenditures, and any such expenditures shall not be subject to any limit applicable under this title to the eligible candidate for the election.

''SEC. 504. BENEFITS FOR ELIGIBLE SENATE CANDIDATES.

''(a) IN GENERAL.—An eligible Senate candidate shall be entitled to—

''(1) the broadcast media rates provided under section 315(b) of the Communications Act of 1934;

''(2) the mailing rates provided in section 3626(e) of title 39, United States Code; and

''(3) payments in an amount equal to—

''(A) the public financing amount determined under subsection (b);

''(B) the excess expenditure amount determined under subsection (c); and

''(C) the independent expenditure amount determined under subsection (d).

''(b) PUBLIC FINANCING AMOUNT.—

''(1) DETERMINATION.—The public financing amount is—

''(A) in the case of an eligible candidate who is a major party candidate and has met the threshold requirement of section 502(e)—

''(i)(I) during the primary election period, the public financing an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less; plus

''(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 50 percent of the primary election expenditure limit; reduced by

''(III) the threshold requirement under section 502(e);

(ii)(I) during the runoff election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less; plus

''(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 10 percent of the general election expenditure limit; and

''(III) during the general election period, an amount equal to the general election expenditure limit; and

''(B) in the case of an eligible candidate who is not a major party candidate and who has met the threshold requirement of section 502(e)—

''(i)(I) during the primary election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less; plus

''(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 50 percent of the primary election expenditure limit; reduced by

''(III) the threshold requirement under section 502(e);

''(ii)(I) during the runoff election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less; plus,

''(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 10 percent of the general election expenditure limit; and

''(iii)(I) during the general election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less, plus;

''(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 50 percent of the general election expenditure limit.

''(c) EXCESS EXPENDITURE AMOUNT.—

''(1) DETERMINATION.—The excess expenditure amount is—

''(A) in the case of a major party candidate, an amount equal to the sum of—

''(i) if the opponent's excess is less than 33⅓ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; plus

''(ii) if the opponent's excess equals or exceeds 33⅓ percent but is less than 66⅔ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; plus

''(iii) if the opponent's excess equals or exceeds 66⅔ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; and

''(B) in the case of an eligible Senate candidate who is not a major party candidate, an amount equal to the least of—

''(i) the amount of allowable contributions accepted by the eligible Senate candidate during the applicable period in excess of the threshold contribution requirement under section 502(e);

''(ii) 50 percent of the general election expenditure limit; or

''(iii) the opponent's excess.

''(2) DEFINITION OF OPPONENT'S EXCESS.—In this subsection, the term 'opponent's excess' means the amount by which an opponent of an eligible Senate candidate in the general election accepts contributions or makes (or obligates to make) expenditures for the election in excess of the general election expenditure limit.

''(d) INDEPENDENT EXPENDITURE AMOUNT.—The independent expenditure amount is the total amount of independent expenditures made, or obligated to be made, during the general election period by 1 or more persons in opposition to, or on behalf of an opponent of, an eligible Senate candidate that are required to be reported by the persons under section 304(c) with respect to the general election period and are certified by the Commission under section 304(c).

''(e) WAIVER OF EXPENDITURE AND CONTRIBUTION LIMITS.—

''(1) RECIPIENTS OF EXCESS EXPENDITURE AMOUNT PAYMENTS AND INDEPENDENT EXPENDITURE AMOUNT PAYMENTS.—

''(A) IN GENERAL.—An eligible Senate candidate who receives payments under subsection (a)(3) that are allocable to the independent expenditure or excess expenditure amounts described in subsections (c) and (d) may make expenditures from the payments for the general election without regard to the general election expenditure limit.

''(B) NONMAJOR PARTY CANDIDATES.—In the case of an eligible Senate candidate who is not a major party candidate, the general election expenditure limit shall be increased by the amount (if any) by which the excess opponent expenditure amount exceeds the amount determined under subsection (b)(2)(B) with respect to the candidate.

''(2) ALL BENEFIT RECIPIENTS.—

''(A) IN GENERAL.—An eligible Senate candidate who receives benefits under this section may make expenditures for the general election without regard to the personal funds expenditure limit or general election expenditure limit if any 1 of the eligible Senate candidate's opponents who is not an eligible Senate candidate raises an amount of contributions or makes or becomes obligated to make an amount of expenditures for the general election that exceeds 200 percent of the general election expenditure limit.

''(B) LIMITATION.—The amount of the expenditures that may be made by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit.

''(3) ACCEPTANCE OF CONTRIBUTION WITHOUT REGARD TO SECTION 502(C)(1)(B)(IV).—

''(A) A candidate who receives benefits under this section may accept a contribution for the general election without regard to section 502(c)(1)(B)(iv) if—

''(i) a major party candidate in the same general election is not an eligible Senate candidate; or

''(ii) any other candidate in the same general election who is not an eligible Senate candidate raises an amount of contributions or makes or becomes obligated to make an amount of expenditures for the general election that exceeds 75 percent of the general election expenditure limit applicable to such other candidate.

''(B) LIMITATION.—The amount of contributions that may be received by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit.

''(e) USE OF PAYMENTS.—

''(1) PERMITTED USE.—Payments received by an eligible Senate candidate under subsection (a)(3) shall be used to make expenditures with respect to the general election period for the candidate.

''(2) PROHIBITED USE.—Payments received by an eligible Senate candidate under subsection (a)(3) shall not be used—

''(A) except as provided in subparagraph (D), to make any payments, directly or indirectly, to the candidate or to any member of the immediate family of the candidate;

''(B) to make any expenditure other than an expenditure to further the general election of the candidate;

''(C) to make an expenditure the making of which constitutes a violation of any law of the United States or of the State in which the expenditure is made; or

''(D) subject to section 315(i), to repay any loan to any person except to the extent that proceeds of the loan were used to further the general election of the candidate.

''SEC. 505. CERTIFICATION BY COMMISSION.

''(a) CERTIFICATION OF STATUS AS ELIGIBLE SENATE CANDIDATE.—

''(1) IN GENERAL.—The Commission shall certify to any candidate meeting the requirements of section 502 that the candidate is an eligible Senate candidate entitled to benefits under this title.

''(2) REVOCATION.—The Commission shall revoke a certification under paragraph (1) if the Commission determines that a candidate fails to continue to meet the requirements of section 502.

''(b) CERTIFICATION OF ELIGIBILITY TO RECEIVE BENEFITS.—

''(1) IN GENERAL.—Not later than 7 business days after an eligible Senate candidate files a request with the Secretary of the Senate to receive benefits under section 504, the Commission shall issue a certification stating whether the candidate is eligible for payments under this title and the amount of such payments to which such candidate is entitled.

''(2) CONTENTS OF REQUEST.—A request under paragraph (1) shall—

''(A) contain such information and be made in accordance with such procedures as the Commission may provide by regulation; and

''(B) contain a verification signed by the candidate and the treasurer of the principal campaign committee of the candidate stating that the information furnished in support of the request, to the best of their knowledge, is correct and fully satisfies the requirements of this title.

''(c) DETERMINATIONS BY THE COMMISSION.—All determinations made by the Commission under this title (including certifications

under subsections (a) and (b)) shall be final and conclusive, except to the extent that a determination is subject to examination and audit by the Commission under section 506 and judicial review under section 507.

"SEC. 506. EXAMINATIONS AND AUDITS; REPAYMENTS; CIVIL PENALTIES.

''(a) EXAMINATIONS AND AUDITS.—

''(1) AFTER A GENERAL ELECTION.—After each general election, the Commission shall conduct an examination and audit of the campaign accounts of 10 percent of all candidates for the office of United States in which there was an eligible Senate candidate on the ballot, as designated by the Commission through the use of an appropriate statistical method of random selection, to determine whether the candidates have complied with the conditions of eligibility and other requirements of this title. If the Commission selects a candidate, the Commission shall examine and audit the campaign accounts of all other candidates in the general election for the office the selected candidate is seeking.

''(2) WITH REASON TO BELIEVE THERE MAY HAVE BEEN A VIOLATION.—The Commission may conduct an examination and audit of the campaign accounts of any eligible Senate candidate in a general election if the Commission determines that there exists reason to believe that the eligible Senate candidate may have failed to comply with this title.

''(b) EXCESS PAYMENT.—If the Commission determines any payment was made to an eligible Senate candidate under this title in excess of the aggregate amounts to which the eligible Senate candidate was entitled, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the excess.

''(c) REVOCATION OF STATUS.—If the Commission revokes the certification of an eligible Senate candidate as an eligible Senate candidate under section 505(a)(1), the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the payments received under this title.

''(d) MISUSE OF BENEFIT.—If the Commission determines that any amount of any benefit made available to an eligible Senate candidate under this title was not used as provided for in this title, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay the amount of that benefit.

''(e) EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate who received benefits under this title made expenditures that in the aggregate exceed the primary election expenditure, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the amount of the excess expenditures.

''(f) CIVIL PENALTIES.—

''(1) MISUSE OF BENEFIT.—If the Commission determines that an eligible Senate candidate has committed a violation described in subsection (d), the Commission may assess a civil penalty against the eligible Senate candidate in an amount not greater than 200 percent of the amount of the benefit that was misused.

''(2) EXCESS EXPENDITURES.—

''(A) LOW AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by 2.5 percent or less the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to the amount of the excess expenditures.

''(B) MEDIUM AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by more than 2.5 percent and less than 5 percent the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to 3 times the amount of the excess expenditures.

''(C) LARGE AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by 5 percent or more the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to the sum of 3 times the amount of the excess expenditures plus an additional amount determined by the Commission.

''(g) UNEXPENDED FUNDS.—

''(1) RETENTION FOR PURPOSES OF LIQUIDATION OF OBLIGATIONS.—An eligible Senate candidate may retain for a period not exceeding 120 days after the date of a general election any unexpended funds received under this title for the liquidation of all obligations to pay expenditures for the general election incurred during the general election period.

''(2) REPAYMENT.—At the end of the 120-day period, any unexpended funds received under this title shall be promptly repaid.

''(h) LIMIT ON PERIOD FOR NOTIFICATION.—No notification shall be made by the Commission under this section with respect to an election more than 3 years after the date of the election.

''(i) DEPOSITS.—The Secretary shall deposit all payments received under this section into the Senate Election Campaign Fund.

"SEC. 507. JUDICIAL REVIEW.

''(a) JUDICIAL REVIEW.—Any agency action by the Commission under this title shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in that court within 30 days after the date of the agency action.

''(b) APPLICATION OF TITLE 5, UNITED STATES CODE.—Chapter 7 of title 5, United States Code, shall apply to judicial review of any agency action by the Commission under this title.

''(c) AGENCY ACTION.—For purposes of this section, the term 'agency action' has the meaning given the term in section 551(13) of title 5, United States Code.

"SEC. 508. PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS.

''(a) APPEARANCES.—The Commission may appear in and defend against any action instituted under this section and under section 507 by attorneys employed in the office of the Commission or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to chapter 51 and subchapter III of chapter 53 of that title.

''(b) ACTIONS FOR RECOVERY OF AMOUNT OF BENEFITS.—The Commission, by attorneys and counsel described in subsection (a), may bring an action in United States district court to recover any amounts determined under this title to be payable to any entity that afforded a benefit to an eligible Senate candidate under this title.

''(c) ACTION FOR INJUNCTIVE RELIEF.—The Commission, by attorneys and counsel described in subsection (a), may petition the courts of the United States for such injunctive relief as is appropriate in order to implement any provision of this title.

''(d) APPEALS.—The Commission, on behalf of the United States, may appeal from, and may petition the Supreme Court for certiorari to review, any judgment or decree entered with respect to actions in which the Commission under this section.

"SEC. 509. REPORTS TO CONGRESS; REGULATIONS.

''(a) REPORTS.—

''(1) IN GENERAL.—As soon as practicable after each general election, the Commission shall submit a full report to the Senate setting forth—

''(A) the expenditures (shown in such detail as the Commission determines to be appropriate) made by each eligible Senate candidate and the authorized committees of the candidate;

''(B) the amounts certified by the Commission under section 505 as benefits available to each eligible Senate candidate;

''(C) the amount of repayments, if any, required under section 506 and the reason why each repayment was required; and

''(D) the balance in the senate Election Campaign Fund, and the balance in any account maintained by the Fund.

''(2) PRINTING.—Each report under paragraph (1) shall be printed as a Senate document.

''(b) REGULATIONS.—

''(1) IN GENERAL.—The Commission may issue such regulations, conduct such examinations and investigations, and require the keeping and submission of such books, records, and information, as the Commission considers necessary to carry out the functions and duties of the Commission under this title.

''(2) STATEMENT TO SENATE.—Not less than 30 days before issuing a regulation under paragraph (1), the Commission shall submit to the Senate a statement setting forth the proposed regulation and containing a detailed explanation and justification for the regulation.

"SEC. 510. PAYMENTS TO ELIGIBLE CANDIDATES.

''(a) SENATE ELECTION CAMPAIGN FUND.—

''(1) ESTABLISHMENT OF CAMPAIGN FUND.—There is established on the books of the Treasury of the United States a special fund to be known as the 'Senate Election Campaign Fund'.

''(2) APPROPRIATIONS.—

(A) IN GENERAL.—There are appropriated to the Fund for each fiscal year, out of amounts in the general fund of the Treasury not otherwise appropriated, amounts equal to—

''(i) any contributions by persons which are specifically designated as being made to the Fund;

''(ii) amounts collected under section 506(i); and

''(iii) any other amounts that may be appropriated to or deposited into the Fund under this title.

''(B) TRANSFERS.—The Secretary of the Treasury shall, from time to time, transfer to the Fund an amount not in excess of the amounts described in subparagraph (A).

''(C) FISCAL YEAR.—Amounts in the Fund shall remain available without fiscal year limitation.

''(3) USE OF FUND.—Amounts in the Fund shall be available only for the purposes of—

''(A) making payments required under this title; and

''(B) making expenditures in connection with the administration of the Fund.

''(4) FUND ACCOUNT.—The Secretary shall maintain such accounts in the Fund as may be required by this title or which the Secretary determines to be necessary to carry out the provisions of this title.

''(b) PAYMENTS ON CERTIFICATION.—On receipt of a certification from the Commission under section 505, except as provided in subsection (c), the Secretary shall, subject to

the availability of appropriations, promptly pay the amount certified by the Commission to the candidate out of the Senate Election Campaign Fund.

''(c) INSUFFICIENT FUNDS.—

''(1) WITHHOLDING.—If, at the time of a certification by the Commission under section 505 for payment to an eligible Senate candidate, the Secretary determines that the monies in the Senate Election Campaign Fund are not, or may not be, sufficient to satisfy the full entitlement of all eligible candidates, the Secretary shall withhold from the amount of the payment any amount that the Secretary determines to be necessary to ensure that each eligible Senate candidate will receive the same pro rata share of the candidate's full entitlement.

''(2) SUBSEQUENT PAYMENT.—Amounts withheld under paragraph (1) shall be paid when the Secretary determines that there are sufficient monies in the Senate Election Campaign Fund to pay all or a portion of the funds withheld from all eligible Senate candidates, but, if only a portion is to be paid, the portion shall be paid in such a manner that each eligible candidate receives an equal pro rata share.

''(3) NOTIFICATION OF ESTIMATED WITHHOLDING.—

''(A) ADVANCE ESTIMATE OF AVAILABLE FUNDS AND PROJECTED COSTS.—Not later than December 31 of any calendar year preceding a calendar year in which there is a regularly scheduled general election, the Secretary, after consultation with the Commission, shall make an estimate of—

''(i) the amount of funds that will be available to make payments under this title in the general election year; and

''(ii) the costs of implementing this title in the general election year.

''(B) NOTIFICATION.—If the Secretary determines that there will be insufficient funds under subparagraph (A) for any calendar year, the Secretary shall notify by registered mail each candidate for the Senate on January 1 of that year (or, if later, the date on which an individual becomes such a candidate) of the amount that the Secretary estimates will be the pro rata withholding from each eligible Senate candidate's payments under this subsection.

''(C) INCREASE IN CONTRIBUTION LIMIT.—The amount of an eligible candidate's contribution limit under section 502(c)(1)(B)(iv) shall be increased by the amount of the estimated pro rata withholding under subparagraph (B).

''(4) NOTIFICATION OF ACTUAL WITHHOLDING.—

''(A) IN GENERAL.—The Secretary shall notify the Commission and each eligible Senate candidate by registered mail of any actual reduction in the amount of any payment by reason of this subsection.

''(B) GREATER AMOUNT OF WITHHOLDING.—If the amount of a withholding exceeds the amount estimated under paragraph (3), an eligible Senate candidate's contribution limit under section 502(c)(1)(B)(iv) shall be increased by the amount of the excess.''.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) shall apply to elections occurring after December 31, 1998.

(2) APPLICABILITY TO CONTRIBUTIONS AND EXPENDITURES.—For purposes of any expenditure or contribution limit imposed by the amendment made by subsection (b)—

(A) no expenditure made before January 1, 1999, shall be taken into account, except that there shall be taken into account any such expenditure for goods or services to be provided after that date; and

(B) all cash, cash items, and Government securities on hand as of January 1, 1999, shall be taken into account in determining whether the contribution limit is met, except that there shall not be taken into account amounts used during the 60-day period beginning on January 1, 1999, to pay for expenditures that were incurred (but unpaid) before that date.

(c) EFFECT OF INVALIDITY ON OTHER PROVISIONS OF TITLE.—If section 502, 503, or 504 of the Federal Election Campaign Act of 1971 (as added by subsection (a)) or any part of those sections is held to be invalid, this Act and all amendments made by this Act shall be treated as invalid.

(d) PROVISIONS TO FACILITATE VOLUNTARY CONTRIBUTIONS TO SENATE ELECTION CAMPAIGN FUND.—

(1) GENERAL RULE.—Part VIII of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following:

''Subpart B—Designation of Additional Amounts to Senate Election Campaign Fund

''Sec. 6097. Designation of additional amounts.

''SEC. 6097. DESIGNATION OF ADDITIONAL AMOUNTS.

''(a) GENERAL RULE.—Every individual (other than a nonresident alien) who files an income tax return for any taxable year may designate an additional amount equal to $5 ($10 in the case of a joint return) to be paid over to the Senate Election Campaign Fund.

''(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made for any taxable year only at the time of filing the income tax return for the taxable year. Such designation shall be made on the page bearing the taxpayer's signature.

''(c) TREATMENT OF ADDITIONAL AMOUNTS.—Any additional amount designated under subsection (a) for any taxable year shall, for all purposes of law, be treated as an additional income tax imposed by chapter 1 for such taxable year.

''(d) INCOME TAX RETURN.—For purposes of this section, the term 'income tax return' means the return of the tax imposed by chapter 1.''.

(2) CONFORMING AMENDMENTS.—(A) Part VIII of subchapter A of chapter 61 of such Code is amended by striking the heading and inserting:

''PART VIII—DESIGNATION OF AMOUNTS TO ELECTION CAMPAIGN FUNDS

''Subpart A. Presidential Election Campaign Fund.

''Subpart B. Designation of additional amounts to Senate Election Campaign Fund.

''Subpart A—Presidential Election Campaign Fund''.

(B) The table of parts for subchapter A of chapter 61 of such Code is amended by striking the item relating to part VIII and inserting:

''Part VIII. Designation of amounts to election campaign funds.''

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 102. POLITICAL ACTION COMMITTEES.

(a) LIMITATIONS ON MULTICANDIDATE POLITICAL COMMITTEE CONTRIBUTIONS TO CANDIDATES.—Section 315(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)) is amended—

(1) by striking ''(2) No multicandidate'' and inserting the following:

''(2) MULTICANDIDATE POLITICAL COMMITTEES.—

''(A) IN GENERAL.—No multicandidate'';

(2) in subparagraph (A) by striking ''$5,000'' and inserting ''$1,000'';

(3) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively; and

(4) by adding at the end the following:

''(B) CONTRIBUTIONS TO CANDIDATES.— Notwithstanding subparagraph (A)(i) it shall be unlawful for a multicandidate political committee to make a contribution to a candidate for election, or nomination for election, to the Senate or an authorized committee of a Senate candidate, or for a Senate candidate to accept a contribution, to the extent that the making or accepting of the contribution would cause the amount of contributions received by the candidate and the candidate's authorized committees from multicandidate political committees to exceed the lesser of—

''(i) $825,000; or

''(ii) 20 percent of the primary election expenditure limit, runoff election expenditure limit, or general election expenditure limit (as those terms are defined in section 501) that is applicable (or, if the candidate were an eligible Senate candidate (as defined in section 501) would be applicable) to the candidate.''.

(b) INDEXING.—The $825,000 amount under subparagraph (B) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)), except that for purposes of subparagraph (B), the base period shall be the calendar year 1996.

(c) RETURN OF EXCESS.—A candidate or authorized committee that receives a contribution from a multicandidate political committee in excess of the amount allowed under subparagraph (B) shall return the amount of the excess contribution to the contributor.

(d) LIMITATIONS ON MULTICANDIDATE COMMITTEE CONTRIBUTIONS TO POLITICAL COMMITTEES.—Paragraphs (1)(C) and (2)(A)(iii) of section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)), as amended by subsection (a), are amended by striking ''$5,000'' and inserting ''$1,000''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elections (and the election cycles relating thereto) occurring after December 31, 1998.

(2) APPLICABILITY.—In applying the amendments made by this section, there shall not be taken into account—

(A) a contribution made or received before January 1, 1999; or

(B) a contribution made to, or received by, a candidate on or after January 1, 1999, to the extent that the aggregate amount of such contributions made to or received by the candidate is not greater than the excess (if any) of—

(i) the aggregate amount of such contributions made to or received by any opponent of the candidate before January 1, 1999; over

(ii) the aggregate amount of such contributions made to or received by the candidate before January 1, 1999.

SEC. 103. REPORTING REQUIREMENTS.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 304 the following:

''SEC. 304A. REPORTING REQUIREMENTS FOR SENATE CANDIDATES.

''(a) MEANINGS OF TERMS.—Any term used in this section that is used in title V shall have the same meaning as when used in title V.

''(b) CANDIDATE OTHER THAN ELIGIBLE SENATE CANDIDATE.—

''(1) DECLARATION OF INTENT.—A candidate for the office of Senator who does not file a certification with the Secretary of the Senate under section 502(c) shall, at the time

provided in section 502(c)(2), file with the Secretary of the Senate a declaration as to whether the candidate intends to make expenditures for the general election in excess of the general election expenditure limit.

''(2) REPORTS.—

''(A) INITIAL REPORT.—A candidate for the Senate who qualifies for the ballot for a general election—

''(i) who is not an eligible Senate candidate under section 502; and

''(ii) who receives contributions in an aggregate amount or makes or obligates to make expenditures in an aggregate amount for the general election that exceeds 75 percent of the general election expenditure limit;

shall file a report with the Secretary of the Senate within 24 hours after aggregate contributions have been received or aggregate expenditures have been made or obligated to be made in that amount (or, if later, within 24 hours after the date of qualification for the general election ballot), setting forth the candidate's aggregate amount of contributions received and aggregate amount of expenditures made or obligated to be made for the election as of the date of the report.

''(B) ADDITIONAL REPORTS.—After an initial report is filed under subparagraph (A), the candidate shall file additional reports (until the amount of such contributions or expenditures exceeds 200 percent of the general election expenditure limit) with the Secretary of the Senate within 24 hours after each time additional contributions are received, or expenditures are made or are obligated to be made, that in the aggregate exceed an amount equal to 10 percent of the general election expenditure limit and after the aggregate amount of contributions or expenditures exceeds 133⅓, 166⅔, and 200 percent of the general election expenditure limit.

''(3) NOTIFICATION OF OTHER CANDIDATES.—The Commission—

''(A) shall, within 24 hours after receipt of a declaration or report under paragraph (1) or (2), notify each eligible Senate candidate of the filing of the declaration or report; and

''(B) if an opposing candidate has received aggregate contributions, or made or obligated to make aggregate expenditures, in excess of the general election expenditure limit, shall certify, under subsection (e), the eligibility for payment of any amount to which an eligible Senate candidate in the general election is entitled under section 504(a).

''(4) ACTION BY THE COMMISSION ABSENT REPORT.—

''(A) IN GENERAL.—Notwithstanding the reporting requirements under this subsection, the Commission may make its own determination that a candidate in a general election who is not an eligible Senate candidate has raised aggregate contributions, or made or has obligated to make aggregate expenditures, in the amounts that would require a report under paragraph (2).

''(B) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—The Commission shall—

''(i) within 24 hours after making a determination under subparagraph (A), notify each eligible Senate candidate in the general election of the making of the determination; and

''(ii) when the aggregate amount of contributions or expenditures exceeds the general election expenditure limit, certify under subsection (e) an eligible Senate candidate's eligibility for payment of any amount under section 504(a).

''(c) REPORTS ON PERSONAL FUNDS.—

''(1) FILING.—A candidate for the Senate who, during an election cycle, expends more than the personal funds expenditure limit during the election cycle shall file a report with the Secretary of the Senate within 24 hours after expenditures have been made or loans incurred in excess of the personal funds expenditure limit.

''(2) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—Within 24 hours after a report has been filed under paragraph (1), the Commission shall notify each eligible Senate candidate in the general election of the filing of the report.

''(3) ACTION BY THE COMMISSION ABSENT REPORT.—

''(A) IN GENERAL.—Notwithstanding the reporting requirements under this subsection, the Commission may make its own determination that a candidate for the Senate has made expenditures in excess of the amount under paragraph (1).

''(B) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—Within 24 hours after making a determination under subparagraph (A), the Commission shall notify each eligible Senate candidate in the general election of the making of the determination.

''(d) CANDIDATES FOR OTHER OFFICES.—

''(1) FILING.—Each individual—

''(A) who becomes a candidate for the office of United States Senator;

''(B) who, during the election cycle for that office, held any other Federal, State, or local office or was a candidate for any such office; and

''(C) who expended any amount during the election cycle before becoming a candidate for the office of United States Senator that would have been treated as an expenditure if the individual had been such a candidate (including amounts for activities to promote the image or name recognition of the individual);

shall, within 7 days after becoming a candidate for the office of United States Senator, report to the Secretary of the Senate the amount and nature of such expenditures.

''(2) APPLICABILITY.—Paragraph (1) shall not apply to any expenditures in connection with a Federal, State, or local election that has been held before the individual becomes a candidate for the office of United States Senator.

''(3) DETERMINATION.—The Commission shall, as soon as practicable, make a determination as to whether any amounts reported under paragraph (1) were made for purposes of influencing the election of the individual to the office of Senator.

''(d) BASIS OF CERTIFICATIONS.—Notwithstanding section 505(a), the certification required by this section shall be made by the Commission on the basis of reports filed in accordance with this Act or on the basis of the Commission's own investigation or determination.

''(e) COPIES OF REPORTS AND PUBLIC INSPECTION.—The Secretary of the Senate shall—

''(1) transmit a copy of any report or filing received under this section or under title V (whenever a 24 hour response is required of the Commission) as soon as possible (but not later than 4 working hours of the Commission) after receipt of the report or filing;

''(2) make the report or filing available for public inspection and copying in the same manner as the Commission under section 311(a)(4); and

''(3) preserve the reports and filings in the same manner as the Commission under section 311(a)(5).''.

SEC. 104. DISCLOSURE BY CANDIDATES OTHER THAN ELIGIBLE SENATE CANDIDATES.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) (as amended by section 133) is amended by adding at the end the following:

''(f) DISCLOSURE BY CANDIDATES OTHER THAN ELIGIBLE SENATE CANDIDATES.—A broadcast, cablecast, or other communication that is paid for or authorized by a candidate in the general election for the office of United States Senator who is not an eligible Senate candidate, or the authorized committee of such a candidate, shall contain the following sentence: 'This candidate has not agreed to voluntary campaign spending limits.'.''.

Subtitle B—General Provisions

SEC. 131. BROADCAST RATES AND PREEMPTION.

(a) BROADCAST RATES.—Section 315(b) of the Communications Act of 1934 (47 U.S.C. 315(b)) is amended—

(1) by striking ''(b) The charges'' and inserting the following:

''(b) BROADCAST MEDIA RATES.—

''(1) IN GENERAL.—The charges'';

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margins accordingly;

(3) in paragraph (1)(A) (as redesignated by paragraph (2))—

(A) by striking ''forty-five'' and inserting ''30'';

(B) by striking ''sixty'' and inserting ''45''; and

(C) by striking ''lowest unit charge of the station for the same class and amount of time for the same period'' and inserting ''lowest charge of the station for the same amount of time for the same period on the same date''; and

(4) by adding at the end the following:

''(2) ELIGIBLE SENATE CANDIDATES.—In the case of an eligible Senate candidate (as described in section 501 of the Federal Election Campaign Act), the charges for the use of a television broadcasting station during the general election period (as defined in section 301 of that Act) shall not exceed 50 percent of the lowest charge described in paragraph (1)(A).

(b) PREEMPTION; ACCESS.—Section 315 of the Communications Act of 1947 (47 U.S.C. 315) is amended—

(1) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (b) the following:

''(c) PREEMPTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased and paid for such use pursuant to subsection (b)(1).

''(2) CIRCUMSTANCES BEYOND CONTROL OF LICENSEE.—If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the broadcasting station, any candidate advertising spot scheduled to be broadcast during that program may also be preempted.''.

''(d) TIME FOR LEGALLY QUALIFIED SENATE CANDIDATES.—In the case of a legally qualified candidate for the United States Senate, a licensee shall provide broadcast time without regard to the rates charged for the time.''.

SEC. 132. EXTENSION OF REDUCED THIRD-CLASS MAILING RATES TO ELIGIBLE SENATE CANDIDATES.

Section 3626(e) of title 39, United States Code, is amended—

(1) in paragraph (2)(A)—

(A) by striking ''and the National'' and inserting ''the National''; and

(B) by striking ''Committee;'' and inserting ''Committee, and, subject to paragraph (3), the principal campaign committee of an eligible House of Representatives or Senate candidate;'';

(2) in paragraph (2)(B), by striking ''and'' after the semicolon;

(3) in paragraph (2)(C), by striking the period and inserting ''; and''; and

(4) by adding after paragraph (2)(C) the following new subparagraph:

''(D) The terms 'eligible Senate candidate' and 'principal campaign committee' have the meanings given those terms in section 301 of the Federal Election Campaign Act of 1971.''; and

(5) by adding after paragraph (2) the following paragraph:

''(3) The rate made available under this subsection with respect to an eligible Senate candidate shall apply only to—

''(A) the general election period (as defined in section 301 of the Federal Election Campaign Act of 1971); and

''(B) that number of pieces of mail equal to the number of individuals in the voting age population (as certified under section 315(e) of such Act) of the congressional district or State, whichever is applicable.''.

SEC. 133. CAMPAIGN ADVERTISING AMENDMENTS.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) is amended—

(1) in subsection (a)—

(A) by striking ''Whenever'' and inserting the following:

''(a) DISCLOSURE.—When a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or when'';

(B) by striking ''an expenditure'' and inserting ''a disbursement'';

(C) by striking ''direct''; and

(D) in paragraph (3), by inserting ''and permanent street address'' after ''name'';

(2) in subsection (b), by inserting ''SAME CHARGE AS CHARGE FOR COMPARABLE USE.—'' before ''No''; and

(3) by adding at the end the following:

''(c) REQUIREMENTS FOR PRINTED COMMUNICATIONS.—A printed communication described in subsection (a) shall be—

''(1) of sufficient type size to be clearly readable by the recipient of the communication;

''(2) contained in a printed box set apart from the other contents of the communication; and

''(3) consist of a reasonable degree of color contrast between the background and the printed statement.

''(d) REQUIREMENTS FOR BROADCAST AND CABLECAST COMMUNICATIONS.—

''(1) PAID FOR OR AUTHORIZED BY THE CANDIDATE.—

''(A) IN GENERAL.—A broadcast or cablecast communication described in paragraph (1) or (2) of subsection (a) shall include, in addition to the requirements of those paragraphs, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

''(B) TELEVISED COMMUNICATIONS.—A broadcast or cablecast communication described in paragraph (1) that is broadcast or cablecast by means of television shall include, in addition to the audio statement under subparagraph (A), a written statement—

''(i) that states: 'I [name of candidate] am a candidate for [the office the candidate is seeking], and I have approved this message';

''(ii) that appears at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds; and

''(iii) that is accompanied by a clearly identifiable photographic or similar image of the candidate.

''(2) NOT PAID FOR OR AUTHORIZED BY THE CANDIDATE.—A broadcast or cablecast communication described in subsection (a)(3) shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the statement—

'_____ is responsible for the content of this advertisement.';

with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor; and, if the communication is broadcast or cablecast by means of television, the statement shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.''.

SEC. 134. DEFINITIONS.

(a) IN GENERAL.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by striking paragraph (19) and inserting the following:

''(19) The term 'general election'—

''(A) means an election that will directly result in the election of a person to a Federal office; but

''(B) does not include an open primary election.

''(20) The term 'general election period' means, with respect to a candidate, the period beginning on the day after the date of the primary or runoff election for the specific office that the candidate is seeking, whichever is later, and ending on the earlier of—

''(A) the date of the general election; or

''(B) the date on which the candidate withdraws from the campaign or otherwise ceases actively to seek election.

''(21) The term 'immediate family' means—

''(A) a candidate's spouse;

''(B) a child, stepchild, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate or the candidate's spouse; and

''(C) the spouse of any person described in subparagraph (B).

''(22) The term 'major party' has the meaning given the term in section 9002(6) of the Internal Revenue Code of 1986, except that if a candidate qualified under State law for the ballot in a general election in an open primary in which all the candidates for the office participated and which resulted in the candidate and at least 1 other candidate's qualifying for the ballot in the general election, the candidate shall be treated as a candidate of a major party for purposes of title V.

''(23) The term 'primary election' means an election that may result in the selection of a candidate for the ballot in a general election for a Federal office.

''(24) The term 'primary election period' means, with respect to a candidate, the period beginning on the day following the date of the last election for the specific office that the candidate is seeking and ending on the earlier of—

''(A) the date of the first primary election for that office following the last general election for that office; or

''(B) the date on which the candidate withdraws from the election or otherwise ceases actively to seek election.

''(25) The term 'runoff election' means an election held after a primary election that is prescribed by applicable State law as the means for deciding which candidate will be on the ballot in the general election for a Federal office.

''(26) The term 'runoff election period' means, with respect to any candidate, the period beginning on the day following the date of the last primary election for the specific office that the candidate is seeking and ending on the date of the runoff election for that office.

''(27) The term 'voting age population' means the number of residents of a State who are 18 years of age or older, as certified under section 315(e).

''(28) The term 'election cycle' means—

''(A) in the case of a candidate or the authorized committees of a candidate, the period beginning on the day after the date of the most recent general election for the specific office or seat that the candidate is seeking and ending on the date of the next general election for that office or seat; and

''(B) in the case of all other persons, the period beginning on the first day following the date of the last general election and ending on the date of the next general election.''.

''(29) The term 'lobbyist' means—

''(A) a person required to register under the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601 et seq.) or the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.); and

''(B) a person who receives compensation in return for having contact with Congress on any legislative matter.''.

(b) IDENTIFICATION.—Section 301(13) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(13)) is amended by striking ''mailing address'' and inserting ''permanent residence address''.

SEC. 135. PROVISIONS RELATING TO FRANKED MASS MAILINGS.

(a) MASS MAILINGS OF SENATORS.—Section 3210(a)(6) of title 39, United States Code, is amended—

(1) in subparagraph (A), by striking ''It is the intent of Congress that a Member of, or a Member-elect to, Congress'' and inserting ''A Member of, or Member-elect to, the House''; and

(2) in subparagraph (C)—

(A) by striking ''if such mass mailing is postmarked fewer than 60 days immediately before the date'' and inserting ''if such mass mailing is postmarked during the calendar year''; and

(B) by inserting ''or reelection'' before the period.

(b) MASS MAILINGS OF HOUSE MEMBERS.—Section 3210 of title 39, United States Code, is amended—

(1) in subsection (a)(7) by striking '', except that—'' and all that follows through the end of subparagraph (B) and inserting a period; and

(2) in subsection (d)(1) by striking ''delivery—'' and all that follows through the end of subparagraph (B) and inserting ''delivery within that area constituting the congressional district or State from which the Member was elected.''.

(c) PROHIBITION ON USE OF OFFICIAL FUNDS.—The Committee on House Administration of the House of Representatives may not approve any payment, nor may a Member of the House of Representatives make any expenditure from, any allowance of the House of Representatives or any other official funds if any portion of the payment or expenditure is for any cost related to a mass mailing by a Member of the House of Representatives outside the congressional district of the Member.

TITLE II—INDEPENDENT EXPENDITURES

SEC. 201. DEFINITIONS.

(a) INDEPENDENT EXPENDITURE; EXPRESS ADVOCACY.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by striking paragraphs (17) and (18) and inserting the following:

''(17) INDEPENDENT EXPENDITURE.—

''(A) IN GENERAL.—The term 'independent expenditure' means an expenditure for an advertisement or other communication that—

''(i) contains express advocacy; and

''(ii) is made without the participation or cooperation of, or without the consultation of, a candidate or a candidate's representative.

''(B) EXCLUSIONS.—The term 'independent expenditure' does not include the following:

''(i) An expenditure made by—

''(I) an authorized committee of a candidate; or

''(II) a political committee of a political party.

''(ii) An expenditure if there is any arrangement, coordination, or direction with respect to the expenditure between the candidate or the candidate's representative and the person making the expenditure.

''(iii) An expenditure if, in the same election cycle, the person making the expenditure—

''(I) is or has been authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees; or

''(II) is serving or has served as a member, employee, or agent of the candidate's authorized committees in an executive or policymaking position.

''(iv) An expenditure if the person making the expenditure has played a significant role in advising or counseling the candidate or the candidate's agents at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office.

''(v) An expenditure if the person making the expenditure retains the professional services of any individual or other person also providing services in the same election cycle to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, including any services relating to the candidate's decision to seek Federal office.

''(C) DEFINITIONS.—For purposes of subparagraph (B)—

''(i) the person making the expenditure includes any officer, director, employee, or agent of a person; and

''(ii) the term 'professional service' includes any service (other than legal and accounting services for purposes of ensuring compliance with this title) in support of a candidate's pursuit of nomination for election, or election, to Federal office.

''(18) EXPRESS ADVOCACY.—

''(A) IN GENERAL.—The term 'express advocacy' means a communication that is taken as a whole and with limited reference to external events, makes an expression of support for or opposition to a specific candidate, to a specific group of candidates, or to candidates of a particular political party.

''(B) EXPRESSION OF SUPPORT FOR OR OPPOSITION TO.—In subparagraph (A), the term 'expression of support for or opposition to' includes a suggestion to take action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity, or to refrain from taking action.''.

''(C) VOTING RECORDS.—The term 'express advocacy' does not include the publication and distribution of a communication that is limited to providing information about votes by elected officials on legislative matters and that does not expressly advocate the election or defeat of a clearly identified candidate.''.

(b) CONTRIBUTION DEFINITION AMENDMENT.—Section 301(8)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(A)) is amended—

(1) by striking ''or'' at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting ''; or''; and

(3) by adding at the end the following:

''(iii) any payment or other transaction referred to in paragraph (17)(A)(i) that is excluded from the meaning of 'independent expenditure' under paragraph (17)(B).''.

SEC. 202. REPORTING REQUIREMENTS FOR CERTAIN INDEPENDENT EXPENDITURES.

(a) IN GENERAL.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following:

''(d) TIME FOR REPORTING CERTAIN EXPENDITURES.—

''(1) EXPENDITURES AGGREGATING $1,000.—

''(A) INITIAL REPORT.—A person (including a political committee) that makes independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before an election shall file a report describing the expenditures within 24 hours after that amount of independent expenditures has been made.

''(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person filing the report shall file an additional report each time that independent expenditures aggregating an additional $1,000 are made with respect to the same election as that to which the initial report relates.

''(2) EXPENDITURES AGGREGATING $10,000.—

''(A) INITIAL REPORT.—A person (including a political committee) that makes independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before an election shall file a report describing the expenditures within 48 hours that amount of independent expenditures has been made.

''(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person filing the report shall file an additional report each time that independent expenditures aggregating an additional $10,000 are made with respect to the same election as that to which the initial report relates.

''(3) PLACE OF FILING; CONTENTS; TRANSMITTAL.—

''(A) PLACE OF FILING; CONTENTS.—A report under this subsection—

''(i) shall be filed with the Commission; and

''(ii) shall contain the information required by subsection (b)(6)(B)(iii), including whether each independent expenditure was made in support of, or in opposition to, a candidate.

''(B) TRANSMITTAL TO CANDIDATES.—In the case of an election for United States Senator, not later than 48 hours after receipt of a report under this subsection, the Commission shall transmit a copy of the report to each eligible candidate seeking nomination for election to, or election to, the office in question.

''(4) OBLIGATION TO MAKE EXPENDITURE.—For purposes of this subsection, an expenditure shall be treated as being made when it is made or obligated to be made.

''(5) DETERMINATIONS BY THE COMMISSION.—

''(A) IN GENERAL.—The Commission may, upon a request of a candidate or on its own initiative, make its own determination that a person, including a political committee, has made, or has incurred obligations to make, independent expenditures with respect to any candidate in any Federal election that in the aggregate exceed the applicable amounts under paragraph (1) or (2).

''(B) NOTIFICATION.—In the case of a United States Senator, the Commission shall notify each candidate in the election of the making of the determination within 2 business days after making the determination.

''(C) TIME TO COMPLY WITH REQUEST FOR DETERMINATION.—A determination made at the request of a candidate shall be made with 48 hours of the request.

''(6) NOTIFICATION OF AN ALLOWABLE INCREASE IN INDEPENDENT EXPENDITURE LIMIT.—When independent expenditures totaling in the aggregate $10,000 have been made in the same election in favor of another candidate or against an eligible Senate candidate, the Commission shall, within 2 business days, notify the eligible candidate that such candidate is entitled to an increase under section 503(e) in the candidate's applicable election limit in an amount equal to the amount of such independent expenditures.''.

TITLE III—EXPENDITURES

Subtitle A—Personal Funds; Credit

SEC. 301. CONTRIBUTIONS AND LOANS FROM PERSONAL FUNDS.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following:

''(i) LIMITATIONS ON REPAYMENT OF LOANS AND RETURN OF CONTRIBUTIONS FROM PERSONAL FUNDS.—

''(1) REPAYMENT OF LOANS.—If a candidate or a member of the candidate's immediate family made a loan to the candidate or to the candidate's authorized committees during an election cycle, no contribution received after the date of the general election for the election cycle may be used to repay the loan.

''(2) RETURN OF CONTRIBUTIONS.—No contribution by a candidate or member of the candidate's immediate family may be returned to the candidate or member other than as part of a pro rata distribution of excess contributions to all contributors.''.

SEC. 302. EXTENSIONS OF CREDIT.

Section 301(8)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(A)), as amended by section 201(b), is amended—

(1) by striking ''or'' at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting ''; or''; and

(3) by inserting at the end the following:

''(iv) with respect to a candidate and the candidate's authorized committees, any extension of credit for goods or services relating to advertising on a broadcasting station, in a newspaper or magazine, or by a mailing, or relating to other similar types of general public political advertising, if the extension of credit is—

''(I) in an amount greater than $1,000; and

''(II) for a period greater than the period, not in excess of 60 days, for which credit is generally extended in the normal course of business after the date on which the goods or services are furnished or the date of a mailing.''.

Subtitle B—Soft Money of Political Party Committees

SEC. 311. SOFT MONEY OF POLITICAL PARTY COMMITTEES.

(a) SOFT MONEY OF COMMITTEES OF POLITICAL PARTIES.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

''SEC. 324. SOFT MONEY OF POLITICAL PARTY COMMITTEES.

''(a) NATIONAL COMMITTEES.—A national committee of a political party and the congressional campaign committees of a political party (including a national congressional campaign committee of a political party, an entity that is established, financed, maintained, or controlled by the national committee, a national congressional campaign committee of a political party, and an officer or agent of any such party or entity but not including an entity regulated under subsection (b)) shall not solicit or accept an amount or spend any funds, or solicit or accept a transfer from another political committee, that is not subject to the limitations, prohibitions, and reporting requirements of this Act.

''(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

''(1) IN GENERAL.—Any amount that is expended or disbursed by a State, district, or

local committee of a political party (including an entity that is established, financed, maintained, or controlled by a State, district, or local committee of a political party and an agent or officer of any such committee or entity) during a calendar year in which a Federal election is held, for any activity that might affect the outcome of a Federal election, including any voter registration or get-out-the-vote activity, any generic campaign activity, and any communication that identifies a candidate (regardless of whether a candidate for State or local office is also mentioned or identified) shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

''(2) ACTIVITY EXCLUDED FROM PARAGRAPH (1).—

''(A) IN GENERAL.—Paragraph (1) shall not apply to an expenditure or disbursement made by a State, district, or local committee of a political party for—

''(i) a contribution to a candidate for State or local office if the contribution is not designated or otherwise earmarked to pay for an activity described in paragraph (1);

''(ii) the costs of a State, district, or local political convention;

''(iii) the non-Federal share of a State, district, or local party committee's administrative and overhead expenses (but not including the compensation in any month of any individual who spends more than 20 percent of the individual's time on activity during the month that may affect the outcome of a Federal election) except that for purposes of this paragraph, the non-Federal share of a party committee's administrative and overhead expenses shall be determined by applying the ratio of the non-Federal disbursements to the total Federal expenditures and non-Federal disbursements made by the committee during the previous presidential election year to the committee's administrative and overhead expenses in the election year in question;

''(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs that name or depict only a candidate for State or local office; and

(v) the cost of any campaign activity conducted solely on behalf of a clearly identified candidate for State or local office, if the candidate activity is not an activity described in paragraph (1).

''(B) FUNDRAISING COSTS.—Any amount spent by a national, State, district, or local committee, by an entity that is established, financed, maintained or controlled by a State, district, or local committee of a political party, or by an agent or officer of any such committee or entity to raise funds that are used, in whole or in part, in connection with an activity described in paragraph (1) shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

''(c) TAX-EXEMPT ORGANIZATIONS.—No national, State, district, or local committee of a political party shall solicit any funds for or make any donations to an organization that is exempt from Federal taxation under section 501(c) of the Internal Revenue Code of 1986.

''(d) CANDIDATES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no candidate, individual holding Federal office, or agent of a candidate or individual holding Federal office may—

''(A) solicit or receive funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

''(B) solicit or receive funds that are to be expended in connection with any election for other than a Federal election unless the funds—

''(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under section 315(a) (1) and (2); and

''(ii) are not from sources prohibited by this Act from making contributions with respect to an election for Federal office.

''(2) EXCEPTION.—Paragraph (1) does not apply to the solicitation or receipt of funds by an individual who is a candidate for a State or local office if the solicitation or receipt of funds is permitted under State law for the individual's State or local campaign committee.''.

SEC. 312. REPORTING REQUIREMENTS.

(a) REPORTING REQUIREMENTS.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following:

''(d) POLITICAL COMMITTEES.—

''(1) NATIONAL AND CONGRESSIONAL POLITICAL COMMITTEES.—The national committee of a political party, a congressional campaign committee of a political party, and any subordinate committee of a national committee or congressional campaign committee of a political party, shall report all receipts and disbursements during the reporting period, whether or not in connection with an election for Federal office.

''(2) OTHER POLITICAL COMMITTEES TO WHICH SECTION 324 APPLIES.—A political committee (not described in paragraph (1)) to which section 324 applies shall report all receipts and disbursements.

''(3) TRANSFERS.—A political committee to which section 324 applies shall—

''(A) include in a report under paragraph (1) or (2) the amount of any transfer described in section 324(d)(2); and

''(B) itemize those amounts to the extent required by section 304(b)(3)(A).

''(4) OTHER POLITICAL COMMITTEES.—Any political committee to which paragraph (1) or (2) does not apply shall report any receipts or disbursements that are used in connection with a Federal election.

''(5) ITEMIZATION.—If a political committee has receipts or disbursements to which this subsection applies from any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for the person in the same manner as under paragraphs (3)(A), (5), and (6) of subsection (b).

''(6) REPORTING PERIODS.—Reports required to be filed by this subsection shall be filed for the same time periods as reports are required for political committees under subsection (a).''.

(b) REPORT OF EXEMPT CONTRIBUTIONS.—Section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)) is amended by adding at the end the following:

''(C) REPORTING REQUIREMENT.—The exclusion provided in subparagraph (B)(viii) shall not apply for purposes of any requirement to report contributions under this Act, and all such contributions aggregating in excess of $200 shall be reported.''.

(c) REPORTS BY STATE COMMITTEES.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434 (as amended by subsection (a)) is amended by adding at the end the following:

''(f) FILING OF STATE REPORTS.—In lieu of any report required to be filed under this Act, the Commission may allow a State committee of a political party to file with the Commission a report required to be filed under State law if the Commission determines that such a report contains substantially the same information as a report required under this Act.''.

(d) OTHER REPORTING REQUIREMENTS.—

(1) AUTHORIZED COMMITTEES.—Section 304(b)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(4)) is amended—

(A) by striking ''and'' at the end of subparagraph (H);

(B) by inserting ''and'' at the end of subparagraph (I); and

(C) by adding at the end the following:

''(J) in the case of an authorized committee, disbursements for the primary election, the general election, and any other election in which the candidate participates;''.

(2) NAMES AND ADDRESSES.—Section 304(b)(5)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(5)(A)) is amended—

(A) by striking ''within the calendar year''; and

(B) by striking ''such operating expenditures'' and inserting ''operating expenses, and the election to which the operating expense relates''.

TITLE IV—CONTRIBUTIONS

SEC. 401. CONTRIBUTIONS THROUGH INTERMEDIARIES AND CONDUITS; PROHIBITION ON CERTAIN CONTRIBUTIONS BY LOBBYISTS.

(a) CONTRIBUTIONS THROUGH INTERMEDIARIES AND CONDUITS.—Section 315(a)(8) of FECA (2 U.S.C. 441a(a)(8)) is amended by striking paragraph (8) and inserting the following:

''(8) INTERMEDIARIES AND CONDUITS.—

''(A) DEFINITIONS.—In this paragraph:

''(i) ACTING ON BEHALF OF THE ENTITY.—The term 'acting on behalf of the entity' means soliciting one or more contributions—

''(I) in the name of an entity;

''(II) using other than incidental resources of an entity; or

''(III) by directing a significant portion of the solicitations to other officers, employees, agents, or members of an entity or their spouses, or by soliciting a significant portion of the other officers, employees, agents, or members of an entity or their spouses.

''(ii) BUNDLER.—The term 'bundler' means an intermediary or conduit that is any of the following persons or entities:

''(I) A political committee (other than the authorized campaign committee of the candidate that receives contributions as described in subparagraph (B) or (C)).

''(II) Any officer, employee or agent of a political committee described in subclause (I).

''(III) An entity.

''(IV) Any officer, employee, or agent of an entity who is acting on behalf of the entity.

''(V) A person required to be listed as a lobbyist on a registration or other report filed pursuant to the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601 et seq.) or any successor law that requires reporting on the activities of a person who is a lobbyist or foreign agent.

''(iii) DELIVER.—The term 'deliver' means to deliver contributions to a candidate by any method of delivery used or suggested by a bundler that communicates to the candidate (or to the person who receives the contributions on behalf of the candidate) that the bundler collected the contributions for the candidate, including such methods as—

''(I) personal delivery;

''(II) United States mail or similar services;

''(III) messenger service; and

''(IV) collection at an event or reception.

''(iv) ENTITY.—The term 'entity' means a corporation, labor organization, or partnership.

''(B) TREATMENT AS CONTRIBUTIONS FROM PERSONS BY WHOM MADE.—

''(i) IN GENERAL.—For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a candidate, including contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, shall be treated as contributions from the person to the candidate.

''(ii) REPORTING.—The intermediary or conduit through which a contribution is made shall report the name of the original contributor and the intended recipient of the contribution to the Commission and to the intended recipient.

''(C) TREATMENT AS CONTRIBUTIONS FROM THE BUNDLER.—Contributions that a bundler delivers to a candidate, agent of the candidate, or the candidate's authorized committee shall be treated as contributions from the bundler to the candidate as well as from the original contributor.

''(D) NO LIMITATION ON OR PROHIBITION OF CERTAIN ACTIVITIES.—This subsection does not—

''(i) limit fundraising efforts for the benefit of a candidate that are conducted by another candidate or Federal officeholder; or

''(ii) prohibit any individual described in subparagraph (A)(ii)(IV) from soliciting, collecting, or delivering a contribution to a candidate, agent of the candidate, or the candidate's authorized committee if the individual is not acting on behalf of the entity.''.

(b) PROHIBITION OF CERTAIN CONTRIBUTIONS BY LOBBYISTS.—Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) (as amended by section 314(b)) is amended by adding at the end the following:

''(m) PROHIBITION OF CERTAIN CONTRIBUTIONS BY LOBBYISTS.—

''(1) IN GENERAL.—A lobbyist, or a political committee controlled by a lobbyist, shall not make a contribution to or solicit contributions for or on behalf of—

''(A) a Federal officeholder or candidate for Federal office if, during the preceding 12 months, the lobbyist has made a lobbying contact with the officeholder or candidate; or

''(B) any authorized committee of the President or Vice President of the United States if, during the preceding 12 months, the lobbyist has made a lobbying contact with a covered executive branch official.

''(2) CONTRIBUTIONS TO MEMBER OF CONGRESS OR CANDIDATE FOR CONGRESS.—A lobbyist who, or a lobbyist whose political committee, has made a contribution to a member of Congress or candidate for Congress (or any authorized committee of the President) shall not, during the 12 months following such contribution, make a lobbying contact with the member or candidate who becomes a member of Congress or with a covered executive branch official.

''(3) SOLICITATION OF CONTRIBUTIONS.—If a lobbyist advises or otherwise suggests to a client of the lobbyist (including a client that is the lobbyist's regular employer), or to a political committee that is funded or administered by such a client, that the client or political committee should make a contribution to or solicit a contribution for or on behalf of—

''(A) a member of Congress or candidate for Congress, the making or soliciting of such a contribution is prohibited if the lobbyist has made a lobbying contact with the member of Congress within the preceding 12 months; or

''(B) an authorized committee of the President or Vice President, the making or soliciting of such a contribution shall be unlawful if the lobbyist has made a lobbying contact with a covered executive branch official within the preceding 12 months.

''(4) DEFINITIONS.—In this subsection, the terms 'covered executive branch official', 'lobbying contact', and 'lobbyist' have the meanings given those terms in section 3 of the Federal Lobbying Disclosure Act of 1995 (2 U.S.C. 1602), except that—

''(A) the term 'lobbyist' includes a person required to register under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.); and

''(B) for purposes of this subsection, a lobbyist shall be considered to make a lobbying contact or communication with a member of Congress if the lobbyist makes a lobbying contact or communication with—

''(i) the member of Congress;

''(ii) any person employed in the office of the member of Congress; or

''(iii) any person employed by a committee, joint committee, or leadership office who, to the knowledge of the lobbyist, was employed at the request of or is employed at the pleasure of, reports primarily to, represents, or acts as the agent of the member of Congress.''.

SEC. 402. CONTRIBUTIONS BY DEPENDENTS NOT OF VOTING AGE.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) (as amended by section 401(c)) is amended by adding at the end the following:

''(n) DEPENDENTS NOT OF VOTING AGE.—

''(1) IN GENERAL.—For purposes of this section, any contribution by an individual who—

''(A) is a dependent of another individual; and

''(B) has not, as of the time of the making of the contribution, attained the legal age for voting in an election to Federal office in the State in which the individual resides;

shall be treated as having been made by the other individual.

''(2) ALLOCATION BETWEEN SPOUSES.—If such individual described in paragraph (1) is the dependent of another individual and the individual's spouse, a the contribution described in paragraph (1) shall be allocated among such individuals in the manner determined by them.''.

SEC. 403. CONTRIBUTIONS TO CANDIDATES FROM STATE AND LOCAL COMMITTEES OF POLITICAL PARTIES TO BE AGGREGATED.

Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is amended by adding at the end the following:

''(9) AGGREGATION OF CONTRIBUTIONS FROM STATE AND LOCAL COMMITTEES OF POLITICAL PARTIES.—Notwithstanding paragraph (5)(B), a candidate may not accept, with respect to an election, any contribution from a State or local committee of a political party (including any subordinate committee of such a committee), if the contribution, when added to the total of contributions previously accepted from all such committees of that political party, exceeds would cause the total amount of contributions to exceed a limitation on contributions to a candidate under this section.''.

SEC. 404. LIMITED EXCLUSION OF ADVANCES BY CAMPAIGN WORKERS FROM THE DEFINITION OF THE TERM "CONTRIBUTION".

Section 301(8)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(B)) is amended—

(1) in clause (xiii), by striking ''and'' after the semicolon at the end;

(2) in clause (xiv), by striking the period at the end and inserting: ''; and''; and

(3) by adding at the end the following new clause:

''(xv) any advance voluntarily made on behalf of an authorized committee of a candidate by an individual in the normal course of such individual's responsibilities as a volunteer for, or employee of, the committee, if the advance is reimbursed by the committee within 10 days after the date on which the advance is made, and the value of advances on behalf of a committee does not exceed $500 with respect to an election.''.

TITLE V—REPORTING REQUIREMENTS

SEC. 501. CHANGE IN CERTAIN REPORTING FROM A CALENDAR YEAR BASIS TO AN ELECTION CYCLE BASIS.

Paragraphs (2) through (7) of section 304(b) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(2)–(7)) are amended by inserting after ''calendar year'' each place it appears the following: ''(election cycle, in the case of an authorized committee of a candidate for Federal office)''.

SEC. 502. PERSONAL AND CONSULTING SERVICES.

Section 304(b)(5)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(5)(A)) is amended by adding before the semicolon at the end the following: '', except that if a person to whom an expenditure is made is merely providing personal or consulting services and is in turn making expenditures to other persons (not including employees) who provide goods or services to the candidate or his or her authorized committees, the name and address of such other person, together with the date, amount and purpose of such expenditure shall also be disclosed''.

SEC. 503. CONTRIBUTIONS OF $50 OR MORE.

Section 304(b)(2)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)2)(A)) is amended by inserting '', including the name and address of each person who makes contributions aggregating at least $50 but not more than $200 during the calendar year'' after ''political committees''.

SEC. 504. COMPUTERIZED INDICES OF CONTRIBUTIONS.

Section 311(a) of Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)) is amended—

(1) by striking ''and'' at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting ''; and''; and

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

''(11) maintain computerized indices of contributions of $50 or more.''.

TITLE VI—FEDERAL ELECTION COMMISSION

SEC. 601. USE OF CANDIDATES' NAMES.

Section 302(e)(4) of Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)(4)) is amended to read as follows:

''(4) NAME OF POLITICAL COMMITTEE.—

(A) AUTHORIZED COMMITTEE.—The name of each authorized committee shall include the name of the candidate who authorized the committee under paragraph (1).

''(B) UNAUTHORIZED COMMITTEE.—A political committee that is not an authorized committee shall not include the name of any candidate in its name or use the name of any candidate in any activity on behalf of such committee in such a context as to suggest that the committee is an authorized committee of the candidate or that the use of the candidate's name has been authorized by the candidate.''.

SEC. 602. REPORTING REQUIREMENTS.

(a) OPTION TO FILE MONTHLY REPORTS—Section 304(a)(2) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(2)) is amended—

(1) in subparagraph (A) by striking ''and'' at the end;

(2) in subparagraph (B) by striking the period at the end and inserting ''; and''; and

(3) by inserting the following new subparagraph at the end:

''(C) in lieu of the reports required by subparagraphs (A) and (B), the treasurer may file monthly reports in all calendar years,

which shall be filed no later than the 15th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-primary election report and a pre-general election report shall be filed in accordance with subparagraph (A)(i), a post-general election report shall be filed in accordance with subparagraph (A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.''.

(b) FILING DATE.—Section 304(a)(4)(B) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(4)(B)) is amended by striking ''20th'' and inserting ''15th''.

SEC. 603. PROVISIONS RELATING TO THE GENERAL COUNSEL OF THE COMMISSION.

(a) VACANCY IN THE OFFICE OF GENERAL COUNSEL.—Section 306(f) of Federal Election Campaign Act of 1971 (2 U.S.C. 437c(f)) is amended by adding at the end the following:

''(5) VACANCY.—In the event of a vacancy in the office of general counsel, the next highest ranking enforcement official in the general counsel's office shall serve as acting general counsel with full powers of the general counsel until a successor is appointed.''.

(b) PAY OF THE GENERAL COUNSEL.—Section 306(f)(1) of Federal Election Campaign Act of 1971 (2 U.S.C. 437c(f)(1)) is amended—

(1) by inserting ''and the general counsel'' after ''staff director'' in the second sentence; and

(2) by striking the third sentence.

SEC. 604. PENALTIES.

(a) PENALTIES PRESCRIBED IN CONCILIATION AGREEMENTS.—

(1) CIVIL PENALTY FOR VIOLATION OF ACT.—Section 309(a)(5)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(5)(A)) is amended by striking ''which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation'' and inserting ''which is—

''(i) not less than 50 percent of all contributions and expenditures involved in the violation (or such lesser amount as the Commission provides if necessary to ensure that the penalty is not unjustly disproportionate to the violation); and

''(ii) not greater than all contributions and expenditures involved in the violation''.

(2) PENALTY FOR KNOWING AND WILLFUL VIOLATION OF ACT.—Section 309(a)(5)(B) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(5)(B)) is amended by striking ''which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation'' and inserting ''which is—

''(i) not less than all contributions and expenditures involved in the violation; and

''(ii) not greater than 150 percent of all contributions and expenditures involved in the violation''.

(b) PENALTIES WHEN VIOLATIONS ARE ADJUDICATED IN COURT.—

(1) COMMISSION PROCEEDINGS INSTITUTED FOR AN ORDER.—Section 309(a)(6)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(6)(A)) is amended by striking all that follows ''appropriate order'' and inserting '', including an order for a civil penalty in the amount determined under subparagraph (A) or (B) in the district court of the United States for the district in which the defendant resides, transacts business, or may be found.''.

(2) COURT ORDERS.—Section 309(a)(6)(B) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(6)(B)) is amended by striking all that follows ''other order'' and inserting '', including an order for a civil penalty which is—

''(i) not less than all contributions and expenditures involved in the violation; and

''(ii) not greater than 200 percent of all contributions and expenditures involved in the violation;

upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or chapter 95 of chapter 96 of the Internal Revenue Code of 1986.''.

(3) KNOWING AND WILLFUL VIOLATION PENALTY.—Section 309(a)(6)(C) of Federal Election Campaign Act of 1971 (29 U.S.C. 437g(6)(C)) is amended by striking ''a civil penalty'' and all that follows and inserting ''a civil penalty which is—''

''(i) not less than 200 percent of all contributions and expenditures involved in the violation; and

''(ii) not greater than 250 percent of all contributions and expenditures involved in the violation.''.

SEC. 605. RANDOM AUDITS.

Section 311(b) of Federal Election Campaign Act of 1971 (2 U.S.C. 438(b)) is amended—

(1) by inserting ''(1)'' before ''The Commission''; and

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

''(2) RANDOM AUDITS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the Commission may from time to time conduct random audits and investigations to ensure voluntary compliance with this Act.

''(B) SELECTION OF SUBJECTS.—The subjects of such audits and investigations shall be selected on the basis of criteria established by vote of at least 4 members of the Commission to ensure impartiality in the selection process.

''(C) APPLICABILITY.—This paragraph does not apply to an authorized committee of an eligible Senate candidate subject to audit under section 505(a) or an authorized committee of an eligible House of Representatives candidate subject to audit under section 605(a).''.

SEC. 606. PROHIBITION OF FALSE REPRESENTATION TO SOLICIT CONTRIBUTIONS.

Section 322 of Federal Election Campaign Act of 1971 (2 U.S.C. 441h) is amended—

(1) by inserting after ''SEC. 322.'' the following: ''(a)''; and

(2) by adding at the end the following:

''(b) FALSE SOLICITATION OF CONTRIBUTIONS.—No person shall solicit contributions by falsely representing himself as a candidate or as a representative of a candidate, a political committee, or a political party.''.

SEC. 607. REGULATIONS RELATING TO USE OF NON-FEDERAL MONEY.

Section 306 of Federal Election Campaign Act of 1971 (2 U.S.C. 437c) is amended by adding at the end the following:

''(g) REGULATIONS.—The Commission shall promulgate regulations to prohibit devices or arrangements which have the purpose or effect of undermining or evading the provisions of this Act restricting the use of non-Federal money to affect Federal elections.''.

SEC. 608. FILING OF REPORTS USING COMPUTERS AND FACSIMILE MACHINES.

Section 302(g) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(g)) is amended by adding at the end the following new paragraph:

''(6)(A) The Commission, in consultation with the Secretary of the Senate, may prescribe regulations under which persons required to file designations, statements, and reports under this Act—

''(i) are required to maintain and file them for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and

''(ii) may maintain and file them in that manner if not required to do so under regulations prescribed under clause (i).

''(B) The Commission, in consultation with the Secretary of the Senate, shall prescribe regulations which allow persons to file designations, statements, and reports required by this Act through the use of facsimile machines.

''(C) In prescribing regulations under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulations. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

''(D) The Secretary of the Senate and the Clerk of the House of Representatives shall ensure that any computer or other system that they may develop and maintain to receive designations, statements, and reports in the forms required or permitted under this paragraph is compatible with any such system that the Commission may develop and maintain.''.

TITLE VII—MISCELLANEOUS

SEC. 701. PROHIBITION OF LEADERSHIP COMMITTEES.

(a) DEFINITIONS.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by adding at the end the following:

(b) PROHIBITION.—Section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)) is amended—

(1) by striking paragraph (3) and inserting the following:

''(3) LIMITATIONS.—A political committee that supports or has supported more than 1 candidate shall not be designated as an authorized committee, except that—

''(A) a candidate for the office of President nominated by a political party may designate the national committee of the political party as the candidate's principal campaign committee if the national committee maintains separate books of account with respect to its functions as a principal campaign committee; and

''(B) a candidate may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.''; and

(2) by adding at the end the following:

''(6) PROHIBITION OF LEADERSHIP COMMITTEES.—

''(A) IN GENERAL.—

''(i) PROHIBITION.—A candidate for Federal office or an individual holding Federal office shall not establish, finance, maintain, or control any political committee or non-Federal political committee other than a principal campaign committee of the candidate, authorized committee, party committee, or other political committee designated in accordance with paragraph (3).

''(ii) CANDIDATE FOR MORE THAN 1 OFFICE.—A candidate for more than 1 Federal office may designate a separate principal campaign committee for the campaign for election to each Federal office.

''(B) TRANSITION.—

''(i) CONTINUATION FOR 12 MONTHS.—For a period of 12 months after the effective date of this paragraph, any political committee established before that date but that is prohibited under subparagraph (A) may continue to make contributions.

''(ii) DISBURSEMENT AT THE END OF 1 YEAR.—At the end of that period the political committee shall disburse all funds by 1 or more of the following means:

''(I) Making contributions a person described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of the United States Code.

''(II) Making a contribution to the Treasury of the United States.

''(III) Contributing to the national, State, or local committee of a political party.

''(IV) Making a contribution of not to exceed $1,000 each to candidates or non-Federal candidates.''.

SEC. 702. POLLING DATA CONTRIBUTED TO CANDIDATES.

Section 301(8) of Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), as amended by section 314(b), is amended by inserting at the end the following:

''(D) VALUATION OF POLLING DATA AS A CONTRIBUTION.—A contribution of polling data to a candidate shall be valued at the fair market value of the data on the date the poll was completed, depreciated at a rate not more than 1 percent per day from such date to the date on which the contribution was made.''.

SEC. 703. RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR PERSONAL PURPOSES.

(a) RESTRICTIONS ON USE OF CAMPAIGN FUNDS.—Title III of Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) (as amended by section 311) is amended by adding at the end the following:

''SEC. 325. RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR PERSONAL PURPOSES.

''(a) DEFINITIONS.—In this section:

''(1) CAMPAIGN EXPENSE.—The term 'campaign expense' means an expense that is attributable solely to a bona fide campaign purpose.

''(2) INHERENTLY PERSONAL PURPOSES.—The term 'inherently personal purpose' means a purpose that, by its nature, confers a personal benefit, including a home mortgage, rent, or utility payment, clothing purchase, noncampaign automobile expense, country club membership, vacation, or trip of a noncampaign nature, household food items, tuition payment, admission to a sporting event, concert, theater or other form of entertainment not associated with a campaign, dues, fees, or contributions to a health club or recreational facility, and any other inherently personal living expense as determined under the regulations promulgated pursuant to section 301(b) of the Senate Campaign Financing and Spending Reform Act.

''(b) PERMITTED AND PROHIBITED USES.—An individual who receives contributions as a candidate for Federal office—

''(1) shall use the contributions only for legitimate and verifiable campaign expenses; and

''(2) shall not use the contributions for any inherently personal purpose.''.

(b) REGULATION.—Not later than 90 days after the date of enactment of this Act, the Federal Election Commission shall issue a regulation consistent with this Act to implement subsection (a). The regulation shall apply to all contributions possessed by an individual on the date of enactment of this Act.

TITLE VIII—EFFECTIVE DATES; AUTHORIZATIONS

SEC. 801. EFFECTIVE DATE.

Except as otherwise provided in this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act but shall not apply with respect to activities in connection with any election occurring before January 1, 1999.

SEC. 802. SEVERABILITY.

Except as provided in section 101(c), if any provision of this Act (including any amendment made by this Act), or the application of any such provision to any person or circumstance, is held invalid, the validity of any other provision of this Act, or the application of the provision to other persons and circumstances, shall not be affected thereby.

SEC. 803. EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.

(a) DIRECT APPEAL TO SUPREME COURT.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory order or final judgment, decree, or order issued by any court ruling on the constitutionality of any provision of this Act or amendment made by this Act.

(b) ACCEPTANCE AND EXPEDITION.—The Supreme Court shall, if it has not previously ruled on the question addressed in the ruling below, accept jurisdiction over, advance on the docket, and expedite the appeal to the greatest extent possible.

By Mr. FEINGOLD.

S. 58. A bill to modify the estate recovery provisions of the medicaid program to give States the option to recover the costs of home and community-based services for individuals over age 55; to the Committee on Finance.

MEDICAID BENEFICIARIES LEGISLATION

Mr. FEINGOLD. Mr. President, I am pleased to introduce legislation today to eliminate the current mandate on States to place liens on the homes and estates of older Medicaid beneficiaries receiving home and community-based long-term care services, and to provide more than adequate funding for that change by establishing a certificate of need process to regulate the growth of federally funded nursing home beds.

This legislation modifies the estate recovery provisions of OBRA 93 to clarify that States may pursue recovery of the cost of Medicaid home and community-based long-term care services from the estate of beneficiaries, but that States are not required to do so.

Mr. President, slowing the growth of rising Medicaid costs is central to easing pressure on both Federal and State budgets, and addressing the long-term care portion of those Medicaid budgets is a key to containing those costs. Meaningful reform of our long-term care system is the ultimate solution to this problem, and I will introduce long-term care reform legislation in the near future that will outline the path we need to follow—helping States provide flexible, consumer-oriented and consumer-directed home and community-based long-term care services.

In the meantime, however, we can take a few important steps down the path toward long-term care reform by repealing the cumbersome mandate on States that they recover the cost of some services by imposing liens on the homes and estates of seniors using home and community-based long-term care services.

Mr. President, in the past, States have had the option of recovering payments for those services from the estates of beneficiaries, but in some cases, at least, have chosen not to do so. In Wisconsin, estate recovery for home and community-based long-term care services was implemented briefly in 1991, but was terminated because of the significant problems experienced with the home and Medicaid waiver programs. Many cases were documented where individuals needing long-term care refused community-based care because of their fear of estate recovery or the placement of a lien on their homes.

One case in southwestern Wisconsin involved an older woman who was suffering from congestive heart failure, phlebitis, severe arthritis, and who had difficulty just being able to move. She was being screened for the Medicaid version of Wisconsin's model home and community-based long-term care program, the Community Options Program, when the caseworker told her of the new law, and that a lien would be put on the estate of the program's clients. The caseworker reported that the older woman began to sob, and told the caseworker that she had worked hard all her life and paid taxes and could not understand why the things she had worked for so hard would be taken from her family after her death.

When asked if she would like to receive services, the client refused. As frail as this client was, the social worker noted that she preferred to chance being on her own rather than endanger her meager estate by using Medicaid funded services.

In northeastern Wisconsin, a 96-year-old woman was being care for by her 73-year-old widowed daughter in their home. The family was receiving some Medicaid long-term care services, including respite services for the elderly caregiver daughter, but the family discontinued all services when they heard of the new law because the older daughter needed to count on the home for security in her own old age.

A 72-year-old man, who had 4 by-pass surgeries and was paralyzed on one side, and his 66-year-old wife, who had 3 by-pass surgeries and rheumatoid arthritis, both needed some assistance to be able to live together at home. But when Medicaid was suggested, they refused because of the new law.

Mr. President, these examples are not unusual. Nor were many of the individuals and families who refused help protecting vast estates. For many, the estates being put at risk were modest at best. A couple in the Green Bay area of Wisconsin who lived in a mobile home and had less than $20,000 in life savings told the local benefit specialist that they would refuse Medicaid funded services rather than risk not leaving their small estate to their family members.

Leaving even a small bequest to a loved-one is a fundamental and deeply felt need of many seniors. Even the most modest home can represent a lifetime's work, and many are willing to forego medical care they know they need to be able to leave a small legacy.

Mr. President, while the vision of this mandate on States from inside the

Washington beltway may appear simple, the estate recovery requirements are not so simple for program administrators. States, counties, and nonprofit agencies, administrators of Medicaid services, are ill-equipped to be real estate agents.

Further, divestment concerns in the Medicaid Program, already a problem, could continue to grow as pressure to utilize existing loopholes increases with estate recovery mandated in this way. Worse, as the Coalition of Wisconsin Aging Groups has pointed out, children who feel ''entitled to inheritance'' might force transfers, constituting elder abuse in some cases.

Too, Mr. President, there is a very real question of age discrimination with the estate recovery provisions of OBRA 93. Only individuals over age 55 are subject to estate recovery. Such age-based distinctions border on age discrimination and ought to be minimized.

Mr. President, because I am committed to reducing the deficit and balancing the budget, I firmly believe we must find offsetting spending cuts to fully fund legislative proposals, even when we might disagree with the cost estimates for those proposals. For that reason, I have included provisions in this measure that have been scored by the Congressional Budget Office to more than offset the officially estimated loss in savings from the estate recovery mandate. Nevertheless, while this bill includes offsetting cuts to fund the proposed change, I also believe that the savings ascribed to the existing mandate are questionable.

Prior to enacting estate recovery in Wisconsin, officials estimated $13.4 million a year could be recovered by the liens. Real collections fell far short. For fiscal year 1992, the State only realized a reported $1 million in collections. And for the period of January to July of 1993, even after officials lowered their estimates, only $2.2 million was realized of an expected $3.8 million in collections.

In addition to lower than expected collections, the refusal to accept home and community-based long-term care because of the prospect of a lien on the estate could lead to the earlier and more costly need for institutional care. Such a result would not only undercut the questionable savings from the program, but would be directly contrary to the Medicaid home and community-based waiver program,which is intended precisely to keep people out of institutions and in their own homes and communities.

The brief experience we had in Wisconsin led the State to limit estate recovery to nursing home care and related services, where, as a practical matter, the potential for estate recovery and liens on homes are much less of a barrier to services. Indeed, just as we should provide financial incentives to individuals to use more cost-effective care, so too should we consider financial disincentives for more costly alternatives. A recent study in Wisconsin showed that two Medicaid waiver programs saved $17.6 million in 1992 by providing home and community-based alternatives to institutional care.

In that context, retaining the more expansive institutional care alternatives in the estate recovery mandate makes good sense, and my legislation would not change that portion of the law. But it does not make sense to jeopardize a program that has produced many more times the savings in lowered institutional costs than even the overly optimistic estimates suggest could be recovered from the estates of those receiving home and community-based long-term care.

All in all, the estate recovery provisions of OBRA 93 are likely to produce more expensive utilization of Medicaid services, may cause an administrative nightmare for State and local government, could aggravate the divestment problem, may result in increased elder abuse, and could well constitute age discrimination.

Though many long-term care experts maintain that mandating estate recovery for home and community-based long-term care services will only lead to increased utilization of more expensive institutional alternatives, and thus increased cost to Federal taxpayers, the CBO estimated a revenue loss of $20 million in the first year and $260 million over 5 years for this proposal.

As I noted above, it is important to act responsibly to fund that formal cost estimate with offsetting spending cuts. The additional savings I firmly believe will be generated beyond the scored amounts would then help reduce our Federal budget deficit. This measure includes a provision that more than offsets the official scored revenue loss from eliminating the estate recovery mandate. That provision regulates the growth in the number of nursing home beds eligible for Federal funding through Medicaid, Medicare, or other Federal programs by requiring providers to obtain a certificate of need [CON] to operate additional beds.

For any specified area, States would issue a CON only if the ratio of the number of nursing home beds to the population that is likely to need them falls below guidelines set by the State and subject to Federal approval.

This approach allows new nursing home beds to operate where there is a demonstrated need, while limiting the potential burden on the taxpayer where no such need has been established. CBO has estimated that the proposed regulation of nursing home bed growth would generate savings of $35 million in the first year, and $625 million over 5 years, more than offsetting the CBO estimates for removing the State mandate on estate recoveries sought in this bill. The net fiscal effect of this proposal would be to generate about $15 million in savings in the first year, and $365 million over 5 years.

Slowing the growth of nursing home beds is critical to reforming the current long-term care system. In Wisconsin, limiting nursing home bed growth has been part of the success of the long-term care reforms initiated in the early 1980's. While the rest of the country experienced a 46-percent increase in Medicaid nursing home bed use between 1980 and 1993, Wisconsin saw Medicaid nursing home bed use decline by 15 percent.

The certificate of need provision is far more modest than the absolute cap on nursing home beds adopted in Wisconsin, and recognizes that there needs to be some flexibility to recognize the differences of long-term care services among States. It is also consistent with the kind of long-term care reform I will be proposing as separate legislation.

Certainly, our ability to reform long-term care will depend not only on establishing a consumer-oriented, consumer-directed home and community-based services that are available to the severely disabled of all ages, but also on establishing a more balanced and cost-effective allocation of public support of long-term care services by eliminating the current bias toward institutional care.

Mr. President, taken together, the change in the estate recovery provisions and the slowing of nursing home bed growth, these two provisions will help shift the current distorted Federal long-term care policy away from the institutional bias that currently exists and toward a more balanced approach that emphasizes home and community-based services.

That is the direction that we will need to take if we are to achieve significant long-term care reform.

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

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

S. 58

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

SECTION 1. MEDICAID ESTATE RECOVERIES.

Section 1917(b)(1)(B) of the Social Security Act (42 U.S.C. 1396p(b)(1)(B)) is amended by striking ''consisting of—'' and all that follows through the period and inserting the following: ''consisting of—

''(i) nursing facility services and related hospital and prescription drug services; and

''(ii) at the option of the State, any additional items or services under the State plan.''.

SEC. 2. REQUIRING STATES TO REGULATE GROWTH IN THE NUMBER OF NURSING FACILITY BEDS.

(a) IN GENERAL.—A nursing facility shall not receive reimbursement under the medicare program under title XVIII of the Social Security Act, the medicaid program under title XIX of such Act, or any other Federal program for services furnished with respect to any beds first operated by such facility on or after the date of the enactment of this Act unless a certificate of need is issued by the State with respect to such beds.

(b) ISSUANCE OF CERTIFICATE.—A certificate of need may be issued by a State with respect to a geographic area only if the ratio of

the number of nursing facility beds in such area to the total population in such area that is likely to need such beds is below the ratio included in guidelines that are established by the State and approved by the Secretary of Health and Human Services under subsection (c).

(c) APPROVAL OF GUIDELINES.—The Secretary of Health and Human Services shall promulgate regulations under which States may submit proposed guidelines for the issuance of certificates of need under subsection (b) for review and approval.

(d) DEFINITION OF NURSING FACILITY.—In this section, the term ''nursing facility'' has the meaning given the terms—

(1) ''skilled nursing facility'', under the medicare program under title XVIII of the Social Security Act; and

(2) ''nursing facility'', under the medicaid program under title XIX of such Act.

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 59. A bill to terminate the Extremely Low Frequency Communication System of the Navy; to the Committee on Armed Services.

EXTREMELY LOW FREQUENCY COMMUNICATION SYSTEM TERMINATION AND DEFICIT REDUCTION ACT OF 1997

Mr. FEINGOLD. Mr. President, today I am introducing legislation for myself and Senator KOHL, which we offered during the 103d and 104th Congress to terminate the Extremely Low Frequency Communications System, located in Clam Lake, WI, and Republic, MI.

This project has been opposed by residents of Wisconsin since its inception, but for years we were told that the national security considerations of the cold war outweighed our concerns about this installation in our State. As we continue our efforts to reduce the Federal budget deficit and as the Department of Defense continues to struggle to meet a tighter budget, it is clear that Project ELF should be closed down. If enacted, my legislation would save $9 to $20 million a year.

Project ELF was developed in the late 1970's as an added protection against the Soviet naval nuclear deployment. It is an electromagnetic messenger system—otherwise known as a bell ringer—used primarily to tell a deeply submerged Trident submarine that it needs to surface to retrieve a message. Because it communicates through very primitive pulses, called phonetic-letter-spelled-out [PLSO] messages, ELF's radiowaves transmit very limited messages.

With the end of the cold war, Project ELF becomes harder and harder to justify. Trident submarines no longer need to take that extra precaution against Soviet nuclear forces. They can now surface on a regular basis with less danger of detection or attack. They can also receive more complicated messages through very low frequency [VLF] radiowaves or lengthier messages through satellite systems, if it can be done more cheaply.

Not only do Wisconsinites think the mission of Project ELF is unnecessary and anachronistic, but they are also concerned about possible environmental and public health hazards associated with it. While I have heard some ELF supporters say there is no apparent environmental impact of Project ELF, we can only conclude that we do not know that—in fact, we do not know much about its impact at all.

The Navy itself had yet to conclude definitively that operating Project ELF is safe for the residents living near the site. It you are a resident in Clam Lake, that is unsettling information. For example, in 1992, a Swedish study found that children exposed to relatively weak magnetic fields from powerlines develop leukemia at almost four times the expected rate. We also know that in 1984, a U.S. district court ruling on State of Wisconsin versus Weinberger ordered Project ELF to be shut down because the Navy paid inadequate attention to the system's possible health effects and violated the National Environmental Policy Act. That decision was overturned on appeal, however, in a ruling that claimed national security interests at the time prevailed over environmental concerns. More recent studies of the impact of electromagnetic fields in general still leave unanswered questions and concerns.

During the 103d Congress, I worked with the Senator from Georgia, Senator NUNN to include an amendment in the National Defense Authorization Act for fiscal year 1994 requiring a report by the Secretary of Defense on the benefits and costs of continued operation of Project ELF. The report issued by DOD was particularly disappointing because it basically argued that because Project ELF may have a purpose during the cold war, it should continue to operate after the cold war as part of the complete complement of command and control links configured for the cold war.

Did Project ELF play a role in helping to minimize the Soviet threat? Perhaps. Did it do so at risk to the community? Perhaps. Does it continue to play a vital security role to the Nation? No.

Most of us in Wisconsin don't want it anymore. Many of my constituents have opposed Project ELF since its inception. Congressman DAVID OBEY has consistently sought to terminate Project ELF, and in fact, we have him to thank in part for getting ELF scaled down from the large-scale project first conceived by the Carter administration. I look forward to continue working with him on this issue in the 105th Congress.

As we take up the budget for fiscal year 1998, the Department of Defense and the Armed Services Committee will again be searching for programs that have outlived their intended purpose. I hope they will seriously consider zeroing out the ELF transmitter system, as I propose in this bill, and save the taxpayers $9 to $20 million a year. Given both its apparently diminished strategic value and potential environmental and public health hazards, Project ELF is a perfect target for termination.

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. 59

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 ''Extremely Low Frequency Communication System Termination and Deficit Reduction Act of 1997''.

SEC. 2. PROHIBITION OF FURTHER FUNDING OF THE EXTREMELY LOW FREQUENCY COMMUNICATION SYSTEM.

(a) PROHIBITION ON USE OF FUNDS.—Except as provided in subsection (b), funds appropriated on or after the date of enactment of this Act to or for the use of the Department of Defense may not be obligated or expended for the Extremely Low Frequency Communication System of the Navy.

(b) LIMITED EXCEPTION FOR TERMINATION COSTS.—Subsection (a) does not apply to expenditures solely for termination of the Extremely Low Frequency Communication System.

By Mr. LOTT:

S. 61. A bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II; to the Committee on Veterans Affairs.

THE MERCHANT MARINERS FAIRNESS ACT OF 1997

Mr. LOTT. Mr. President, today, it is my pleasure to introduce the Merchant Mariners Fairness Act. My bill would grant veterans status to American merchant mariners who have been denied this status.

In 1988, the Secretary of the Air Force decided, for the purposes of granting veterans benefits to merchant seamen, that the cut-off date for service would be August 15, 1945, V–J Day, rather than December 31, 1946, when hostilities were declared officially ended. My bill would correct the 1988 decision and extend veterans benefits to merchant mariners who served from August 15, 1945 to December 31, 1946. It would extend eligibility for burial benefits and related veterans benefits for certain members of the U.S. Merchant Marine during World War II.

I urge my distinguished colleagues to join me in supporting this important legislation.

By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 62. A bill to prohibit further extension of establishment of any national monument in Idaho without full public participation and an express Act of Congress, and for other purposes; to the Committee on Energy and National Resources.

THE IDAHO PROTECTION ACT OF 1997

Mr. CRAIG. Mr. President, I rise today to introduce legislation that has been forced by recent events. I am talking about President Clinton's proclamation of last fall declaring nearly

two million acres of southern Utah a national monument.

After the President's announcement, Senator KEMPTHORNE and I introduced the Idaho Protection Act of 1996. That bill would have required that the public and the Congress be included before a national monument could be established in Idaho.

When we introduced that bill, I was immediately approached by other Senators seeking the same protection. What we see unfolding before us in Utah ought to frighten all of us. Without including Utah's Governor, Senators, congressional delegation, the State legislature, county commissioners, or the people of Utah—President Clinton set off-limits forever approximately 1.7 million acres of Utah.

Under the 1906 Antiquities Act, President Clinton has the unilateral authority to create a national monument where none existed before. And if he can do it in the State of Utah, he can do it in Idaho. In fact, since 1906, the law has been used some 66 times to set lands aside. I would note—with very few exceptions, these declarations occurred before enactment of the National Environmental Policy Act of 1969 which recognized the need for public involvement in such issues and mandated public comment periods before such decisions are made.

Just as 64 percent of the land in Utah is owned by the Federal Government, 62 percent of Idaho is owned by Uncle Sam. What the President has done in Utah, without public input, he could also do in Idaho or any or the States where the Federal Government has a presence.

With Senator KEMPTHORNE as a cosponsor, I am once again introducing the Idaho Protection Act. This bill would simply require that the public and the Congress be fully involved and give approval before such a unilateral Presidential declaration of a new national monument could be imposed on Idaho.

The President's action in Utah has been a wake-up call to people across America. While we all want to preserve what is best in our States, people everywhere understand that much of their economic future is tied up in what happens on their public lands.

In the West, where public lands dominate the landscape, issues such as grazing, timber harvesting, water use, and recreation access have all come under attack by this administration seemingly bent upon kowtowing to a segment of our population that wants these uses kicked off our public lands.

Everyone wants public lands decisions to be made in an open and inclusive process. No one wants the President, acting alone, to unilaterally lock up enormous parts of any State. We certainly don't work that way in the West. There is a recognition that with common sense, a balance can be struck that allows jobs to grow and families to put down roots while at the same time protecting America's great natural resources.

In my view, the President's actions are beyond the pale and for that reason—to protect others from suffering a similar fate, I am cosponsoring this bill.

By Mr. FEINGOLD:

S. 63. A bill to amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful employment discrimination based on race, color, religion, sex, national origin, age, or disability, and for other purposes; to the Committee on Labor and Human Resources.

THE CIVIL RIGHTS PROCEDURES PROTECTION ACT OF 1997

Mr. FEINGOLD. Mr. President, I rise today to introduce the Civil Rights Procedures Protection Act of 1997. The 105th Congress will mark the third successive Congress that I have introduced this legislation. Very simply Mr. President, this legislation addresses the rapidly growing and, in my opinion, troubling practice of employers conditioning employment or professional advancement upon their employees willingness to submit claims of discrimination or harassment to arbitration, rather than pursuing them in the courts. In other words, employees raising claims of harassment or discrimination by their employers must submit the adjudication of those claims to arbitration, irrespective of what other remedies may exist under the laws of this Nation.

To address the growing incidents of compulsory arbitration, the Civil Rights Procedures Protection Act of 1997 amends seven civil rights statutes to ensure that those statutes remain effective when claims of this nature arise. Specifically, this legislation affects claims raised under Title VII of the Civil Rights Act of 1965, Section 505 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Section 1977 of the Revised Statutes, the Equal Pay Act, the Family and Medical Leave Act and the Federal Arbitration Act (FAA). In the context of the Federal Arbitration Act, the protections of this legislation are extended to claims of unlawful discrimination arising under State or local law and other Federal laws that prohibit job discrimination.

Mr. President, I want to be clear that this legislation is in no way intended to bar the use of arbitration, conciliation, mediation or any other form of adjudication short of litigation in resolving these claims. I have long been and will continue to be a strong supporter of ''voluntary'' forms of alternative dispute resolution. The key, however, is that the practices targeted by this bill are not voluntary. Rather they are imposed upon working men and women and are mandatory. Furthermore, the ability to be promoted, or in some cases, to be hired in the first place, is often conditioned upon the employee accepting this type of mandatory arbitration. Mandatory arbitration allows employers to tell all current and prospective employees in effect, 'if you want to work for us, you will have to check your rights as a working American citizen at the door.' In short, working men and women all across this country are faced with the tenuous choice of either accepting these mandatory limitations on their right to redress in the face of discrimination or placing at risk employment opportunities or professional advancement. These requirements have been referred to recently as ''front door'' contracts; that is, they require an employee to surrender certain rights up front in order to ''get in the front door.'' As a nation which values work as well as deplores discrimination, we should not allow this situation to continue.

As I noted Mr. President, today marks the third successive Congress in which this important legislation has been introduced. Given that much of the rhetoric coming out of Washington and this body in recent months, certainly during the most recent elections, dealt with helping working families, it is my hope that this legislation will receive consideration in the coming months. The practice of mandatory arbitration should be stopped now—if people are being discriminated against, they should retain all avenues of redress provided for in the laws of this Nation. This bill will help restore integrity in relations between hard working employees and their employers, but more importantly, it will ensure that the civil rights laws which we pass, will continue to protect all Americans.

Mr. President, I ask unanimous consent that the text of the legislation be printed in the RECORD at the conclusion of my remarks.

Mr. President, I also ask unanimous consent that a newspaper article from the September 24, 1996 edition of the Boston Globe, entitled, ''A cautionary tale about signing away right to sue,'' be placed in the RECORD.

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

S. 63

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 ''Civil Rights Procedures Protection Act of 1997''.

SEC. 2. AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) is amended by adding at the end the following new section:

''EXCLUSIVITY OF POWERS AND PROCEDURES

''SEC. 719. Notwithstanding any Federal statute of general applicability that would modify any of the powers and procedures expressly applicable to a claim arising under this title, such powers and procedures shall be the exclusive powers and procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.''.

SEC. 3. AMENDMENT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) is amended—

(1) by redesignating sections 16 and 17 as sections 17 and 18, respectively; and

(2) by inserting after section 15 the following new section 16:

''EXCLUSIVITY OF POWERS AND PROCEDURES

''SEC. 16. Notwithstanding any Federal statute of general applicability that would modify any of the powers and procedures expressly applicable to a right or claim arising under this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to resolve such right or such claim through arbitration or another procedure.''.

SEC. 4. AMENDMENT TO THE REHABILITATION ACT OF 1973.

Section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 795) is amended by adding at the end the following new subsection:

''(c) Notwithstanding any Federal statute of general applicability that would modify any of the procedures expressly applicable to a claim based on right under section 501, such procedures shall be the exclusive procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.''.

SEC. 5. AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT OF 1990.

Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) is amended by adding at the end the following new subsection:

''(c) Notwithstanding any Federal statute of general applicability that would modify any of the powers and procedures expressly applicable to a claim based on a violation described in subsection (a), such powers and procedures shall be the exclusive powers and procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.''.

SEC. 6. AMENDMENT TO SECTION 1977 OF THE REVISED STATUTES OF THE UNITED STATES.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended by adding at the end the following new subsection:

''(d) Notwithstanding any Federal statute of general applicability that would modify any of the procedures expressly applicable to a right to make and enforce a contract of employment under this section, such procedures shall be the exclusive procedures applicable to a claim based on such right unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.''.

SEC. 7. AMENDMENT TO THE EQUAL PAY REQUIREMENT UNDER THE FAIR LABOR STANDARDS ACT OF 1938.

Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended by adding at the end the following new paragraph:

''(5) Notwithstanding any Federal statute of general applicability that would modify any of the powers or procedures expressly applicable to a claim based on violation of this subsection, such powers and procedures shall be the exclusive procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.''.

SEC. 8. AMENDMENT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.

Title IV of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) is amended by adding at the end the following new section:

''SEC. 406. EXCLUSIVITY OF REMEDIES.

''Notwithstanding any Federal statute of general applicability that would modify any of the procedures expressly applicable to a claim based on a right provided under this Act or under an amendment made by this Act, such procedures shall be the exclusive procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.''.

SEC. 9. AMENDMENT TO TITLE 9 OF THE UNITED STATES CODE.

Section 14 of title 9, United States Code, is amended—

(1) by inserting ''(a)'' before ''This''; and

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

''(b) This chapter shall not apply with respect to a claim of unlawful discrimination in employment if such claim arises from discrimination based on race, color, religion, sex, national origin, age, or disability.''.

SEC. 10. APPLICATION OF AMENDMENTS.

The amendments made by this Act shall apply with respect to claims arising on and after the date of the enactment of this Act.

[From the Boston Globe, Sept. 24, 1996]

A CAUTIONARY TALE ABOUT SIGNING AWAY RIGHT TO SUE; ON THE JOB

(By Diane E. Lewis)

Jane Lajoie thought she had an open-and-shut discrimination case against her employer. Instead, she now has a cautionary tale for the growing number of American workers whose employers have asked them to sign away their rights to have employment complaints brought before a jury.

Lajoie's story begins in 1987 when, after receiving an MBA, she joined Fidelity Management Research Corp. as a data analyst for the publishing group's Mutual Fund Guide. Over the next seven years, she took on more responsibilities, rising to managing editor and then publisher of the guide.

But the Marlborough woman says there was a dark cloud over what should have been a successful career: She was convinced that she was not being compensated fairly, that men in comparable posts had more prestigious titles and were getting a lot more money for the same work. And she voiced her concerns.

Lajoie, 51, alleges that not long after she spoke up, a company lawyer asked her to register as a principle with the New York Stock Exchange and the National Association of Securities Dealers. Lajoie says she agreed, think she was required to register. She admits that she didn't read the fine print.

Today, Lajoie claims she was tricked into signing a so-called U–4 securities arbitration form stating that any dispute or claim against her employer must be submitted to private arbitration. In a lawsuit filed in Norfolk Superior Court, she alleges that she was replaced by a younger woman and then fired after she signed the form.

Fidelity denies discriminating against Lajoie. ''There was no discrimination. She was compensated properly and fairly. She was also replaced by another woman,'' said attorney Wilfred Benoit Jr., who represents the Boston firm.

As for trickery, Benoit asserted: ''Jane Lajoie was not tricked into signing anything. She signed a U–4 application as a principal in the securities industry and, as far as we know, she understood what it was.''

Thus far, two Massachusetts courts have upheld Fidelity's right to arbitration, and an arbitration hearing is expected this year. The dispute may or may not end there.

Attorney Nancy Shilepsky, who represents Lajoie, says the Massachusetts Court of Appeals has acknowledged that her client may have good grounds for an appeal. But the court also ruled the Lajoie must arbitrate first and then, if unhappy with the findings, appeal.

For employers, mandatory arbitration has been a boon. Not only does it limit lengthy and expensive court battles, but it also reduces the kind of publicity that can seriously damage a company's image. In the five years since the US Supreme Court ruled that U–4s were legal, scores of companies have sought to have sexual harassment, age, gender and other discrimination claims moved from courts to the system of private justice known as binding arbitration. In the securities industry alone, about 500,000 Wall Street employees are legally bound by arbitration agreements.

Not surprisingly, the American Arbitration Association reports that employment arbitration claims increased 70 percent between 1994 and 1995.

Criticism has kept pace with the trend. Both the Equal Employment Opportunity Commission and the National Labor Relations Board have denounced the increased use of mandatory arbitration forms. The National Employment Lawyers Association has an ongoing campaign against the agreements.

The critics argue that the agreements are generally signed at the time of hiring or in the course of a policy change at a company—times when workers are concerned about making a good first impression or are probably not focused on the consequences of compliance.

Last year, the EEOC succeeded in enjoining an employer from requiring workers to sign mandatory arbitration forms and from firing those workers who refused.

This spring, the NLRB took a similar stand when it issued a complaint against a luggage maker that fired an employee for refusing to sign a form stating that all workplace disputes would have to be arbitrated.

''Nobody should be forced to use an employer's private justice system,'' says Lewis Maltby, director of workplace rights at the American Civil Liberties Union in New York.

Maltby, who sits on the board of the American Arbitration Association, concedes that there are times when employees may be better off arbitrating a dispute than taking the matter to a backlogged court or a beleaguered government agency.

In Boston, the Massachusetts Commission Against Discrimination is hoping arbitration will help reduce a two-year backlog of cases. For those who opt for binding arbitration, the dispute would be heard within 30 days after filing and decided in 60 days. Decisions would be binding on both sides.

Still, MCAD Commissioner Michael Duffy has drawn the line: His program will not mediate any cases stemming from mandatory arbitration agreements.

''We're not against arbitration or mediation,'' said Duffy. ''We think it's fine when all parties agree. But problems arise when employees are told they must do it or are made to feel they could lose a job, and then they wind up giving up their right to a jury trial.''

In the meantime, he and others advise what consumer advocates have been telling the public for years: Read the fine print before signing on the bottom line.

By Mr. LUGAR:

S. 64. A bill to state the national missile defense policy of the United

States; to the Committee on Armed Services.

THE DEFEND THE UNITED STATES OF AMERICA ACT OF 1997

Mr. LUGAR. Mr. President, as we commence the 105th Congress and take up, as we surely will, issues with regard to national missile defense and theater missile defense, a key question is whether continued adherence to the ABM Treaty, in its original or a modified form, is compatible with the kind of missile defense we need.

Is this an ''either/or'' choice?

I hold the view that the ABM Treaty does have, or can be made to have, sufficient flexibility or elasticity to accommodate certain kinds of national missile or theater missile defense systems. By the same token, I reject the notion that we can only achieve the types of theater missile defense or national missile defense we need by outright abrogation of the ABM Treaty.

I am struck more by the commonality than the differences between the prevailing views of some of my Republican colleagues in the Senate and views in the Administration on this subject. Much of the difference has to do with timing, stemming in part from different assessments of the intelligence information on the ballistic missile threat facing the country. Ultimately, responsible policy makers must come to grips with the management of the risk entailed by the threat and how much money we are willing to spend, in a tight budget situation, for various levels of missile defense to counter that threat.

At this point in our debates, there seems to be general agreement that we are not trying to protect the U.S. against a massive nuclear strike from a reconstituted Soviet Union or even a general exchange with Russia. Nor, for that matter, are we talking about protection against a deliberate, massive Chinese nuclear attack on the United States.

A consensus between the prevailing positions on the Hill and that of the administration comes closer if there is an acceptance that this range of Russian or Chinese threats are beyond our technological and financial means in the near term and that our objective is one of defending America against a Third World, long-range ballistic missile capability from a regime not subject to any rational laws of deterrence.

It is the prospect that rogue states will at some point obtain strategic ballistic missiles - ICBMs - that can reach American shores which propels us to consider the deployment of a national missile defense. A second prospect involves an unauthorized or accidental launch of an ICBM from Russia or China.

The kind of national missile defense system promoted both on the Hill and in the administration would not be capable of defending against thousands of warheads being launched against the United States. Rather, both sides are talking about a system capable of defending against the much smaller and relatively unsophisticated ICBM threat that a rogue nation or terrorist group could mount anytime in the foreseeable future as well as one capable of shooting down an unauthorized or accidentally launched missile.

The critical difference between many of the plans offered on the Hill and those proposed by the administration has to do with timing. Some Congressional proposals would require selection of a missile defense system to be made within a year, with deployment to begin within three years. The administration has argued for the need to develop a system, assess the threat in three years, and make a deployment decision accordingly.

It is the difference between the various plans over timing on system selection and deployment that holds practical implications for existing and potential arms control agreements—START II, the ABM Treaty, START III?—as well as the potential effectiveness of the system deployed. The more immediate the commitment to deploy a national defense system, the greater the risk of a Russian rejection of the START II Treaty and of an outright American rejection of the original ABM Treaty.

Second, differences over timing have been linked to the issue of the effectiveness of the system deployed by the United States. The administration has argued that selection of a system within the next year or so will limit the options to build a system that is better matched to the threat, and that the real choice between various Congressional plans and that of the administration is between building an advanced system to defeat an actual threat and a less capable system to defeat a hypothetical threat.

Mr. President, is there a middle ground—one that satisfies neither the administration nor various Congressional proponents fully but that does move us in the direction of providing the American people with a limited national defense system against the most urgent ballistic missile threats? I believe there is, and this legislation is an attempt to chart it.

Mr. President, I sense a greater willingness in both branches to try to come together in the interest of providing the American people with some form of limited, national defense system against the most urgent form of ballistic missile threat —to seek to bridge gaps rather than score debating points.

Moreover, with the passage of time, the differences over preferred dates of system selection and deployment have narrowed.

With that in mind, and with a felt need to change the terms of reference of previous ballistic missile defense debates by focusing on areas of commonality between the administration's position and the various congressional plans, I offer this legislation as one of the starting points for a more constructive exchange on the subject of national missile defense.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

DEFEND THE UNITED STATES OF AMERICA ACT OF 1997—SECTION-BY-SECTION ANALYSIS

I. SHORT TITLE

This act may be cited as the ''Defend the United States of America Act of 1997''.

II. FINDINGS

Describes the linkages between U.S. missile defenses, the ABM Treaty, and continued Russian adherences to other arms reduction treaties like START I and START II.

Describes the newly-emerging threats posed by other kinds of weapons of mass destruction than nuclear weapons, and other delivery means than long-range ballistic missiles.

Hearings over the last two years have shown the pervasive threat to the U.S. from chemical, biological, and radiological weapons, and the relative unpreparedness of U.S. governments at all levels to cope with such terrorist incidents.

Restates what DoD and Congress have learned about major weapons system development, which emphasis on the necessity for thorough testing and careful systems cost-effectiveness analysis prior to a commitment to deployment.

III. NATIONAL MISSILE DEFENSE POLICY

Development for deployment not later than 2003 of a National Missile Defense system designed to defend against accidental, unauthorized, and limited attacks.

The initial National Missile Defense system to be developed and deployed at the former Safeguard ABM site in compliance with the ABM Treaty, and to consist of:

Fixed, guard-based battle management radars;

Up to 100 ground-based interceptor missiles;

Space based adjuncts allowed by the ABM Treaty; and

Large phased array radars on the periphery of the U.S., facing outward, as necessary.

A requirement for a Presidential recommendation in 2000 on whether or not to deploy the developed system, and a set of criteria that should be used by the Congress in 2000 to aid in making a deployment decision. The criteria include:

The threat, as it exists in 2000 and is projected over the next several years;

The projected cost and effectiveness of the system, based on development and testing results;

The projected cost and effectiveness of the National Missile Defense system if deployment were deferred for one to three years, while additional development occurs;

Arms control factors; and

Where the U.S. stands in preparedness for, and defenses against, all the other nuclear, chemical and biological threats to the U.S.

The establishment of provisions to give the 106th Congress a vote on whether or not to authorize deployment of the system, as a privileged motion under expedited procedures.

This is a process that has been used by previous Congresses to insure an up-or-down vote in both Houses on the B–2 bomber, the MX missile, and on B–52s.

In sum, this section establishes a process whereby Congress will vote in 2000 on whether or not to deploy whatever National Missile Defense system may be ready to begin deployment at that time, and with better information than we have today.

IV. NATIONAL MISSILE DEFENSE VS. ARMS CONTROL AGREEMENTS

A statement that it is the United States' legal right to deploy such a National Missile Defense system, and that such a deployment does not threaten Russian or Chinese deterrent capabilities.

A direction to the President to seek both further cooperation with Russia on a variety of Theater Missile Defense issues, and the relaxation of the ABM Treaty to allow both sides to have two National Missile Defense sites.

This would greatly increase the effectiveness of our National Missile Defense systems against Third World missile attacks aimed at targets on our distant borders, while not posing a threat to Russia's deterrent.

This section also contains a provision requiring the President, if the ballistic missile threat to the U.S. exceeds that which the initial National Missile Defense system is capable of handling, to consult with the Congress regarding the exercise of our right to withdraw from the ABM Treaty under Article XV.

V. DOD TO CONTINUE R&D ON NATIONAL MISSILE DEFENSE

Directs the Secretary of Defense to continue a research and development program on advanced National Missile Defense technologies while the initial site is developed and deployed; this program would be conducted in full compliance with the ABM Treaty.

VI. U.S. POLICY TOWARD OTHER WMD DELIVERY THREATS

Sets forth U.S. policy on reducing the threat to the U.S. from weapons of mass destruction and associated delivery systems. It further directs the Administration to develop a balanced comprehensive plan for reducing the threat to the U.S. from all weapons of mass destruction and all delivery means.

VII. PRESIDENTIAL AND CONGRESSIONAL REVIEW OF U.S. DEFENSES AGAINST ALL TYPES OF WMD ATTACK

Requires a review, following the initial deployment of a National Missile Defense, by the President and the Congress to determine the future course of U.S. defenses against all types of weapons of mass destruction.

VIII. REPORTING REQUIREMENTS

Administration reporting requirements to Congress.

IX. LEGAL DEFINITIONS

The legal definitions of the treaties mentioned in the bill.

By Mr. HATCH:

S. 65. A bill to amend the Internal Revenue Code of 1986 to ensure that members of tax-exempt organizations are notified of the portion of their dues used for political and lobbying activities, and for other purposes; to the Committee on Finance.

MEMBERSHIP DUES DISCLOSURE AND DEDUCTIBILITY LEGISLATION.

Mr. HATCH. Mr. President, for many years, Congress has recognized that private institutions can often provide better service in certain areas than the government. In this regard, membership organizations that serve various public needs are given tax-exempt treatment. However, some tax-exempt membership organizations are involved in political and lobbying activities. These activities may or may not meet with the approval of those who pay dues and certainly should not be subsidized by the taxpayers.

Today, I am introducing legislation that is designed to rectify this problem. My bill is very simple. It requires tax-exempt membership organizations to disclose to their members these political activities and organizational resources spent on them. In addition, this bill will give the members of these tax-exempt organizations the opportunity to deduct the nonpolitical portion of their dues for income tax purposes without regard to the so-called ''two percent limitation.''

First, let me discuss the issue of full disclosure.

Mr. President, in the Omnibus Budget Reconciliation Act of 1993, Congress disallowed a deduction for expenses relating to lobbying and political activities. Lobbying is no longer a legitimate deductible expense for American businesses. Since tax-exempt organizations generally do not pay any income tax, the law was amended to further disallow an individual taxpayer a tax deduction for the portion of annual dues paid to a tax-exempt organization that is attributable to any lobbying or political activities of the organization. To assist association members in knowing what portion is and what portion is not deductible when paying their dues, the law requires organizations to annually disclose to the IRS and to the individual members the amount of money spent on political activities by the organization.

However, certain exceptions to the disclosure rules are provided in the tax code and an organization is not required to disclose such information if (1) political activities do not exceed $2,000 a year; (2) the organization elects to pay a proxy tax on the nondeductible portion in order to avoid providing disclosure; or (3) substantially all of the individual members do not deduct their annual dues payments on their tax returns as itemized deductions.

In 1995, the IRS put forth an interpretation of this third exception and explained what they believe Congress meant by substantially all dues are not deductible. In Revenue Procedure 95–35, the IRS let all but three categories of tax-exempt organizations off the hook from the disclosure rules. The three that must comply are: section 501(c)(4) organizations that are not veterans organizations, 501(c)(5) agricultural and horticultural organizations, and 501(c)(6) organizations.

Interestingly, Mr. President, the IRS choose to grant labor unions, which are also 501(c)(5) organizations, a complete exemption from the lobbying disclosure rules. Thus, unions do not have to inform their members how much of their dues are used for political purposes.

I am sure that my colleagues see the obvious problems in this. It is simply not fair that the IRS would treat a labor union preferentially. Why are unions exempt and not, for example, farm cooperatives?

Mr. President, it seems to me that the Clinton administration has twisted the law to favor their friends in union leadership at the expense of the right to know for the rank and file. Let me reiterate this point: the law says clearly that tax-exempt organizations must disclose their political and lobbying activities. It is only the IRS interpretation that enables unions to duck this disclosure requirement and still benefit from tax-exempt status.

Second, I find it outrageous that union leadership are able to coerce dues from workers in many states as a condition of employment. But, it adds insult to injury that those dues can be used for political purposes without the knowledge, let alone permission, of the rank and file.

The Supreme Court, in 1988, in *Beck* v. *Communication Workers of America,* declared that workers were entitled to know how much of their dues were being directed to political uses and to receive a refund for that portion of dues paid. This seems like a simple common sense solution to this violation of free speech rights. However, in one of his first acts upon taking office in 1993, President Clinton rescinded the executive order enforcing this decision of the Supreme Court.

Mr. President, in the *Beck* case, for example, it was found that only 21 percent of the dues collected by the Communications Workers of America went for bargaining-related activities. This meant that Harry Beck, the former Maryland union shop steward who spent 13 years fighting his case in the courts, was entitled to get a substantial rebate of his dues, plus interest. Yet, this case is merely illustrative of a widespread injustice. Where is the fairness in requiring a worker to contribute to a political cause or a lobbying effort with which he or she does not agree?

Forcing people to contribute portions of their earnings to political causes they oppose violates their First Amendment rights. In his *Beck* opinion, Justice William Brennen cited Thomas Jefferson's view that forcing people to finance opinions they disagree with was ''sinful and tyrannical.''

Mr. President, it is often a requirement or a condition of employment for workers to be members of a labor union. Yet, this requirement is often very costly. Union dues can run from about $300 to over $1,000 a year. Now, I am the first to acknowledge that unions play an important role in employee-employer relations. I will wager that I am one of the few members of this body who was ever a member of a union. And, that experience, perhaps, is the reason I believe so strongly that the rank and file have rights that must be protected.

Citizens of a free country ought to be free to spend their own money on the political causes and candidates they wish to support. In 1992, union officials admit to having spent at least $92 million on political contributions and expenses. In-kind contributions could be

3 to 5 times that amount. In other words, organized labor may have actually spent from $300 million to $500 million on political activities in 1992. While some union members would approve of these expenditures, some definitely would not.

But, I want to be absolutely clear that the bill I am introducing today does *not* affect any provision in the National Labor Relations Act, the ability of unions to establish closed or agency shops in any state where they are currently permitted, or the ability of unions to assess dues or collect fees. Those are debates for another day.

Rather, this bill deals only with the obligation of labor unions, as tax exempt organizations, to disclose political and lobbying activities to their members. All union members deserve to know how their organizations spend their money. Moreover, because these are tax-exempt organizations, the taxpayers deserve to know what they are subsidizing.

While union members are certainly capable of reading a headline like, ''Union leaders commit $35 million to Democrats,'' they may wish to have a more comprehensive disclosure of political and lobbying activity financed with their dues—and I cannot blame them one bit.

Mr. President, polling data suggests that union members would prefer that their unions not engage in partisan political campaign activities at all. But, by an overwhelming 84 percent to 9 percent margin, according to a survey by Luntz and Associates, union members want to force their union leaders to explain what happens to their dues. They simply want to know where the money is spent and why. This seems utterly reasonable and fair to me.

Furthermore, only 19 percent of union members know that they can request a refund if they do not agree with an ideological position and/or political position of their particular union. When told that they have the right to a refund, 20 percent say they would ''definitely'' request their money back, and another 20 percent would be ''very likely'' to request a refund.

Mr. President, let me turn to the issue of deductibility.

Currently, an individual union member may deduct his union dues only if the amount exceed two percent of his or her adjusted gross income [AGI]. For all intents and purposes, this means that union dues and fees are not deductible at all for most workers, even if such dues and fees are required as a condition of employment.

I believe that union dues and fees, especially to the extent that so many workers are forced to pay them, ought to be fully deductible for those who itemize deductions. Therefore, I am proposing this bill to remove the two percent threshold and to permit union members and fee payers to deduct that portion of their dues and fees that is not used for political or lobbying activities. This conforms union dues and fees with all other sorts of business expenses and contributions to tax-exempt organizations.

Moreover, this deduction is a form of tax break that could put real money back in the pockets of American workers.

Mr. President, to summarize, if my bill is enacted into law, tax-exempt organizations would be required—really required—to disclose to their members the amount of their political and lobbying activities. It goes further by allowing full deductibility of membership dues to the extent they are used for nonpolitical or lobbying activities.

Mr President, this proposal is a step in the direction of campaign finance reform. One important objective of campaign finance reform should be to return political power to individual citizens and to diminish the influence of large organizational special interests.

Well, Mr. President, knowledge has always been power. To return power to individual voters, they need to know where their dollars are going. If my bill is passed, workers will no longer be in the dark about their dues. At the same time they will be getting a tax break and possibly an increase in their take-home pay. I believe this is the fair and honest thing to do. I urge all my colleagues to support and cosponsor this bill.

By Mr. HATCH (for himself, Mr. LIEBERMAN, Mr. GRASSLEY, and Mr. BREAUX):

S. 66. A bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes; to the Committee on Finance.

THE CAPITAL FORMATION ACT OF 1997

Mr. HATCH. Mr. President, I am pleased to be joined by Senators LIEBERMAN, GRASSLEY, and BREAUX in introducing the Capital Formation Act of 1997.

Mr. President, reducing the high rate on capital gains has long been a priority of mine. During the last Congress, I joined my good friend, the chairman of the House Ways and Means Committee, Bill Archer, in sponsoring the Archer-Hatch capital gains bill. Then later in the session Senator Lieberman and I offered a bipartisan capital gains tax reduction bill. The Hatch/Lieberman bill, S. 959, contained the same 50 percent deduction for capital gains as well as an enhanced incentive for investments in newly issued stock of small corporations. This measure was supported by 45 senators, and we were pleased that its provisions were included in the Balanced Budget Act of 1995.

The bill we are introducing today is substantially the same. Our bill combines two important elements of capital gains relief with a broad based tax cut and a targeted incentive to give an extra push for newly formed or expanding small businesses. Like the capital gains measure that passed the House and Senate during the last Congress, our bill would allow individual taxpayers to deduct 50 percent of any net capital gain. This means that the top capital gains tax rate for individuals would be 19.8 percent. Also, it grants a 25-percent maximum capital gains tax rate for corporations. Our bill also includes an important provision that would allow homeowners who sell their personal residences at a loss to take a capital gains deduction.

A provision that is not in our bill is a provision for indexing assets. Many of our Senate colleagues have expressed concern that indexing capital assets would result in undue complexity and possibly lead to a resurgence of tax shelters. While I continue to support the concept of indexing capital assets to prevent the taxation of inflationary gains, I believe even more strongly that capital gains tax relief is essential for our long-term economic growth. Therefore, in an effort to streamline this bill and expedite its passage, we have omitted the indexing provisions. I hope that some form of indexing can be developed that will achieve the goals of indexing without adding undue complexity or the potential for abuse.

In addition to the broad-based provisions listed above, our bill also includes some extra capital gains incentives targeted to individuals and corporations who are willing to invest in small businesses. We see this add-on as an inducement for investors to provide the capital needed to help small businesses get established and to expand.

Mr. President, this additional targeted incentive works as follows: If an investor buys newly issued stock of a qualified small business, which is defined as one with up to $100 million in assets, and holds that stock for three or more years, he or she can deduct 75 percent of the gain on the sale of that stock, rather than just the 50 percent deduction provided for other capital gains.

In addition, any time after the end of the 3 year period, if the investor decides to sell the stock of one qualified small business and invest in another qualified small business, he or she can completely defer the gain on the sale of the first stock and not pay taxes on the gain until the second stock is sold. In essence, the investor is allowed to roll over the gain into the new stock until he or she sells the stock and cashes out the assets. We think that this additional incentive will make a tremendous amount of capital available for new and expanding small businesses in this country.

In particular, these special incentives should really make a difference in the electronics, biotechnology, and other high tech industries that are so important to our economy and to our future. The software and medical device industries in Utah are perfect examples of how these industries have transformed our economy. While these

provisions are not limited to high tech companies by any means, these are the types of businesses that are most likely to use them because it is so hard to attract capital for these higher risk ventures. In addition, many start-up companies have large research and development needs. With the uncertainty of the R&E tax credit, this bill will give investors an incentive to fund high risk research companies that may be a Novell or Thiokol of tomorrow.

Mr. President, our economy is becoming more connected to the global marketplace every day. And, it is vital for us to realize that capital flows across national boundaries very rapidly. Therefore, we need to be concerned with how our trading partners tax capital and investment income.

Unfortunately, the U.S. has the highest tax rate on individual capital gains of all of the G–7 nations, except the U.K. And, even in the U.K., individuals can take advantage of indexing to alleviate capital gains caused solely by inflation. For example, Germany totally exempts long-term capital gains on securities. In Japan, investors pay the lesser of 1 percent of the sales price or 20 percent of the net gain. I think it is no coincidence, Mr. President, that Germany's saving rate is twice ours, and Japan's is three times as high as ours. In order to stay competitive in the world, it is vital that our tax laws provide the proper incentive to attract the capital we need here in the U.S.

We are aware that some of the opponents of capital gains tax reductions have asserted that such changes would inordinately benefit the wealthy, leaving little or no tax relief for the lower and middle income classes. Nothing could be further from the truth. In fact, capital gains taxation affects every homeowner, every employee who participates in a stock purchase plan, or every senior citizen who relies on income from mutual funds for their basic needs during retirement. A capital gains tax cut is for everybody.

It is interesting to note how the current treatment of capital gains only gives preferential treatment to those taxpayers whose incomes lie in the highest tax brackets. Under the Capital Formation Act of 1997, the benefits will tilt decidedly toward the middle-income taxpayer. A married couple with $30,000 in taxable income who sells a capital asset would, under our bill, pay only a 7.5-percent tax on the capital gain. Further, this bill would slash the taxes retired seniors pay when they sell the assets they have accumulated for income during retirement.

I also believe there is a misperception about the term ''capital asset.'' We tend to think of capital assets as something only wealthy persons have. In fact, a capital asset is a savings account—which we should all have—a piece of land, a savings bond, some stock your grandmother gave you, a mutual fund share, your house, your farm, your 1964 Mustang convertible, or any number of things that have monetary worth. It is misleading to imply that only ''the wealthy'' would benefit from this bill.

I want to elaborate on this point, Mr. President. Current law already provides a sizeable differential between ordinary income tax rates and capital gains tax rates for upper income taxpayers. The wealthiest among us pay up to 39.6 percent on ordinary income but only 28 percent on capital gains. We certainly believe that income tax rates are too high. And, for middle-income taxpayers in the 28 percent income tax bracket, there is no difference between their capital gains rate and their ordinary income rate. Thus, current law provides no tax incentive for middle income taxpayers to invest assets that may have capital gains. Our bill would correct this problem and give the largest percentage rate reduction to the lowest income taxpayers. For example, the rate for high income earners would change from 28 percent to 19.8 percent—a 8.2 percentage point reduction. Whereas, a middle income taxpayer—who is getting no benefit under current law—would be taxed at 14 percent—a 14 percentage point reduction.

Frankly, Mr. President, the introduction of a bipartisan capital gains bill couldn't come at a better time than now. Congress is in the midst of formulating a plan to balance the federal budget. The elements of this plan will have consequences far beyond this year or even beyond 2002 when we hope to achieve our balanced budget goal. Crucial to the achievement of a balanced budget is the underlying growth and strength of our economy. Small changes in the behavior of the economy can make or break our ability to put our fiscal house in order. Thus, especially now, we can ill afford to have our economy slow down and create an increased fear of future job insecurity. Both Republicans and Democrats alike can agree that the creation of new and secure jobs is imperative for a vibrant and growing economy.

This is where a reduction of the capital gains rate can be so important. By stimulating the economy and spurring job creation, a cut in the capital gains rate can stave off the downturn that may be on its way.

Many Americans have expressed concern about the wisdom of a tax reduction while we are trying to balance the budget. However, Mr. President, we see this bill as a change that will help us balance the budget. The evidence clearly shows that a cut in the capital gains tax rate will increase, not decrease, revenue to the Treasury. During the period from 1978 to 1985, the tax rate on capital gains was cut from almost 50 percent to 20 percent. Over this same period, however, tax receipts increased from $9.1 billion to $26.5 billion. The opposite occurred after the 1986 Tax Reform Act raised the capital gains tax rate. The higher rate resulted in less revenue.

Mr. President, the capital gains tax is really a tax on realizing the American dream. For those Americans who have planted seeds in small or large companies, family farms, or other investments, and who have been fortunate enough and worked hard enough to see them grow, the capital gains tax is a tax on success. It is an additional tax on the reward for taking risks. The American dream is not dead; it's just that we have been taxing it away.

I urge my colleagues on both sides of the aisle to take a close look at this bill. We believe it offers a solid plan to help us achieve our goal of a brighter future for our children and grandchildren. When it comes down to it, jobs, economic growth, and entrepreneurship are not partisan issues. They are American issues.

I ask unanimous consent that the text and a summary 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. 66

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Capital Formation Act of 1997''.

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

TITLE I—CAPITAL GAINS REFORM

Subtitle A—Capital Gains Deduction for Taxpayers Other Than Corporations

SEC. 101. CAPITAL GAINS DEDUCTION.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by redesignating section 1202 as section 1203 and by inserting after section 1201 the following:

''SEC. 1202. CAPITAL GAINS DEDUCTION.

''(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a net capital gain, 50 percent of such gain shall be a deduction from gross income.

''(b) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

''(c) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

''(d) TRANSITIONAL RULE.—

''(1) IN GENERAL.—In the case of a taxable year which includes January 1, 1997—

''(A) the amount taken into account as the net capital gain under subsection (a) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year on or after January 1, 1997, and

''(B) if the net capital gain for such year exceeds the amount taken into account under subsection (a), the rate of tax imposed by section 1 on such excess shall not exceed 28 percent.

''(2) SPECIAL RULES FOR PASS-THRU ENTITIES.—

''(A) IN GENERAL.—In applying paragraph (1) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

''(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

''(i) a regulated investment company,

''(ii) a real estate investment trust,

''(iii) an S corporation,

''(iv) a partnership,

''(v) an estate or trust, and

''(vi) a common trust fund.''.

(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) is amended by inserting after paragraph (15) the following:

''(16) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1 is amended by striking subsection (h).

(2) Section 170(e)(1) is amended by striking ''the amount of gain'' in the material following subparagraph (B)(ii) and inserting ''50 percent ($^{25}/_{35}$ in the case of a corporation) of the amount of gain''.

(3) Section 172(d)(2)(B) is amended to read as follows:

''(B) the deduction under section 1202 and the exclusion under section 1203 shall not be allowed.''.

(4) The last sentence of section 453A(c)(3) is amended by striking all that follows ''long-term capital gain,'' and inserting ''the maximum rate on net capital gain under section 1201 or the deduction under section 1202 (whichever is appropriate) shall be taken into account.''.

(5) Section 642(c)(4) is amended to read as follows:

''(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year or gain described in section 1203(a), proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses) or for the exclusion allowable to the estate or trust under section 1203 (relating to exclusion for gain from certain small business stock). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).''.

(6) The last sentence of section 643(a)(3) is amended to read as follows: ''The deduction under section 1202 (relating to deduction of excess of capital gains over capital losses) and the exclusion under section 1203 (relating to exclusion for gain from certain small business stock) shall not be taken into account.''.

(7) Section 643(a)(6)(C) is amended by inserting ''(i)'' before ''there shall'' and by inserting before the period '', and (ii) the deduction under section 1202 (relating to capital gains deduction) and the exclusion under section 1203 (relating to exclusion for gain from certain small business stock) shall not be taken into account''.

(8) Section 691(c)(4) is amended by striking ''sections 1(h), 1201, 1202, and 1211'' and inserting ''sections 1201, 1202, 1203, and 1211''.

(9) The second sentence of section 871(a)(2) is amended by inserting ''or 1203'' after ''section 1202''.

(10)(A) Section 904(b)(2) is amended by striking subparagraph (A), by redesignating subparagraph (B) as subparagraph (A), and by inserting after subparagraph (A) (as so redesignated) the following:

''(B) OTHER TAXPAYERS.—In the case of a taxpayer other than a corporation, taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.''.

(B) Section 904(b)(2)(A), as so redesignated, is amended—

(i) by striking all that precedes clause (i) and inserting the following:

''(A) CORPORATIONS.—In the case of a corporation—'', and

(ii) by striking in clause (i) ''in lieu of applying subparagraph (A),''.

(C) Section 904(b)(3) is amended by striking subparagraphs (D) and (E) and inserting the following:

''(D) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).''.

(D) Section 593(b)(2)(D)(v) is amended—

(i) by striking ''if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year,''; and

(ii) by striking ''section 904(b)(3)(E)'' and inserting ''section 904(b)(3)(D)''.

(11) The last sentence of section 1044(d) is amended by striking ''1202'' and inserting ''1203''.

(12)(A) Section 1211(b)(2) is amended to read as follows:

''(2) the sum of—

''(A) the excess of the net short-term capital loss over the net long-term capital gain, and

''(B) one-half of the excess of the net long-term capital loss over the net short-term capital gain.''.

(B) So much of section 1212(b)(2) as precedes subparagraph (B) thereof is amended to read as follows:

''(2) SPECIAL RULES.—

''(A) ADJUSTMENTS.—

''(i) For purposes of determining the excess referred to in paragraph (1)(A), there shall be treated as short-term capital gain in the taxable year an amount equal to the lesser of—

''(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

''(II) the adjusted taxable income for such taxable year.

''(ii) For purposes of determining the excess referred to in paragraph (1)(B), there shall be treated as short-term capital gain in the taxable year an amount equal to the sum of—

''(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) or the adjusted taxable income for such taxable year, whichever is the least, plus

''(II) the excess of the amount described in subclause (I) over the net short-term capital loss (determined without regard to this subsection) for such year.''.

(C) Section 1212(b) is amended by adding at the end the following:

''(3) TRANSITIONAL RULE.—In the case of any amount which, under this subsection and section 1211(b) (as in effect for taxable years beginning before January 1, 1998), is treated as a capital loss in the first taxable year beginning after December 31, 1997, paragraph (2) and section 1211(b) (as so in effect) shall apply (and paragraph (2) and section 1211(b) as in effect for taxable years beginning after December 31, 1997, shall not apply) to the extent such amount exceeds the total of any capital gain net income (determined without regard to this subsection) for taxable years beginning after December 31, 1997.''.

(13) Section 1402(i)(1) is amended by inserting '', and the deduction provided by section 1202 and the exclusion provided by section 1203 shall not apply'' before the period at the end thereof.

(14) Section 1445(e) is amended—

(A) in paragraph (1), by striking ''35 percent (or, to the extent provided in regulations, 28 percent)'' and inserting ''25 percent (or, to the extent provided in regulations, 19.8 percent)''; and

(B) in paragraph (2), by striking ''35 percent'' and inserting ''25 percent''.

(15)(A) The second sentence of section 7518(g)(6)(A) is amended—

(i) by striking ''during a taxable year to which section 1(h) or 1201(a) applies''; and

(ii) by striking ''28 percent (34 percent'' and inserting ''19.8 percent (25 percent''.

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 is amended—

(i) by striking ''during a taxable year to which section 1(h) or 1201(a) of such Code applies''; and

(ii) by striking ''28 percent (34 percent'' and inserting ''19.8 percent (25 percent''.

(16) The table of sections for part I of subchapter P of chapter 1 is amended by striking the item relating to section 1202 and by inserting after the item relating to section 1201 the following:

''Sec. 1202. Capital gains deduction.

''Sec. 1203. 50-percent exclusion for gain from certain small business stock.''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section apply to taxable years ending after December 31, 1996.

(2) CONTRIBUTIONS.—The amendment made by subsection (c)(2) applies to contributions on or after January 1, 1997.

(3) USE OF LONG-TERM LOSSES.—The amendments made by subsection (c)(12) apply to taxable years beginning after December 31, 1997.

(4) WITHHOLDING.—The amendments made by subsection (c)(14) apply only to amounts paid after the date of enactment of this Act.

Subtitle B—Capital Gains Reduction for Corporations

SEC. 111. REDUCTION OF ALTERNATIVE CAPITAL GAIN TAX FOR CORPORATIONS.

(a) IN GENERAL.—Section 1201 is amended to read as follows:

''SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS.

''(a) GENERAL RULE.—If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, and 831 (whichever is applicable), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

''(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

''(2) a tax of 25 percent of the net capital gain.

''(b) TRANSITIONAL RULE.—

''(1) IN GENERAL.—In the case of any taxable year ending after December 31, 1996, and beginning before January 1, 1998, in applying subsection (a), net capital gain for such taxable year shall not exceed such net capital

gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year after December 31, 1996.

''(2) SPECIAL RULE FOR PASS-THRU ENTITIES.—Section 1202(d)(2) shall apply for purposes of paragraph (1).

''(c) CROSS REFERENCES.—

"For computation of the alternative tax—

"(1) in the case of life insurance companies, see section 801(a)(2),

"(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D), and

"(3) in the case of real estate investment trusts, see section 857(b)(3)(A).".

(b) CONFORMING AMENDMENT.—Section 852(b)(3)(D)(iii) is amended by striking ''65 percent'' and inserting ''75 percent''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years ending after December 31, 1996.

Subtitle C—Capital Loss Deduction Allowed With Respect to Sale or Exchange of Principal Residence

SEC. 121. CAPITAL LOSS DEDUCTION ALLOWED WITH RESPECT TO SALE OR EXCHANGE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Section 165(c) (relating to limitation on losses of individuals) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''; and'', and by adding at the end the following:

''(4) losses arising from the sale or exchange of the principal residence (within the meaning of section 1034) of the taxpayer.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to sales and exchanges after December 31, 1996, in taxable years ending after such date.

TITLE II—SMALL BUSINESS VENTURE CAPITAL STOCK

SEC. 201. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) INCREASE IN EXCLUSION PERCENTAGE.—

(1) IN GENERAL.—Section 1203(a), as redesignated by section 101, is amended—

(A) by striking ''50 percent'' and inserting ''75 percent''; and

(B) in the heading, by striking ''50-PERCENT'' and inserting ''PARTIAL''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1203, as so redesignated, is amended by adding at the end the following:

''(*l*) CROSS REFERENCE.—

"For treatment of eligible gain not excluded under subsection (a), see sections 1201 and 1202.".

(B) The heading for section 1203, as so redesignated, is amended by striking ''50-PERCENT'' and inserting ''PARTIAL''.

(C) The table of sections for part I of subchapter P of chapter 1, as amended by section 101(d), is amended by striking ''50-percent'' in the item relating to section 1203 and inserting ''Partial''.

(b) REDUCTION IN HOLDING PERIOD.—Subsection (a) of section 1202 is amended by striking ''5 years'' and inserting ''3 years''.

(c) EXCLUSION AVAILABLE TO CORPORATIONS.—

(1) IN GENERAL.—Section 1203(a), as redesignated by section 101, is amended by striking ''other than a corporation''.

(2) CONFORMING AMENDMENT.—Section 1203(c), as so redesignated, is amended by adding at the end the following:

''(4) STOCK HELD AMONG MEMBERS OF CONTROLLED GROUP NOT ELIGIBLE.—Stock of a member of a parent-subsidiary controlled group (as defined in subsection (d)(3)) shall not be treated as qualified small business stock while held by another member of such group.''.

(d) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) IN GENERAL.—Section 57(a) is amended by striking paragraph (7).

(2) CONFORMING AMENDMENT.—Section 53(d)(1)(B)(ii)(II) is amended by striking '', (5), and (7)'' and inserting ''and (5)''.

(e) STOCK OF LARGER BUSINESSES ELIGIBLE FOR EXCLUSION.—

(1) IN GENERAL.—Section 1203(d)(1), as redesignated by section 101, is amended by striking ''$50,000,000'' each place it appears and inserting ''$100,000,000''.

(2) INFLATION ADJUSTMENT.—Section 1203(d), as so redesignated, is amended by adding at the end the following:

''(4) INFLATION ADJUSTMENT OF ASSET LIMITATION.—In the case of stock issued in any calendar year after 1998, the $100,000,000 amount contained in paragraph (1) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''.

(f) REPEAL OF PER-ISSUER LIMITATION.—Section 1203, as redesignated by section 101, is amended by striking subsection (b).

(g) OTHER MODIFICATIONS.—

(1) REPEAL OF WORKING CAPITAL LIMITATION.—Section 1203(e)(6), as redesignated by section 101, is amended—

(A) in subparagraph (B), by striking ''2 years'' and inserting ''5 years''; and

(B) by striking the last sentence.

(2) EXCEPTION FROM REDEMPTION RULES WHERE BUSINESS PURPOSE.—Section 1203(c)(3), as so redesignated, is amended by adding at the end the following:

''(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitations of this section.''.

(h) QUALIFIED TRADE OR BUSINESS.—Section 1203(e)(3), as redesignated by section 101, is amended by inserting ''and'' at the end of subparagraph (C), by striking '', and'' at the end of subparagraph (D) and inserting a period, and by striking subparagraph (E).

(i) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section apply to stock issued after the date of enactment of this Act.

(2) SPECIAL RULE.—The amendments made by subsections (a), (c), (e), and (f) apply to stock issued after August 10, 1993.

SEC. 202. ROLLOVER OF GAIN FROM SALE OF QUALIFIED STOCK.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 is amended by adding at the end the following:

"SEC. 1045. ROLLOVER OF GAIN FROM QUALIFIED SMALL BUSINESS STOCK TO ANOTHER QUALIFIED SMALL BUSINESS STOCK.

''(a) NONRECOGNITION OF GAIN.—In the case of any sale of qualified small business stock with respect to which the taxpayer elects the application of this section, eligible gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

''(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

''(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED SMALL BUSINESS STOCK.—The term 'qualified small business stock' has the meaning given such term by section 1203(c).

''(2) ELIGIBLE GAIN.—The term 'eligible gain' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

''(3) PURCHASE.—A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

''(4) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

''(c) SPECIAL RULES FOR TREATMENT OF REPLACEMENT STOCK.—

''(1) HOLDING PERIOD FOR ACCRUED GAIN.—For purposes of this chapter, gain from the disposition of any replacement qualified small business stock shall be treated as gain from the sale or exchange of qualified small business stock held more than 5 years to the extent that the amount of such gain does not exceed the amount of the reduction in the basis of such stock by reason of subsection (b)(4).

''(2) TACKING OF HOLDING PERIOD FOR PURPOSES OF DEFERRAL.—Solely for purposes of applying this section, if any replacement qualified small business stock is disposed of before the taxpayer has held such stock for more than 5 years, gain from such stock shall be treated eligible gain for purposes of subsection (a).

''(3) REPLACEMENT QUALIFIED SMALL BUSINESS STOCK.—For purposes of this subsection, the term 'replacement qualified small business stock' means any qualified small business stock the basis of which was reduced under subsection (b)(4).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a)(23) is amended—

(A) by striking ''or 1044'' and inserting '', 1044, or 1045''; and

(B) by striking ''or 1044(d)'' and inserting '', 1044(d), or 1045(b)(4)''.

(2) The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end the following:

''Sec. 1045. Rollover of gain from qualified small business stock to another qualified small business stock.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to stock sold or exchanged after the date of enactment of this Act.

SUMMARY OF CAPITAL FORMATION ACT OF 1997

The Capital Formation Act of 1997 would reduce the tax rate on capital gains and encourage investment in new and growing business enterprises through the following provisions:

I. Broad-Based Tax Relief:

(1) Individual taxpayers would be allowed a deduction of 50 percent of any net capital gain. The top effective rate on capital gains would thus be 19.8 percent.

(2) Corporations would have a maximum capital gains tax rate of 25 percent.

(3) Capital loss treatment would be allowed with respect to the sale of a taxpayer's principal residence.

(4) Indexing of capital assets would not be included.

(5) Would be effective for taxable years ending after December 31, 1996.

II. Targeted Incentives to Invest in Small Business Enterprises:

(1) Provides an exclusion of 75 percent of capital gains from the sale of investments in qualified small business stock held for more than three years.

(2) Allows 100 percent deferral of capital gains tax, after the three year period, if proceeds from the sale of qualified small business stock are rolled over within 60 days into another qualified small business stock. Gains accrued after the rollover would qualify for a 50 percent deduction if held for more than one year, 75 percent exclusion if held for more than another three years, or, at any time, could be rolled over yet again into another qualified small business stock for 100 percent deferral.

(3) Would be effective upon date of enactment.

Example: A taxpayer buys qualified small business stock in 1997 for $10,000. She sells the stock in 2001 for $20,000. She would be allowed to exclude 75 percent of the gain, or $7,500, and then deduct 50 percent of the remaining gain of $2,500. Thus, she would pay tax on only $1,250. Or, if she chose to roll over the $20,000 proceed from the sale into another qualified small business stock within 60 days, she would defer all tax until she ultimately sold the second stock.

Qualified small business stock is defined as newly issued stock of corporations with up to $100 million in assets and is an expansion of the current law targeted small business capital gains exclusion added by the 1993 tax act. The changes in the targeted small business stock incentive from current law would include:

(1) Allow corporations to participate.

(2) Remove the current law per-issuer limitation.

(3) Expand the working capital limitation.

Mr. LIEBERMAN. Mr. President, I am proud to join Senator HATCH is introducing this important capital gains legislation today.

This bill is nearly identical to S. 959, legislation that I introduced with Senator HATCH in the last Congress. Ultimately that bill had over 40 cosponsors. A variation of that bill was included in the broader budget and tax bill which was approved by the Congress in 1995 but failed to become law. In addition, a version of S. 959 was included in the Centrist Coalition budget, a budget which was crafted by a group of 22 Senators evenly divided between Republicans and Democrats. That package was offered on the floor of the Senate in May of 1996 and received a very respectable 46 votes.

The capital gains bill we are introducing today contains a broad-based capital gains cut which would allow individuals to deduct 50 percent of their capital gains and a corporate rate of 25 percent. It also has a targeted provision which provides a ''sweetener'' for investments in qualified small businesses. In addition, it allows taxpayers to deduct losses on the sale of a principal residence, something which is very important in places like my home state of Connecticut as well as in California and Texas.

This bill gives people at all income levels a reason to put their money in places where that money will help businesses start and grow and that means more jobs for Americans and more economic prosperity for our country. The benefits of this capital gains cut will not flow just to people of wealth. Anyone who has stock, who has money invested in a mutual fund, who owns a home, who has a stock option plan at work, has a stake in capital gains tax relief. This means millions and millions of middle-class American families stand to benefit from this legislation. I often cite data on employee stock options and stock purchase plans in talking about stakeholders in a capital gains cut. A recent count showed that over three hundred American companies with over seven million workers offered these plans. Each of those workers and their spouses and their children stand to gain from this legislation.

This capital gains bill rewards those people who are willing to invest their money and not spend it. It rewards people who put their money in places where it will add to our national pool of savings. Businesses can draw on this pool of savings to meet their capital needs, expand their businesses and hire more workers. The 1995 Nobel Prize winner in Economics, Robert Lucas, had this to say about capital gains taxes in the fall of 1995: ''When I left graduate school in 1963, I believed that the single most desirable change in the U.S. tax structure would be the taxation of gains as ordinary income. I now believe that neither capital gains nor any of the income from capital should be taxed at all.'' Professor Lucas went on to say that his analysis shows that even under conservative assumptions, eliminating capital gains taxes would increase available capital in this country by about 35 percent. While we reduce not eliminate the tax on capital in this country, we hope you will consider joining us in cosponsoring this important legislation.

I would also like to point out that this bill contains a targeted sweetener for investments in qualified small businesses. This is an attempt to promote investments in small businesses, the firms that are driving job creation in our economy. We expect these provisions to be very helpful to the kinds of small businesses we need for our future, the high technology companies that will be the source of new jobs in the next century. The bill provides a 75 percent exclusion of capital gains from sales of investment in qualified small business stock held more than three years. In addition, it allows a 100 percent deferral of capital gains, after the three year period, if proceeds from the sale of qualified small business stock are rolled over within 60 days into another qualified small business stock. If the taxpayer continues to roll into qualified stock, and holds that stock for at least a year, this deferral could continue indefinitely.

Before I go any further, I must give credit where credit is due. The targeted provisions of this legislation build on the fine work of Senator DALE BUMPERS, who has been a leader in providing incentives for start-up businesses to attract capital. He worked mightily to have a targeted incentive piece included in the 1993 reconciliation bill and he succeeded. The legislation we are introducing today builds on, and we hope, improves, on that targeted incentive.

I would also like to note that I am also joining Minority Leader DASCHLE today as a cosponsor of his Targeted Investment Incentive and Economic Growth Act of 1997. That proposal contains a capital gains rollover provision which contains features of a targeted rollover piece I introduced in the last Congress, S. 1053, as well as features from the targeted section of the bill I am introducing with Senator HATCH today. Senator DASCHLE's legislation is also very helpful insofar as he improves upon the targeted capital gains bill we passed in 1993, much in the same way the broader capital gains bill being introduced today does.

I am also delighted that Senator DASCHLE's bill incorporates a version of a bill I introduced in June of 1993, The Equity Expansion Act of 1993. That bill created a preferred type of stock options for companies willing to offer stock options to a wide cross section of their employees. Under current law, taxpayers are taxed on a stock option when they exercise their right to buy stock, not when they sell that stock. The perverse effect of taxing this paper gain is that many people feel compelled to sell their stock when they exercise their option to buy it in order to pay the tax. The Equity Expansion Act began with the premise that we ought to encourage people to hold their investment in their company. It changed the taxable event from the date of exercise to the date of sale for a new class of stock options known as performance-based stock options [PSOs]. Under my bill, as under the bill being introduced by the Minority Leader, in order to qualify for this new class of stock options, at least half of a company's stock options would have to go to non-highly compensated employees.

In addition, 50 percent of any capital gain on these PSO's would be exempt from tax if they are held by the taxpayer for more than two years. I hope this will prove a powerful incentive for employees to buy and hold the investments they are making in their company.

In closing, I applaud both Senator HATCH and Minority Leader DASCHLE, in their efforts to promote economic growth by changing the way we tax investment in this country. They have done yeoman's work on this issue and I hope that we will be able to move forward in a bipartisan way to make these incentives a reality in the very near future.

By Ms. SNOWE:

S. 67. A bill to amend the Public Health Service Act to extend the program of research on breast cancer; to the Committee on Labor and Human Resources.

THE BREAST CANCER RESEARCH EXTENSION ACT OF 1997

Ms. SNOWE. Mr. President, I am extremely pleased that one of the first resolutions introduced in the 105th Congress by the Republican leadership will significantly increase biomedical research funding at NIH. I truly believe that this is a momentous occasion which will reap enormous benefits for all Americans. Building on this, I rise to introduce legislation which authorizes increased funding for breast cancer research.

Over the past six years, Congress has demonstrated an increased commitment to the fight against breast cancer. Back in 1991, less than $100 million dollars was spent on breast cancer research. Since then, Congress has steadily increased this allocation. These increases have stimulated new and exciting research that has begun to unravel the mysteries of this devastating disease and is moving us closer to a cure. Today, we must send a message through our authorization level to scientists and research policy makers that we are committed to continued funding for this important research.

This increase in funding is necessary because breast cancer has reached crisis levels in America. In 1997, it is estimated that 180,200 new cases of breast cancer will be diagnosed in this country, and 43,900 women will die from this disease. Breast cancer is the most common form of cancer and the second leading cause of cancer deaths among American women. Today, over 2.6 million American women are living with this disease. In my home state of Maine, it is the most commonly-diagnosed cancer among women, representing more than 30 percent of all new cancers in Maine women.

In addition to these enormous human costs, breast cancer also exacts a heavy financial toll—over $6 billion of our health care dollars are spent on breast cancer annually.

Today, however, there is cause for hope. Recent scientific progress made in the fight to conquer breast cancer is encouraging. Researchers have isolated the genes responsible for inherited breast cancer, and are beginning to understand the mechanism of the cancer cell itself. It is imperative that we capitalize upon these advances by continuing to support the scientists investigating this disease and their innovative research.

For this reason, my bill increases the FY98 funding authorization level for breast cancer research to $590 million. This level represents the funding level scientists believe is necessary to make progress against this disease. This increased funding will contribute substantially toward solving the mysteries surrounding breast cancer. Our continued investment will save countless lives and health care dollars, and prevent undue suffering in millions of American women and families.

On behalf of the 2.6 million women living with breast cancer, I urge my colleagues to support this important bill.

By Mr. KYL:

S. 68. A bill to establish a commission to study the impact on voter turnout of making the deadline for filing Federal income tax returns conform to the date of Federal elections; to the Committee on Rules and Administration.

THE VOTER TURNOUT ENHANCEMENT STUDY COMMISSION ACT

Mr. KYL. Mr. President, I rise today to introduce the Voter Turnout Enhancement Study (VoTES) Commission Act, a bill designed to promote fiscal responsibility while helping to motivate more Americans to get to the polls on Election Day.

Mr. President, there are far too many people who, for one reason or another, choose not to exercise their right to vote. Although the reasons for their non-participation are undoubtedly varied, I suspect that it comes down to a perception that the choices they will make on the ballot will not make enough of a difference. One person, explaining why she chose not to participate in last November's election, told the Tucson Citizen that ''it doesn't make any difference in my life who's president.'' This is a common enough sentiment that the election last fall posted one of the lowest voter turnout rates this century.

The ''Motor Voter'' bill that President Clinton championed a few years ago as a way to get out the vote apparently had little effect, other than to impose additional costs and mandates on state and local governments and their taxpayers. Although the bill did help increase voter registration, it did little, if anything, to motivate people to get to the polls. Like the woman in Tucson, too many people did not believe they had enough of a stake in the outcome of the election to take the time to vote.

Of course, people do have a stake in the outcome of every election. For one thing, the candidates chosen determine how much and for what purpose citizens are taxed. Most people I hear from say that is one area where the majority of those elected in the past failed to heed their concerns; they say their taxes are far too high.

One survey, which was published in Reader's Digest last year, found that more than two-thirds of Americans felt their own taxes were ''too high.'' According to the poll, the maximum tax burden that Americans think a family of four should bear is 25 percent of its total income, even if the family's income is $200,000 per year.

But the government takes far more than that. The average family—whose income is not $200,000, but something far less than that—now pays nearly 40 percent of its income in taxes. That is more than it spends on food, clothing, and shelter combined. People around the country are reacting to that heavy burden. The new faces in the House and Senate in recent years have been those of people pledging to oppose tax increases and support tax cuts. President Clinton won reelection, promising to support tax cuts. In some cases, people around the country have also placed limits on how much their state governments can tax them. But advocates of tax cuts, and tax limits themselves, can only achieve their purpose if people are willing to go to the polls to support them.

With that in mind, one way to demonstrate to people that their choices at the polls have a real effect on their lives would be to move the deadline for filing income tax returns to Election Day. That would give people a reason to vote by focusing their attention on the role of government—and how much it actually takes from them in taxes—on the day of the year that they have the greatest opportunity to influence change. Moving Tax Day to Election Day would probably result in more voter turnout and more change in Washington than anything else we could do. And of course, maximizing voter turnout is the best way to ensure that government officials heed the will of the people and make sound public policy.

The bill I am introducing today would provide for a thoughtful and thorough analysis of a change in the tax-filing deadline from April to November, its potential effect on voter turnout, as well as any economic impact it might have. The bill explicitly requires that an independent commission conduct a cost-benefit analysis—a requirement that Congress would be wise to impose routinely on legislative initiatives to separate the good ideas from the bad, and save taxpayers a lot of money in the process. A number of other cost-limiting provisions have been included to protect taxpayers' interests.

While just about every day of the year is celebrated by special interest groups around the country for the government largesse they receive, the taxpayers—the silent majority—have only one day of the year to focus on what that largesse means to them—how much it costs them—and that is Tax Day. I believe that it ought to coincide with Election Day.

I invite my colleagues to join me as cosponsors of this initiative, and 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. 68

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 ''Voter Turnout Enhancement Study Commission Act''.

SECTION 2. FINDINGS.

(a) FINDINGS.—The Congress finds that:

(1) The right of citizens of the United States to vote is a fundamental right.

(2) It is the duty of federal, state, and local governments to promote the exercise of that right to vote to the greatest extent possible.

(3) The power to tax is a power that citizens of the United States only guardedly vest in their elected representatives to the federal, state, and local governments.

(4) The only regular contacts most Americans have with their government are the filing of their personal income tax returns and their participation in federal, state, and local elections.

(5) About 14 million individual income tax returns were filed in 1996, but only about 92 million Americans cast votes in that year's presidential election.

SECTION 3. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Voter Turnout Enhancement Study Commission (hereafter in this Act referred to as the 'Commission').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of nine members of whom—

(A) 3 shall be appointed by the President;

(B) 3 shall be appointed by the Majority Leader of the Senate, and

(C) 3 shall be appointed by the Speaker of the House of Representatives.

(c) PERIOD OF APPOINTMENT, VACANCIES.—Members shall be appointed no later than 30 days after the date of the enactment of this Act, and serve for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) COMPENSATION.—

(1) RATES OF PAY.—Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, include per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(e) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) MEETINGS.—After the initial meeting, the Commission shall meet at the call of the Chairman.

(g) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(h) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.

SECTION 4. DUTIES OF THE COMMISSION.

(a) STUDY.—

(1) IN GENERAL.—The Commission shall conduct a thorough study of all matters relating to the propriety of conforming the annual filing date for federal income tax returns with the date for holding biennial federal elections.

(2) MATTERS STUDIED.—The matters studied by the Commission shall include:

(A) whether establishment of a single date on which individuals can fulfill their obligations of citizenship as both electors and taxpayers would increase participation in federal, state, and local elections; and

(B) a cost-benefit analysis of any change in tax filing deadlines.

(b) REPORT.—No later than 12 months after the date of the enactment of this Act, the Commission shall submit a report to the President and the Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

SECTION 5. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such information as the Commission considers advisable to carry out the purposes of this Act.

(b) INFORMATION TO BE GATHERED.—The Commission shall obtain information from sources as it deems appropriate, including, but not limited to, taxpayers and their representatives, Governors, state and federal election officials, and the Commissioner of the Internal Revenue Service.

SECTION 6. TERMINATION OF THE COMMISSION.

The Commission shall terminate upon the submission of the report under section 4.

SECTION 7. AUTHORIZATION OF APPROPRIATIONS

There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

By Mr. KYL:

S. 69. A bill to amend the Internal Revenue Code of 1986 to allow a one-time election of the interest rate to be used to determine present value for purposes of pension cash-out restrictions, and for other purposes; to the Committee on Finance.

THE RETIREMENT PROTECTION ACT AMENDMENT ACT OF 1997

Mr. KYL. Mr. President, today I am introducing the Retirement Protection Act Amendments of 1997, a bill that will make a small but very important change in the pension-related provisions of the 1994 Uruguay Round Agreements Act.

Mr. President, the 1994 trade act made some very significant changes in pension law, including a modification in the interest rate used to calculate lump-sum distributions from defined benefit pension plans. The act required such plans to use the interest rate on 30-year Treasury securities, a rate that is proving too volatile for many retirement plans, particularly small plans.

Bruce Tempkin, an actuary and small business pension specialist at Louis Kravitz & Associates, described the effect of the change this way: ''it is similar to taking out a variable-rate mortgage with no cap.'' You could find yourself getting ready to retire and expecting a lump-sum distribution of a given amount, but being told that you will actually get a third less because the government just mandated an interest-rate change. That is not only unfair, it discourages people from participating in private pension plans at the very time we need to be encouraging more such planning.

Recognizing the problem created by the 1994 law, legislators included language in the Small Business Job Protection Act last year to delay the effective date of the change for plans adopted and in effect before December 8, 1995. While I supported that delay, it is, at best, only a temporary solution.

The bill I am introducing today proposes a permanent solution. It would give plans a one-time option to choose a fixed interest rate between five percent and eight percent instead of the floating 30-year Treasury rate. That will make it easier for employers to plan for the required contributions, and for employers and employees alike to understand what their lump-sum benefits will ultimately be.

Mr. President, I invite my colleagues to join me as cosponsors of this initiative.

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. 69

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 ''Retirement Protection Act Amendments of 1997''.

SECTION 2. INTEREST RATE FOR DETERMINATION OF PRESENT VALUE FOR PURPOSES OF PENSION CASH-OUT RESTRICTIONS.

(a) IN GENERAL.—Subclause (II) of section 417(e)(3)(A)(ii) of the Internal Revenue Code of 1986 (relating to determination of present value) is amended by inserting '', or, at the irrevocable election of the plan, an annual interest rate specified in the plan, which may not be less than 5 percent nor more than 8 percent'' after ''prescribe''.

(b) CONFORMING AMENDMENT.—Subclause (II) of section 205(g)(3)(A)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)(A)(ii)) is amended by inserting '', or, at the irrevocable election of the plan, an annual interest rate specified in the plan, which may not be less than 5 percent nor more than 8 percent'' after ''perscribe''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the amendments made by section 767 of the Uruguay Round Agreements Act.

By Mrs. BOXER (for herself, Mr. CHAFEE, Mr. REED, and Mr. DURBIN):

S. 70. A bill to apply the same quality and safety standards to domestically manufactured handguns that are currently applied to imported handguns; to the Committee on the Judiciary.

THE AMERICAN HANDGUN STANDARDS ACT

Mrs. BOXER. Mr. President, today I am to introducing the American Handgun Standards Act, a bill to require that handguns made in the United States meet the same quality and safety standards currently required of imported handguns. I am joined in this effort by Senators JOHN CHAFEE, JACK REED, and DICK DURBIN.

This bill is aimed at junk guns—the cheap, unsafe, and easily concealable handguns that are the criminals' clear favorite. Under our bill, junk guns will no longer be allowed to be manufactured or sold in the United States of America.

Nearly 30 years ago, Congress thought it had solved the problem of junk guns. Following the assassination of Senator Robert Kennedy, Congress passed the Gun Control Act of 1968, which banned the importation of junk

guns. At the time, virtually all junk guns were imported, so restricting their domestic manufacture was not considered necessary.

To implement the new law, a quality and safety test was designed to measure a gun's suitability for import. Any foreign-made firearm that fails this test is, by definition, a junk gun, and it cannot be imported into the United States. This bill would require that all handguns made in the United States pass this common sense quality and safety test.

The Gun Control Act of 1968 created a junk gun double standard. Imported handguns were subjected to rigorous quality and safety standards, but guns made in the United States were left totally unregulated. Even toy guns are subject to quality and safety standards, but real handguns made in the United States are not required to meet even one.

The need for strong action is clear. Gunshots are now the leading cause of death among children in California. A child dies from gunfire every 92 minutes in the United States. A total of 39,720 people died from gunshot wounds in 1994 and approximately 250,000 Americans were injured. If we were in a war with this many casualties, there would be protests in the streets to end it. Let us end now, end this junk gun war.

For each person killed by gunfire, up to 8 are wounded. Many survivors of gun violence face debilitating injuries that require constant medical attention. The economic costs of gun violence are staggering. Direct medical costs alone cost Americans more than $20 billion. When indirect costs, such as lost productivity, are considered, the total economic cost of gun injuries soars to over $120 billion.

I first introduced junk gun legislation less than a year ago. Since then, I have received support so strong that it has surpassed even my most optimistic hopes. More than two dozen California cities and counties have passed local ordinances banning junk gun sales, and my legislation has been endorsed by the California Police Chiefs Association and 36 individual police chiefs and sheriffs representing some of California's largest cities, including Los Angeles, San Francisco, San Jose and Sacramento.

This legislation has generated such strong support in the law enforcement community because police know the danger of these junk guns first hand. They know that junk guns are the criminals' favorite firearms.

Junk guns are 3.4 times as likely to be used in crimes as are other firearms. And newly compiled ATF data shows that in 1996, the three firearms most frequently traced at crime scenes were junk guns made in America.

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

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

S. 70

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 ''American Handgun Standards Act of 1997''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Gun Control Act of 1968 prohibited the importation of handguns that failed to meet minimum quality and safety standards;

(2) the Gun Control Act of 1968 did not impose any quality and safety standards on domestically produced handguns;

(3) domestically produced handguns are specifically exempted from oversight by the Consumer Product Safety Commission and are not required to meet any quality and safety standards;

(4) each year—

(A) gunshots kill more than 35,000 Americans and wound approximately 250,000;

(B) approximately 75,000 Americans are hospitalized for the treatment of gunshot wounds;

(C) Americans spend more than $20 billion for the medical treatment of gunshot wounds; and

(D) gun violence costs the United States economy a total of $135 billion;

(5) the disparate treatment of imported handguns and domestically produced handguns has led to the creation of a high-volume market for junk guns, defined as those handguns that fail to meet the quality and safety standards required of imported handguns;

(6) traffic in junk guns constitutes a serious threat to public welfare and to law enforcement officers;

(7) junk guns are used disproportionately in the commission of crimes; and

(8) the domestic manufacture, transfer, and possession of junk guns should be restricted.

SEC. 3. DEFINITION OF JUNK GUN.

Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

''(33)(A) The term 'junk gun' means any handgun that does not meet the standard imposed on imported handguns as described in section 925(d)(3), and any regulations issued under such section.''.

SEC. 4. RESTRICTION ON MANUFACTURE, TRANSFER, AND POSSESSION OF CERTAIN HANDGUNS.

Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(y)(1) It shall be unlawful for a person to manufacture, transfer, or possess a junk gun that has been shipped or transported in interstate or foreign commerce.

''(2) Paragraph (1) shall not apply to—

''(A) the possession or transfer of a junk gun otherwise lawfully possessed under Federal law on the date of the enactment of the American Handgun Standards Act of 1997;

''(B) a firearm or replica of a firearm that has been rendered permanently inoperative;

''(C)(i) the manufacture for, transfer to, or possession by, the United States or a State or a department or agency of the United States, or a State or a department, agency, or political subdivision of a State, of a junk gun; or

''(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a junk gun for law enforcement purposes (whether on or off-duty);

''(D) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a junk gun for purposes of law enforcement (whether on or off-duty); or

''(E) the manufacture, transfer, or possession of a junk gun by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.''.

By Mr. DASCHLE (for himself, Mr. KERRY, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REID, Mr. WYDEN, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. HARKIN, and Mr. LAUTENBERG):

S. 71. A bill to amend the Fair Labor Standards Act of 1938 and the Civil Rights Act of 1964 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes; to the Committee on Labor and Human Resources.

PAYCHECK FAIRNESS ACT

Mr. DASCHLE. 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. 71

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 ''Paycheck Fairness Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Women have entered the workforce in record numbers.

(2) Even in the 1990s, women earn significantly lower pay than men for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.

(3) The existence of such pay disparities—

(A) depresses the wages of working families who rely on the wages of all members of the family to make ends meet;

(B) prevents the optimum utilization of available labor resources;

(C) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of the several States;

(D) burdens commerce and the free flow of goods in commerce;

(E) constitutes an unfair method of competition in commerce;

(F) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and

(G) interferes with the orderly and fair marketing of goods in commerce.

(4)(A) Artificial barriers to the elimination of discrimination in the payment of wages on the basis of sex continue to exist more than 3 decades after the enactment of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

(B) Elimination of such barriers would have positive effects, including—

(i) providing a solution to problems in the economy created by unfair pay disparities;

(ii) substantially reducing the number of working women earning unfairly low wages, thereby reducing the dependence on public assistance; and

(iii) promoting stable families by enabling all family members to earn a fair rate of pay.

(5) Only with increased information about the provisions added by the Equal Pay Act of 1963 and generalized wage data, along with more effective remedies, will women recognize and enforce their rights to equal pay for

work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.

(6) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.

(a) NONRETALIATION PROVISION.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(1) by striking ''or has'' each place it appears and inserting ''has''; and

(2) by inserting before the semicolon the following: '', or has inquired about, discussed, or otherwise disclosed the wages of the employee or another employee''.

(b) ENHANCED PENALTIES.—Section 16(b) of such Act (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: ''Any employer who violates section 6(d) shall additionally be liable for such compensatory or punitive damages as may be appropriate.'';

(2) in the sentence beginning ''An action to'', by striking ''either of the preceding sentences'' and inserting ''any of the preceding sentences of this subsection'';

(3) in the sentence beginning ''No employees shall'', by striking ''No employees'' and inserting ''Except with respect to class actions brought to enforce section 6(d), no employee'';

(4) by inserting after such sentence the following: ''Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.''; and

(5) in the sentence beginning ''The court in''—

(A) by striking ''in such action'' and inserting ''in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection''; and

(B) by inserting before the period the following: '', including expert fees''.

(c) ACTION BY SECRETARY.—Section 16(c) of such Act (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting ''or, in the case of a violation of section 6(d), additional compensatory or punitive damages,'' before ''and the agreement''; and

(B) by inserting before the period the following: '', or such compensatory or punitive damages, as appropriate'';

(2) in the second sentence, by inserting before the period the following: '' and, in the case of a violation of section 6(d), additional compensatory or punitive damages'';

(3) in the third sentence, by striking ''the first sentence'' and inserting ''the first or second sentence''; and

(4) in the last sentence, by inserting after ''in the complaint'' the following: ''or becomes a party plaintiff in a class action brought to enforce section 6(d)''.

SEC. 4. COLLECTION OF PAY INFORMATION BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4) is amended by adding at the end the following new subsection:

''(l)(1) The Commission shall, by regulation, require each employer who has 100 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year to maintain payroll records and to prepare and submit to the Commission reports containing information from the records. The reports shall contain pay information, analyzed by the race, sex, and national origin of the employees. The reports shall not disclose the pay information of an employee in a manner that permits the identification of the employee.

''(2) The third through fifth sentences of section 709(c) shall apply to employers, regulations, and records described in paragraph (1) in the same manner and to the same extent as the sentences apply to employers, regulations, and records described in such section.''.

SEC. 5. TRAINING.

The Equal Employment Opportunity Commission, subject to the availability of funds appropriated under section 8(b), shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.

The Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women, including—

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the general public the findings resulting from studies and other materials, relating to eliminating the pay disparities;

(3) sponsoring and assisting State and community informational and educational programs;

(4) providing information to employers, labor organizations, professional associations, and other interested persons on the means of eliminating the pay disparities;

(5) recognizing and promoting the achievements of employers, labor organizations, and professional associations that have worked to eliminate the pay disparities; and

(6) convening a national summit to discuss, and consider approaches for rectifying, the pay disparities.

SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR PAY EQUITY IN THE WORKPLACE.

(a) IN GENERAL.—There is established the Robert Reich National Award for Pay Equity in the Workplace, which shall be evidenced by a medal bearing the inscription ''Robert Reich National Award for Pay Equity in the Workplace''. The medal shall be of such design and materials, and bear such additional inscriptions, as the Secretary may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including at a minimum information that demonstrates that the business has made substantial effort to eliminate pay disparities between men and women, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Secretary determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Secretary, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the elimination of pay disparities between men and women.

(d) BUSINESS.—For the purposes of this section, the term ''business'' includes—

(1)(A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) an entity carrying out a joint program, formed by a combination of any entities described in paragraph (1) or (2).

SEC. 8. INCREASED RESOURCES FOR ENFORCEMENT AND EDUCATION.

(a) GENERAL RESOURCES.—There is authorized to be appropriated to the Equal Employment Opportunity Commission, for necessary expenses of the Commission in carrying out title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), and section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), $36,000,000, in addition to sums otherwise appropriated for such expenses. Any amounts so appropriated shall remain available until expended.

(b) TARGETED RESOURCES.—There is authorized to be appropriated to the Equal Employment Opportunity Commission to carry out section 5, $500,000, in addition to sums otherwise appropriated for providing training described in such section. Any amounts so appropriated shall remain available until expended.

(c) RESEARCH, EDUCATION, OUTREACH, AND NATIONAL AWARD.—There is authorized to be appropriated to the Secretary of Labor to carry out sections 6 and 7, $1,000,000. Any amounts so appropriated shall remain available until expended.

By Mr. KYL:

S. 72. A bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gain rates for all taxpayers, and for other purposes; to the Committee on Finance.

S. 73. A bill to amend the Internal Revenue Code of 1986 to repeal the corporate alternative minimum tax; to the Committee on Finance.

S. 74. A bill to amend the Internal Revenue Code of 1986 to limit the tax rate for certain small businesses, and for other purposes; to the Committee on Finance.

AGENDA FOR ECONOMIC GROWTH AND OPPORTUNITY

Mr. KYL. Mr. President, I rise today to introduce a series of bills aimed at improving our Nation's rate of economic growth, encouraging investment in small businesses, enhancing wages of American workers, and making our country more competitive in the global economy. The bills make up what I will call the Agenda for Economic Growth and Opportunity.

Mr. President, it was just over 34 years ago that President John F. Kennedy made the following observation in his State of the Union message—an observation that someone could just as

easily make about today's economy. He said, ''America has enjoyed 22 months of uninterrupted economic recovery''. The current expansion, albeit one of the weakest this century, has gone on a little longer. ''But'', President Kennedy went on to say, ''recovery is not enough. If we are to prevail in the long run, we must expand the long-run strength of our economy. We must move along the path to a higher rate of economic growth''.

Economic growth. Tracking it is the domain of economists and statisticians, but what does it mean for the average American family, and why should policy-makers be so concerned about the slow rate of economic growth during the last 4 years?

Slow growth means fewer job opportunities for young Americans just entering the work force and for those people seeking to free themselves from the welfare rolls. It means stagnant wages and salaries, and fewer opportunities for career advancement for those who do have jobs. It means less investment in new plant and equipment, and new technology—things needed to enhance workers' productivity and ensure that American businesses can remain competitive in the global marketplace. It means less revenue for the U.S. Treasury, compared to what we could collect with higher rates of economic growth, for the critical programs serving the American people. And it means that interest rates are higher than they need to be because national debt as a share of Gross Domestic Product is higher. As a result, we all pay more for such things as home mortgages, college loans, and car loans.

For most of the 20th century, our Nation enjoyed very strong rates of economic growth and the dividends that came with it. The 1920s saw annual economic growth above 5 percent. In the 1950s, it was above 6 percent. Economic growth during the Kennedy and Johnson years averaged 4.8 percent annually. During the decade before President Clinton took office, the economy grew at an average rate of 3.2 percent a year, according to data supplied by the Joint Economic Committee.

The Clinton years, by contrast, have seen the economy grow at an average rate of only about 2.3 percent. What that means is that, while we may not exactly be hurting as a Nation, we are not becoming much better off, either. And we are certainly not leaving much of a legacy for our children and grandchildren to meet the needs of tomorrow.

So what do we do to enhance economic growth—to ensure that jobs are available for those who want them, that families can earn better wages, and that American business maintains a dominant role in the global economy? Those are, after all, the goals of the agenda I am laying out today—an agenda for economic growth and opportunity for all Americans, for those struggling to make ends meet today, and for our children when they enter the work force tomorrow.

Let me answer then, beginning with another quotation from John Kennedy:

''[I]t is increasingly clear—to those in Government, business, and labor who are responsible for our economy's success—that our obsolete tax system exerts too heavy a drag on private purchasing power, profits, and employment. Designed to check inflation in earlier years, it now checks growth instead. It discourages extra effort and risk. It distorts use of resources. It invites recurrent recessions, depresses our Federal revenues, and causes chronic budget deficits.''

Mr. President, the agenda I am proposing attacks some of the most significant deficiencies in our Nation's Tax Code that are inhibiting savings and investment, and job creation—deficiencies that are preventing us from reaching our potential as a Nation. I do not make these proposals as a substitute for fundamental tax reform, which I believe is the ultimate solution to the problem. But fundamental tax reform is going to take some time to accomplish, maybe several years. What we need now are interim steps—things we can do quickly—to make sure our movement into the 21st century is based on the bedrock of a strong and growing economy.

I believe these Tax Code changes will help strengthen the economy and, in turn, produce more revenue for the Federal Government to assist in deficit reduction. Still, I recognize that under existing budget rules which require static scoring of tax bills, there may be a need to find offsetting spending cuts. With that in mind, I am asking the Joint Committee on Taxation, as well as the respected Institute for Policy Innovation, to estimate the economic impact of these proposals, including the effect on federal revenues. Should the result of those analyses indicate that there will be some revenue loss—most likely because of rules requiring static scoring—my intention would be to propose some offsetting spending cuts.

Mr. President, the cuts I would identify would come in so-called corporate welfare programs. In other words, in exchange for the targeted subsidies from corporate welfare programs, we would adopt broadly applicable tax incentives to support activities vetted by the free market. That is what free enterprise is all about.

THE CAPITAL GAINS REFORM ACT

Mr. KYL. Mr. President, the first of the five tax-related bills I am introducing is based upon President John Kennedy's own growth package from three decades ago. Like the Kennedy plan, the legislation would reduce the percentage of long-term capital gains included in individual income subject to tax to 30 percent. It would reduce the alternative tax on the capital gains of corporations to 22 percent.

I would note that Democratic President John Kennedy's plan called for a deeper capital gains tax cut than the Republican-controlled Congress proposed last year.

There was a reason that John Kennedy called for a significant cut in the capital gains tax. ''The present tax treatment of capital gains and losses is both inequitable and a barrier to economic growth'', the President said. ''The tax on capital gains directly affects investment decisions, the mobility and flow of risk capital from static to more dynamic situations, the ease or difficulty experienced by new ventures in obtaining capital, and thereby the strength and potential for growth of the economy.''

So, if we are concerned whether new jobs are being created, whether new technology is developed, whether workers have the tools they need to do a better, more efficient job, we should support measures that reduce the cost of capital to facilitate the achievement of all these things. Remember, for every employee, there is an employer who took risks, made investments, and created jobs. But that employer needed capital to start.

Also remember that the capital gains tax represents a second tax on amounts saved and invested. As a result, individuals and businesses that save and invest end up paying more taxes over time than if all income is consumed and no saving takes place at all. To make matters even worse, the tax is applied to gains due solely to inflation.

Mr. President, it may come as a surprise to some people, but experience shows that lower capital gains tax rates have a positive effect on federal revenues. The most impressive evidence, as noted in a recent report by the American Council for Capital Formation, can be found in the period from 1978 to 1985. During those years, the top marginal federal tax rate on capital gains was cut by almost 45 percent—from 35 percent to 20 percent—but total individual capital gains tax receipts nearly tripled—from $9.1 billion to $26.5 billion annually.

Research by experts at the prestigious National Bureau of Economic Research indicates that the maximizing capital gains tax rate—that is, the rate that would bring in the most Treasury revenue—is somewhere between nine and 21 percent. The bill I am introducing today would set an effective top rate on capital gains earned by individuals, by virtue of the 70 percent exclusion, at 11.88 percent.

Mr. President, when capital gains tax rates are too high, people need only hold onto their assets to avoid the tax indefinitely. No sale, no tax. But that means less investment, fewer new businesses and new jobs, and—as historical records show—far less revenue to the Treasury than if capital gains taxes were set at a lower level. Just as the Target store down the street does not lose money on weekend sales—because volume more than makes up for lower prices—lower capital gains tax rates can encourage more economic activity and, in turn, produce more revenue for the government.

Capital gains reform will help the Treasury. A capital gains tax reduction would help unlock a sizable share of the estimated $7 trillion of capital that

is left virtually unused because of high tax rates. More importantly, it will help the family that has a small plot of land it would like to sell, and the business that could expand, buy new equipment and create new jobs.

And evidence shows that most of the benefits will go to Americans of modest means. A special U.S. Treasury study covering 1985 showed that nearly half of all capital gains that year were realized by taxpayers with wage and salary income of less than $50,000 a year. An update of the Treasury study by the Barents Group, a subsidiary of the public accounting firm of KPMG Peat Marwick, estimates that for 1995, middle-income wage and salary earners making $50,000 or less in inflation-adjusted dollars will continue to receive almost half of all capital gains.

President Clinton recognized the importance of lessening the capital gains tax burden by proposing to eliminate the tax on most gains earned on the sale of a home. I would support the President's proposal, but I would also ask, if a capital gains tax cut is good for homeowners, is it not also good policy to apply a tax cut to other kinds of gains that help create new businesses and new jobs?

I believe John Kennedy's plan was far superior—far more beneficial for the Nation's economy—than the very limited one Bill Clinton has proposed. That is why I encourage the Senate to take up the Capital Gains Reform Act, which is based on the Kennedy plan, and which I am introducing today.

CORPORATE TAX EQUITY ACT

Mr. KYL. Mr. President, the second in this series of bills is the Corporate Tax Equity Act, a bill designed to help U.S. businesses make larger capital expenditures and thereby enhance productivity growth and job creation by repealing the corporate Alternative Minimum Tax (AMT).

Mr. President, the original intent of the AMT was to make it harder for large, profitable corporations to avoid paying any federal income tax. But the way to have accomplished that objective was not, in my view, to impose an AMT, but to identify and correct the provisions of law that allowed large companies to inappropriately lower their federal tax liabilities to begin with. Ironically, the primary shelters corporations were using to minimize their tax liability—that is, the accelerated depreciation and safe harbor leasing of the old Tax Code—were being corrected at the time the AMT was enacted.

I would point out that the AMT is not a tax, per se. As indicated in an April 3, 1996 report by the Congressional Research Service, the AMT is merely intended to serve as a prepayment of the regular corporate income tax, not a permanent increase in overall corporate tax liability. What that means in practical terms is that businesses are forced to make interest-free loans to the federal government under the guise of the AMT. Corporations pay a tax for which they are not liable, but which they are able to apply toward their future regular tax liability.

I would also point out that most of the corporations paying the AMT are relatively small. The General Accounting Office, in a 1995 report on the issue, found that, in most years between 1987 and 1992, more than 70 percent of corporations paying the AMT had less than $10 million in assets.

The AMT's effect on the economy, moreover, is disproportionate to the small amount of revenue raised, due in large part to its requirement that corporations calculate their tax liability under two separate but parallel income tax systems. Firms must calculate their AMT liability even if they end up paying the regular tax. At a minimum, that means that firms must maintain two sets of records for tax purposes.

The compliance costs are substantial. In 1992, for example, while only about 28,000 corporations paid the AMT, more than 400,000 corporations filed the AMT form, and an even greater—but unknown—number of firms performed the calculations needed to determine their AMT liability. A 1993 analysis by the Joint Committee on Taxation found that the AMT added 16.9 percent to a corporation's total cost of complying with federal income tax laws.

Mr. President, repealing the corporate AMT would help free up badly needed capital to assist in business expansion and job creation. According to a study by DRI/McGraw-Hill, repeal of the AMT would, over the 1996–2005 time period, increase fixed investment by a total of 7.9 percent, raise Gross Domestic Product by 1.6 percent, and increase labor productivity by 1.6 percent. The study also projected repeal would produce an additional 100,000 jobs a year during the years 1998 to 2002.

SMALL BUSINESS INVESTMENT AND GROWTH ACT

Mr. KYL. Mr. President, the third bill in this package is the Small Business Investment and Growth Act, which would ensure that small businesses do not pay a higher income tax rate than large corporations. Congressman PHIL CRANE of Illinois has promoted similar legislation in the House of Representatives.

Mr. President, the 1990 and 1993 increases in the marginal income tax rates applicable to individuals put a tremendous strain on small businesses organized as S corporations, because they pay taxes at the individual rate. S corporations, facing 36 percent and 39.6 percent tax rates at the highest levels, are forced to compete against larger corporations, which pay a top rate of 34 percent.

The bill I am introducing would establish 34 percent as the top rate that small businesses must pay. Taxable small business income would be limited to income from the trade or business of certain eligible small businesses, specifically excluding passive income. To benefit from the maximum 34 percent rate, businesses must reinvest their after-tax income into the business.

The intent is to provide relief for those small businesses that invest income into their business operations, thereby creating new jobs. In fact, successful small manufacturers have been able to create three to four new jobs for every additional $100,000 they retain in the business.

FAMILY HERITAGE PRESERVATION ACT

Mr. KYL. Mr. President, the fourth in the series of economic growth incentives is a bill to enhance the economic security of older Americans and small businesses around the country, a bill known as the Family Heritage Preservation Act. It would repeal the onerous Federal estate and gift tax, and the tax on generation-skipping transfers. A companion bill will be introduced in the House of Representatives by Congressman CHRIS COX of California.

Mr. President, most Americans know the importance of planning ahead for retirement. Sometimes that means buying a less expensive car, wearing clothes a little longer, or foregoing a vacation or two. But by doing with a little less during one's working years, people know they can enjoy a better and more secure life during retirement, and maybe even leave their children and grandchildren a little better off when they are gone.

Savings not only create more personal security, they help create new opportunities for others, too. Savings are really investments that help others create new jobs in the community. They make our country more competitive. And ultimately they make a citizen's retirement more secure by providing a return on the money invested during his or her working years.

So how does the government reward all of this thrift and careful planning? It imposes a hefty tax on the end result of such activity—up to 55 percent of a person's estate. The respected liberal Professor of Law at the University of Southern California, Edward J. McCaffrey, observed that ''polls and practices show that we like sin taxes, such as on alcohol and cigarettes.'' ''The estate tax,'' he went on to say, ''is an anti-sin, or a virtue, tax. It is a tax on work and savings without consumption, on thrift, on long term savings. There is no reason even a liberal populace need support it.''

At one time, the estate tax was required of only the wealthiest Americans. Now inflation, a nice house, and a good insurance policy can push people of even modest means into its grip. The estate tax is applied to all of the assets owned by an individual at the time of death. The tax rate, which starts at 37 percent, can quickly rise to a whopping 55 percent—the highest estate tax rate in the world.

It is true that each person has a $600,000 exemption, but that does not provide as much relief as one might expect. Unless a couple goes through expensive estate planning so that trusts are written into their wills and at least $600,000 of the assets are owned by each spouse—that is, not held jointly—the

couple will end up with only one $600,000 exemption. Many people do not realize that literally every asset they own, including the face value of life insurance policies, all retirement plan assets, including Individual Retirement Accounts, is counted toward the $600,000 limit.

As detrimental as the tax is for couples, it is even more harmful to small businesses, including those owned by women and minorities. The tax is imposed on a family business when it is least able to afford the payment—upon the death of the person with the greatest practical and institutional knowledge of that business's operations. It should come as no surprise then that a 1993 study by Prince and Associates—a Stratford, Connecticut research and consulting firm—found that nine out of 10 family businesses that failed within three years of the principal owner's death attributed their companies' demise to trouble paying estate taxes. Six out of 10 family-owned businesses fail to make it to the second generation. Nine out of 10 never make it to the third generation. The estate tax is a major reason why.

Think of what that means to women and minority-owned businesses. Instead of passing a hard-earned and successful business on to the next generation, many families have to sell the company in order to pay the estate tax. The upward mobility of such families is stopped in its tracks. The proponents of this tax say they want to hinder ''concentrations of wealth.'' What the tax really hinders is new American success stories.

With that in mind, the 1995 White House Conference on Small Business identified the estate tax as one of small business's top concerns. Delegates to the conference voted overwhelming to endorse its repeal.

Obviously, there is a great deal of peril to small businesses when they fail to plan ahead for estate taxes. So many small business owners try to find legal means of avoiding the tax or preparing for it, but that, too, comes at a significant cost. Some people simply slow the growth of their businesses to limit their estate tax burden. Of course, that means less investment in our communities and fewer jobs created. Others divert money they would have spent on new equipment or new hires to insurance policies designed to cover estate tax costs. Still others spend millions on lawyers, accountants, and other advisors for estate tax planning purposes. But that leaves fewer resources to invest in the company, start up new businesses, hire additional people, or pay better wages.

The inefficiencies surrounding the tax can best be illustrated by the findings of a 1994 study published in the Seton Hall Law Review. That study found that compliance costs totalled a whopping $7.5 billion in 1992, a year when the estate tax raised only $11 billion.

The estate tax raises only about one percent of the federal government's annual revenue, but it consumes eight percent of each year's private savings. That is about $15 billion sidelined from the Nation's economy. Economists calculate that if the money paid in estate taxes since 1971 had been invested instead, total savings in 1991 would have been $399 billion higher, the economy would have been $46 billion larger, and we would have 262,000 more jobs. Obviously, the income and payroll taxes that would have been paid on these gains would have topped the amount collected by the government in estate taxes.

There have been nine attempts to reform the estate tax during the last 50 years. Few would contend that it has been made any fairer or more efficient. The only thing that has really changed is that lobbyists and estate planners have gotten a little wealthier. Probably the best thing we could do is repeal the estate tax altogether. That is what I am proposing in the Family Heritage Preservation Act.

Mr. President, the National Commission on Economic Growth and Tax Reform, which studied ways to make the tax code simpler, looked at the estate tax during the course of its deliberations just over a year ago. The Commission concluded that ''[i]t makes little sense and is patently unfair to impose extra taxes on people who choose to pass their assets on to their children and grandchildren instead of spending them lavishly on themselves.'' It went on to endorse repeal of the estate tax.

INVEST MORE IN AMERICA ACT

Mr. KYL. Mr. President, the last in the series of bills that make up what I call the Agenda for Economic Growth and Opportunity is the Invest More in America Act, a bill that would allow small businesses to fully deduct the first $250,000 they invest in equipment in the year it is purchased. The bill is based on another recommendation made by the White House Conference on Small Business in 1995.

Mr. President, Congress last year approved legislation to phase in an increase in the expensing limit to $25,000 by the year 2003. That is a step in the right direction, but it is not nearly enough.

Businesses investing more than the annual expensing allowance must recover the cost of their investments over several years using the current depreciation system. Inflation, however, erodes the present value of their depreciation deductions taken in future years. Moreover, many businesses are required to make significant capital investments to comply with various government regulations, including environmental regulations, yet in many cases are unable to immediately expense such costs.

The increased expensing allowance provided by the Invest More in America Act would spur additional investment in business assets and lead to increased productivity and more jobs.

CONCLUSION

Mr. KYL. Mr. President, as I said at the beginning of my remarks, I am asking the Joint Tax Committee and the Institute for Policy Innovation to analyze the economic and revenue effects of this economic growth package. It is my intention that, if there is a revenue loss to the Treasury associated with it, the loss could at least partially be offset by reductions in corporate welfare spending.

Mr. President, the Agenda for Economic Growth and Opportunity will help improve the standard of living for all Americans. It will help eliminate from the federal budget much of the largesse the government showers on a select group of business enterprises through corporate welfare.

I invite my colleagues' support for this very important initiative.

By Mr. BREAUX:

S. 77. A bill to provide for one additional Federal judge for the middle district of Louisiana by transferring one Federal judge from the eastern district of Louisiana; to the Committee on the Judiciary.

LOUISIANA JUDICIAL DISTRICTS LEGISLATION

Mr. BREAUX. Mr. President, I rise today to offer legislation that will correct a serious inequity in Louisiana's judicial districts.

My legislation adds an additional judge to the middle district of Louisiana, based in Baton Rouge. U.S. District Judges John Parker and Frank Polozola, the two Baton Rouge, judges, each have almost 2,000 cased pending. The national average for federal judges is 400 cased pending. Case filings in the Middle District have totaled more than four times the national average. The Baton Rouge district also ranks first among the Nation's 97 federal court districts in total filings, civil filings, weighted filings and in the percent change in total filings last year.

Louisiana's Middle District is composed of nine parishes. The state capital and many of the State's adult and juvenile prisons and forensic facilities are located in this district. The Court is regularly required to hear most of the litigation challenging the constitutionality of State laws and the actions of State agencies and officials. The District now has several reapportionment and election cases pending on the docket which generally require the immediate attention of the court. Additionally, because numerous chemical, oil, and industrial plants and hazardous waste sites are located in the Middle District, the Court has in the past and will continue to handle complex mass tort cases. One environmental case alone, involving over 7,000 plaintiffs and numerous defendants, is being handled by a judge from another district because both of the Middle District's judges were recused.

Since 1984, the Middle District has sought an additional judge because of its concern that its caseload would continue to rise despite the fact that its judges' termination rate exceeded that national average and ranked among the highest in numerical standing within the United States and the

Fifth Circuit. Both the Judicial Conference and the Judicial Council of the Fifth Circuit have approved the Middle District's request for an additional judgeship after each biennial survey from 1984 through 1994.

Mr. President, I know that my colleagues will agree with me that the clear solution to this obvious inequity is to assign an additional judge to Louisiana's Middle District. I look forward to the Senate's resolution of this important matter.

By Mr. HATCH (for himself and Mr. THOMAS):

S. 78. A bill to provide a fair and balanced resolution to the problem of multiple imposition of punitive damages, and for other purposes; to the Committee on the Judiciary.

THE MULTIPLE PUNITIVE DAMAGES FAIRNESS ACT OF 1997

Mr. HATCH. Mr. President, I rise today to introduce legislation which will at last deal with one of the most unfair aspects of our civil justice system—the availability of multiple awards of punitive damages for the same wrongful act. I introduced identical legislation last Congress, in the form of S. 671, and I hope that we can move this bill in the 105th Congress.

While there are countless abuses and excesses in our civil justice system, the fact that one defendant may face repeated punishment for the same conduct is one of the most egregious and unconscionable. This can happen in a variety of ways, but in any case is unjust and unfair. A defendant might, for example, be sued by a different plaintiff for essentially the same action, or might be sued by the same parties in a different state based on essentially the same conduct. The only effective means of addressing these problems is through a nationwide solution, which the legislation I introduce today would provide.

Significantly, this legislation will not affect the compensatory damages that injured parties will be entitled to receive. Even in cases of multiple lawsuits based on the same conduct, under this legislation injured parties will be entitled to receive full compensatory damages when they are wrongfully harmed. My legislation deals only with punitive damages. Punitive damages are not intended to compensate injured plaintiffs or make them whole, but rather constitute punishment and an effort to deter future egregious misconduct. Punitive damages reform is not about shielding wrongdoers from liability, nor does such reform prevent victims of wrongdoing from being rightfully compensated for their damages. It is about ensuring that wrongdoers do not face excessive and unfair punishments.

I certainly do not argue that a person or company that acts maliciously should not be subject to punitive damages. But it is neither just nor fair for a defendant to face the repeated imposition of punitive damages in several states for the same act or conduct, as our system currently permits. Exorbitant and out-of-control punitive damage awards also have the effect of punishing innocent people: employees, consumers, shareholders, and others who ultimately pay the price of these outrageous awards.

This is not a hypothetical problem. Last Term, the Supreme Court considered a case, *BMW* v. *Gore*, in which a state court let stand a multimillion dollar punitive damage award against an automobile distributor who failed to inform a buyer that his new vehicle had been refinished to cure superficial paint damage. The defendant in that case could be exposed to thousands of claims based on the same conduct.

The plaintiff, a purchaser of a $40,000 BMW automobile, learned nine months after his purchase that his vehicle might have been partially refinished. As a result of the discovery, he sued the automobile dealer, the North American distributor, and the manufacturer for fraud and breach of contract. He also sought an award for punitive damages. He won a ridiculously high award of punitive damages.

At trial, the jury was allowed to assess damages for each of the partially refinished vehicles that had been sold throughout the United States over a period of ten years. As sought by the plaintiff's attorney, the jury returned a verdict of $4,000 in compensatory damages and $4,000,000 in punitive damages. On appeal to the state supreme court, the punitive damage award was reduced to $2 million, applicable to the North American distributor.

On reviewing the *BMW* v. *Gore* case, the United States Supreme Court recognized that excessive punitive damages ''implicate the federal interest in preventing individual states from imposing undue burdens on interstate commerce.'' While that decision for the first time recognizes some outside limits on punitive damage awards, the Court's decision leaves ample room for legislative action. Legislative reforms are now—more than ever before—desperately needed to set up the appropriate boundaries.

In the 5–4 decision, the Supreme Court held that the $2 million punitive damages award was grossly excessive and therefore violated the due process clause of the Fourteenth Amendment. The Court remanded the case, and the majority opinion set out three guideposts for assessing the excessiveness of a punitive damages award: the reprehensibility of the conduct being punished, the ratio between compensatory and punitive damages, and the difference between the punitive award and criminal or civil sanctions that could be imposed for comparable conduct.

Unfortunately, even under the Supreme Court's decision, this same defendant can be sued again and again for punitive damages by every owner of a partially refinished vehicle. The company could still be sued for punitive damages for the same act in every other state in which it sold one of its vehicles. In fact, the very same plaintiffs' attorney who filed the *BMW* v. *Gore* case filed numerous similar lawsuits against BMW.

Defendants and consumers are not the only ones hurt by excessive, multiple punitive damage awards. Ironically, other victims can be those the system is intended to benefit—the injured parties themselves. Funds that might otherwise be available to compensate later victims can be wiped out at any early stage by excessive punitive damage awards.

The imposition of multiple punitive damage awards in different states for the same act is an issue that can be addressed only through federal legislation. If only one state limits such awards, other states still remain free to impose multiple punitive damages. The fact is that a federal response in this area is the only viable solution.

This bill provides that response by generally prohibiting the award of multiple punitive damages. With one exception, the bill prevents courts from awarding punitive damages based on the same act or course of conduct for which punitive damages have already been awarded against the same defendant. Under the exception, an additional award of punitive damages may be permitted if the court determines that the claimant will offer new and substantial evidence of previously undiscovered, wrongful behavior on the part of the defendant. In those circumstances, the court must make specific findings of fact to support the award, must reduce the amount of punitive damages awarded by the amounts of prior punitive damages based on the same acts, and may not disclose to the jury the court's determination and action under the provisions. The provisions would not apply to any action brought under a federal or state statute that specifically mandates the amount of punitive damages to be awarded.

This legislation is needed to correct a glaring injustice. I hope my colleagues will join me in supporting it, and I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 78

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 ''Multiple Punitive Damages Fairness Act of 1997''.

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) CLAIMANT.—The term ''claimant'' means any person who brings a civil action and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) HARM.—The term ''harm'' means any legally cognizable wrong or injury for which punitive damages may be imposed.

(3) DEFENDANT.—The term ''defendant'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(4) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(5) SPECIFIC FINDINGS OF FACT.—The term ''specific findings of fact'' means findings in written form focusing on specific behavior of a defendant.

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

SEC. 3. MULTIPLE PUNITIVE DAMAGES FAIRNESS.

(a) FINDINGS.—The Congress finds the following:

(1) Multiple or repetitive imposition of punitive damages for harms arising out of a single act or course of conduct may deprive a defendant of all the assets or insurance coverage of the defendant, and may endanger the ability of future claimants to receive compensation for basic out-of-pocket expenses and damages for pain and suffering.

(2) The detrimental impact of multiple punitive damages exists even in cases that are settled, rather than tried, because the threat of punitive damages being awarded results in a higher settlement than would ordinarily be obtained. To the extent this premium exceeds what would otherwise be a fair and reasonable settlement for compensatory damages, assets that could be available for satisfaction of future compensatory claims are dissipated.

(3) Fundamental unfairness results when anyone is punished repeatedly for what is essentially the same conduct.

(4) Federal and State appellate and trial judges, and well-respected commentators, have expressed concern that multiple imposition of punitive damages may violate constitutionally protected due process rights.

(5) Multiple imposition of punitive damages may be a significant obstacle to comprehensive settlement negotiations in repetitive litigation.

(6) Limiting the imposition of multiple punitive damages awards would facilitate resolution of mass tort claims involving thousands of injured claimants.

(7) Federal and State trial courts have not provided adequate solutions to problems caused by the multiple imposition of punitive damages because of a concern that such courts lack the power or authority to prohibit subsequent awards in other courts.

(8) Individual State legislatures can create only a partial remedy to address problems caused by the multiple imposition of punitive damages, because each State lacks the power to control the imposition of punitive damages in other States.

(b) GENERAL RULE.—Except as provided in subsection (c), punitive damages shall be prohibited in any civil action in any State or Federal court in which such damages are sought against a defendant based on the same act or course of conduct for which punitive damages have already been sought or awarded against such defendant.

(c) CIRCUMSTANCES FOR AWARD.—If the court determines in a pretrial hearing that the claimant will offer new and substantial evidence of previously undiscovered, additional wrongful behavior on the part of the defendant, other than the injury to the claimant, the court may award punitive damages in accordance with subsection (d).

(d) LIMITATIONS ON AWARD.—A court awarding punitive damages pursuant to subsection (c) shall—

(1) make specific findings of fact on the record to support the award;

(2) reduce the amount of the punitive portion of the damage award by the sum of the amounts of punitive damages previously paid by the defendant in prior actions based on the same act or course of conduct; and

(3) prohibit disclosure to the jury of the court's determination and action under this subsection.

(e) APPLICABILITY AND PREEMPTION.—

(1) IN GENERAL.—Except as provided in paragraph (3), this section shall apply to—

(A) any civil action brought on any theory where punitive damages are sought based on the same act or course of conduct for which punitive damages have already been sought or awarded against the defendant; and

(B) all civil actions in which the trial has not commenced before the effective date of this Act.

(2) APPLICABILITY.—Except as provided in paragraph (3), this section shall apply to all civil actions in which the trial has not commenced before the effective date of this Act.

(3) NONAPPLICABILITY.—This section shall not apply to any civil action involving damages awarded under any Federal or State statute that prescribes the precise amount of punitive damages to be awarded.

(4) EXCEPTION.—This section shall not preempt or supersede any existing Federal or State law limiting or otherwise restricting the recovery for punitive damages to the extent that such law is inconsistent with the provisions of this section.

SEC. 4. EFFECT ON OTHER LAW.

Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) create a cause of action for punitive damages.

By Mr. HATCH (for himself, Mr. KYL, and Mr. THOMAS):

S. 79. A bill to provide a fair and balanced resolution to the problem of multiple imposition of punitive damages, and for the reform of the civil justice system; to the Committee on the Judiciary.

THE CIVIL JUSTICE FAIRNESS ACT OF 1997

Mr. HATCH. Mr. President, today I introduce the Civil Justice Fairness Act of 1997. Last Congress, I introduced a similar bill that, had it been enacted, would have granted significant relief from litigation abuses to individuals, consumers, small businesses and others. Unfortunately, given President Clinton's repeated vetoes of litigation reform measures in the 104th Congress, it was clear that we would be unable to enact more broad-reaching civil justice reform.

This Congress, I urge my colleagues to revisit the important issue of litigation reform. Product liability reform remains badly needed, as do the more comprehensive reforms of the civil litigation system embodied in my civil justice reform bill, the Civil Justice Fairness Act of 1997.

Americans in Utah and every other State overwhelmingly agree that there is a crying need for reform of our civil justice system. They are sick and tired of the abuses of our system, and are fed up with million dollar awards for scratched paint jobs, spilled coffee, and other minor harms. The system fails to deliver justice in far too many cases. Success for plaintiffs can depend more on chance than the merits of the case, and defendants may find themselves forced to settle for significant sums in circumstances in which they have done little or no wrong, simply due to the high litigation costs involved in defending against a weak or frivolous lawsuit.

I have gone through the litany of problems with our civil justice system time and time again. They continue to include excessive legal fees and costs, dilatory and sometimes abusive litigation practices, the increasing use of ''junk science'' as evidence, and the risk of unduly large punitive damage awards.

The problems with our current civil justice system have resulted in several perverse effects. First, all too often the system fails to accomplish its most important function—to compensate deserving plaintiffs adequately. Second, it imposes unnecessarily high litigation costs on all parties. Those costs are passed along to consumers—in effect, to each and every American—in the form of higher prices for products and services we buy. Those costs can even harm our nation's competitiveness in the global economy.

Congress must face these problems and enact meaningful legislation reforming our civil justice system. Reforms are needed to eliminate abuses and procedural problems in litigation, and to restore to the American people a civil justice system deserving of their trust, confidence and support. To achieve this goal, I am introducing civil justice reform legislation. This bill will correct some of the more serious abuses in our present civil justice system through a number of provisions.

The legislation will address the problems of excessive punitive damage awards and of multiple punitive damage awards. We all know that punitive damage awards are out of control in this country. Further, the imposition of multiple punitive damages for the same wrongful act raises particular concerns about the fairness of punitive damages and their ability to serve the purposes of punishment and deterrence for which they are intended.

The Supreme Court, legal scholars, practicing litigators, and others have acknowledged for years that punitive damages may raise serious constitutional issues. A decision from the U.S.

Supreme Court last term finally held that in certain circumstances a punitive damage award may violate due process and provided guidance as to when that would occur.

In the case, BMW versus Gore, the Supreme Court acknowledged that excessive punitive damages ''implicate the federal interest in preventing individual states from imposing undue burdens on interstate commerce.'' The decision for the fist time recognizes some outside limits on punitive damage awards. The Court's decision leaves plenty of room for legislative action, and legislative reforms are now needed more than ever to set up the appropriate boundaries.

The decision also highlights some of the extreme abuses in our civil justice system. The BMW versus Gore case was brought by a doctor who had purchased a BMW automobile for $40,000 and later discovered that the car had been partially refinished prior to sale. He sued the manufacturer in Alabama State court on a theory of fraud, seeking compensatory and punitive damages. The jury found BMW liable for $4,000 in compensatory damages and $4 million in punitive damages. On appeal, the Alabama Supreme Court reduced the punitive damages award to $2 million—which still represents an astonishing award for such inconsequential harm.

In its 5 to 4 decision, the Supreme Court held that the $2 million punitive damages award was grossly excessive and therefore violated the due process clause of the 14th amendment. The court remanded the case for further proceedings. The majority opinion set out three guideposts for courts to employ in assessing the constitutional excessiveness of a punitive damages award: the reprehensibility of the conduct being punished, the ratio between compensatory and punitive damages, and the difference between the punitive award and criminal or civil sanctions that could be imposed for comparable conduct.

Justice Breyer, in a concurring opinion joined by Justices O'Connor and Souter, emphasized that, although constitutional due process protections generally cover purely procedural protections, the narrow circumstances of the case justified added protections to ensure that legal standards providing for discretion are adequately enforced so as to provide for the ''application of law, rather than a decisionmaker's caprice.'' Congress has a similar responsibility to ensure fairness in the litigation system and the application of law in that system. It is high time for Congress to provide specific guidance to courts on the appropriate level of damage awards, and to address other issues in the civil litigation system.

The BMW case also illustrates the potential abuses of the system that can occur through the availability of multiple awards of punitive damages for essentially the same conduct. Under current law, the company can still, in every other state in which it sold one of its vehicles, be sued for punitive damages for the same act.

Multiple punitive damage awards can hurt not only defendants but also injured parties. Funds that would otherwise be available to compensate later victims can be wiped out at any early stage by excessive punitive damage awards. A Federal response is critical: if only the one State limits such awards, other States still remain free to impose multiple punitive damages. An important provision in my bill limits these multiple punitive damage awards. I am also today introducing separate legislation that would deal only with the multiple punitive damages problem.

In addition to reforming multiple punitive damage awards, my broad civil justice reform legislation addresses general abuses of punitive damages litigation. It includes a heightened standard of proof to ensure that punitive damages are awarded only if there is clear and convincing evidence that the harm suffered was the result of conduct either specifically intended to cause that harm, or carried out with conscious, flagrant indifference to the right or the safety of the claimant.

The bill also provides that punitive damages may not be awarded against the seller of a drug or medical device that received pre-market approval from the Food and Drug Administration.

Additionally, this legislation would allow a bifurcated trial, at the defendant's request, on the issue of punitive damages and limits the amount of the award to either $250,000 or three times the economic damages suffered by the claimant, whichever is greater. The bill provides a special limit in the cases of small business or individuals; in those cases, punitive damages will be limited to the lesser of $250,000 or three times economic damages.

The legislation would also limit a defendant's joint liability for non-economic damages. In any civil case for personal injury, wrongful death, or based upon the principles of comparative fault, a defendant's liability for non-economic loss shall be several only and shall not be joint. The trier of fact will determine the proportional liability of each person, whether or not a party to the action, and enter separate judgments against each defendant.

Another provision of this bill would shift costs and attorneys fees in circumstances in which a party has rejected a settlement offer, forcing the litigation to proceed, and then obtain a less favorable judgment. This provision encourages parties to act reasonably, rather than pursue lengthy and costly litigation. It allows a plaintiff or a defendant to be compensated for their reasonable attorneys fees and costs from the point at which the other party rejects a reasonable settlement offer.

Another widely reported problem in our civil justice system is abuse in contingency fee cases. This bill encourages attorneys to disclose fully to clients the hours worked and fees paid in all contingency fee cases. The bill calls upon the Attorney General to draft model State legislation requiring such disclosure to clients. It also requires the Attorney General to study possible abuses in the area of contingency fees and, where such abuses are found, to draft model State legislation specifically addressing those problems.

This legislation restricts the use of so-called ''junk science'' in the courtroom. This long overdue reform will improve the reliability of expert scientific evidence and permit juries to consider only scientific evidence that is objectively reliable.

This legislation includes a provision for health care liability reform. It limits, in any health care liability action, the maximum amount of non-economic damages that may be awarded to a claimant of $250,000. This limit would apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought. To avoid prejudice to any parties, the jury would not be informed about the limitations on non-economic damages.

This legislation would also establish a reasonable, uniform statute of limitations for the bringing of health care liability actions. Further, if damages for losses incurred after the date of judgment exceed $100,000, the Court shall allow the parties to have 60 days in which to negotiate an agreement providing for the payment of such damages in a lump sum, periodic payments, or a combination of both. If no agreement is reached, a defendant may elect to pay the damages on a periodic basis. Periodic payments for future damages would terminate in the event of the claimant's return to work, or upon the claimant's death. This is an exception for the portion of such payments allocable to future earnings, which shall be paid to any individual to whom the claimant owed a duty of support immediately prior to death, to the extent required by law at the time of the claimant's death.

This legislation also allows states the freedom to experiment with alternative patient compensation systems based upon no-fault principles. The Secretary of Health and Human Services would award grants based on applications by interested states according to enumerated criteria and subject to enumerated reporting requirements. Persons or entities participating in such experimental systems may obtain from the Secretary a waiver from the provisions of this legislation for the duration of the experiment. The Secretary would collect information regarding these experiments and submit an annual report to Congress, including an assessment of the feasibility of implementing no-fault systems, and legislative recommendations, if any.

I urge my colleagues to take a serious look at these problems within our civil justice system. I believe this bill

addresses these issues in a common sense way, and I hope my colleagues will join me in supporting this legislation.

I ask for unanimous consent that a section-by-section description of the bill be printed in the RECORD.

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

SECTION-BY-SECTION DESCRIPTION OF THE CIVIL JUSTICE FAIRNESS ACT OF 1997

TITLE I—PUNITIVE DAMAGES REFORM

Sec. 101. Definitions.—This section defines various terms used in Title I of the bill.

Sec. 102. Multiple Punitive Damages Fairness.—This section generally prohibits the award of multiple punitive damages. With one exception, it prevents courts from awarding punitive damages based on the same act or course of conduct for which punitive damages have already been awarded against the same defendant. Under the exception, an additional award of punitive damages may be permitted if the court determines in a pretrial hearing that the claimant will offer new and substantial evidence of previously undiscovered, additional wrongful behavior on the part of the defendant, other than injury to the claimant. In those circumstances, the court must make specific findings of fact to support the award, must reduce the amount of punitive damages awarded by the amounts of prior punitive damages based on the same acts, and may not disclose to the jury the court's determination and action under the section. This section would not apply to any action brought under a federal or state statute that specifically mandates the amount of punitive damages to be awarded.

Sec. 103. Uniform Standards for Award of Punitive Damages.—This section sets the following uniform standards for the award of punitive damages in any State or Federal Court action: (1) In general, punitive damages may be awarded only if the claimant establishes by clear and convincing evidence that the conduct causing the harm was either specifically intended to cause harm or carried out with conscious, flagrant indifference to the rights or the safety of the claimant. (2) Punitive damages may not be awarded in the absence of an award of compensatory damages exceeding nominal damages. (3) Punitive damages may not be awarded against a manufacturer or product seller of a drug or medical device which was the subject of pre-market approval by the Food and Drug Administration (FDA). This FDA exemption is not applicable where a party has withheld or misrepresented relevant information to the FDA. (4) Punitive damages may not be pleaded in a complaint. Instead, a party must establish at a pretrial hearing that it has a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages, and may then amend the pleading to include a prayer for relief seeking punitive damages. (5) At the defendant's request, the trier of fact shall consider in separate proceedings whether punitive damages are warranted and, if so, the amount of such damages. If a defendant requests bifurcated proceedings, evidence relevant only to the claim for punitive damages may not be introduced in the proceeding on compensatory damages. Evidence of the defendant's profits from his misconduct, if any, is admissible, but evidence of the defendant's overall wealth is inadmissible in the proceeding on punitive damages. (6) In any civil action where the plaintiff seeks punitive damages under this title, the amount awarded shall not exceed three times the economic damages or $250,000, whichever is greater. This provision shall be applied by the court and shall not be disclosed to the jury. (7) A special rule applies to small businesses and individuals. In any action against an individual whose net worth does not exceed $500,000, or a business or organization having 25 or fewer employees, punitive damages may not exceed the lesser of $250,000 or 3 times the amount awarded for economic loss.

Sec. 104. Effect on Other Law.—This section specifies that certain state and federal laws are not superseded or affected by this legislation. Choice-of-law and forum nonconveniens rules are similarly unaffected.

TITLE II—JOINT AND SEVERAL LIABILITY REFORM

Sec. 201. Several Liability for Non-Economic Loss.—This section limits a defendant's joint liability for non-economic damages. In any civil case, a defendant's liability for non-economic loss shall be several only and shall not be joint. The trier of fact will determine the proportional liability of each defendant and enter separate judgments against each defendant.

TITLE III—CIVIL PROCEDURAL REFORM

Sec. 301. Trial Lawyer Accountability.—This section contains two major provisions. The first provides that it is the sense of the Congress that each State should require attorneys who enter into contingent fee agreements to disclose to their clients the actual services performed and hours expended in connection with such agreements. The second provision directs the Attorney General to study and evaluate contingent fee awards and their abuses in State and Federal court; to develop model legislation to require attorneys who enter into contingency fee agreements to disclose to clients the actual services performed and hours expended, and to curb abuses in contingency fee awards based on the study; and to report the Attorney General's findings and recommendations to Congress within one year of enactment.

Sec. 302. Honesty in Evidence.—This section amends Federal Rule of Evidence 702 to reform the rules regarding the use of expert testimony. It clarifies that courts retain substantial discretion to determine whether the testimony of an expert witness that is premised on scientific, technical, or medical knowledge is based on scientifically valid reasoning, is sufficiently reliable, and is sufficiently established to have gained general acceptance in the particular field in which it belongs. The section follows the standard for admissibility of expert testimony enunciated in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993). It also mirrors the common law *Frye* rule that requires that scientific evidence have ''general acceptance'' in the relevant scientific community to be admissible. This section further clarifies that expert witnesses have expertise in the particular field on which they are testifying. Finally, this section mandates that the testimony of an expert retained on a contingency fee basis is inadmissible.

Sec. 303. Fair Shifting of Costs and Reasonable Attorney Fees.—This section modifies Federal Rule of Civil Procedure 68 to allow either party, not just the defendant, to make a written offer of settlement or to allow a judgment to be entered against the offering party. It expands the time period during which an offer can be made from 10 days before trial to any time during the litigation. If within 21 days the offer is accepted, a judgment may be entered by the court. If, however, a final judgment is not more favorable to an offeree than the offer, the offeree must pay attorney fees and costs incurred after the time expired for acceptance of the offer. Thus, this is not a true ''loser pays'' provision where a loser pays the winner's attorney's fees, but rather a narrower attorney fee and cost-shifting idea applicable only when a party has made an offer of settlement or judgment. This section also significantly expands the definition of recoverable costs. Currently, costs are narrowly defined and do not create enough of a financial incentive for a party to make an offer that allows judgment to be entered. Finally, this section also allows a party to make an offer of judgment after liability has already been determined but before the amount or extent has been adjudged.

TITLE IV—HEALTH CARE LIABILITY REFORM

Sec. 401. Definitions.—This section sets up definitions for various terms used in Title IV of the bill.

Sec. 402. Limitations on Noneconomic Damages.—In any health care liability action the maximum amount of noneconomic damages that may be awarded to a claimant is $250,000. This limit shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought. The jury shall not be informed about the limitations on non-economic damages.

Sec. 403. Statute of Limitations.—This section provides a reasonable uniform statute of limitations for health care liability actions, with one exception for minors. The general rule is that an action must be brought within two years from the date the injury and its cause was or reasonably should have been discovered, but in no event can an action be brought more than six years after the alleged date of injury. This section also allows an exception for young children. The rule for children under six years of age is that an action must be brought within two years from the date the injury and its cause was or reasonably should have been discovered, but in no event can an action be brought more than six years after the alleged date of injury or the date on which the child attains 12 years of age, whichever is later.

Sec. 404. Periodic Payment of Future Damages.—This section allows for the periodic payment of large awards for losses accruing in the future. If damages for losses incurred after the date of judgment exceed $100,000, the court shall allow the parties to have 60 days in which to negotiate an agreement providing for the payment of such damages in a lump sum, periodic installments, or a combination of both. If no agreement is reached within those 60 days, a defendant may elect to pay the damages on a periodic basis. The court will determine the amount and periods for such payments, reducing amounts to present value for purposes of determining the funding obligations of the individual making the payments. Periodic payments for future damages terminate in the event of the claimant's recovery or return to work; or upon the claimant's death, except for the portion of the payments allocable to future earnings which shall be paid to any individual to whom the claimant owed a duty of support immediately prior to death to the extent required by law at the time of death. Such payments shall expire upon the death of the last person to whom a duty of support is owed or the expiration of the obligation pursuant to the judgment for periodic payments.

Sec. 405. State No-Fault Demonstration Projects.—This section allows states to experiment with alternative patient compensation systems based upon no-fault principles. Grants shall be awarded by the Secretary of Health and Human Services based on applications made by interested states according to enumerated criteria and subject to enumerated reporting requirements. Persons or entities involved in the demonstrations involved may obtain a waiver from the Secretary from the provisions of this Title for

the duration of the experiment, which shall be not greater than five years. The Secretary shall collect information regarding these experiments and submit an annual report to Congress including an assessment of the feasibility of implementing no-fault systems and legislative recommendations, if any.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Federal Cause of Action Precluded.—This section provides that the bill does not provide any new basis for federal court jurisdiction. The resolution of punitive damages claims is left to state courts or to federal courts that currently have jurisdiction over those claims.

Sec. 502. Effective Date.—This section states that the bill, except as otherwise provided, shall be effective 30 days after the date of enactment and apply to all civil actions commenced on or after such date, including those in which the harm, or harm-causing conduct, predates the bill's enactment.

By Mr. KOHL:

S. 80. A bill to amend the Internal Revenue Code of 1986 to provide for the rollover of gain from the sale of farm assets into an individual retirement account; to the Committee on Finance.

FAMILY FARM RETIREMENT EQUITY ACT OF 1997

Mr. KOHL. Mr. President, I rise today to introduce the Family Farm Retirement Equity Act of 1995, a bill to help improve the retirement security of our nation's farmers.

As we begin the 105th Congress, we can anticipate legislative action dealing with pension reform and the tax treatment of retirement savings. In his 1996 State of the Union address, President Clinton mentioned his concerns about the retirement security of farmers and ranchers, and many of us in Congress have sought to address this concern, as well.

Last year, Congress passed the 1996 farm bill, bringing sweeping changes to the traditional farm support programs, and greatly affecting the income side of the average farmer's financial sheet. But it is equally important that we address the other side of the farmers' financial equation—the cost side. And some of the biggest costs that farmers face are the costs associated with retirement planning. In fact, those costs are sometimes so monumental that farmers reach retirement age without having made the appropriate provisions for their security.

In the last Congress, efforts were made to address the financial concerns of retiring farmers and ranchers. In fact, the Senate version of the 1995 Budget Reconciliation Act included the legislation that I am reintroducing today, the Family Farm Retirement Equity Act. Unfortunately, that important provision did not survive the conference negotiations between House and Senate budget leaders. It is my hope that we will be able to revisit this matter this year, and address this growing concern in rural America.

Farming is a highly capital-intensive business. To the extent that the average farmer reaps any profits from his or her farming operation, much of that income is directly reinvested into the farm. Rarely are there opportunities for farmers to put money aside in individual retirement accounts. Instead, farmers tend to rely on the sale of their accumulated capital assets, such as real estate, livestock, and machinery, in order to provide the income to sustain them during retirement. All too often, farmers are finding that the lump-sum payments of capital gains taxes levied on those assets leave little for retirement.

The legislation that I am reintroducing today would provide retiring farmers the opportunity to rollover the proceeds from the sale of their farms into a tax-deferred retirement account. Instead of paying a large lump-sum capital gains tax at the point of sale, the income from the sale of a farm would be taxed only as it is withdrawn from the retirement account. Such a change in method of taxation would help prevent the financial distress that many farmers now face upon retirement.

Another concern that I have about rural America is the diminishing interest of our younger rural citizens in continuing in farming. Because this legislation will facilitate the transition of our older farmers into a successful retirement, the Family Farm Retirement Equity Act will also pave the way for a more graceful transition of our younger farmers toward farm ownership. While low prices and low profits in farming will continue to take their toll on our younger farmers, I believe that this will be one tool we can use to make farming more viable for the next generation.

This proposal is supported by farmers and farm organizations throughout the country. It has been endorsed by the American Farm Bureau Federation, the American Sheep Industry Association, the American Sugar Beet Association, the National Association of Wheat Growers, the National Cattleman's Beef Association, the National Corn Growers Association, National Pork Producers Council, and the Southwestern Peanut Growers Association.

Further, I am very pleased that a modified version of this legislation has also been included in the Targeted Investment Incentive and Economic Growth Act of 1997, as introduced today by Minority Leader DASCHLE and other Senators. I look forward to swift action on that legislation, so that the working families and small businesses targeted for assistance can enjoy tax relief as soon as possible.

I ask unanimous consent that the full text of the bill and a summary be included in the RECORD.

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

S. 80

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

SECTION 1. SHORT TITLE; REFERENCE TO INTERNAL REVENUE CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Family Farm Retirement Equity Act of 1997''.

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

SEC. 2. ROLLOVER OF GAIN FROM SALE OF FARM ASSETS TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by inserting after section 1034 the following new section:

''SEC. 1034A. ROLLOVER OF GAIN ON SALE OF FARM ASSETS INTO ASSET ROLLOVER ACCOUNT.

''(a) NONRECOGNITION OF GAIN.—Subject to the limits of subsection (c), if for any taxable year a taxpayer has qualified net farm gain from the sale of qualified farm assets, then, at the election of the taxpayer, such gain shall be recognized only to the extent it exceeds the contributions to 1 or more asset rollover accounts of the taxpayer for the taxable year in which such sale occurs.

''(b) ASSET ROLLOVER ACCOUNT.—

''(1) GENERAL RULE.—Except as provided in this section, an asset rollover account shall be treated for purposes of this title in the same manner as an individual retirement plan.

''(2) ASSET ROLLOVER ACCOUNT.—For purposes of this title, the term 'asset rollover account' means an individual retirement plan which is designated at the time of the establishment of the plan as an asset rollover account. Such designation shall be made in such manner as the Secretary may prescribe.

''(c) CONTRIBUTION RULES.—

''(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to an asset rollover account.

''(2) AGGREGATE CONTRIBUTION LIMITATION.—Except in the case of rollover contributions, the aggregate amount for all taxable years which may be contributed to all asset rollover accounts established on behalf of an individual shall not exceed—

''(A) $500,000 ($250,000 in the case of a separate return by a married individual), reduced by

''(B) the amount by which the aggregate value of the assets held by the individual (and spouse) in individual retirement plans (other than asset rollover accounts) exceeds $100,000.

The determination under subparagraph (B) shall be made as of the close of the taxable year for which the determination is being made.

''(3) ANNUAL CONTRIBUTION LIMITATIONS.—

''(A) GENERAL RULE.—The aggregate contribution which may be made in any taxable year to all asset rollover accounts shall not exceed the lesser of—

''(i) the qualified net farm gain for the taxable year, or

''(ii) an amount determined by multiplying the number of years the taxpayer is a qualified farmer by $10,000.

''(B) SPOUSE.—In the case of a married couple filing a joint return under section 6013 for the taxable year, subparagraph (A) shall be applied by substituting '$20,000' for '$10,000' for each year the taxpayer's spouse is a qualified farmer.

''(4) TIME WHEN CONTRIBUTION DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to an asset rollover account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

''(d) QUALIFIED NET FARM GAIN; ETC.—For purposes of this section—

''(1) QUALIFIED NET FARM GAIN.—The term 'qualified net farm gain' means the lesser of—

''(A) the net capital gain of the taxpayer for the taxable year, or

''(B) the net capital gain for the taxable year determined by only taking into account gain (or loss) in connection with dispositions of qualified farm assets.

''(2) QUALIFIED FARM ASSET.—The term 'qualified farm asset' means an asset used by a qualified farmer in the active conduct of the trade or business of farming (as defined in section 2032A(e)).

''(3) QUALIFIED FARMER.—

''(A) IN GENERAL.—The term 'qualified farmer' means a taxpayer who—

''(i) during the 5-year period ending on the date of the disposition of a qualified farm asset materially participated in the trade or business of farming, and

''(ii) owned (or who with the taxpayer's spouse owned) 50 percent or more of such trade or business during such 5-year period.

''(B) MATERIAL PARTICIPATION.—For purposes of this paragraph, a taxpayer shall be treated as materially participating in a trade or business if the taxpayer meets the requirements of section 2032A(e)(6).

''(4) ROLLOVER CONTRIBUTIONS.—Rollover contributions to an asset rollover account may be made only from other asset rollover accounts.

''(e) DISTRIBUTION RULES.—For purposes of this title, the rules of paragraphs (1) and (2) of section 408(d) shall apply to any distribution from an asset rollover account.

''(f) INDIVIDUAL REQUIRED TO REPORT QUALIFIED CONTRIBUTIONS.—

''(1) IN GENERAL.—Any individual who—

''(A) makes a contribution to any asset rollover account for any taxable year, or

''(B) receives any amount from any asset rollover account for any taxable year,

shall include on the return of tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe) information described in paragraph (2).

''(2) INFORMATION REQUIRED TO BE SUPPLIED.—The information described in this paragraph is information required by the Secretary which is similar to the information described in section 408(o)(4)(B).

''(3) PENALTIES.—For penalties relating to reports under this paragraph, see section 6693(b).''.

(b) CONTRIBUTIONS NOT DEDUCTIBLE.—Section 219(d) (relating to other limitations and restrictions) is amended by adding at the end the following new paragraph:

''(5) CONTRIBUTIONS TO ASSET ROLLOVER ACCOUNTS.—No deduction shall be allowed under this section with respect to a contribution under section 1034A.''.

(c) EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Section 4973 (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended by adding at the end the following new subsection:

''(e) ASSET ROLLOVER ACCOUNTS.—For purposes of this section, in the case of an asset rollover account referred to in subsection (a)(1), the term 'excess contribution' means the excess (if any) of the amount contributed for the taxable year to such account over the amount which may be contributed under section 1034A.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4973(a)(1) is amended by striking ''or'' and inserting ''an asset rollover account (within the meaning of section 1034A), or''.

(B) The heading for section 4973 is amended by inserting ''**ASSET ROLLOVER ACCOUNTS,**'' after ''**CONTRACTS**''.

(C) The table of sections for chapter 43 is amended by inserting ''asset rollover accounts,'' after ''contracts'' in the item relating to section 4973.

(d) TECHNICAL AMENDMENTS.—

(1) Section 408(a)(1) (defining individual retirement account) is amended by inserting ''or a qualified contribution under section 1034A,'' before ''no contribution''.

(2) Section 408(d)(5)(A) is amended by inserting ''or qualified contributions under section 1034A'' after ''rollover contributions''.

(3)(A) Section 6693(b)(1)(A) is amended by inserting ''or 1034A(f)(1)'' after ''408(o)(4)''.

(B) Section 6693(b)(2) is amended by inserting ''or 1034A(f)(1)'' after ''408(o)(4)''.

(4) The table of sections for part III of subchapter O of chapter 1 is amended by inserting after the item relating to section 1034 the following new item:

''Sec. 1034A. Rollover of gain on sale of farm assets into asset rollover account.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges after the date of the enactment of this Act.

FAMILY FARM RETIREMENT EQUITY ACT OF 1997

Allows retiring farmers to roll over up to $500,000 from the sale of their farm assets into a tax-deferred individual retirement account, called an Asset Rollover Account [ARA]. In this manner, they avoid paying lump-sum capital gains, and instead pay taxes only as they withdraw the funds from the retirement account.

Each farmer would be allowed to rollover an amount equal to $10,000—$20,000 for a couple—for each year that he or she was a ''qualified farmer,'' with a maximum contribution of $250,000—or $500,000 per farm couple.

The maximum allowed contribution to the ARA would be reduced by any amount in excess of $100,000 that the qualified farmer and spouse already have in a separate IRA.

A qualified farmer is a farmer who: For the 5-year period ending on the date of sale of the farm, was materially participating in the business of the farm. A farmer is determined to be materially participating in the farm operation if they meet the requirements of section 2032A individually, or jointly in the case of a couple, owns at least 50 percent of the farm asset during the 5-year period.

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 81. A bill to amend the Dairy Production Stabilization Act of 1983 to require that members of the National Dairy Promotion and Research Board be elected by milk producers and to prohibit bloc voting by cooperative associations of milk producers in the election of the producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

NATIONAL DAIRY PROMOTION REFORM ACT OF 1997

Mr. KOHL. Mr. President, one of the basic tenets upon which this Nation was founded was that there should be no taxation without representation. But the dairy farmers of this nation know all too well that taxation without representation continues today. They live with that reality in their businesses every day.

Dairy farmers are required to pay a 15 cent tax, in the form of an assessment, on every hundred pounds of milk that they sell. This tax goes to fund dairy promotion activities, such as those conducted by the National Dairy Promotion and Research Board, commonly known as the National Dairy Board. Yet these same farmers that pay hundreds, or in some cases thousands, of dollars every year for these mandatory promotion activities have no direct say over who represents them on that Board.

In the summer of 1993, a national referendum was held giving dairy producers the opportunity to vote on whether or not the National Dairy Board should continue. The referendum was held after 16,000 dairy producers, more than 10 percent of dairy farmers nationwide, signed a petition to the Secretary of Agriculture calling for the referendum.

Farmers signed this petition for a number of reasons. Some felt they could no longer afford the promotion assessment that is taken out of their milk checks every month. Others were frustrated with what they perceived to be a lack of clear benefits from the promotion activities. And still others were alarmed by certain promotion activities undertaken by the Board with which they did not agree. But overriding all of these concerns was the fact that dairy farmers have no direct power over the promotion activities which they fund from their own pockets.

When the outcome of the referendum on continuing the National Dairy Board was announced, it had passed overwhelmingly. But because nearly 90 percent of all votes cast in favor of continuing the Board were cast by bloc-voting cooperatives, there has been skepticism among dairy farmers about the validity of the vote.

While I believe that dairy promotion activities are important for enhancing markets for dairy products, it matters more what dairy farmers believe. After all, they are the ones who pay hundreds or thousands of dollars every year for these promotion activities. And they are the ones who have no direct say over who represents them on that Board.

It is for this reason that I rise today to reintroduce the National Dairy Promotion Reform Act of 1997.

Some in the dairy industry have argued that this issue is dead, and that to reintroduce such legislation will only reopen old wounds. But I must respectfully disagree.

The intent of this legislation is not to rehash the referendum debate, which was a contentious one. Instead, the intent is to look forward.

Farmers in my state have traditionally been strong supporters of the cooperative movement, because the cooperative business structure has given them the opportunity to be equal partners in the businesses that market their products and supply their farms. I have been a strong supporter of the cooperative movement for the same reason.

But there is a growing dissention among farmers that I believe is dangerous to the long-term viability of agricultural cooperatives. As I talk to farmers around Wisconsin, I hear a growing concern that their voices are not being heard by their cooperatives. They frequently cite the 1993 National Dairy Board referendum as an example. The bill that I am reintroducing today seeks to address one small part of that concern, by giving dairy farmers a more direct role in the selection of their representatives on the National Dairy Board. Whereas current law requires that members of the National Dairy Board be appointed by the Secretary of Agriculture, this legislation would require that the Board be an elected body.

Further, although the legislation would continue the right of farmer cooperatives to nominate individual members to be on the ballot, bloc voting by cooperatives would be prohibited for the purposes of the election itself. There are many issues for which the cooperatives can and should represent their members. But on this issue, farmers ought to speak for themselves.

It is my hope that this legislation will help restore the confidence of the U.S. dairy farmer in dairy promotion. To achieve that confidence, farmers need to know that they have direct power over their representatives on the Board. This bill gives them that power.

I welcome my colleague from Wisconsin, Senator FEINGOLD, as an original cosponsor of this bill, and I am also pleased to join today as an original cosponsor of two pieces of legislation that he is introducing today, as well.

Senator FEINGOLD's two bills would make other needed improvements in the national dairy promotion program. Specifically, one bill would require that imported dairy products be subject to the same dairy promotion assessment as are paid on domestic dairy products today. The other would prohibit the practice of bloc voting by cooperatives for the purpose of any future farmer referenda regarding the National Dairy Board.

I thank my colleague Senator FEINGOLD for his efforts on these matters, and I believe that our three bills provide dairy promotion program reforms that are both complementary and necessary.

I ask unanimous consent that the full text of the bill and summary be included in the RECORD.

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

S. 81

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 ''National Dairy Promotion Reform Act of 1997''.

SEC. 2. DAIRY VOTING REFORM.

Section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)) is amended—

(1) by designating the first and second sentences as paragraphs (1) and (2), respectively;

(2) by designating the third through fifth sentences as paragraph (3);

(3) by designating the sixth sentence as paragraph (4);

(4) by designating the seventh and eighth sentences as paragraph (5);

(5) by designating the ninth sentence as paragraph (6);

(6) in paragraph (1) (as so designated), by striking ''and appointment'';

(7) by striking paragraph (2) (as so designated) and inserting the following:

''(2) QUALIFICATIONS, NOMINATION, AND ELECTION OF MEMBERS.—

''(A) QUALIFICATIONS AND ELECTION.—

''(i) IN GENERAL.—Subject to clause (ii), each member of the Board shall be a milk producer nominated in accordance with subparagraph (B) and elected by a vote of producers through a process established by the Secretary.

''(ii) BLOC VOTING.—In carrying out clause (i), the Secretary shall not permit an organization certified under section 114 to vote on behalf of the members of the organization.

''(B) NOMINATIONS.—

''(i) SOURCE.—Nominations shall be submitted by organizations certified under section 114, or, if the Secretary determines that a substantial number of milk producers are not members of, or the interests of the producers are not represented by, a certified organization, from nominations submitted by the producers in the manner authorized by the Secretary.

''(ii) CONSULTATION WITH MEMBERS.—In submitting nominations, each certified organization shall demonstrate to the satisfaction of the Secretary that the milk producers who are members of the organization have been fully consulted in the nomination process.'';

(8) in the first sentence of paragraph (3) (as so designated), by striking ''In making such appointments,'' and inserting ''In establishing the process for the election of members of the Board,''; and

(9) in paragraph (4) (as so designated)—

(A) by striking ''appointment'' and inserting ''election''; and

(B) by striking ''appointments'' and inserting ''elections''.

National Dairy Promotion Reform Act of 1997

SUMMARY OF THE BILL

The bill would amend the Dairy Production Stabilization Act of 1983 to require that future members of the National Dairy Board be elected directly by dairy producers, and not appointed by the Secretary of Agriculture as they are currently.

The bill would also prohibit the practice of bloc voting of members by producer cooperatives for the purposes of the Board elections.

However, cooperatives could continue to nominate members to be on the ballot, as long as they adequately consult with their membership in the nomination process.

The explicit details of the election process would be developed by the Secretary of Agriculture.

By Mr. KOHL:

S. 82. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide child care assistance for dependents of their employees, and for other purposes; to the Committee on Finance.

CHILD CARE INFRASTRUCTURE ACT

Mr. KOHL. Mr. President, today I rise to introduce the Child Care Infrastructure Act. This legislation is designed to give incentives to private companies to get involved in the provision of quality child care. I introduced the bill as S. 2088 late last year, and I intend to make its passage this year one of my highest priorities.

My bill responds to the challenges presented by the landmark welfare legislation enacted last Congress. And it responds to the fundamental changes in the American economy that have led to parents entering the work force in record numbers.

The Child Care Infrastructure Act creates a tax credit for employers who get involved in increasing the supply of quality child care. The credit is limited to 50 percent of $150,000 per company per year. The credit will sunset after 3 years. The credit goes to employers who engage in activities like: Building and subsidizing an entire child care center on the site of a company or near it; participating, along with other businesses, in setting up and running a child care center jointly; contracting with a child care facility to provide a set number of places to employees—this gives existing centers the steady cash flow they need to survive, or it can give a startup center the steady income it needs to get off the ground; contracting with a resource and referral agency to provide services such as placement or the design of a network of local child care providers.

This legislation responds to a great need, a great challenge, and a great opportunity. The need is to provide a safe and stimulating place for our youngest children to spend their time while their parents are at work. The challenge is to make the American workplace more productive by making it more responsive to the needs of the American family. And the opportunity is to take what we are learning about the importance of early childhood education and use it to help our children become the best educated adults of the 21st century.

The need for quality child care is certainly apparent. As real wages have stagnated over the last decade, many families have adapted by having two wage earners per family. Also, over the same period, the number of children living in mother-only families has increased—in 1950, 6 percent of all children lived in mother-only families; in 1994, that number was 24 percent. In my home State of Wisconsin, 67 percent of women with children under 6 years old are in the work force according to Children's Defense Fund. And in Milwaukee County, about 56 percent of children under the age of 6 have both parents in

the work force or their sole parent in the work force. That translates into about 67,600 children under the age of 6 in that county who right now are already in need of or in child care.

With the passage of the welfare reform law, and the implementation of W–2, Wisconsin's welfare reform State plan, the need for child care will become even greater. A recent report done for the Community Coordinated Child Care of Milwaukee found that the implementation of W–2 will lead to the need for over 8,000 new full-time child care slots in Milwaukee County alone.

Wisconsin is not unique in facing this overwhelming shortage of child care slots. Across the Nation, States and communities are facing the same issue. Where are our youngest children going to spend the day while their parents are at work?

This is not the sort of market shortage we can or should address haphazardly. There is nothing less at stake than the welfare of our children. Study after study has found the enormous importance of early childhood education and care—and by early education, the experts mean the education of 0 to 4 year olds. One University of Chicago researcher has claimed that intelligence appears to develop as much during the years 0 to 4 as it does from the years 4 to 18.

If we are simply warehousing kids in these early years, we are going to not only hamper their ability to develop fulfilling and productive lives, but we are hurting ourselves. We are resigning ourselves to trying to solve educational and developmental problems—at great expense—for the rest of these children's lives.

As obvious as this point may seem, the desperate need for quality early child care is not a problem that this Nation has addressed. As a Nation—and I mean Federal, State, local, and private resources—over the last 10 years, we have doubled our expenditures on educating 5 to 25 year olds to $500 billion. Contrast that with the mere $4 billion we are spending on Head Start, and 95 percent of that is on children 3, 4, and 5 years old. Only $100 million out of $500 billion is spent on the period when the most significant development takes place—that's one-fifth of one thousandth of what we spend on ages 5 through 25.

Obviously, our investment in children has not kept up with what we now know about how children learn and develop in their earliest year.

There is another reason to care about the supply of quality child care—especially for businesses to care about quality child care. Employees who are happy with their child care situations are better employees. They are more productive, have less absenteeism, and are more loyal to their company.

Clearly, there is a shortage of quality child care, and equally clearly, there is a benefit to the private sector if they are involved in solving that shortage. The approach I take in my legislation is to try to encourage private businesses to undertake activities that would increase the supply of quality child care.

The legislation gives flexibility to businesses that want to get involved in providing child care for their employee's dependents. Though the shortage of quality child care is definitely a national problem, it does have uniquely local solutions. What sort of child care infrastructure works best in a community is going to depend on the sort of work that community does—whether there are many part-time or odd hour shifts, whether the local economy has a few very large employers or a lot of small employers, or some mix. My legislation includes a tax incentive that would allow many different kinds of businesses to take advantage of it—and that would allow them to be as creative as possible.

The 21st century economy will be one in which more of us are working, and more of us are trying to balance work and family. How well we adjust to that balance will determine how strong we are as an economy and as a Nation of families. My legislation is an attempt to encourage businesses to play an active role in this deeply important transition.

In the 1950's, Federal, State, local governments, communities, and businesses banded together to build a highway system that is the most impressive in the world. Those roads allowed our economy to flourish and our people to move safely and quickly to work. In the 1990's, we need the same sort of national, comprehensive effort to build safe and affordable child care for our children. As more and more parents—of all income levels—move into the work force, they need access to quality child care just as much as their parents needed quality highways to drive to work. And if we are successful—and I plan to be successful—in the 21st century excellent child care will be as common as interstate highways.

Child care is an investment that is good for children, good for business, good for our States, and good for the Nation. We need to involve every level of government—and private communities and private businesses—in building a child care infrastructure that is the best in the world. My legislation is a first, essential step toward this end.

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. 82

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 ''Child Care Infrastructure Act of 1997''.

SEC. 2. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CHILD CARE ASSISTANCE.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

''SEC. 45D. EMPLOYER-PROVIDED CHILD CARE CREDIT.

''(a) IN GENERAL.—For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified child care expenditures of the taxpayer for such taxable year.

''(b) DOLLAR LIMITATION.—The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CHILD CARE EXPENDITURE.—The term 'qualified child care expenditure' means any amount paid or incurred—

''(A) to acquire, construct, rehabilitate, or expand property—

''(i) which is to be used as part of a qualified child care facility of the taxpayer,

''(ii) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

''(iii) which does not constitute part of the principal residence (within the meaning of section 1034) of the taxpayer or any employee of the taxpayer,

''(B) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training,

''(C) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer, or

''(D) under a contract to provide child care resource and referral services to employees of the taxpayer.

''(2) QUALIFIED CHILD CARE FACILITY.—

''(A) IN GENERAL.—The term 'qualified child care facility' means a facility—

''(i) the principal use of which is to provide child care assistance, and

''(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 1034) of the operator of the facility.

''(B) SPECIAL RULES WITH RESPECT TO A TAXPAYER.—A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

''(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

''(ii) the facility is not the principal trade or business of the taxpayer unless at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

''(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

''(d) RECAPTURE OF ACQUISITION AND CONSTRUCTION CREDIT.—

''(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

''(A) the applicable recapture percentage, and

''(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer

described in subsection (c)(1)(A) with respect to such facility had been zero.

''(2) APPLICABLE RECAPTURE PERCENTAGE.—

''(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

''(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

''(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

''(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified child care facility.

''(B) CHANGE IN OWNERSHIP.—

''(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

''(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

''(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) AGGREGATION RULES.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

''(f) NO DOUBLE BENEFIT.—

''(1) REDUCTION IN BASIS.—For purposes of this subtitle—

''(A) IN GENERAL.—If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

''(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

''(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

''(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1999.''

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out ''plus'' at the end of paragraph (11),

(B) by striking out the period at the end of paragraph (12), and inserting a comma and ''plus'', and

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

''(13) the employer-provided child care credit determined under section 45D.''

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45D. Employer-provided child care credit."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

Mr. AKAKA:

S. 83. A bill to consolidate and revise the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PLANT PROTECTION ACT

Mr. AKAKA.

Mr. President, today I am introducing the Plant Protection Act, a comprehensive consolidation of Federal laws governing plant pests and diseases, noxious weeds, and the plant products that harbor pests and weeds.

During the past century, numerous Federal laws were enacted to address problems caused by plant pests and noxious weeds. While some of these laws continue to protect agriculture and the environment, others are ambiguous, outmoded, or difficult to enforce. The Nation's agricultural community, as well as private, state, and Federal land managers, cannot afford the continuing uncertainty caused by the hodgepodge of Federal plant pest laws, some of which were enacted before World War I. Legislation to revise and consolidate federal plant pest laws is urgently needed and long overdue.

Agriculture Secretary Dan Glickman highlighted the problem created by federal plant protection laws when he told Congress that ''in some instances, it is unclear which statutes should be relied upon for authority. It is difficult to explain to the public why some apparently similar situations have to be treated differently because different authorities are involved.''

A 1993 report issued by the Office of Technology Assessment reached the same conclusion. The OTA found that Federal and State statutes, regulations, and programs are not keeping pace with new and spreading alien pests.

The Plant Protection Act will address many of these problems. The bill I introduced today will enhance the Federal Government's ability to combat weeds, plant pests, and diseases, and protect our farms, environment, and economy from the harm they cause.

Plant pests are a problem of monumental proportions. Insects such as Mediterranean fruit fly, fire ant, and gypsy moth plague America's farmers and cause billions of dollars in crop losses annually. Destructive plant diseases include chestnut blight, which wiped out the most common tree of our Appalachian forests, elm blight, which destroyed many splendid trees throughout our towns and cities, and the white pine blister rust, which eliminated western white pine as a source of timber for several decades.

Alien weeds also cause havoc, and nowhere is this problem more apparent than in Hawaii. Because our climate is so accommodating, Hawaii is heaven-on-earth for weeds. Weeds such as gorse, ivy gourd, miconia, and banana poka are ravaging our tropical and subtropical landscape.

Invasive noxious weeds do more than just compete with domestic species. They transform the landscape, change the rules by which native plants and animals live, and undermine the economic and environmental health of the areas they infest.

Alien weeds fuel grass and forest fires, promote soil erosion, and destroy critical water resources. They significantly increase the cost of farming and ranching. Noxious weeds destroy or alter natural habitat, damage waterways and powerlines, and depress property values. Some are toxic to humans, livestock, and wildlife.

Alien weeds are biological pollution, pure and simple. Due to the worldwide growth in trade and travel we are witnessing an explosion in the number of foreign weeds that plague our Nation.

Just how big is this problem? Let me offer an example. Last year, on Federal lands alone, we lost 4,500 acres each day to noxious weeds. That's a million-and-a-half acres a year, or an area the size of Delaware. By comparison, forest fires—one of the most fearsome natural disasters—claimed only half as many Federal acres as weeds.

Noxious weeds have also been called biological wildfire, and for good reason. Forests, national parks, recreation areas, urban landscapes, wilderness, grasslands, waterways, farm and range land across the Nation are overrun by noxious weeds.

Farmers experience the greatest economic impact of this problem. The Office of Technology Assessment estimates that exotic weeds cost U.S. farmers $3.6 to $5.4 billion annually due to reduced yields, crops of poor quality, increased herbicide use, and other weed control costs. Noxious weeds are a significant drain on farm productivity.

Despite the magnitude of this problem, few people get alarmed about weeds. The issue certainly doesn't appear on the cover of Time or Newsweek. Perhaps if kudzu, a weed known as the ''vine that ate the South,'' attacked the Capitol grounds, weeds would finally get the attention they deserve.

Several of these foreign weeds are truly the King Kong of plants. Some are 50 feet tall. Others have 4 inch thorns. Some have roots 25 feet deep, and others produce 20 million seeds each year.

My least-favorite weed is the tropical soda apple, a thorny plant with a sweet-sounding name. It bears small yellow and green fruit. But, like fruit from the forbidden tree, tropical soda apples are a source of great strife.

This import from Brazil has inch-long spikes covering its stems and leaves. The fruit is a favorite among cattle, and when they pass the seeds in their manure new weeds quickly sprout. As cattle are shipped from state to state with soda apple seeds in their stomachs you can easily imagine how the problem rapidly spreads. Tropical soda apple is a weed control nightmare.

The saga of tropical soda apple prompted me to introduce S. 690, the Federal Noxious Weed Improvement Act during the 104th Congress. S. 690 would grant the Secretary of Agriculture emergency powers to restrict the entry of a foreign weed until formal action can be taken to place it on the noxious weed list. This legislation would prevent future tropical soda apples from taking root.

I have incorporated the text of S. 690 into section 4 of the Plant Protection Act. Other provisions of the legislation I have introduced today are drawn from USDA recommendations for consolidating weed and plant pest authorities.

Because the U.S. Department of Agriculture's authority over plant pests and noxious weeds is dispersed throughout many statutes, Federal efforts to protect agriculture, forestry, and our environment are seriously hindered. To enable the Department to respond more efficiently to this challenge, the Plant Protection Act will consolidate these authorities into a single statute.

I ask unanimous consent that the text of the Plant Protection Act be printed in the RECORD.

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

S. 83

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 ''Plant Protection Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the detection, control, eradication, suppression, prevention, and retardation of the spread of plant pests and noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States;

(2) biological control—

(A) is often a desirable, low-risk means of ridding crops and other plants of plant pests and noxious weeds; and

(B) should be facilitated by the Secretary of Agriculture, Federal agencies, and States, whenever feasible;

(3) markets could be severely impacted by the introduction or spread of pests or noxious weeds into or within the United States;

(4) the unregulated movement of plant pests, noxious weeds, plants, biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds would present an unacceptable risk of introducing or spreading plant pests or noxious weeds;

(5) the existence on any premises in the United States of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States could threaten crops, other plants, plant products, and the natural resources and environment of the United States and burden interstate commerce or foreign commerce; and

(6) all plant pests, noxious weeds, plants, plant products, or articles capable of harboring plant pests or noxious weeds regulated under this Act are in or affect interstate commerce or foreign commerce.

SEC. 3. DEFINITIONS.

In this Act:

(1) ARTICLE.—The term ''article'' means any material or tangible object that could harbor a pest, disease, or noxious weed.

(2) BIOLOGICAL CONTROL ORGANISM.—The term ''biological control organism'' means a biological entity, as defined by the Secretary, that suppresses or decreases the population of another biological entity.

(3) ENTER.—The term ''enter'' means to move into the commerce of the United States.

(4) ENTRY.—The term ''entry'' means the act of movement into the commerce of the United States.

(5) EXPORT.—The term ''export'' means to move from the United States to any place outside the United States.

(6) EXPORTATION.—The term ''exportation'' means the act of movement from the United States to any place outside the United States.

(7) IMPORT.—The term ''import'' means to move into the territorial limits of the United States.

(8) IMPORTATION.—The term ''importation'' means the act of movement into the territorial limits of the United States.

(9) INDIGENOUS.—The term ''indigenous'' means a plant species found naturally as part of a natural habitat in a geographic area in the United States.

(10) INTERSTATE.—The term ''interstate'' means from 1 State into or through any other State, or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(11) INTERSTATE COMMERCE.—The term ''interstate commerce'' means trade, traffic, movement, or other commerce—

(A) between a place in a State and a point in another State;

(B) between points within the same State but through any place outside the State; or

(C) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(12) MEANS OF CONVEYANCE.—The term ''means of conveyance'' means any personal property or means used for or intended for use for the movement of any other personal property.

(13) MOVE.—The term ''move'' means to—

(A) carry, enter, import, mail, ship, or transport;

(B) aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting;

(C) offer to carry, enter, import, mail, ship, or transport;

(D) receive to carry, enter, import, mail, ship, or transport; or

(E) allow any of the activities referred to this paragraph.

(14) NOXIOUS WEED.—The term ''noxious weed'' means a plant, seed, reproductive part, or propagative part of a plant that—

(A) can directly or indirectly injure or cause damage to a crop, other useful plant, plant product, livestock, poultry, or other interest of agriculture (including irrigation), navigation, public health, or natural resources or environment of the United States; and

(B) belongs to a species that is not indigenous to the geographic area or ecosystem in which it is causing injury or damage.

(15) PERMIT.—The term ''permit'' means a written or oral authorization (including electronic authorization) by the Secretary to move a plant, plant product, biological control organism, plant pest, noxious weed, or article under conditions prescribed by the Secretary.

(16) PERSON.—The term ''person'' means an individual, partnership, corporation, association, joint venture, or other legal entity.

(17) PLANT.—The term ''plant'' means a plant or plant part for or capable of propagation, including a tree, shrub, vine, bulb, root, pollen, seed, tissue culture, plantlet culture, cutting, graft, scion, and bud.

(18) PLANT PEST.—The term ''plant pest'' means—

(A) a living stage of a protozoan, animal, bacteria, fungus, virus, viroid, infection agent, or parasitic plant that can directly or indirectly injure or cause damage to, or cause disease in, a plant or plant product; or

(B) an article that is similar to or allied with an article referred to in subparagraph (A).

(19) PLANT PRODUCT.—The term ''plant product'' means a flower, fruit, vegetable, root, bulb, seed, or other plant part that is not considered a plant or a manufactured or processed plant or plant part.

(20) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

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

(22) UNITED STATES.—The term ''United States'', when used in a geographical sense, means all of the States.

SEC. 4. RESTRICTIONS ON MOVEMENT OF PLANTS, PLANT PRODUCTS, BIOLOGICAL CONTROL ORGANISMS, PLANT PESTS, NOXIOUS WEEDS, ARTICLES, AND MEANS OF CONVEYANCE.

(a) IN GENERAL.—The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of a plant, plant product, biological control organism, plant pest, noxious weed,

article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the interstate dissemination of a plant pest or noxious weed.

(b) MAIL.—

(1) IN GENERAL.—No person shall convey in the mail, or deliver from a post office or by a mail carrier, a letter or package containing a plant pest, biological control organism, or noxious weed unless it is mailed in accordance with such regulations as the Secretary may issue to prevent the introduction into the United States, or interstate dissemination, of plant pests or noxious weeds.

(2) POSTAL EMPLOYEES.—This subsection shall not apply to an employee of the United States in the performance of the duties of the employee in handling the mail.

(3) POSTAL LAWS AND REGULATIONS.—Nothing in this subsection authorizes a person to open a mailed letter or other mailed sealed matter except in accordance with the postal laws and regulations.

(c) STATE RESTRICTIONS ON NOXIOUS WEEDS.—No person shall move into a State, or sell or offer for sale in the State, a plant species the sale of which is prohibited by the State because the plant species is designated as a noxious weed or has a similar designation.

(d) ADMINISTRATION.—The Secretary may issue regulations to carry out this section, including regulations requiring that a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance imported, entered, to be exported, or moved in interstate commerce—

(1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, or movement in interstate commerce;

(2) be accompanied by a certificate of inspection issued in a manner and form required by the Secretary or by an appropriate official of the country or State from which the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is to be moved;

(3) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests; and

(4) in the case of a plant or biological control organism, be grown or handled under post-entry quarantine conditions by or under the supervision of the Secretary for the purpose of determining whether the plant or biological control organism may be infested with a plant pest or noxious weed, or may be a plant pest or noxious weed.

(e) LIST OF RESTRICTED NOXIOUS WEEDS.—

(1) PUBLICATION.—The Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States.

(2) PETITIONS TO ADD OR REMOVE PLANT SPECIES.—

(A) IN GENERAL.—A person may petition the Secretary to add or remove a plant species from the list required under paragraph (1).

(B) ACTION ON PETITION.—The Secretary shall—

(i) act on a petition not later than 1 year after receipt of the petition by the Secretary; and

(ii) notify the petitioner of the final action the Secretary takes on the petition.

(C) BASIS FOR DETERMINATION.—The Secretary's determination on the petition shall be based on sound science, available data and technology, and information received from public comment.

(D) INCLUSION ON LIST.—To include a plant species on the list, the Secretary must determine that—

(i) the plant species is nonindigenous to the geographic region or ecosystem in which the species is spreading and causing injury; and

(ii) the dissemination of the plant in the United States may reasonably be expected to interfere with natural resources, agriculture, forestry, or a native ecosystem of a geographic region, or management of an ecosystem, or cause injury to the public health.

(f) CONFORMING AMENDMENTS.—

(1) Section 102 of the Act of September 21, 1944 (58 Stat. 735, chapter 412; 7 U.S.C. 147a) is amended by striking ''(a)'' in subsection (a) and all that follows through ''(2)'' in subsection (f)(2).

(2) The matter under the heading ''ENFORCEMENT OF THE PLANT-QUARANTINE ACT:'' under the heading ''MISCELLANEOUS'' of the Act of March 4, 1915 (commonly known as the ''Terminal Inspection Act'') (38 Stat. 1113, chapter 144; 7 U.S.C. 166) is amended—

(A) in the second paragraph—

(i) by striking ''plants and plant products'' each place it appears and inserting ''plants, plant products, animals, and other organisms'';

(ii) by striking ''plants or plant products'' each place it appears and inserting ''plants, plant products, animals, or other organisms'';

(iii) by striking ''plant-quarantine law or plant-quarantine regulation'' each place it appears and inserting ''plant-quarantine or other law or plant-quarantine regulation'';

(iv) in the second sentence—

(I) by striking ''Upon his approval of said list, in whole or in part, the Secretary of Agriculture'' and inserting ''On the receipt of the list by the Secretary of Agriculture, the Secretary''; and

(II) by striking ''said approved lists'' and inserting ''the lists'';

(v) by inserting after the second sentence the following: ''On the request of a representative of a State, a Federal agency shall act on behalf of the State to obtain a warrant to inspect mail to carry out this paragraph.''; and

(vi) in the last sentence, by striking ''be forward'' and inserting ''be forwarded''; and

(B) in the third paragraph, by striking ''plant or plant product'' and inserting ''plant, plant product, animal, or other organism''.

SEC. 5. NOTIFICATION OF ARRIVAL AND INSPECTION BEFORE MOVEMENT OF PLANTS, PLANT PRODUCTS, BIOLOGICAL CONTROL ORGANISMS, PLANT PESTS, NOXIOUS WEEDS, ARTICLES, AND MEANS OF CONVEYANCE.

(a) NOTIFICATION AND HOLDING BY SECRETARY OF THE TREASURY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of the Treasury shall—

(A) promptly notify the Secretary of the arrival of a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance at a port of entry; and

(B) hold the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance until inspected and authorized for entry into or transit movement through the United States, or otherwise released by the Secretary.

(2) APPLICATION.—Paragraph (1) shall not apply to a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that is imported from a country or region of countries that the Secretary designates as exempt from paragraph (1), pursuant to such regulations as the Secretary may issue.

(b) NOTIFICATION BY RESPONSIBLE PERSON.—The person responsible for a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance subject to subsection (a) shall promptly, on arrival at the port of entry and before the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is moved from the port of entry, notify the Secretary or, at the Secretary's direction, the proper official of the State to which the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is destined, or both, as the Secretary may prescribe, of—

(1) the name and address of the consignee;

(2) the nature and quantity of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance proposed to be moved; and

(3) the country and locality where the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance was grown, produced, or located.

(c) NO MOVEMENT WITHOUT INSPECTION AND AUTHORIZATION.—No person shall move from the port of entry or interstate an imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance unless the imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance has been inspected and authorized for entry into or transit movement through the United States, or otherwise released by the Secretary.

SEC. 6. REMEDIAL MEASURES OR DISPOSAL FOR PLANT PESTS OR NOXIOUS WEEDS; EXTRAORDINARY EMERGENCY.

(a) REMEDIAL MEASURES OR DISPOSAL FOR PLANT PESTS OR NOXIOUS WEEDS.—

(1) IN GENERAL.—Except as provided in subsection (c), if the Secretary considers it necessary to prevent the dissemination of a plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of—

(A) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that is moving into or through the United States or interstate and that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(B) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that has moved into the United States or interstate and that the Secretary has reason to believe was infested with the plant pest or noxious weed at the time of the movement;

(C) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this Act;

(D) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that has not been maintained in compliance with a post-entry quarantine requirement;

(E) a progeny of a plant, plant product, biological control organism, plant pest, or noxious weed that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this Act; or

(F) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that is infested

with a plant pest or noxious weed that the Secretary has reason to believe was moved into the United States or in interstate commerce.

(2) ORDERING TREATMENT OR DISPOSAL BY THE OWNER.—Except as provided in subsection (c), the Secretary may order the owner of a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance subject to disposal under paragraph (1), or the owner's agent, to treat, apply other remedial measures to, destroy, or otherwise dispose of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance, without cost to the Federal Government and in a manner the Secretary considers appropriate.

(3) CLASSIFICATION SYSTEM FOR NOXIOUS WEEDS.—

(A) IN GENERAL.—To facilitate control of noxious weeds, the Secretary shall develop a classification system to describe the status and action levels for noxious weeds.

(B) CATEGORIES.—The classification system shall differentiate between—

(i) noxious weeds that are not known to be introduced into the United States;

(ii) noxious weeds that are not known to be widely disseminated within the United States;

(iii) noxious weeds that are widely distributed within the United States; and

(iv) noxious weeds that are not indigenous, including native plant species that are invasive in limited geographic areas within the United States.

(C) OTHER CATEGORIES.—In addition to the categories required under subparagraph (B), the Secretary may establish other categories of noxious weeds for the system.

(D) VARYING LEVELS OF REGULATION AND CONTROL.—The Secretary shall develop varying levels of regulation and control appropriate to each of the categories of the system.

(E) APPLICATION OF REGULATIONS.—The regulations issued to carry out this paragraph shall apply, as the Secretary considers appropriate, to—

(i) exclude a noxious weed;

(ii) prevent further dissemination of a noxious weed through movement or commerce;

(iii) establish mandatory controls for a noxious weed; or

(iv) designate a noxious weed as warranting control efforts.

(F) REVISIONS.—The Secretary shall revise the classification system, and the placement of individual noxious weeds within the system, in response to changing circumstances.

(G) INTEGRATED MANAGEMENT PLANS.—In conjunction with the classification system, the Secretary may develop an integrated management plan for a noxious weed for the geographic region or ecological range of the United States where the noxious weed is found or to which the noxious weed may spread.

(b) EXTRAORDINARY EMERGENCIES.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary determines that an extraordinary emergency exists because of the presence of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest or noxious weed threatens a crop, other plant, plant product, or the natural resources or environment of the United States, the Secretary may—

(A) hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(B) quarantine, treat, or apply other remedial measures to a premises, including a plant, plant product, biological control organism, article, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(C) quarantine a State or portion of a State in which the Secretary finds the plant pest or noxious weed, or a plant, plant product, biological control organism, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed; or

(D) prohibit or restrict the movement within a State of a plant, plant product, biological control organism, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed.

(2) REQUIREMENTS FOR ACTION.—

(A) INADEQUATE STATE MEASURES.—After review and consultation with the Governor or other appropriate official of the State, the Secretary may take action under this subsection only on a finding that the measures being taken by the State are inadequate to eradicate the plant pest or noxious weed.

(B) NOTICE TO STATE AND PUBLIC.—Before taking any action in a State under this subsection, the Secretary shall—

(i) notify the Governor or another appropriate official of the State;

(ii) issue a public announcement; and

(iii) except as provided in subparagraph (C), publish in the Federal Register a statement of—

(I) the Secretary's findings;

(II) the action the Secretary intends to take;

(III) the reason for the intended action; and

(IV) if practicable, an estimate of the anticipated duration of the extraordinary emergency.

(C) NOTICE AFTER ACTION.—If it is not practicable to publish a statement in the Federal Register under subparagraph (B) prior to taking an action under this subsection, the Secretary shall publish the statement in the Federal Register within a reasonable period of time, not to exceed 10 business days, after commencement of the action.

(3) COMPENSATION.—

(A) IN GENERAL.—The Secretary may pay compensation to a person for economic losses incurred by the person as a result of action taken by the Secretary under paragraph (1).

(B) FINAL DETERMINATION.—The determination by the Secretary of the amount of any compensation paid under this subsection shall be final and shall not be subject to judicial review.

(c) LEAST DRASTIC ACTION TO PREVENT DISSEMINATION.—No plant, plant product, biological control organism, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible, and that would be adequate, to prevent the dissemination of a plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

(d) COMPENSATION OF OWNER FOR UNAUTHORIZED DISPOSAL.—

(1) IN GENERAL.—The owner of a plant, plant product, biological control organism, article, or means of conveyance destroyed or otherwise disposed of by the Secretary under this section may bring an action against the United States in the United States District Court of the District of Columbia, not later than 1 year after the destruction or disposal, and recover just compensation for the destruction or disposal of the plant, plant product, biological control organism, article, or means of conveyance (not including compensation for loss due to delays incident to determining eligibility for importation, entry, exportation, movement in interstate commerce, or release into the environment) if the owner establishes that the destruction or disposal was not authorized under this Act.

(2) SOURCE FOR PAYMENTS.—A judgment rendered in favor of the owner shall be paid out of the money in the Treasury appropriated for plant pest control activities of the Department of Agriculture.

SEC. 7. INSPECTIONS, SEIZURES, AND WARRANTS.

(a) IN GENERAL.—Consistent with guidelines approved by the Attorney General, the Secretary may—

(1) stop and inspect, without a warrant, a person or means of conveyance moving into the United States to determine whether the person or means of conveyance is carrying a plant, plant product, biological control organism, or article regulated under this Act or is moving subject to this Act;

(2) stop and inspect, without a warrant, a person or means of conveyance moving in interstate commerce on probable cause to believe that the person or means of conveyance is carrying a plant, plant product, biological control organism, or article regulated under this Act or is moving subject to this Act;

(3) stop and inspect, without a warrant, a person or means of conveyance moving in interstate commerce from or within a State, portion of a State, or premises quarantined under section 6(b) on probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, or article regulated under this Act or is moving subject to this Act; and

(4) enter, with a warrant, a premises in the United States for the purpose of making inspections and seizures under this Act.

(b) WARRANTS.—

(1) IN GENERAL.—A United States judge, a judge of a court of record in the United States, or a United States magistrate judge may, within the judge's or magistrate's jurisdiction, on proper oath or affirmation showing probable cause to believe that there is on certain premises a plant, plant product, biological control organism, article, facility, or means of conveyance regulated under this Act, issue a warrant for entry on the premises to make an inspection or seizure under this Act.

(2) EXECUTION.—The warrant may be executed by the Secretary or a United States Marshal.

SEC. 8. COOPERATION.

(a) IN GENERAL.—To carry out this Act, the Secretary may cooperate with—

(1) other Federal agencies;

(2) States or political subdivisions of States;

(3) national, State, or local associations;

(4) national governments;

(5) local governments of other nations;

(6) international organizations;

(7) international associations; and

(8) other persons.

(b) RESPONSIBILITY.—The individual or entity cooperating with the Secretary shall be responsible for conducting the operations or taking measures on all land and property within the foreign country or State, other than land and property owned or controlled by the United States, and for other facilities and means determined by the Secretary.

(c) TRANSFER OF BIOLOGICAL CONTROL METHODS.—At the request of a Federal or

State land management agency, the Secretary may transfer to the agency biological control methods utilizing biological control organisms against plant pests or noxious weeds.

(d) IMPROVEMENT OF PLANTS, PLANT PRODUCTS, AND BIOLOGICAL CONTROL ORGANISMS.—The Secretary may cooperate with State authorities in the administration of regulations for the improvement of plants, plant products, and biological control organisms.

SEC. 9. PHYTOSANITARY CERTIFICATE FOR EXPORTS.

The Secretary may certify a plant, plant product, or biological control organism as free from plant pests and noxious weeds, and exposure to plant pests and noxious weeds, according to the phytosanitary requirements of the country to which the plant, plant product, or biological control organism may be exported.

SEC. 10. ADMINISTRATION.

(a) IN GENERAL.—The Secretary may acquire and maintain such real or personal property, employ such persons, make such grants, and enter into such contracts, cooperative agreements, memoranda of understanding, or other agreements as are necessary to carry out this Act.

(b) PERSONNEL OF USER FEE SERVICES.—Notwithstanding any other law, the Secretary shall provide adequate personnel for services provided under this Act that are funded by user fees.

(c) TORT CLAIMS.—

(1) IN GENERAL.—The Secretary may pay a tort claim (in the manner authorized in the first paragraph of section 2672 of title 28, United States Code) if the claim arises outside the United States in connection with an activity authorized under this Act.

(2) TIME LIMITATION.—A claim may not be allowed under paragraph (1) unless the claim is presented in writing to the Secretary not later than 2 years after the claim accrues.

SEC. 11. REIMBURSABLE AGREEMENTS.

(a) PRECLEARANCE.—

(1) IN GENERAL.—The Secretary may enter into a reimbursable fee agreement with a person for preclearance (at a location outside the United States) of plants, plant products, and articles for movement into the United States.

(2) ACCOUNT.—All funds collected under this subsection shall be credited to an account that may be established by the Secretary and remain available until expended without fiscal year limitation.

(b) OVERTIME.—

(1) IN GENERAL.—Notwithstanding any other law, the Secretary may pay an employee of the Department of Agriculture performing services under this Act relating to imports into and exports from the United States, for all overtime, night, or holiday work performed by the employee, at a rate of pay determined by the Secretary.

(2) REIMBURSEMENT OF SECRETARY.—The Secretary may require a person for whom the services are performed to reimburse the Secretary for any funds paid by the Secretary for the services.

(3) ACCOUNT.—All funds collected under this subsection shall be credited to the account that incurs the costs and remain available until expended without fiscal year limitation.

(c) LATE PAYMENT PENALTY AND INTEREST.—

(1) PENALTY.—On failure of a person to reimburse the Secretary in accordance with this section, the Secretary may assess a late payment penalty against the person.

(2) INTEREST.—Overdue funds due the Secretary under this section shall accrue interest in accordance with section 3717 of title 31, United States Code.

(3) ACCOUNT.—A late payment penalty and accrued interest shall be credited to the account that incurs the costs and shall remain available until expended without fiscal year limitation.

SEC. l2. VIOLATIONS; PENALTIES.

(a) CRIMINAL PENALTIES.—A person who knowingly violates this Act, or who knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys a certificate, permit, or other document provided under this Act shall be guilty of a misdemeanor, and, on conviction, shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 1 year, or both.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—A person who violates this Act, or who forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys a certificate, permit, or other document provided under this Act may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary of not more than $25,000 for each violation.

(2) FINAL ORDER.—The order of the Secretary assessing a civil penalty shall be treated as a final order that is reviewable under chapter 158 of title 28, United States Code.

(3) VALIDITY OF ORDER.—The validity of an order of the Secretary may not be reviewed in an action to collect the civil penalty.

(4) INTEREST.—A civil penalty not paid in full when due under an order assessing the civil penalty shall (after the due date) accrue interest until paid at the rate of interest applicable to a civil judgment of a court of the United States.

(c) PECUNIARY GAINS OR LOSSES.—If a person derives pecuniary gain from an offense described in subsection (a) or (b), or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than an amount that is the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the imposition of a fine or sentence under subsection (a) or (b).

(d) AGENTS.—For purposes of this Act, the act, omission, or failure of an officer, agent, or person acting for or employed by any other person within the scope of the employment or office of the other person shall be considered also to be the act, omission, or failure of the other person.

(e) CIVIL PENALTIES OR NOTICE IN LIEU OF PROSECUTION.—The Secretary shall coordinate with the Attorney General to establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this Act.

SEC. 13. ENFORCEMENT.

(a) INVESTIGATIONS, EVIDENCE, AND SUBPOENAS.—

(1) INVESTIGATIONS.—The Secretary may gather and compile information and conduct any investigations the Secretary considers necessary for the administration and enforcement of this Act.

(2) EVIDENCE.—The Secretary shall at all reasonable times have the right to examine and copy any documentary evidence of a person being investigated or proceeded against.

(3) SUBPOENAS.—

(A) IN GENERAL.—The Secretary shall have power to require by subpoena the attendance and testimony of any witness and the production of all documentary evidence relating to the administration or enforcement of this Act or any matter under investigation in connection with this Act.

(B) LOCATION.—The attendance of a witness and production of documentary evidence may be required from any place in the United States at any designated place of hearing.

(C) NONCOMPLIANCE WITH SUBPOENA.—If a person disobeys a subpoena, the Secretary may request the Attorney General to invoke the aid of a court of the United States within the jurisdiction in which the investigation is conducted, or where the person resides, is found, transacts business, is licensed to do business, or is incorporated to require the attendance and testimony of a witness and the production of documentary evidence.

(D) ORDER.—If a person disobeys a subpoena, the court may order the person to appear before the Secretary and give evidence concerning the matter in question or to produce documentary evidence.

(E) NONCOMPLIANCE WITH ORDER.—A failure to obey the court's order may be punished by the court as a contempt of the court.

(F) FEES AND MILEAGE.—

(i) IN GENERAL.—A witness summoned by the Secretary shall be paid the same fees and reimbursement for mileage that is paid to a witness in the courts of the United States.

(ii) DEPOSITIONS.—A witness whose deposition is taken, and the person taking the deposition, shall be entitled to the same fees that are paid for similar services in a court of the United States.

(b) ATTORNEY GENERAL.—The Attorney General may—

(1) prosecute, in the name of the United States, a criminal violation of this Act that is referred to the Attorney General by the Secretary or is brought to the notice of the Attorney General by a person;

(2) bring an action to enjoin the violation of or to compel compliance with this Act, or to enjoin any interference by a person with the Secretary in carrying out this Act, if the Secretary has reason to believe that the person has violated or is about to violate this Act, or has interfered, or is about to interfere, with the Secretary; and

(3) bring an action for the recovery of any unpaid civil penalty, funds under a reimbursable agreement, late payment penalty, or interest assessed under this Act.

(c) JURISDICTION.—

(1) IN GENERAL.—Except as provided in section 12(b), a United States district court, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of other territories and possessions shall have jurisdiction over all cases arising under this Act.

(2) VENUE.—Except as provided in subsection (b), an action arising under this Act may be brought, and process may be served, in the judicial district where a violation or interference occurred or is about to occur, or where the person charged with the violation, interference, impending violation, impending interference, or failure to pay resides, is found, transacts business, is licensed to do business, or is incorporated.

(3) SUBPOENAS.—A subpoena for a witness to attend court in a judicial district or to testify or produce evidence at an administrative hearing in a judicial district in an action or proceeding arising under this Act may apply to any other judicial district.

SEC. 14. PREEMPTION.

(a) IN GENERAL.—Except as provided in subsection (b), no State or political subdivision of a State may regulate any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in foreign commerce to control a plant pest or noxious weed, eradicate a plant pest or noxious weed, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.

(b) STATE NOXIOUS WEED LAWS.—This Act shall not invalidate the law of any State or

political subdivision of a State relating to noxious weeds, except that a State or political subdivision of a State may not permit any action that is prohibited under this Act.

SEC. 15. REGULATIONS AND ORDERS.

The Secretary may issue such regulations and orders as the Secretary considers necessary to carry out this Act, including (at the option of the Secretary) regulations and orders relating to—

(1) notification of arrival of plants, plant products, biological control organisms, plant pests, noxious weeds, articles, or means of conveyance;

(2) prohibition or restriction of or on the importation, entry, exportation, or movement in interstate commerce of plants, plant products, biological control organisms, plant pests, noxious weeds, articles, or means of conveyance;

(3) holding, seizure of, quarantine of, treatment of, application of remedial measures to, destruction of, or disposal of plants, plant products, biological control organisms, plant pests, noxious weeds, articles, premises, or means of conveyance;

(4) in the case of an extraordinary emergency, prohibition or restriction on the movement of plants, plant products, biological control organisms, plant pests, noxious weeds, articles, or means of conveyance;

(5) payment of compensation;

(6) cooperation with other Federal agencies, States, political subdivisions of States, national governments, local governments of other countries, international organizations, international associations, and other persons, entities, and individuals;

(7) transfer of biological control methods for plant pests or noxious weeds;

(8) negotiation and execution of agreements;

(9) acquisition and maintenance of real and personal property;

(10) issuance of letters of warning;

(11) compilation of information;

(12) conduct of investigations;

(13) transfer of funds for emergencies;

(14) approval of facilities and means of conveyance;

(15) denial of approval of facilities and means of conveyance;

(16) suspension and revocation of approval of facilities and means of conveyance;

(17) inspection, testing, and certification;

(18) cleaning and disinfection;

(19) designation of ports of entry;

(20) imposition and collection of fees, penalties, and interest;

(21) recordkeeping, marking, and identification;

(22) issuance of permits and phytosanitary certificates;

(23) establishment of quarantines, post-importation conditions, and post-entry quarantine conditions;

(24) establishment of conditions for transit movement through the United States; and

(25) treatment of land for the prevention, suppression, or control of plant pests or noxious weeds.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS; TRANSFERS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Act.

(2) INDEMNITIES.—Except as specifically authorized by law, no part of the money made available under paragraph (1) shall be used to pay an indemnity for property injured or destroyed by or at the direction of the Secretary.

(b) TRANSFERS.—

(1) IN GENERAL.—In connection with an emergency in which a plant pest or noxious weeds threatens any segment of the agricultural production of the United States, the Secretary may transfer (from other appropriations or funds available to an agency or corporation of the Department of Agriculture) such funds as the Secretary considers necessary for the arrest, control, eradication, and prevention of the spread of the plant pest or noxious weed and for related expenses.

(2) AVAILABILITY.—Any funds transferred under this subsection shall remain available to carry out paragraph (1) without fiscal year limitation.

SEC. 17. REPEALS.

The following provisions of law are repealed:

(1) Public Law 97–46 (7 U.S.C. 147b).

(2) The Joint Resolution of April 6, 1937 (50 Stat. 57, chapter 69; 7 U.S.C. 148 et seq.).

(3) Section 1773 of the Food Security Act of 1985 (7 U.S.C. 148f).

(4) The Act of January 31, 1942 (56 Stat. 40, chapter 31; 7 U.S.C. 149).

(5) The Golden Nematode Act (7 U.S.C. 150 et seq.).

(6) The Federal Plant Pest Act (7 U.S.C. 150aa et seq.).

(7) The Act of August 20, 1912 (commonly known as the ''Plant Quarantine Act'') (37 Stat. 315, chapter 308; 7 U.S.C. 151 et seq.).

(8) The Halogeton Glomeratus Control Act (7 U.S.C. 1651 et seq.).

(9) The Act of August 28, 1950 (64 Stat. 561, chapter 815; 7 U.S.C. 2260).

(10) The Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 et seq.), other than the first section of the Act (Public Law 93–629; 7 U.S.C. 2801 note) and section 15 of the Act (7 U.S.C. 2814).

By Mr. GRAMM:

S. 84. A bill to authorize negotiation of free trade agreements with the countries of the Americas, and for other purposes; to the Committee on Finance.

S. 85. A bill to authorize negotiation for the accession of Chile to the North American Free Trade Agreement, and for other purposes; to the Committee on Finance.

AMERICAS FREE TRADE ACT AND NAFTA ACCESSION ACT

Mr. GRAMM. Mr. President, when America trades, America wins. The United States of America is the greatest trading Nation the world has ever known. From beef to computers to engineering, last year American workers exported more than $830 billion in goods and services. No other country even came close.

Over the last decade, America's exports in goods of all kinds grew by 131 percent. By comparison, Europe's exports of goods grew by 55 percent, and Japan's total grew less than half the rate of Europe's by 24 percent. The U.S. trade expansion involved virtually every sector of the economy, but it was particularly pronounced in the export of manufactured goods. From 1985 to 1995, U.S. exports of manufactured goods grew by over 180 percent. That growth rate was six times the rate for Germany and almost nine times Japan's export growth.

In short, trade is our game. American workers, businesses, and farms are more competitive and far more successful than the merchants of fear and defeatism advertise.

Fortunately, we have resisted incessant cries to model our economic and trade policies after those of Japan, Germany, and others, and we have outperformed them in every respect. Lately, one does not hear much talk about the Japanese economic miracle, and Germany's double-digit unemployment rate finds few admirers. Instead, what Pericles said of ancient Athens in the days of that city's glory may without fear be said of us. ''The magnitude of our city draws the produce of the world into our harbor, so that to the Athenian the fruits of other countries are as familiar a luxury as those of his own.''

In fact, successful economic and trade policies have resulted in the addition of 18 million jobs to the Nation since 1985, 6 million jobs more than the total job creation for Japan and the nations of the European Community combined.

We must not forget that the most valuable products of trade are high-wage jobs. An export-related job in America pays better, 15 percent better, than the average pay in the Nation. Today, America exports over $26,000 in manufactured goods for every man and woman employed in manufacturing.

In January 1988, President Reagan gave his final State of the Union address. As a veteran of those trade battles, President Reagan warned us all: ''A creative, competitive America is the answer to a changing world, not trade wars that would close doors, create great barriers, and destroy millions of jobs. We should always remember: protectionism is destructionism.''

Mr. President, on May 21, 1986, I introduced legislation to begin negotiations for a free trade agreement with Mexico. On February 26, 1987, I introduced a bill that laid out a framework for negotiating a North American free trade area, and on June 26 of that same year the Senate adopted an amendment that I offered to the omnibus trade bill, authorizing the negotiation of a North American Free Trade Agreement.

On February 7, 1989, I once again introduced trade legislation and called for a free trade agreement encompassing the entire Western Hemisphere. I have introduced similar legislation in the 103d and the 104th Congress, providing authority for negotiation of a free trade agreement with the nations of the Americas.

Today I am introducing two pieces of legislation to extend free trade from Point Barrow, AK, to Cape Horn at the tip of South America. The first bill, the Americas Free Trade Act, will provide fast track authority for consideration of free trade agreements with any or all of the nations of the Western Hemisphere.

While renewing fast track authority, the legislation provides two very important reforms made necessary by the abuse of the fast track authority in the most recent trade agreement. First of all, the legislation explicitly excludes labor and environmental provisions from the fast track approval process.

These are important issues to be addressed in our relations with other nations, but the Senate must not surrender its constitutional treaty review responsibilities over these important matters.

The legislation also deals with the problem of unrelated matters being included in a bill implementing a trade agreement. Similar to the Byrd Rule that excludes extraneous matter from reconciliation legislation, this bill will permit a point of order to be raised against any provision in an implementing bill that is not necessary to carry out the provisions of the trade agreement. This point of order, as with the Byrd Rule, would strike the offending provision from the bill rather than cause the entire bill to fail.

As with legislation that I have introduced in the past, this bill provides special procedures for trade agreements with Cuba. In short, Fidel Castro's Cuba would not be eligible, but a free trade agreement with a free Cuba would be made a national priority.

I am also introducing today legislation to provide for Chile to join the North American Free Trade Agreement. While I would prefer the extension of fast track authority for free trade agreements for any nation of the Western Hemisphere, as the Americas Free Trade Act would do, I do not believe that we should delay the process of including Chile in NAFTA, or hold Chile hostage to that process, should a broader trade bill require more time to be enacted. I believe that a free trade agreement with Chile could and should be concluded this year, and I am eager to see the progress toward lower barriers to trade and economic growth move forward.

We are the best competitor the world has ever known, and we have the biggest stake. Trade and expanding economic opportunity power America's engines of economic growth and prosperity. Let us embrace them, not destroy them.

Mr. President, I ask unanimous consent that the text of the Americas Free Trade Act and the NAFTA Accession Act, together with an outline of each bill, be included in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 84

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 ''Americas Free Trade Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The countries of the Western Hemisphere have enjoyed more success in the twentieth century in the peaceful conduct of their relations among themselves than have the countries in the rest of the world.

(2) The economic prosperity of the United States and its trading partners in the Western Hemisphere is increased by the reduction of trade barriers.

(3) Trade protection endangers economic prosperity in the United States and throughout the Western Hemisphere and undermines civil liberty and constitutionally limited government.

(4) The successful establishment of a North American Free Trade Area sets the pattern for the reduction of trade barriers throughout the Western Hemisphere, enhancing prosperity in place of the cycle of increasing trade barriers and deepening poverty that results from a resort to protectionism and trade retaliation.

(5) The reduction of government interference in the foreign and domestic sectors of a nation's economy and the concomitant promotion of economic opportunity and freedoms promote civil liberty and constitutionally limited government.

(6) Countries that observe a consistent policy of free trade, the promotion of free enterprise and other economic freedoms (including effective protection of private property rights), and the removal of barriers to foreign direct investment, in the context of constitutionally limited government and minimal interference in the economy, will follow the surest and most effective prescription to alleviate poverty and provide for economic, social, and political development.

SEC. 3. FREE TRADE AREA FOR THE WESTERN HEMISPHERE.

(a) IN GENERAL.—The President shall take action to initiate negotiations to obtain trade agreements with the sovereign countries located in the Western Hemisphere, the terms of which provide for the reduction and ultimate elimination of tariffs and other nontariff barriers to trade, for the purpose of promoting the eventual establishment of a free trade area for the entire Western Hemisphere.

(b) RECIPROCAL BASIS.—An agreement entered into under subsection (a) shall be reciprocal and provide mutual reductions in trade barriers to promote trade, economic growth, and employment.

(c) BILATERAL OR MULTILATERAL BASIS.—Agreements may be entered into under subsection (a) on a bilateral basis with any foreign country described in that subsection or on a multilateral basis with all of such countries or any group of such countries.

SEC. 4. FREE TRADE WITH FREE CUBA.

(a) RESTRICTIONS PRIOR TO RESTORATION OF FREEDOM IN CUBA.—The provisions of this Act shall not apply to Cuba unless the President certifies to Congress that—

(1) freedom has been restored in Cuba; and

(2) the claims of United States citizens for compensation for expropriated property have been appropriately addressed.

(b) STANDARDS FOR THE RESTORATION OF FREEDOM IN CUBA.—The President shall not make the certification that freedom has been restored in Cuba, for purpose of subsection (a), unless the President determines that—

(1) a constitutionally guaranteed democratic government has been established in Cuba with leaders chosen through free and fair elections;

(2) the rights of individuals to private property have been restored and are effectively protected and broadly exercised in Cuba;

(3) Cuba has a currency that is fully convertible domestically and internationally;

(4) all political prisoners have been released in Cuba; and

(5) the rights of free speech and freedom of the press in Cuba are effectively guaranteed.

(c) PRIORITY FOR FREE TRADE WITH FREE CUBA.—Upon making the certification described in subsection (a), the President shall give priority to the negotiation of a free trade agreement with Cuba.

SEC. 5. INTRODUCTION AND FAST-TRACK CONSIDERATION OF IMPLEMENTING BILLS.

(a) INTRODUCTION IN HOUSE AND SENATE.—When the President submits to Congress a bill to implement a trade agreement described in section 3, the bill shall be introduced (by request) in the House and the Senate as described in section 151(c) of the Trade Act of 1974 (19 U.S.C. 2191(c)).

(b) RESTRICTIONS ON CONTENT.—A bill to implement a trade agreement described in section 3—

(1) shall contain only provisions that are necessary to implement the trade agreement; and

(2) may not contain any provision that establishes (or requires or authorizes the establishment of) a labor or environmental protection standard or amends (or requires or authorizes an amendment of) any labor or environmental protection standard set forth in law or regulation.

(c) POINT OF ORDER IN SENATE.—

(1) APPLICABILITY TO ALL LEGISLATIVE FORMS OF IMPLEMENTING BILL.—For the purposes of this subsection, the term ''implementing bill'' means the following:

(A) THE BILL.—A bill described in subsection (a), without regard to whether that bill originated in the Senate or the House of Representatives.

(B) AMENDMENT.—An amendment to a bill referred to in subparagraph (A).

(C) CONFERENCE REPORT.—A conference report on a bill referred to in subparagraph (A).

(D) AMENDMENT BETWEEN HOUSES.—An amendment between the houses of Congress in relation to a bill referred to in subparagraph (A).

(E) MOTION.—A motion in relation to an item referred to in subparagraph (A), (B), (C), or (D).

(2) MAKING OF POINT OF ORDER.—

(A) AGAINST SINGLE ITEM.—When the Senate is considering an implementing bill, a Senator may make a point of order against any part of the implementing bill that contains material in violation of a restriction under subsection (b).

(B) AGAINST SEVERAL ITEMS.—Notwithstanding any other provision of law or rule of the Senate, when the Senate is considering an implementing bill, it shall be in order for a Senator to raise a single point of order that several provisions of the implementing bill violate subsection (b). The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order.

(3) EFFECT OF SUSTAINMENT OF POINT OF ORDER.—

(A) AGAINST SINGLE ITEM.—If a point of order made against a part of an implementing bill under paragraph (2)(A) is sustained by the Presiding Officer, the part of the implementing bill against which the point of order is sustained shall be deemed stricken.

(B) AGAINST SEVERAL ITEMS.—In the case of a point of order made under paragraph (2)(B) against several provisions of an implementing bill, only those provisions against which the Presiding Officer sustains the point of order shall be deemed stricken.

(C) STRICKEN MATTER NOT IN ORDER AS AMENDMENT.—Matter stricken from an implementing bill under this paragraph may not be offered as an amendment to the implementing bill (in any of its forms described in paragraph (1)) from the floor.

(4) WAIVERS AND APPEALS.—

(A) WAIVERS.—Before the Presiding Officer rules on a point of order under this subsection, any Senator may move to waive the point of order as it applies to some or all of the provisions against which the point of order is raised. Such a motion to waive is

amendable in accordance with the rules and precedents of the Senate.

(B) APPEALS.—After the Presiding Officer rules on a point of order under this subsection, any Senator may appeal the ruling of the Presiding Officer on the point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

(C) THREE-FIFTHS MAJORITY REQUIRED.—

(i) WAIVERS.—A point of order under this subsection is waived only by the affirmative vote of at least the requisite majority.

(ii) APPEALS.—A ruling of the Presiding Officer on a point of order under this subsection is sustained unless at least the requisite majority votes not to sustain the ruling.

(iii) REQUISITE MAJORITY.—For purposes of clauses (i) and (ii), the requisite majority is three-fifths of the Members of the Senate, duly chosen and sworn.

(c) APPLICABILITY OF FAST TRACK PROCEDURES.—Section 151 of the Trade Act of 1974 (19 U.S.C. 2191) is amended—

(1) in subsection (b)(1)—

(A) by inserting ''section 5 of the Americas Free Trade Act,'' after ''the Omnibus Trade and Competitiveness Act of 1988,''; and

(B) by amending subparagraph (C) to read as follows:

''(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary to implement such trade agreement or agreements or such extension, either repealing or amending existing laws or providing new statutory authority.''; and

(2) in subsection (c)(1), by inserting ''or under section 5 of the Americas Free Trade Act,'' after ''the Uruguay Round Agreements Act,''.

THE AMERICAS FREE TRADE ACT—SUMMARY

I. The President is directed to undertake negotiations to establish free trade agreements between the United States and countries of the Western Hemisphere (including North and South America and the Caribbean). Agreements may be bilateral or multilateral.

II. The President, before seeking a free trade agreement with Cuba under the Act, would have to certify (1) that freedom has been restored in Cuba, and (2) that the claims of U.S. citizens for compensation for expropriated property have been appropriately addressed. The President could make the certification that freedom has been restored to Cuba only if he determines that—

A. constitutionally guaranteed democratic government has been established in Cuba, with leaders freely and fairly elected;

B. private property rights have been restored and are effectively protected and broadly exercised;

C. Cuba has a convertible currency;

D. all political prisoners have been released; and

E. free speech and freedom of the press are effectively guaranteed.

If the President certifies that freedom has been restored to Cuba, priority will be given to the negotiation of a free trade agreement with Cuba.

III. Congressional fast track procedures for consideration of any such agreement (i.e. expedited consideration, no amendments), are extended permanently.

IV. Fast track procedures are amended to provide that they apply to an implementing bill only if such bill contains legislation that is ''necessary'' to implement the trade agreement. Also, such bills will be subject in the Senate to a procedure like the Byrd Rule that applies to extraneous provisions in reconciliation bills. That is, any provision that does not meet the ''necessary'' standard is subject to a point of order which, if sustained, causes the offending provisions to be stricken from the bill (rather than the whole bill falling), and this point of order can be overruled only by a vote of three-fifths of the members duly sworn.

V. Labor and environmental standards may not be included as elements of an implementing bill.

S. 85

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 ''NAFTA Accession Act''.

SEC. 2. ACCESSION OF CHILE TO THE NORTH AMERICAN FREE TRADE AGREEMENT.

Subject to section 3, the President is authorized to enter into an agreement which provides for the accession of Chile to the North American Free Trade Agreement and the provisions of section 151(c) of the Trade Act of 1974 (19 U.S.C. 2191(c)) shall apply with respect to a bill to implement such agreement if such agreement is entered into on or before December 31, 1998.

SEC. 3. INTRODUCTION AND FAST-TRACK CONSIDERATION OF IMPLEMENTING BILL.

(a) INTRODUCTION IN HOUSE AND SENATE.—When the President submits to Congress a bill to implement a trade agreement described in section 2, the bill shall be introduced (by request) in the House and the Senate as described in section 151(c) of the Trade Act of 1974 (19 U.S.C. 2191(c)).

(b) RESTRICTIONS ON CONTENT.—A bill to implement a trade agreement described in section 2—

(1) shall contain only provisions that are necessary to implement the trade agreement; and

(2) may not contain any provision that establishes (or requires or authorizes the establishment of) a labor or environmental protection standard or amends (or requires or authorizes an amendment of) any labor or environmental protection standard set forth in law or regulation.

(c) POINT OF ORDER IN SENATE.—

(1) APPLICABILITY TO ALL LEGISLATIVE FORMS OF IMPLEMENTING BILL.—For the purposes of this subsection, the term ''implementing bill'' means the following:

(A) THE BILL.—A bill described in subsection (a), without regard to whether that bill originated in the Senate or the House of Representatives.

(B) AMENDMENT.—An amendment to a bill referred to in subparagraph (A).

(C) CONFERENCE REPORT.—A conference report on a bill referred to in subparagraph (A).

(D) AMENDMENT BETWEEN HOUSES.—An amendment between the houses of Congress in relation to a bill referred to in subparagraph (A).

(E) MOTION.—A motion in relation to an item referred to in subparagraph (A), (B), (C), or (D).

(2) MAKING OF POINT OF ORDER.—

(A) AGAINST SINGLE ITEM.—When the Senate is considering an implementing bill, a Senator may make a point of order against any part of the implementing bill that contains material in violation of a restriction under subsection (b).

(B) AGAINST SEVERAL ITEMS.—Notwithstanding any other provision of law or rule of the Senate, when the Senate is considering an implementing bill, it shall be in order for a Senator to raise a single point of order that several provisions of the implementing bill violate subsection (b). The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order.

(3) EFFECT OF SUSTAINMENT OF POINT OF ORDER.—

(A) AGAINST SINGLE ITEM.—If a point of order made against a part of an implementing bill under paragraph (2)(A) is sustained by the Presiding Officer, the part of the implementing bill against which the point of order is sustained shall be deemed stricken.

(B) AGAINST SEVERAL ITEMS.—In the case of a point of order made under paragraph (2)(B) against several provisions of an implementing bill, only those provisions against which the Presiding Officer sustains the point of order shall be deemed stricken.

(C) STRICKEN MATTER NOT IN ORDER AS AMENDMENT.—Matter stricken from an implementing bill under this paragraph may not be offered as an amendment to the implementing bill (in any of its forms described in paragraph (1)) from the floor.

(4) WAIVERS AND APPEALS.—

(A) WAIVERS.—Before the Presiding Officer rules on a point of order under this subsection, any Senator may move to waive the point of order as it applies to some or all of the provisions against which the point of order is raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate.

(B) APPEALS.—After the Presiding Officer rules on a point of order under this subsection, any Senator may appeal the ruling of the Presiding Officer on the point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

(C) THREE-FIFTHS MAJORITY REQUIRED.—

(i) WAIVERS.—A point of order under this subsection is waived only by the affirmative vote of at least the requisite majority.

(ii) APPEALS.—A ruling of the Presiding Officer on a point of order under this subsection is sustained unless at least the requisite majority votes not to sustain the ruling.

(iii) REQUISITE MAJORITY.—For purposes of clauses (i) and (ii), the requisite majority is three-fifths of the Members of the Senate, duly chosen and sworn.

(c) APPLICABILITY OF FAST TRACK PROCEDURES.—Section 151 of the Trade Act of 1974 (19 U.S.C. 2191) is amended—

(1) in subsection (b)(1)—

(A) by inserting ''section 3 of the NAFTA Accession Act,'' after ''the Omnibus Trade and Competitiveness Act of 1988,''; and

(B) by amending subparagraph (C) to read as follows:

''(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary to implement such trade agreement or agreements or such extension, either repealing or amending existing laws or providing new statutory authority.''; and

(2) in subsection (c)(1), by inserting ''or under section 3 of the NAFTA Accession Act,'' after ''the Uruguay Round Agreements Act,''.

THE NAFTA ACCESSION ACT—SUMMARY

I. The President is directed to undertake negotiations for the accession of Chile to the North American Free Trade Agreement.

II. Congressional fast track procedures for consideration of any such agreement (i.e., expedited consideration, no amendments), are extended through December 31, 1998.

III. Fast track procedures are amended to provide that they apply to an implementing bill only if such bill contains legislation that is ''necessary'' to implement the trade agreement. Also, such bill will be subject in the

Senate to a procedure like the Byrd rule that applies to extraneous provisions in reconciliation bills. That is, any provision that does not meet the ''necessary'' standard is subject to a point of order which, if sustained, causes the offending provision to be stricken from the bill (rather than the whole bill falling), and this point of order can be overruled only by a vote of three-fifths of the members duly sworn.

IV. Labor and environmental standards may not be included as elements of an implementing bill.

By Ms. SNOWE (for herself and Mr. LEAHY):

S. 86. A bill to amend the Public Health Service Act to provide, with respect to research on breast cancer, for the increased involvement of advocates in decision making at the National Cancer Institute; to the Committee on Labor and Human Resources.

By Ms. SNOWE (for herself and Mrs. FEINSTEIN):

S. 87. A bill to amend the Public Health Service Act to provide a one-stop shopping information service for individuals with serious or life-threatening diseases; to the Committee on Labor and Human Resources.

By Ms. SNOWE:

S. 88. A bill to permit individuals to continue health plan coverage of services while participating in approved clinical studies; to the Committee on Labor and Human Resources.

S. 89. A bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services; to the Committee on Labor and Human Resources.

S. 90. A bill to require studies and guidelines for breast cancer screening for women ages 40–49, and for other purposes; to the Committee on Labor and Human Resources.

S. 91. A bill to establish an Office on Women's Health within the Department of Health and Human Services; to the Committee on Labor and Human Resources.

WOMEN'S HEALTH LEGISLATION

Ms. SNOWE. Mr. President, I rise today to introduce a package of six bills designed to improve the health of countless women across America. By introducing these bills during the opening days of the 105th Congress, I hope to convey that women's health is one of my top legislative priorities for this Congress, and that I will do everything I can to ensure that it is a priority for the 105th Congress as well.

For too many years, women's health care needs were ignored or poorly understood, and women were systematically excluded from important health research. One famous medical study on breast cancer examined hundreds of men. Another federally-funded study examined the ability of aspirin to prevent heart attacks in 20,000 medical doctors, all of whom were men, despite the fact that heart disease is the leading cause of death among women.

Today, members of Congress and the American public understand the importance of ensuring that both genders benefit equally from medical research and health care services. Unfortunately, equity does not yet exist in health care, and we have a long way to go. Knowledge about appropriate courses of treatment for women lags far behind that for men for many diseases. For years, research into diseases that predominantly affect women, such as breast cancer, went grossly underfunded. And many women do not have access to reproductive and other vital health services.

Throughout my tenure in the House and Senate, I have worked hard to expose and eliminate this health care gender gap and improve women's access to affordable, quality health services. As co-chairs of the Congressional Caucus for Women's Issues (CCWI), Representative Pat Schroeder and I, along with Representative Henry Waxman, called for a GAO investigation into the inclusion of women and minorities in medical research at the National Institutes of Health. This study documented the widespread exclusion of women from medical research, and spurred the Caucus to introduce the first Women's Health Equity Act (WHEA) in 1990. This comprehensive legislation provided Congress with its first broad, forward looking health agenda designed to redress the historical inequities that face women in medical research, prevention and services.

Since the initial introduction of WHEA, we have made important strides on behalf of women's health. Legislation from that first package became law in June 1993, mandating the inclusion of women and minorities in clinical trials at NIH. We secured dramatic funding increases for research into breast cancer, osteoporosis, and cervical cancer, and my legislation established the Office of Research on Women's Health at NIH. And last year the Mothers' and Newborns' Health Protection Act, which I cosponsored, became law. This Act will end the practice of ''drive-thru deliveries'', where hospitals discharge mothers and their newborns too soon after delivery.

Despite these achievements, women remain at a stark and singular disadvantage in our health care system and in health research. Equality in women's health remains a goal, not a completed task. Legislators must build on the gains that we have made on behalf of women's health to take the next crucial steps toward achieving equity. I believe that the package of bills which I am introducing today provides this framework for progress.

Several of the bills I am introducing today target one of the major public health crises facing this nation—breast cancer. This year alone, 180,000 new cases of breast cancer will be diagnosed in this country, and more than 44,000 women will die from the disease. Breast cancer is the most common form of cancer and the second leading cause of cancer deaths among American women.

Our first priority in the fight against breast cancer must be to maintain and strengthen our commitment to discovering new treatments for this deadly disease. As the Federal Government continues to fund breast cancer research, we also must ensure that funding goes to those projects which victims of breast cancer believe are important and meaningful to them in their fight against this disease.

Over the past three years, the Department of Defense has included lay breast cancer advocates in breast cancer research decision making. The involvement of these breast cancer advocates has helped foster new and innovative breast cancer research funding designs and research projects. While maintaining the highest level of quality assurance through peer review, breast cancer advocates have helped to ensure that all breast cancer research reflects the experiences and wisdom of the individuals who have lived with the disease. In addition, breast cancer advocates provide a vital educational link between the scientific and lay communities.

The first bill I am introducing today, which I am introducing with my colleague from Vermont, Senator LEAHY, urges the National Institutes of Health to follow the DOD's lead. This bill, the Consumer Involvement in Breast Cancer Research Act, urges NIH to include breast cancer advocates in breast cancer research decision making, and to report on progress that the Institute is making next year.

But funding new research alone is not enough—we must ensure that people who are suffering from deadly diseases such as breast cancer have access to information about the latest, most-innovative therapies which are frequently available only through experimental drug trials. At a breast cancer hearing which I sponsored last year with my colleagues, Senators CONNIE MACK and DIANNE FEINSTEIN, we heard testimony from breast cancer advocates on the difficulty patients and physicians face in learning about ongoing clinical trials. The second bill I introduce today addresses this knowledge gap, by establishing a data bank of information on clinical trials and experimental treatments for all serious or life-threatening illnesses.

This ''one-stop shopping information service'' will include a registry of all privately and publicly funded clinical trials, and will contain information describing the purpose of the trial, eligibility criteria for participating in the trial, as well as the location of the trial. The database will also contain information on the results of completed clinical trials, enabling patients to make fully informed decisions about medical treatments. The bill would allow people with a serious or life-threatening illness, or the doctor of a family member, to call a toll-free number to access this critical information so they could locate a clinical trial near them that may offer hope by extending their lives or alleviating their

suffering. I am pleased that my colleague from California, Senator FEINSTEIN, is joining me in introducing this important bill.

Providing people with information about clinical trials is only the first step in increasing access to experimental treatments—we must also ensure that they have adequate insurance coverage to cover costs associated with clinical trials. While pharmaceutical companies typically cover the costs of the experimental treatment, insurance companies are expected to cover the costs of non-experimental services. Yet many insurance companies deny coverage for these non-experimental services when a patient is enrolled in an experimental trial.

As a result, many patients who could benefit from these potentially life-saving investigational treatments do not have access to them because their insurance will not cover these associated costs. Denying reimbursement for these services also impedes the ability of scientists to conduct important research, by reducing the number of patients who are eligible to participate in clinical trials.

The third bill I am introducing today, the Improved Patient Access to Clinical Studies Act of 1997, addresses this problem. This bill would prohibit insurance companies from denying coverage for services provided to individuals participating in clinical trials, if those services would otherwise be covered by the plan. This bill would also prevent health plans from discriminating against enrollees who choose to participate in clinical trials.

Another form of discrimination in health insurance we see today is based on genetic information. This is a particular concern to women who inherit or may have inherited a mutated form of the breast cancer gene [BRCA1 or BRCA2]. Women who inherit either of these mutated genes have an 85 percent risk of developing breast cancer in their lifetime, and a 50 percent chance of developing ovarian cancer. Although there is no known treatment to ensure that women who carry the mutated gene do not develop breast cancer, genetic testing makes it possible for carriers of these mutated genes to take extra precautions in order to detect cancer at its earliest stages—precautions such as mammograms and self-examinations.

The tremendous promise of genetic testing, however, is significantly threatened when insurance companies use the results of genetic testing to deny or limit coverage to consumers on the basis of genetic information. Yet this practice is relatively common today. In fact, a recent survey of individuals with a known genetic condition in the family revealed that 22 percent had been denied health insurance coverage because of genetic information.

In addition to the potentially devastating consequences of being denied health insurance on the basis of genetic information, the fear of discrimination has equally harmful consequences for consumers and for scientific research. For example, many women who might take extra precautions if they knew they had the breast cancer gene may not seek testing because they fear losing their health insurance. Patients may be unwilling to disclose information about their genetic status to their physicians out of fear, hindering treatment or preventive efforts. And people may be unwilling to participate in potentially ground breaking research because they do not want to reveal information about their genetic status.

The Kassebaum/Kennedy Health Care Reform Act took the first step in protecting Americans in group health plans from genetic discrimination by preventing discrimination in health insurance based on a pre-exiting genetic condition. My bill, the Genetic Information Nondiscrimination in Health Insurance Act of 1997, takes the next crucial steps to prohibit genetic discrimination. My bill prevents insurers from charging higher premiums based on genetic information, prohibits insurers from requiring or requesting a genetic test as a condition of coverage, requires informed written consent before an insurance company can disclose genetic information to a third party, and extends these important protections to Medigap.

While there is much that we still do not know in the fight against breast cancer, we do know that mammograms are currently the most effective weapon we have in the fight against breast cancer. Yet experts still disagree about the effectiveness of mammograms for women in their forties. In fact, the National Cancer Institute (NCI) in 1993 reversed its position on the effectiveness of mammograms for women in their forties, producing widespread confusion in women and their doctors. To assure that American women have clear guidance from their government on when to have a mammogram, I am reintroducing my bill, the Breast Cancer Screening Act of 1997, directing NCI to reissue its guidelines recommending mammograms for women in this age group. This legislation is particularly crucial in light of recent studies that show a reduced death rate for women in their forties who seek mammograms. In fact, one Swedish study of 150,000 women conducted in 1996 showed a 25 percent lower death rate for women who obtained mammograms beginning in their forties.

Finally, the sixth bill I am introducing is the Women's Health Office Act of 1997. This bill creates or codifies offices of women's health at various federal agencies, including the Office of the Assistant Secretary at HHS, the Centers for Disease Control, the Agency for Health Care Policy and Research, the Health Resources and Services Administration and the Food and Drug Administration. This bill provides for short and long-range goals and coordination of all activities that related to disease prevention, health promotion, delivery of health services and scientific research concerning women. The bill also creates a clearinghouse for information on women's health.

By statutorily creating Offices of Women's Health, the Deputy Assistant Secretary for Women's Health will be able to better monitor various Public Health Service agencies and advise them on scientific, legal, ethical and policy issues. Agencies would establish a Coordinating Committee on Women's Health to identify and prioritize which women's health projects should be conducted. This will also provide a mechanism for coordination within and across these agencies, and with the private sector. But most importantly, this bill will ensure the presence of enduring offices dedicated to addressing the ongoing needs and gaps in research policy, programs, and education and training in women'shealth.

Improving the health of American women requires a far greater understanding of women's health needs and conditions, and ongoing evaluation in the areas of research, education, prevention, treatment and the delivery of services. I believe that passage of these important bills will help ensure that women's health will never again be a missing page in America's medical textbook.

Mrs. FEINSTEIN. Mr. President, today Senator SNOWE and I are introducing S. 87, a bill to set up a toll-free service so that people with life-threatening diseases and the medical community can find out about research projects on new treatments.

There are thousands of serious and life-threatening diseases, diseases for which we have no cure. For genetic diseases alone, there are 3,000 to 4,000. We are familiar with diseases like cancer, Alzheimer's disease and multiple sclerosis. But there are thousands of others that are not so common, like cystinosis, Tay-Sachs disease, Wilson's disease, and Sjogren's syndrome. Indeed, there are over 5,000 known rare diseases, diseases most of us have never heard of, affecting between 10 and 20 million Americans.

Cancer kills half a million Americans per year. Diabetes afflicts 15 million Americans per year, half of whom do not know they have it. Arthritis affects 40 million Americans every year. 15,000 American children die every year. Among children, the rates of chronic respiratory diseases (asthma, bronchitis and sinusitis), heart murmurs, migraine headaches, anemia, epilepsy and diabetes are increasing. Few families escape illness today. Every family fears it.

THE BILL

Our bill requires the Secretary of Health and Human Services to establish a ''one-stop shopping'' database, including a toll-free telephone number, so that patients and physicians can conveniently find out what clinical research trials are being conducted on experimental treatments. By accessing

this database, users would be able to find out the purpose of the study, eligibility requirements, research locations, and a contact person. Information would have to be presented in ''plain English,'' not ''medicalese,'' so that the average person could understand it.

Our bill is endorsed by the American Cancer Society, the National Organization for Rare Disorders, AIDS Action and the Alzheimer's Association.

A CONSTITUENT SUGGESTION

The need for this information center came from my constituent, Nancy Evans, of San Francisco's Breast Cancer Action, in a June 13, 1996 hearing of the Senate cancer coalition, which I co-chair with Senator MACK. She described the difficulty that cancer patients have in trying to find out what experimental treatments might be available, research trials sponsored by the federal government and by private companies. Most of them are desperate; most have tried everything. She testfied that the National Cancer Institute has established 1–800–4–CANCER, but the NCI information is incomplete. It does not include all trials and the information is often difficult for the lay person to understand.

In addition, the National Kidney Cancer Association has called for a central database.

PEOPLE IN SERIOUS NEED

It is helpful to think about the plight of the individuals that this bill could help. These are people who have a terminal illness; their physicians have tried every treatment they can find. Cancer patients, for example, have probably had several rounds of chemotherapy, which has left them, debilitated, virtually lifeless. These patients cling to slim hopes. They are desperate to try anything. But step one is finding out what is available, even if it is still in the experimental stage.

One survey found that a majority of patients and families are willing to use investigational drugs (drugs being researched but not approved for sale), but find it difficult to locate information on research projects. A similar survey of physicians found that 42 percent of physicians are unable to find printed information about rare illnesses.

HELP FOR PHYSICIANS

Physicians, no matter how competent and well trained, also cannot be knowledgeable about experimental treatments being researched. And most Americans do not have sophisticated computers hookups that provide them instant access to the latest information. Our witness, Nancy Evans, testified that she can find out more about a company's clinical trials by calling her stockbroker than by calling existing data services.

Many desperate families have called me, their U.S. Senator, seeking help. Others have lodged their pleas at the White House. Others call lawyers, 911, the local medical society, the local Chamber of Commerce, anything they can think of. Getting information on health research projects should not require a ''fishing expedition'' of futiile calls, ''good connections'' or the involvement of elected officials.

In 1988, Congress directed HHS to establish an AIDS Clinical Trials Information Services. It is now operational (1–800–TRIALS-A) so that patients, providers and their families can find out about AIDS clinical trials. All calls are confidential and experienced professionals at the service can help people.

IMPROVING HEALTH, RESEARCH

Facilitating access to information can also strengthen our health research effort. With a national database enabling people to find research trials, more people could be available to participate in research. This can help researchers broaden their pool of research participants.

MODEST HELP FOR THE ILL

The bill we introduce does not guarantee that anyone can participate in a clinical research trial. Researchers would still control who participates and set the requirements for the research. But for people who cling to hopes for a cure, for people who want to live longer, for people who want to feel better, this database can offer a little help.

If you have a life-threatening illness, you should not have to have political or other connections, computer sophistication or access to top-flight university medical schools to find out about research on treatments of disease

I hope this bill will offer some hope to the millions who are suffering today.

By Mr. KERRY:

S. 92. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on Labor and Human Resources.

WORKPLACE RELIGIOUS FREEDOM ACT

Mr. KERRY. Mr. President, I am proud today to introduce the Workplace Religious Freedom Act of 1997. This bill would protect workers from on-the-job discrimination. It represents a milestone in the protection of religious liberty, assuring that all workers have equal employment opportunities.

In 1972, Congress amended the Civil Rights Act of 1964 to require employers to reasonably accommodate an employee's religious practice or observance unless doing so would impose an undue hardship on the employer. This 1972 amendment, although completely appropriate, has been interpreted by the courts so narrowly as to place little restraint on an employer's refusal to provide religious accommodation. The ''Workplace Religious Freedom Act'' will restore to the religious accommodation provision the weight that Congress originally intended and help assure that employers have a meaningful obligation to reasonably accommodate their employees' religious practices.

The restoration of this protection is no small matter. For many religiously observant Americans the greatest peril to their ability to carry out their religious faiths on a day-to-day basis may come from employers. I have heard accounts from around the country about a small minority of employers who will not make reasonable accommodation for employees to observe the Sabbath and other holy days or for employees who must wear religiously-required garb, such as a yarmulke, or for employees to wear clothing that meets religious modesty requirements.

The refusal of an employer, absent undue hardship, to provide reasonable accommodation of a religious practice should be seen as a form of religious discrimination, as originally intended by Congress in 1972. And religious discrimination should be treated fully as seriously as any other form of discrimination that stands between Americans and equal employment opportunities. Enactment of the ''Workplace Religious Freedom Act'' will constitute an important step towards ensuring that all members of society, whatever their religious beliefs and practices, will be protected from an invidious form of discrimination.

It is important to recognize that, in addition to protecting the religious freedom of employees, this legislation protects employers from an undue burden. Employees would be allowed to take time off only if their doing so does not pose a significant difficulty or expense for the employer. This common sense definition of ''undue hardship'' is used in the Americans with Disabilities Act and has worked well in that context.

I believe this bill should receive bipartisan support. The same bill was endorsed in the last session by a wide range of organizations including the American Jewish Committee, the Baptist Joint Committee on Public Affairs, the Christian Legal Society, and the Jewish Community Relations Council of Greater Boston.

I urge this body to pass this legislation so that all American workers can both be assured of equal employment opportunities and the ability to practice their religion.

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. 92

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 ''Workplace Religious Freedom Act of 1997''.

SEC. 2. AMENDMENT.

(a) DEFINITIONS.—Section 701(j) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(j)) is amended—

(1) by inserting ''(1)'' after ''(j)'';

(2) by inserting '', after initiating and engaging in an affirmative and bona fide effort,'' after ''unable''; and

(3) by adding at the end the following:

''(2) As used in this subsection, the term 'undue hardship' means an accommodation requiring significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expense, the factors to be considered shall include—

''(A) the identifiable cost of the accommodation in relation to the size and operating cost of the employer; and

''(B) the number of individuals who will need a particular accommodation to a religious observance or practice.''.

(b) EMPLOYMENT PRACTICES.—Section 703 of such Act (42 U.S.C. 2000e–2) is amended by adding at the end the following:

''(o)(1) As used in this subsection:

''(A) The term 'employee' includes a prospective employee.

''(B) The term 'undue hardship' has the meaning given the term in section 701(j)(2).

''(2) For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee, an accommodation by the employer shall not be deemed to be reasonable if—

''(A) such accommodation does not remove the conflict between employment requirements and the religious observance or practice of the employee; or

''(B)(i) the employee demonstrates to the employer the availability of an alternative accommodation less onerous to the employee that may be made by the employer without undue hardship on the conduct of the employer's business; and

''(ii) the employer refuses to make such accommodation.

''(3) It shall not be a defense to a claim of unlawful employment practice under this title for failure to provide a reasonable accommodation to a religious observance or practice of an employee that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate to such observance or practice—

''(A) an adjustment would be made in the employee's work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements), shift, or job assignment, that would not be available to any employee but for such accommodation; or

''(B) the employee and any other employee would voluntarily exchange shifts or job assignments, or voluntarily make some other arrangement between the employees.

''(4)(A) An employer shall not be required to pay premium wages for work performed during hours to which such premium wages would ordinarily be applicable, if work is performed during such hours only to accommodate religious requirements of an employee.

''(B) As used in this paragraph, the term 'premium wages' includes overtime pay and compensatory time off, pay for night, weekend, or holiday work, and pay for standby or irregular duty.''.

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by section 2 take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by section 2 do not apply with respect to conduct occurring before the date of enactment of this Act.

By Mr. KERRY:

S. 93. A bill to increase funding for child care under the temporary assistance for needy families program; to the Committee on Finance.

WORKING FAMILIES CHILD CARE ASSISTANCE ACT

Mr. KERRY. Mr. President, today I am introducing the ''Working Families' Child Care Assistance Act'' to help the many working families who face great struggles to find affordable, good-quality child care.

Mr. President, we no longer live in an era when one parent generally stays at home full time to take care of the children. Today, 60 percent of women with children younger than six are in the labor force. The result is that approximately seven million children of working parents are cared for each month by someone other than a parent. And most of these children spend 30 hours or more each week in child care, according to the National Research Council.

New research also confirms that our current social reality has placed enormous strains on working families' budgets because many families must pay for child care. According to a new study of 100 child care centers entitled ''Cost, Quality, and Child Outcomes in Child Care Centers,'' families spend an average of $4,940 per year to provide services for each enrolled child. Annual child care costs of this size represent a whopping 28 percent of $17,481, which is the yearly income of an average family in the bottom two-fifths of the income scale.

But even for families who can afford the cost of child care, in some communities child care continues to be hard to obtain at any cost. In 1994, 36 States reported State child care assistance waiting lists, according to the Children's Defense Fund. Eight States had at least 10,000 children waiting for assistance. Georgia's list was the longest with 41,000, while in Texas the list had 36,000 names and a wait of about 2 years. In Massachusetts, the statewide waiting list contains the names of 4,000 working families. Additionally, a 1995 U.S. General Accounting Office (GAO) study found that shortages of child care for infants, sick children, children with special needs, and school-age children before and after school pose difficulties for many families.

I believe the child care situation may worsen because of a provision to which I was opposed in last year's welfare reform bill which cuts the Title XX Social Services Block Grant by 15 percent. Many States use Title XX funding to pay for child care for working families; unfortunately, this cut will result in even more families needing child care assistance.

Mr. President, it is time to provide help to working families to afford quality child care. My bill would double the funding through the Child Care Development Block Grant, increasing child care funding by $1 billion per year. In my home State of Massachusetts, this would result in more than 5,000 families receiving child care help which otherwise would not receive it.

Working parents face an extraordinary uphill battle in trying to make ends meet and cover the high cost of child care. Well over half the women in the work force are parents of preschool children, and they need access to affordable, quality child care they can trust. This bill provides real help to working families and hopefully will send a strong signal that their work and their efforts to provide reliable child care for their children are valued and supported.

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. 93

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

SECTION 1. INCREASED FUNDING FOR CHILD CARE.

(a) IN GENERAL.—Section 418(a) of the Social Security Act (42 U.S.C. 618(a)) is amended by striking paragraph (3) and inserting the following:

''(3) APPROPRIATION.—For grants under this section, there are appropriated—

''(A) $2,967,000,000 for fiscal year 1997;

''(B) $3,067,000,000 for fiscal year 1998;

''(C) $3,167,000,000 for fiscal year 1999;

''(D) $3,367,000,000 for fiscal year 2000;

''(E) $3,567,000,000 for fiscal year 2001; and

''(F) $3,717,000,000 for fiscal year 2002.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on August 22, 1996.

By Mr. DORGAN:

S. 95. A bill to provide for Federal campaign finance reform, and for other purposes; to the Committee on Rules and Administration.

CAMPAIGN FINANCE REFORM LEGISLATION

Mr. DORGAN. Mr President, the current system of electing Members of Congress is badly in need of reform. Elections are too long, too negative and too expensive; incumbents have a decided advantage over challengers, voter participation continues to decline, and 30-second political attack ads are polluting the airways. The American people want us to fix the system, and they want us to do it now. It is my view that campaign finance reform, along with balancing the budget, should be the highest priorities on the Senate agenda in the 105th Congress.

Successive Supreme court decisions have made it increasingly difficult to control campaign spending. In its review of the Federal Election Campaign Act (FECA) of 1971, the Court, in Buckley v. Valeo, stuck down the mandatory spending limits in that law as an infringement of First Amendment rights. The Court stated unequivocally: ''In the free society ordained by our Constitution, it is not the government, but the people—individuals as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.'' The Court at that time did, however, retain the section of FECA which limited contributions to political candidates because of the Court's stated

concern that unlimited gifts to candidates were a recipe for corruption. Simply put, the Courts have prohibited mandatory spending limits while preserving contribution limits. In the long run, it seems to me that we will have to pass a constitutional amendment to get a handle on the spending side of the campaign equation, and I intend to cosponsor just such a measure.

Nevertheless, there are short term solutions that can and should be addressed, including voluntary spending limits. The system is awash in money, and the public is disgusted with the ever increasing amounts of money flowing into congressional campaign coffers. Whether we like it or not, the public believes the money is tainted. They know that money flows towards power, and are convinced that large campaign contributions buy influence. To put their concerns in some perspective, one need only look at the statistics. The average cost of winning a Senate seat rose from $609,100 in 1976 to $3.6 million in the 1996 election cycle, and incumbents on average have a spending advantage of more than 2–1 over challengers.

There is simply no way to justify these escalating expenditures. No wonder the American people have grown cynical of public institutions and officials, and no wonder talented people in our communities do not want to run for elective office. If we hope to reverse public attitudes and restore confidence in our government officials and institutions, we should begin with campaign finance reform. We have a unique opportunity this year to pass meaningful and bipartisan reform, something that has eluded us for more than a decade. I hope we will seize the moment.

While I intend to support comprehensive reform efforts as I have in the past, I am introducing legislation today to address what I perceive to be the most serious problems in the system now. My bill includes the following provisions which I will describe briefly:

1. VOLUNTARY SPENDING LIMITS/LIMITATION ON PERSONAL FUNDS/FEE ON NON-COMPLYING CANDIDATES

As a result of the Supreme Court decisions mentioned above, the only way to control spending in the short term is through voluntary spending limits. My bill contains voluntary limits which are based on a percentage of the voting age population in each state. These are the same limits that were contained in the campaign finance reform bill that passed the Senate in the 103rd Congress and which have been the basis of comprehensive reform proposals in the 104th Congress. In addition, my bill would limit the amount of personal or family money that a candidate can contribute to his or her campaign to $25,000. I don't believe any candidate should be able to spend unlimited personal funds in an attempt to buy a seat in the U.S. Senate.

Unlike other bills, however, my proposal imposes a fee on candidates who choose not to comply with the spending limits. Under my legislation, non-complying candidates would be charged a fee of 50 percent on all expenditures exceeding the spending limits. The fee would be due and payable at the time candidates are currently required to submit quarterly and other reports to the Federal Election Commission. The proceeds from the fee would be distributed by the FEC on a fair and equitable basis among complying candidates for the same federal office. It is my hope that this fee will provide a strong inducement for candidates to comply with the voluntary spending limits.

2. SOFT MONEY

My bill prohibits national political parties and congressional campaign committees from raising or spending so-called ''soft money.'' Only money raised and spent according to the requirements and restrictions of federal law can be used to ''expressly advocate'' the election or defeat of a federal candidate. This is called ''hard money.'' However, unlimited amounts of soft money are being raised by the national parties and congressional campaign committees, outside the constraints of federal election law, ostensibly to support state and local candidates as well as federal candidates to the extent that they do not directly advocate the election or defeat of that candidate. In practice, however, soft money is being raised and spent on federal elections because of a loophole in federal election law.

Soft money is raised from unions and corporations, which are prohibited from contributing to federal elections except through their PACs, and from individuals who have reached the aggregate federal contribution limits of $25,000 a year. In a nutshell, soft money contributions are unlimited and unregulated.

It is this pot of soft money which has dramatically increased in recent election cycles. The Republican national committees raised $141.2 million in soft money in the 1996 election cycle, a 183 percent increase over the $49.2 raised in 1992. The Democratic party committees raised $122 million in 1996, a 237 percent increase over their 1992 level of $36.5 million. A substantial portion of soft money spending by party campaign committees has gone to finance the generic issue ads we have come to know as attack ads. The figures above illustrate the problem. My bill would eliminate it by preventing national committees from raising or spending soft money which does not comply with the source and dollar restrictions in federal campaign finance law.

3. EXPRESS ADVOCACY

As mentioned above, only money raised under the restrictions and prohibitions of federal election law can be used to advocate the election or defeat of a candidate for federal office. As currently defined in FEC regulations, only communications which use such words as ''vote for'', ''elect'', ''support'', ''defeat'', ''reject'' or ''Smith for Congress'' are considered express advocacy which must be paid for with money raised under federal election law restraints, i.e., hard money.

This overly narrow definition of what constitutes express advocacy has created a giant loophole for attack ads. Simply by avoiding the magic words mentioned above, political parties, corporations, unions and other special interest groups can pay for brutal attack ads which certainly have the intent of influencing the outcome of federal elections—and they can do it without having to disclose it to the FEC.

My bill would expand the current express advocacy standard to include both the content and intent of such ads. It would not prohibit such ads; it would simply ensure—as Congress intended—that such ads are paid for with money which is subject to regulation and disclosure. Any political ads that clearly identify a candidate(s) and which are broadcast within 60 days prior to an election (or 90 days prior to a general election with respect to a candidate for Vice President or President) will be considered express advocacy and, therefore, will be subject to the restrictions and limitations of federal election law. The bottom line is that you would have to pay for these ads with hard money which is more difficult to raise and which requires full disclosure to the FEC.

4. POLITICAL ADVERTISING

I have long thought that the 30-second political attack ad does little, if anything, to advance the cause of public debate. They tend to be hit-and-run ads. Under current federal communications law, television broadcasters are required to provide political candidates with their lowest unit rate—the rate they charge their best customers—for political ads run in the 45 days prior to a primary election and 60 days prior to a general election. Unfortunately, oftentimes the candidate never appears in the ad. My bill would require broadcasters to provide this reduced rate only for ads which are at least one minute in length and in which the candidate appears at least 75 percent of the time.

5. NON-CITIZENS

It is my strong view that people who are not citizens of the United States should not be able to influence our election process in any way. Therefore, my bill prohibits noncitizens from raising funds for or contributing to federal elections.

6. VOTER PARTICIPATION

I am extremely disheartened by the lack of individual involvement in the political process and the every increasing decline in voter participation numbers. Between 1948–1968, voter turnout for presidential elections was 60.43 percent. Between 1972–1992, it fell to 53.21 percent. Last year, it fell below 50 percent. These statistics are a national disgrace Certainly, there must be something that can be done to increase voter participation. Unfortunately, past initiatives have had little or marginal impact on increasing the number of voters who choose to fulfill their civic responsibility to vote. I believe we need a comprehensive analysis of what has worked, what has not worked or what we might try to change public attitudes, educate voters and improve participation. Early voting, extended polling hours and weekend voting are areas that ought to be researched. My bill provides $150,000 for the Federal Election Commission to conduct such a study and to make recommendations to Congress. This is a small amount of money to invest in an increasingly serious public problem.

7. TAX CREDIT

If we want to encourage participation by ordinary citizens, I believe it is in our national interest to restore a tax credit for small contributors similar to what existed between 1972 and 1986. My bill does that by providing an annual 100% tax credit for the first $100 ($200 for joint returns) of contributions to congressional campaigns. It is my belief that many people who want to participate financially in the political process simply cannot afford to do so. These voters believe they have no power or influence. They are increasingly frustrated, disgusted and disengaged. My bill will afford them the opportunity to participate in the process.

The American public and the voters in my state of North Dakota are clearly appalled by the amount of money involved in electing federal officials. They are adamant that we clean up the system—NOW. If we don't, we do so at our personal and collective peril.

I want the people of North Dakota and the Members of this body to know that I intend to support and to work as hard as I can to enact comprehensive campaign finance legislation this year. I think is in all our best interests to do so, and I hope my bill will stimulate debate and be incorporated in the final reform package.

By Mr. INOUYE:

S. 96. A bill to require the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Armed Services.

MILITARY SERVICE LEGISLATION

Mr. INOUYE. Mr. President, I am

reintroducing legislation today that would direct the Secretary of the Army to determine whether certain nationals of the Philippine Islands performed military service on behalf of the United States during World War II.

Mr. President, our Filipino veterans fought side by side and sacrificed their lives on behalf of the United States. This legislation would confirm the validity of their claims and further allow qualified individuals the opportunity to apply for military and veterans benefits that, I believe, they are entitled to. As this population becomes older, it is important for our nation to extend its firm commitment to the Filipino veterans and their families who participated in making us the great nation that we are today.

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

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

S. 129

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

SECTION 1. DETERMINATIONS BY THE SECRETARY OF THE ARMY.

(a) IN GENERAL.—Upon the written application of any person who is a national of the Philippine Islands, the Secretary of the Army shall determine whether such person performed any military service in the Philippine Islands in aid of the Armed Forces of the United States during World War II which qualifies such person to receive any military, veterans', or other benefits under the laws of the United States.

(b) INFORMATION TO BE CONSIDERED.—In making a determination for the purpose of subsection (a), the Secretary shall consider all information and evidence (relating to service referred to in subsection (a)) available to the Secretary, including information and evidence submitted by the applicant, if any.

SEC. 2. CERTIFICATE OF SERVICE.

(A) ISSUANCE OF CERTIFICATE OF SERVICE.—The Secretary shall issue a certificate of service to each person determined by the Secretary to have performed military service described in section 1(a).

(b) EFFECT OF CERTIFICATE OF SERVICE.—A certificate of service issued to any person under subsection (a) shall, for the purpose of any law of the United States, conclusively establish the period, nature, and character of the military service described in the certificate.

SEC. 3. APPLICATIONS BY SURVIVORS.

An application submitted by a surviving spouse, child, or parent of a deceased person described in section 1(a) shall be treated as an application submitted by such person.

SEC. 4. LIMITATION PERIOD.

The Secretary may not consider for the purpose of this Act any application received by the Secretary more than two years after the date of enactment of this Act.

SEC. 5. PROSPECTIVE APPLICATION OF DETERMINATIONS BY THE SECRETARY OF THE ARMY.

No benefits shall accrue to any person for any period prior to the date of enactment of this Act as a result of the enactment of this Act.

SEC. 6. REGULATIONS.

The Secretary shall issue regulations to carry out sections 1, 3, and 4.

SEC. 7. RESPONSIBILITIES OF THE SECRETARY OF VETERANS AFFAIRS.

Any entitlement of a person to receive veterans' benefits by reason of this Act shall be administered by the Department of Veterans Affairs pursuant to regulations issued by the Secretary of Veterans Affairs.

SEC. 8. DEFINITIONS.

In this Act:

(1) The term ''Secretary'' means the Secretary of the Army.

(2) The term ''World War II'' means the period beginning on December 7, 1941, and ending on December 31, 1946.

By Mr. KERRY:

S. 97. A bill to amend the Internal Revenue Code of 1986 and the Social Security Act to require the Internal Revenue Service to collect child support through wage withholding and to eliminate State enforcement of child support obligations other than medical support obligations; to the Committee on Finance.

THE UNIFORM CHILD SUPPORT ENFORCEMENT ACT OF 1997

Mr. KERRY. Mr. President, I am introducing legislation today to help ensure that children across this country get the economic support they need and deserve from both parents in order to have a wholesome childhood, grow up healthy, and thrive.

Mr. President, child support reform is an urgent public issue because it affects so many children. In 1994, one out of every four children lived in a family with only one parent present in the home. Half of all the 18.7 million children living in single-parent families in 1994 were poor, compared with only slightly more than one out of every ten children in two-parent families. Clearly the payment of child support by the absent parent is an important determinant of the economic status of these children.

Unfortunately, the failure to pay child support is extraordinarily widespread, cutting across income and racial lines. Of the 10 million women raising children with an absent parent, over 4 million had no support awarded. Of those 5.4 million women who were due support, slightly over half received the full amount due, while a quarter received partial payment and a quarter received nothing at all. Let me repeat that, Mr. President—more than half of the women with child support orders received no support or less than the full amount.

Mr. President, common sense will tell you that children are hurt when parents do not pay support. But perhaps some evidence will make the point even clearer. A recent survey of single parents in Georgia, Oregon, Ohio, and New York documents the real harm children suffer when child support is not paid: during the first year after the parent left the home, more than half the families surveyed faced a serious housing crisis. Nearly a third reported that their children went hungry at some point during the year. And over a third reported that their children lacked appropriate clothing such as a winter coat.

Mr. President, it is also evident that better child support enforcement can produce a lot more money for children. A 1994 study by the Urban Institute estimates that if child support orders were established for all children with a living non-custodial father and these orders were fully enforced, aggregate child support payments would have been $47.6 billion dollars in 1990—nearly three times the amount of child support actually paid in this country.

Unfortunately, this country has made all too little progress in tackling the child support problem, and this has been true under both Democratic and Republican Administrations. Over the past decade, the average child support payment due to all women with a child support award, the average amount received by those women, as well as the percentage of women with awards have remained virtually unchanged (adjusting for inflation). Similarly, the state child support enforcement system that serves welfare families and non-welfare families who ask for help has made progress in paternity establishment, but little progress overall. Over half a million children had their paternity established by state agencies in FY 1994—a fifty percent increase from five years earlier. But fewer than one out of every five cases served by state agencies had any child support paid in FY 1994—a figure that has risen only slightly since FY 1990. Mr. President, it is an intolerable situation for our nation's children when state child support agencies are making absolutely no collection in 80 percent of their cases.

My bill will help make sure that we achieve real progress for children. Last year, Congress passed some important improvements in the child support system in the welfare reform bill that became law. My bill would give states a chance to implement these new changes and then assess their success or failure. If these reforms succeed in dramatically improving the performance of state child support offices, then this bill would not tinker with success. If, however, we do not see dramatic improvement in collections within the next three years, this bill would ensure that we take bold steps to help children. This bill would leave establishment of paternity and child support orders at the state level but move collection of support to the national level where we can more aggressively pursue interstate cases and send a message to all parents obligated to pay support that making full and timely support payments is an obligation as serious as making full and timely payment of taxes. If more than half the states do not achieve a 75 percent collection rate in their child support cases, then the system of collection would be federalized to ensure that children get the support they need and deserve.

Mr. President, it has been 13 years since this Congress passed the first major child support legislation. Despite this legislative effort and additional reforms in 1988, according to a

recent study there is a higher default rate on child support payments than on used car loans. I believe that every single member of this body will agree with me that this is wrong. If, under the newly revised federal law, states can rectify this situation, we can all take pleasure and satisfaction from watching them do it. If they cannot, we must take action. I urge my colleagues to support this bill so that America's children of every income level will be assured of the support they need and deserve.

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

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

S. 97

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 ''Uniform Child Support Enforcement Act of 1997''.

SEC. 2. EFFECTIVE DATE; AMENDMENTS.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect on the first day of the first calendar month that begins after the 3-year period that begins with the date of the enactment of this Act, if the Secretary of Health and Human Services certifies to the Congress that on such first day more than 50 percent of the States have not achieved a 75 percent collection rate in child support cases in which child support is awarded and due under the jurisdiction of such States pursuant to part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.).

(b) ELIMINATION OF PROVISIONS OF LAW RELATING TO STATE ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OTHER THAN MEDICAL SUPPORT OBLIGATIONS.—Not later than 90 days after the effective date of this Act and the amendments made by this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of the Congress a legislative proposal proposing such technical and conforming amendments as are necessary to eliminate State enforcement of child support obligations other than medical support obligations and to bring the law into conformity with the policy embodied in this Act.

SEC. 3. NATIONAL CHILD SUPPORT ORDER REGISTRY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of the Treasury shall establish in the Internal Revenue Service a national registry of abstracts of child support orders.

(2) CHILD SUPPORT ORDER DEFINED.—As used in this section, the term ''child support order'' means an order, issued or modified by a State court or an administrative process established under State law, that requires an individual to make payments for support and maintenance of a child or of a child and the parent with whom the child is living.

(b) CONTENTS OF ABSTRACTS.—The abstract of a child support order shall contain the following information:

(1) The names, addresses, and social security account numbers of each individual with rights or obligations under the order, to the extent that the authority that issued the order has not prohibited the release of such information.

(2) The name and date of birth of any child with respect to whom payments are to be made under the order.

(3) The dollar amount of child support required to be paid on a monthly basis under the order.

(4) The date the order was issued or most recently modified, and each date the order is required or scheduled to be reviewed by a court or an administrative process established under State law.

(5) Any orders superseded by the order.

(6) Such other information as the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall, by regulation require.

SEC. 4. CERTAIN STATUTORILY PRESCRIBED PROCEDURES REQUIRED AS A CONDITION OF RECEIVING FEDERAL CHILD SUPPORT FUNDS.

Section 466(a) of the Social Security Act (42 U.S.C. 666(a)) is amended by inserting after paragraph (19) the following:

''(20)(A) Procedures which require any State court or administrative agency that issues or modifies (or has issued or modified) a child support order to transmit an abstract of the order to the Internal Revenue Service on the later of—

''(i) the date the order is issued or modified; or

''(ii) the effective date of this paragraph.

''(B) Procedures which—

''(i) require any individual with the right to collect child support pursuant to an order issued or modified in the State (whether before or after the effective date of this paragraph) to be presumed to have assigned to the Internal Revenue Service the right to collect such support, unless the individual affirmatively elects to retain such right at any time; and

''(ii) allow any individual who has made the election referred to in clause (i) to rescind or revive such election at any time.''.

SEC. 5. COLLECTION OF CHILD SUPPORT BY INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7525. COLLECTION OF CHILD SUPPORT.

''(a) EMPLOYEE TO NOTIFY EMPLOYER OF CHILD SUPPORT OBLIGATION.—

''(1) IN GENERAL.—Each employee shall specify, on each withholding certificate furnished to such employee's employer—

''(A) the monthly amount (if any) of each child support obligation of such employee, and

''(B) the TIN of the individual to whom each such obligation is owed.

''(2) WHEN CERTIFICATE FILED.—In addition to the other required times for filing a withholding certificate, a new withholding certificate shall be filed within 30 days after the date of any change in the information specified under paragraph (1).

''(3) PERIOD CERTIFICATE IN EFFECT.—Any specification under paragraph (1) shall continue in effect until another withholding certificate takes effect which specifies a change in the information specified under paragraph (1).

''(4) AUTHORITY TO SPECIFY SMALLER CHILD SUPPORT AMOUNT.—In the case of an employee who is employed by more than 1 employer for any period, such employee may specify less than the monthly amount described in paragraph (1)(A) to each such employer so long as the total of the amounts specified to all such employers is not less than such monthly amount.

''(b) CERTAIN OBLIGATIONS EXEMPT.—This section shall not apply to a child support obligation for any month if the individual to whom such obligation is owed has so notified the Secretary and the individual owing such obligation more than 30 business days before the beginning of such month.

''(c) EMPLOYER OBLIGATIONS.—

''(1) REQUIREMENT TO DEDUCT AND WITHHOLD.—

''(A) IN GENERAL.—Every employer who receives a certificate under subsection (a) that specifies that the employee has a child support obligation for any month shall deduct and withhold from the wages (as defined in section 3401(a)) paid by such employer to such employee during each month that such certificate is in effect an additional amount equal to the amount of such obligation or such other amount as may be specified by the Secretary under subsection (d).

''(B) LIMITATION ON AGGREGATE WITHHOLDING.—In no event shall an employer deduct and withhold under this section from a payment of wages an amount in excess of the amount of such payment which would be permitted to be garnished under section 303(b) of the Consumer Credit Protection Act.

''(2) NOTICE TO SECRETARY.—

''(A) IN GENERAL.—Every employer who receives a withholding certificate shall, within 30 business days after such receipt, submit a copy of such certificate to the Secretary.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any withholding certificate if—

''(i) a previous withholding certificate is in effect with the employer, and

''(ii) the information shown on the new certificate with respect to child support is the same as the information with respect to child support shown on the certificate in effect.

''(3) WHEN WITHHOLDING OBLIGATION TAKES EFFECT.—Any withholding obligation with respect to a child support obligation of an employee shall commence with the first payment of wages after the certificate is furnished.

''(d) SECRETARY TO VERIFY AMOUNT OF CHILD SUPPORT OBLIGATION.—

''(1) VERIFICATION OF INFORMATION SPECIFIED ON WITHHOLDING CERTIFICATES.—Within 45 business days after receiving a withholding certificate of any employee, or a notice from any person claiming that an employee is delinquent in making any payment pursuant to a child support obligation, the Secretary shall determine whether the information available to the Secretary under section 3 of the Uniform Child Support Enforcement Act of 1996 indicates that such employee has a child support obligation.

''(2) EMPLOYER NOTIFIED IF INCREASED WITHHOLDING IS REQUIRED.—If the Secretary determines that an employee's child support obligation is greater than the amount (if any) shown on the withholding certificate in effect with respect to such employee, the Secretary shall, within 45 business days after such determination, notify the employer to whom such certificate was furnished of the correct amount of such obligation, and such amount shall apply in lieu of the amount (if any) specified by the employee with respect to payments of wages by the employer after the date the employer receives such notice.

''(3) DETERMINATION OF CORRECT AMOUNT.—In making the determination under paragraph (2), the Secretary shall take into account whether the employee is an employee of more than 1 employer and shall appropriately adjust the amount of the required withholding from each such employer.

''(e) CHILD SUPPORT OBLIGATIONS REQUIRED TO BE PAID WITH INCOME TAX RETURN.—

''(1) IN GENERAL.—The child support obligation of any individual for months ending with or within any taxable year shall be paid—

''(A) not later than the last date (determined without regard to extensions) prescribed for filing his return of tax imposed by chapter 1 for such taxable year, and

''(B)(i) if such return is filed not later than such date, with such return, or

''(ii) in any case not described in clause (i), in such manner as the Secretary may by regulations prescribe.

''(2) CREDIT FOR AMOUNT PREVIOUSLY PAID.—The amount required to be paid by an individual under paragraph (1) shall be reduced by the sum of—

''(A) the amount collected under this section with respect to periods during the taxable year, plus

''(B) the amount (if any) paid by such individual under section 6654 by reason of subsection (f)(3) thereof for such taxable year.

''(f) FAILURE TO PAY AMOUNT OWING.—If an individual fails to pay the full amount required to be paid under subsection (e) on or before due date for such payment, the Secretary shall assess and collect the unpaid amount in the same manner, with the same powers, and subject to the same limitations applicable to a tax imposed by subtitle C the collection of which would be jeopardized by delay.

''(g) CREDIT OR REFUND FOR WITHHELD CHILD SUPPORT IN EXCESS OF ACTUAL OBLIGATION.—There shall be allowed as a credit against the taxes imposed by subtitle A for the taxable year an amount equal to the excess (if any) of—

''(1) the aggregate of the amounts described in subparagraphs (A) and (B) of subsection (e)(2), over

''(2) the actual child support obligation of the taxpayer for such taxable year.

The credit allowed by this subsection shall be treated for purposes of this title as allowed by subpart C of part IV of subchapter A of chapter 1.

''(h) CHILD SUPPORT TREATED AS TAXES.—

''(1) IN GENERAL.—For purposes of penalties and interest related to failure to deduct and withhold taxes, amounts required to be deducted and withheld under this section shall be treated as taxes imposed by chapter 24.

''(2) OTHER RULES.—Rules similar to the rules of sections 3403, 3404, 3501, 3502, 3504, and 3505 shall apply with respect to child support obligations required to be deducted and withheld.

''(3) SPECIAL RULE FOR COLLECTIONS.—For purposes of collecting any unpaid amount which is required to be paid under this section—

''(A) paragraphs (4), (6), and (8) of section 6334(a) (relating to property exempt from levy) shall not apply, and

''(B) there shall be exempt from levy so much of the salary, wages, or other income of an individual as is being withheld therefrom in garnishment pursuant to a judgment entered by a court of competent jurisdiction for the support of his minor children.

''(i) COLLECTIONS DISPERSED TO INDIVIDUAL OWED OBLIGATION.—

''(1) IN GENERAL.—Payments received by the Secretary pursuant to this section or by reason of section 6654(f)(3) which are attributable to a child support obligation payable for any month shall be paid (to the extent such payments do not exceed the amount of such obligation for such month) to the individual to whom such obligation is owed as quickly as possible. Any penalties and interest collected with respect to such payments also shall be paid to such individual.

''(2) SHORTFALLS IN PAYMENTS MADE BY OTHER WITHHELD AMOUNTS.—If the amount payable under a child support obligation for any month exceeds the payments (referred in paragraph (1)) received with respect to such obligation for such month, such excess shall be paid from other amounts received under subtitle C or section 6654 with respect to the individual owing such obligation. The treasury of the United States shall be reimbursed for such other amounts from collections from the individual owing such obligation.

''(3) FAMILIES RECEIVING STATE ASSISTANCE.—In the case of an individual with respect to whom an assignment of child support payments to a State is in effect—

''(A) of the amounts collected which represent monthly support payments, the first $50 of any payments for a month shall be paid to such individual and shall not be considered as income for purposes of calculating amounts of State assistance, and

''(B) all other amounts shall be paid to such State pursuant to such assignment.

''(j) TREATMENT OF ARREARAGES UNDER CHILD SUPPORT OBLIGATIONS NOT SUBJECT TO SECTION FOR PRIOR PERIOD.—If—

''(1) this section did not apply to any child support obligation by reason of subsection (b) for any prior period, and

''(2) there is a legally enforceable past-due amount under such obligation for such period,

then such past-due amount shall be treated for purposes of this section as owed (until paid) for each month that this section applies to such obligation.

''(k) DEFINITIONS AND SPECIAL RULES.—

''(1) DEFINITIONS.—For purposes of this section—

''(A) WITHHOLDING CERTIFICATE.—The term 'withholding certificate' means the withholding exemption certificate used for purposes of chapter 24.

''(B) BUSINESS DAY.—The term 'business day' means any day other than a Saturday, Sunday, or legal holiday (as defined in section 7503).

''(2) TIMELY MAILING.—Any notice under subsection (c)(2) or (d)(2) which is delivered by United States mail shall be treated as given on the date of the United States postmark stamped on the cover in which such notice is mailed.

''(l) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''

(b) WITHHELD CHILD SUPPORT TO BE SHOWN ON W–2.—Subsection (a) of section 6051 of such Code, as amended by section 310(c)(3) of the Health Insurance Portability and Accountability Act of 1996, is amended by striking ''and'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', and'', and by inserting after paragraph (11) the following new paragraph:

''(12) the total amount deducted and withheld as a child support obligation under section 7525(c).''

(c) APPLICATION OF ESTIMATED TAX.—

(1) IN GENERAL.—Subsection (f) of section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by striking ''minus'' at the end of paragraph (2) and inserting ''plus'', by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

''(3) the aggregate amount of the child support obligations of the taxpayer for months ending with or within the taxable year (other than such an obligation for any month for which section 7525 does not apply to such obligation), minus''.

(2) Paragraph (1) of section 6654(d) of such Code is amended by adding at the end the following new subparagraph:

''(D) DETERMINATION OF REQUIRED ANNUAL PAYMENT FOR TAXPAYERS REQUIRED TO PAY CHILD SUPPORT.—In the case of a taxpayer who is required under section 7525 to pay a child support obligation (as defined in section 7525) for any month ending with or within the taxable year, the required annual payment shall be the sum of—

''(i) the amount determined under subparagraph (B) without regard to subsection (f)(3), plus

''(ii) the aggregate amount described in subsection (f)(3).''

(3) CREDIT FOR WITHHELD AMOUNTS, ETC.—Subsection (g) of section 6654 of such Code is amended by adding at the end the following new paragraph:

''(3) CHILD SUPPORT OBLIGATIONS.—For purposes of applying this section, the amounts collected under section 7525 shall be deemed to be a payment of the amount described in subsection (f)(3) on the date such amounts were actually withheld or paid, as the case may be.''

(d) PENALTY FOR FALSE INFORMATION ON WITHHOLDING CERTIFICATE.—Section 7205 of such Code (relating to fraudulent withholding exemption certificate or failure to supply information) is amended by adding at the end the following new subsection:

''(c) WITHHOLDING OF CHILD SUPPORT OBLIGATIONS.—If any individual willfully makes a false statement under section 7525(a), then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.''

(e) NEW WITHHOLDING CERTIFICATE REQUIRED.—Not later than 90 days after the date this Act takes effect, each employee who has a child support obligation to which section 7525 of the Internal Revenue Code of 1986 (as added by this section) applies shall furnish a new withholding certificate to each of such employee's employers. A certificate required under the preceding sentence shall be treated as required under such section 7525.

(f) REPEAL OF OFFSET OF PAST-DUE SUPPORT AGAINST OVERPAYMENTS.—

(1) Section 6402 of such Code, as amended by section 110(*l*)(7) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, is amended by striking subsections (c) and (h) and by redesignating subsections (d), (e), (f), (g), (i), and (j) as subsections (c), (d), (e), (f), (g), and (h), respectively.

(2) Subsection (a) of section 6402 of such Code, as so amended, is amended by striking ''(c), (d), and (e)'' and inserting ''(c) and (d)''.

(3) Subsection (c) of section 6402 of such Code (as redesignated by paragraph (1)) is amended—

(A) by striking ''(other than past-due support subject to the provisions of subsection (c))'' in paragraph (1),

(B) by striking ''after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) of the Social Security Act and'' in paragraph (2).

(4) Subsection (d) of section 6402 of such Code (as redesignated by paragraph (1)) is amended by striking ''or (d)''.

(g) REPEAL OF COLLECTION OF PAST-DUE SUPPORT.—Section 6305 of such Code is hereby repealed.

(h) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 64 of such Code is amended by striking the item relating to section 6305.

(2) The table of sections for chapter 77 of such Code is amended by adding at the end thereof the following new item:

''Sec. 7525. Collection of child support.''

(h) USE OF PARENT LOCATOR SERVICE.—Section 453(a) of the Social Security Act (42 U.S.C. 653(a)) is amended by inserting ''or the Internal Revenue Service'' before ''information as''.

By Mr. GRAMS (for himself, Mr. HUTCHINSON, Mr. NICKLES, Mr. KYL, and Mr. COATS):

S. 98. A bill to amend the Internal Revenue Code of 1986 to provide a family tax credit; to the Committee on Finance.

THE FAMILY TAX FAIRNESS ACT OF 1997

Mr. GRAMS. Madam President, I thank my colleague from Oklahoma for helping us in supporting this bill.

Madam President, I rise today to introduce legislation, together with Senator Hutchinson, my distinguished colleague from Arkansas, a bill to provide the $500 per child tax credit for America's working families. We are pleased, as I said, to be joined by Senator NICKLES, along with Senators KYL and COATS, in introducing this bill.

The November election sends us a very clear message that the American people want us to work together, to work together in a bipartisan manner, to balance the Federal budget, control the growth of Government, and to restore its accountability. While we see the tax burden increase on the middle class, working families need our help, and it is time that Congress and the President come together to deliver it.

Since the opening days of the 105th Congress, a renewed spirit of cooperation has settled in over Washington. Instead of the partisan politics that have often and too often exploited our disagreements, the talk from the Capitol Building to the White House has centered on creating consensus. Just yesterday in his inaugural address the President affirmed this commitment when he said, ''The American people returned to office a President of one party and a Congress of another. Surely they did not do this to advance the politics of petty bickering and partisanship, which they plainly deplore.''

While a sign of that new commitment, I believe, is the strongest and the most compassionate statement this Congress and this President can make in 1997 on behalf of working families is to cut their taxes and to leave them a little bit more of their own money at the end of the day, the extensive debate that we have undertaken in the past 2 years over fiscal policy has helped us to understand that working families are indeed overtaxed.

The child tax credit is appropriate and necessary to stimulate economic growth and to allow families to make more of their own spending decisions. The people of Minnesota sent me to Washington with their instructions to make the $500-per-child tax credit a top priority. Like struggling men and women nationwide, Minnesotans have seen what our outrageous tax burden has done to their families over the past 40 years. It is far from merely being a fact of life. Taxes today dominate the family budget.

There is no better argument for tax relief than to consider that taxpayers today are spending more to feed their Government than they are spending to feed, clothe, and shelter their families. When we debated the $500-per-child tax credit in the last Congress, some of my colleagues expressed their concern that any tax relief now would jeopardize their efforts to balance the Federal budget. Balance the budget first, they said, and then cut taxes later. Their concerns missed a very important part. The budget will never be balanced or stay balanced until we decide that it is the people who should prosper under it and not the Government.

Recent economic data reveal that despite a shrinking Federal deficit, the Government is in fact getting bigger, not smaller. Government spending and taxes continue to soar, and total taxation now claims the largest bite in the Nation's income in history. Without significant policy changes, the deficit will begin climbing again in fiscal year 1998 and reach over $200 billion by the year 2002.

By enacting the $500-per-child tax credit we can begin turning back the decades of abuse which taxpayers have suffered at the hands of their own Government, a Government often eager to spend the taxpayers' money with reckless regard. The $500-per-child tax credit is the right solution because it takes power out of the hands of Washington's big spenders and puts it back where it can do the most good, and that is in the hands of families.

Nobody outside of Washington's insulated fantasy world really thinks the Government can spend the family's dollars more efficiently than the family would. By leaving that money in the family bank accounts, taxpayers are then empowered to use it to directly benefit their own household. They can make the best decisions on how to spend those dollars. Beyond the direct benefits, families' tax relief can have a substantial and a positive impact on the economy as a whole.

It was John F. Kennedy who observed that ''an economy hampered with high tax rates will never introduce enough revenue to balance the budget, just as it will never produce enough output and enough jobs.'' President Kennedy was able to put these theories to work in the early 1960's when he enacted significant tax cuts that sparked one of the few periods of sustained growth that we have experienced in the last half century.

It was 20 years later when President Ronald Reagan cut taxes once again that reinvigorated the economy, which responded enthusiastically with 19 million new jobs that were created, and take-home pay grew 13 percent between 1982 and 1996. It is now President Clinton who has the opportunity to work alongside Congress as we cut taxes and generate a new era of growth in the economy and prosperity for American families. I am encouraged by his public cause for family tax relief, and in particular his words in support of the $500-per-child tax credit.

With the President truly committed to working with us, there is every reason to believe that a plan that will balance the budget and reduce the tax load for working families will pass this Congress and be signed into law this year. We made a promise to middle class Americans that we would cut their taxes. We laid the groundwork for the $500-per-child tax credit in the 104th Congress, so now in the 105th it is time that we put aside politics and deliver on the promise.

So I ask that S. 9 be introduced and properly referred.

The PRESIDING OFFICER. The bill will be appropriately referred.

Mr. GRAMS. Thank you very much, Madam President.

Mr. HUTCHINSON. Madam President, I rise today in support of America's families. It is with a deep sense of honor that I stand for the first time before this great deliberative body. As the first Republican Senator to be popularly elected from the great state of Arkansas, I believe it is fitting that my first legislative initiative be on behalf of those whom we hold most dear—the children of America's families. It is doubly fitting that I join my dear friend from our days in the House of Representatives and now Senate colleague, ROD GRAMS, in cosponsorship of the Family Tax Fairness Act of 1997.

My career of public service has been grounded in principles of faith, preservation of the family and honest but less intrusive government. These tenets will be my guide post as I serve the good people of Arkansas in the United States Senate.

In my lifetime, I have observed the precipitous decline of the economic and moral health of the American family. This decline is attributable to many causes not the least of which is the rising tax burden. As a member of the baby boomer generation, I, like all of you, have watched our 2% tax rate of the 1950's grow to 25%, nearly a 300% increase since World War II. This means that America's families send one out of every four dollars to Washington. In real terms, the average American family pays more in federal taxes than it spends on food, clothing, transportation, insurance, and recreation combined.

What is the payback for millions of hardworking American families? It is increased crime rates, failing educational systems, intrusive government, and a very real threat to our overall quality of life by the shrinking of America's backbone—the middle class. It is my belief that over taxation is slowly destroying the middle class American family. Families are working harder and harder and taking home less and less. Measured by average after-tax per capita income, families with children are now the lowest income group in America. Their average after-tax income is below that of elderly households. It is below that of single individuals, and it is below that of couples without children. The shrinking family paycheck because of ever-higher taxes forces families with children to spend more time at work and less time at home. Less family time translates into children with less parental supervision with all of its attendant problems.

The Family Tax Fairness Act of 1997 with a $500 tax credit for every child under the age of 18, provides the stimulus to keep our families strong. It

translates into over $25 billion of tax relief each year, of which over 78 percent would directly benefit working and middle class families. I am convinced that parents, not government, can best decide how to allocate resources. Under this proposal, a family with two children would receive $1,000 to pay for clothes, college, or health insurance for the children. The Family Tax Fairness Act of 1997 is a statement by our government and our society that all our families and all of our children are valuable.

In closing, I am reminded of the words of William Sumner in his speech, The Forgotten Man.

''The Forgotten Man . . . delving away in patient industry supporting his family, paying his taxes, casting his vote, supporting the church and school . . . but he is the only one for whom there is no provision in the great scramble and the big divide. Such is the Forgotten Man. He works, he votes, generally he prays—but his chief business in life is to pay . . . Who and where is the Forgotten Man in this case? Who will have to pay for it all?''

Sadly, the Forgotten Man is a metaphor for today's American family. So, while I urge support for the repeal of the death tax—the inheritance tax—that killer of the American dream . . . and while I urge support for dramatically cutting the capital gains tax rate, which both economists and experience teach will actually increase federal revenues, let us not forget the American family.

I urge my colleagues to join Senator GRAMS and myself in support of the Family Tax Fairness Act of 1997.

I thank the chair and yield the floor.

Mr. NICKLES. Madam President, Senator GRAMS and Senator Hutchinson will be introducing legislation dealing with the $500 tax credit per child. I compliment them on this legislation. I am happy to cosponsor it with them. It is outstanding legislation that will restore individual families the opportunity to keep more of their own money. I might mention that the definition of ''child'' in the legislation which we are introducing includes children up to age 18 in contrast to that introduced by the President which is up to age 12, a big difference. It is a very profamily, very positive protaxpayer piece of legislation of which I am very happy to cosponsor. And I compliment my colleagues from Minnesota and Arkansas for their leadership on this issue.

I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

By Mrs. BOXER:

S. 99. A bill to amend the Internal Revenue Code of 1986 to allow companies to donate scientific equipment to elementary and secondary schools for use in their educational programs, and for other purposes; to the Committee on Finance.

THE COMPUTER DONATION INCENTIVE ACT OF 1997

Mrs. BOXER. Mr. President, in March 1996 scores of volunteers throughout California helped make NetDay 96 one of the most successful one-day public projects in history. At the time, we all noted that this electronic barn-raising could be a turning point in educational history—but only if we followed through with other steps to help our children travel the information superhighway. I would like to take one step by introducing the Computer Donation Incentive Act of 1997.

The successful education of America's children is closely linked to the use of innovative educational technologies, particularly computer-based instruction and research. Unfortunately, however, far too many public elementary and secondary school classrooms lack the computers they need to take advantage of these new educational technologies.

The Computer Donation Incentive Act will help get our students those computers. Current law allows computer manufacturers to receive a greater deduction for donations of computers to college and universities, for scientific and research purposes, than for donations made to elementary and secondary schools for education purposes. That limitation may have made sense when this provision was enacted, before the personal computer boom, but not in the era of the Information Superhighway, such a limitation is unreasonable.

The Computer Donation Incentive Act provides computer manufacturers the same enhanced deduction for donating computers for educational purposes that they currently receive for donating computers to colleges and universities for scientific purposes. Similarly, the bill will allow nonmanufacturers to receive a deduction for donating computers to elementary and secondary schools for educational use.

The Boxer-Chafee bill will provide a reasonable incentive for businesses to donate computer to the schools. I would like to emphasize the donated computers must be nearly new; those donated by manufacturers must be no more than 2 year old, and those donated by nonmanufacturers must be no more than 3 year old.

Along with computers and software, businesses should also donate their expertise, providing the training required to bring our schools fully on-line—and we challenge them to do so. Teachers and students both need such training in order to integrate computer-based lessons into their basic curriculum.

Alone, neither NetDay nor an adjustment to the Tax Code can solve all our educational problems or even make every student computer literate for the next century. But together, each initiative we take will help provide our students with the tools they need to drive on the information Superhighway and compete in a global information-based marketplace. Such initiatives are investments in the futures of our children.

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

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

S. 99

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

SECTION 1. CHARITABLE CONTRIBUTIONS OF SCIENTIFIC EQUIPMENT TO ELEMENTARY AND SECONDARY SCHOOLS.

(a) IN GENERAL.—Subparagraph (B) of section 170(e)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

''(B) QUALIFIED RESEARCH OR EDUCATION CONTRIBUTION.—For purposes of this paragraph, the term 'qualified research or education contribution' means a charitable contribution by a corporation of tangible personal property (including computer software), but only if—

''(i) the contribution is to—

''(I) an educational organization described in subsection (b)(1)(A)(ii),

''(II) a governmental unit described in subsection (c)(1), or

''(III) an organization described in section 41(e)(6)(B),

''(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed by the taxpayer, the date the construction of the property is substantially completed),

''(iii) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for—

''(I) research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences, or

''(II) in the case of an organization described in clause (i) (I) or (II), use within the United States for educational purposes related to the purpose or function of the organization,

''(iv) the original use of the property began with the taxpayer (or in the case of property constructed by the taxpayer, with the donee),

''(v) the property is not transferred by the donee in exchange for money, other property, or services, and

''(vi) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v).''

(b) DONATIONS TO CHARITY FOR REFURBISHING.—Section 170(e)(4) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(D) DONATIONS TO CHARITY FOR REFURBISHING.—For purposes of this paragraph, a charitable contribution by a corporation shall be treated as a qualified research or education contribution if—

''(i) such contribution is a contribution of property described in subparagraph (B)(iii) to an organization described in section 501(c)(3) and exempt from taxation under section 501(a),

''(ii) such organization repairs and refurbishes the property and donates the property to an organization described in subparagraph (B)(i), and

''(iii) the taxpayer receives from the organization to whom the taxpayer contributed the property a written statement representing that its use of the property (and any use

by the organization to which it donates the property) meets the requirements of this paragraph.''

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (4)(A) of section 170(e) of the Internal Revenue Code of 1986 is amended by striking ''qualified research contribution'' each place it appears and inserting ''qualified research or education contribution''.

(2) The heading for section 170(e)(4) of such Code is amended by inserting ''OR EDUCATION'' after ''RESEARCH''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

By Mr. KERRY:

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; to the Committee on Labor and Human Resources.

AVIATION SAFETY PROTECTION ACT

Mr. KERRY. Mr. President, in an effort to increase overall safety of the airline industry, I am introducing the ''Aviation Safety Protection Act of 1997,'' which would establish whistle blower protection for aviation workers.

The worker protections contained in the Occupational Safety and Health Act [OSHA] are very important to American workers. OSHA properly protects both private and Federal Government employees who report health and safety violations from reprisal by their employers. However, because of a loophole, aviation employees are not covered by these protections. Flight attendants and other airline employees are in the best position to recognize breaches in safety regulations and can be the critical link in ensuring safer air travel. Currently, those employees who work for unscrupulous airlines face the possibility of harassment, negative disciplinary action, and even termination if they report work violations.

Aviation employees perform an important public service when they choose to report safety concerns. No employee should be put in the position of having to choose between his or her job and reporting violations that threaten the safety of passengers and crew. For that reason, we need a strong whistle blower law to protect aviation employees from retaliation by their employers when reporting incidents to Federal authorities. Americans who travel on commercial airlines deserve the safeguards that exist when flight attendants and other airline employees can step forward to help Federal authorities enforce safety laws.

This bill would close the loophole in OSHA law and provide the necessary protections for aviation employees who provide safety violation information to Federal authorities or testify about or assist in disclosure of safety violations. The act provides a Department of Labor complaint procedure for employees who experience employer reprisal for reporting such violations, and assures that there are strong enforcement and judicial review provisions for fair implementation of the protections. The act also protects airlines from frivolous complaints by establishing a fine which will be imposed on an employee who files a complaint if the Department of Labor determines that there is no merit to the complaint.

I want to acknowledge the leadership of Representative JAMES CLYBURN who will introduce the bill in the House of Representatives. I am pleased to introduce the companion legislation in the Senate.

This bill will provide important protections to aviation workers and the general public. I urge my colleagues to join me in supporting it.

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. 100

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 ''Aviation Safety Protection Act of 1997''.

SEC. 2. PROTECTION OF EMPLOYEES PROVIDING AIR SAFETY INFORMATION.

(a) GENERAL RULE.—Chapter 421 of title 49, United States Code, is amended by adding at the end the following new subchapter:

''SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

''§ 42121. Protection of employees providing air safety information

''(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee of the air carrier or the contractor or subcontractor of an air carrier or otherwise discriminate against any such employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

''(1) provided, caused to be provided, or is about to provide or cause to be provided to the Federal Government information relating to air safety under this subtitle or any other law of the United States;

''(2) has filed, caused to be filed, or is about to file or cause to be filed a proceeding relating to air carrier safety under this subtitle or any other law of the United States;

''(3) testified or is about to testify in such a proceeding; or

''(4) assisted or participated or is about to assist or participate in such a proceeding.

''(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

''(1) FILING AND NOTIFICATION.—

''(A) IN GENERAL.—In accordance with this paragraph, a person may file (or have a person file on behalf of that person) a complaint with the Secretary of Labor if that person believes that an air carrier or contractor or subcontractor of an air carrier discharged or otherwise discriminated against that person in violation of subsection (a).

''(B) REQUIREMENTS FOR FILING COMPLAINTS.—A complaint referred to in subparagraph (A) may be filed not later than 180 days after an alleged violation occurs. The complaint shall state the alleged violation.

''(C) NOTIFICATION.—Upon receipt of a complaint submitted under subparagraph (A), the Secretary of Labor shall notify the air carrier, contractor, or subcontractor named in the complaint and the Administrator of the Federal Aviation Administration of the—

''(i) filing of the complaint;

''(ii) allegations contained in the complaint;

''(iii) substance of evidence supporting the complaint; and

''(iv) opportunities that are afforded to the air carrier, contractor, or subcontractor under paragraph (2).

''(2) INVESTIGATION; PRELIMINARY ORDER.—

''(A) IN GENERAL.—Not later than 60 days after receiving a complaint under paragraph (1), and after affording the air carrier, contractor, or subcontractor named in the complaint the opportunities specified in subparagraph (B), the Secretary of Labor shall conduct an investigation to determine whether there is reasonable cause to believe that a complaint submitted under this subsection has merit.

''(B) OPPORTUNITY FOR RESPONSE.—Before the date specified in subparagraph (A), the Secretary of Labor shall afford the air carrier, contractor, or subcontractor named in the complaint an opportunity to—

''(i) submit to the Secretary of Labor a written response to the complaint; and

''(ii) meet with a representative of the Secretary of Labor to present statements from witnesses.

''(C) NOTIFICATION.—Upon completion of an investigation under subparagraph (A), the Secretary of Labor shall notify the complainant and the air carrier, contractor, or subcontractor alleged to have committed a violation of subsection (a) of the findings of the investigation.

''(D) ORDERS.—If, on the basis of the investigation conducted under this paragraph, the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall—

''(i) issue a preliminary order providing the relief prescribed by paragraph (3)(B); and

''(ii) provide a copy of the order to the parties specified in subparagraph (C).

''(E) OBJECTIONS.—Not later than 30 days after receiving a notification under subparagraph (C), the air carrier, contractor, or subcontractor alleged to have committed a violation in a complaint filed under this subsection or the complainant may file an objection to the findings of an investigation conducted under this paragraph or a preliminary order issued under this paragraph and request a hearing on the record. The filing of an objection under this subparagraph shall not operate to stay any reinstatement remedy contained in a preliminary order issued under this paragraph.

''(F) HEARINGS.—A hearing requested under this paragraph shall be conducted expeditiously.

''(G) FINAL ORDER.—If no hearing is requested by the date specified in subparagraph (E), a preliminary order shall be considered to be a final order that is not subject to judicial review.

''(3) FINAL ORDER.—

''(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—

''(i) IN GENERAL.—Not later than 120 days after conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order that—

''(I) provides relief in accordance with this paragraph; or

''(II) denies the complaint.

''(ii) SETTLEMENT AGREEMENT.—At any time before issuance of a final order under this paragraph, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the air carrier, contractor, or subcontractor alleged to have committed the violation.

''(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the air carrier, contractor, or subcontractor that the Secretary of Labor determines to have committed the violation to—

''(i) take action to abate the violation;

''(ii) reinstate the complainant to the former position of the complainant and ensure the payment of compensation (including back pay) and the restoration of terms, conditions, and privileges associated with the employment; and

''(iii) provide compensatory damages to the complainant.

''(C) COSTS OF COMPLAINT.—If the Secretary of Labor issues a final order that provides for relief in accordance with this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the air carrier, contractor, or subcontractor named in the order an amount equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant (as determined by the Secretary of Labor) for, or in connection with, the bringing of the complaint that resulted in the issuance of the order.

''(D) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint brought under paragraph (1) is frivolous or was brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee in an amount not to exceed $5,000.

''(4) REVIEW.—

''(A) APPEAL TO COURT OF APPEALS.—

''(i) IN GENERAL.—Not later than 60 days after a final order is issued under paragraph (3), a person adversely affected or aggrieved by that order may obtain review of the order in the United States court of appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of that violation.

''(ii) REQUIREMENTS FOR JUDICIAL REVIEW.—A review conducted under this paragraph shall be conducted in accordance with chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order that is the subject of the review.

''(B) LIMITATION ON COLLATERAL ATTACK.—An order referred to in subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

''(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—

''(A) IN GENERAL.—If an air carrier, contractor, or subcontractor named in an order issued under paragraph (3) fails to comply with the order, the Secretary of Labor may file a civil action in the United States district court for the district in which the violation occurred to enforce that order.

''(B) RELIEF.—In any action brought under this paragraph, the district court shall have jurisdiction to grant any appropriate form of relief, including injunctive relief and compensatory damages.

''(6) ENFORCEMENT OF ORDER BY PARTIES.—

''(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order is issued under paragraph (3) may commence a civil action against the air carrier, contractor, or subcontractor named in the order to require compliance with the order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the order.

''(B) ATTORNEY FEES.—In issuing any final order under this paragraph, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any party if the court determines that the awarding of those costs is appropriate.

''(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

''(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of an air carrier, or contractor or subcontractor of an air carrier who, acting without direction from the air carrier (or an agent, contractor, or subcontractor of the air carrier), deliberately causes a violation of any requirement relating to air carrier safety under this subtitle or any other law of the United States.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 421 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

''42121. Protection of employees providing air safety information.''.

SEC. 3. CIVIL PENALTY.

Section 46301(a)(1)(A) of title 49, United States Code, is amended by striking ''subchapter II of chapter 421'' and inserting ''subchapter II or III of chapter 421''.

By Mrs. BOXER:

S. 101. A bill to amend the Public Health Service Act to provide for the training of health professions students with respect to the identification and referral of victims of domestic violence; to the Committee on Labor and Human Resources.

THE DOMESTIC VIOLENCE IDENTIFICATION AND REFERRAL ACT

Mrs. BOXER. Mr. President, I rise today to introduce the Domestic Violence Identification and Referral Act.

Spousal abuse, child abuse, and elder abuse injures millions of Americans each year, and is growing at an alarming rate. An estimated 2 to 4 million women are beaten by their spouses or former spouses each year. In 1993, 2.9 million children were reported abused or neglected, about triple the number reported in 1980. Studies also showed that spouse abuse and child abuse often go hand-in-hand.

Doctors, nurses, and other health care professionals are on the front lines of this abuse, but they cannot stop what they have been trained to see or talk about. The Domestic Violence Identification and Referral Act addresses this need by encouraging medical schools to incorporate training on domestic violence into their curriculums.

There is a need for this legislation. While many medical specialities, hospitals, and other organizations have made education about domestic violence a priority, this instruction typically occurs on the job or as part of a continuing medical education program. A 1994 survey by the Association of American Medical Colleges [AAMC] found that 60 percent of medical school graduates rated the time devoted to instruction in domestic violence as inadequate.

The bill I am introducing today would give preference in Federal funding to those medical and other health professional schools which provide significant training in domestic violence. It defines significant training to include identifying victims of domestic violence and maintaining complete medical records, providing medical advice regarding the dynamics and nature of domestic violence, and referring victims to appropriate public and nonprofit entities for assistance.

The bill also defines domestic violence in the broadest terms, to include battering, child abuse and elder abuse.

I hope my colleagues agree that this legislation is a critical next step in the fight to bring the brutality of domestic violence out in the open. It mobilizes our Nation's health care providers to recognize and treat its victims—and will ultimately save lives by helping to break the cycle of violence.

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. 101

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 ''Domestic Violence Identification and Referral Act of 1997''.

SEC. 2. ESTABLISHMENT, FOR CERTAIN HEALTH PROFESSIONS PROGRAMS, OF PROVISIONS REGARDING DOMESTIC VIOLENCE.

(a) TITLE VII PROGRAMS; PREFERENCES IN FINANCIAL AWARDS.—Section 791 of the Public Health Service Act (42 U.S.C. 295j) is amended by adding at the end the following:

''(c) PREFERENCES REGARDING TRAINING IN IDENTIFICATION AND REFERRAL OF VICTIMS OF DOMESTIC VIOLENCE.—

''(1) IN GENERAL.—In the case of a health professions entity specified in paragraph (2), the Secretary shall, in making awards of grants or contracts under this title, give preference to any such entity (if otherwise a qualified applicant for the award involved) that has in effect the requirement that, as a condition of receiving a degree or certificate (as applicable) from the entity, each student have had significant training in carrying out the following functions as a provider of health care:

''(A) Identifying victims of domestic violence, and maintaining complete medical records that include documentation of the examination, treatment given, and referrals made, and recording the location and nature of the victim's injuries.

''(B) Examining and treating such victims, within the scope of the health professional's discipline, training, and practice, including, at a minimum, providing medical advice regarding the dynamics and nature of domestic violence.

''(C) Referring the victims to public and nonprofit private entities that provide servvices for such victims.

''(2) RELEVANT HEALTH PROFESSIONS ENTITIES.—For purposes of paragraph (1), a health professions entity specified in this paragraph is any entity that is a school of medicine, a school of osteopathic medicine, a graduate program in mental health practice, a school of nursing (as defined in section 853), a program for the training of physician assistants, or a program for the training of allied health professionals.

''(3) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of the

Domestic Violence Identification and Referral Act of 1997, the Secretary shall submit to the Committee on Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report specifying the health professions entities that are receiving preference under paragraph (1); the number of hours of training required by the entities for purposes of such paragraph; the extent of clinical experience so required; and the types of courses through which the training is being provided.

''(4) DEFINITIONS.—For purposes of this subsection, the term 'domestic violence' includes behavior commonly referred to as domestic violence, sexual assault, spousal abuse, woman battering, partner abuse, child abuse, elder abuse, and acquaintance rape.''.

(b) TITLE VIII PROGRAMS; PREFERENCES IN FINANCIAL AWARDS.—Section 860 of the Public Health Service Act (42 U.S.C. 298b–7) is amended by adding at the end the following:

''(f) PREFERENCES REGARDING TRAINING IN IDENTIFICATION AND REFERRAL OF VICTIMS OF DOMESTIC VIOLENCE.—

''(1) IN GENERAL.—In the case of a health professions entity specified in paragraph (2), the Secretary shall, in making awards of grants or contracts under this title, give preference to any such entity (if otherwise a qualified applicant for the award involved) that has in effect the requirement that, as a condition of receiving a degree or certificate (as applicable) from the entity, each student have had significant training in carrying out the following functions as a provider of health care:

''(A) Identifying victims of domestic violence, and maintaining complete medical records that include documentation of the examination, treatment given, and referrals made, and recording the location and nature of the victim's injuries.

''(B) Examining and treating such victims, within the scope of the health professional's discipline, training, and practice, including, at a minimum, providing medical advice regarding the dynamics and nature of domestic violence.

''(C) Referring the victims to public and nonprofit private entities that provide services for such victims.

''(2) RELEVANT HEALTH PROFESSIONS ENTITIES.—For purposes of paragraph (1), a health professions entity specified in this paragraph is any entity that is a school of nursing or other public or nonprofit private entity that is eligible to receive an award described in such paragraph.

''(3) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of the Domestic Violence Identification and Referral Act of 1997, the Secretary shall submit to the Committee on Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report specifying the health professions entities that are receiving preference under paragraph (1); the number of hours of training required by the entities for purposes of such paragraph; the extent of clinical experience so required; and the types of courses through which the training is being provided.

''(4) DEFINITIONS.—For purposes of this subsection, the term 'domestic violence' includes behavior commonly referred to as domestic violence, sexual assault, spousal abuse, woman battering, partner abuse, child abuse, elder abuse, and acquaintance rape.''.

By Mr. BREAUX (for himself, Mr. AKAKA, Mr. BINGAMAN, Mr. CHAFEE, Mr. COCHRAN, Mr. CRAIG, Mr. GLENN, Mr. JEFFORDS, Mr. LEAHY, Mr. INOUYE, Ms. MIKULSKI, and Mr. REID):

S. 102. A bill to amend title XVIII of the Social Security Act to improve medicare treatment and education for beneficiaries with diabetes by providing coverage of diabetes outpatient self-management training services and uniform coverage of blood-testing strips for individuals with diabetes; to the Committee on Finance.

Mr. BREAUX. Mr. President, diabetes is the fourth leading cause of death from diseases in the United States. Deaths accountable to diabetes or resulting complications number about 250,000 per year. Diabetes also results in about 12,000 new cases of blindness each year and greatly increases an individual's chance of heart disease, kidney failure, and stroke.

The terrible irony, Mr. President, is that diabetes is largely a treatable condition. While there is no known cure, individuals who have diabetes can lead completely normal, active lives so long as they stick to a proper diet, carefully monitor the amount of sugar in their blood, and take their medicine, which may or may not include insulin. In order to take proper care of themselves, diabetics need to take self-maintenance education programs—at least once when they are diagnosed with the disease and then periodically after that to keep up with the latest treatments and any changes in their own condition.

Appropriate preventive education services for diabetics have the potential to save a great deal of money that would otherwise go for hospitalizations and other acute care costs—not to mention a great deal of unnecessary pain and suffering. CBO projects that this proposal would save Medicare money in the long-run.

Medicare currently covers diabetes self-maintenance education services in inpatient or hospital-based settings and in limited outpatient settings, specifically hospital outpatient departments or rural health clinics. Medicare does not cover education services if they are given in any other outpatient setting, such as a doctor's office. Even the limited coverage of outpatient settings that is currently permitted under Medicare is subject to State-by-State variation according to fiscal intermediaries' interpretation.

Medicare also covers the cost of the paper test strips that are used to monitor the sugar levels in the blood—but only for diabetics who require insulin to control their disease. All noninsulin dependent diabetics must purchase these test strips at their own expense.

Today, I am introducing the Medicare Diabetes Education and Supplies Amendments of 1997. This legislation would provide Medicare coverage for outpatient education on a consistent equitable basis throughout the country. The bill would extend Medicare coverage of outpatient programs beyond hospital-based programs and rural health clinics and direct the Secretary of Health and Human Services to do two things: First, to develop and implement payment amounts for outpatient diabetes education programs; and second, to adopt quality standards for outpatient education programs. Only qualified programs would be eligible to receive Medicare reimbursement. Furthermore, this legislation would mandate test strip coverage for all diabetics.

This preventive measure is a sensible one that will show savings for the Medicare Program in the long run. I encourage my colleagues to join me in supporting its passage this Congress.

By Mr. MURKOWSKI (for himself, Mr. CRAIG, Mr. GRAMS, Mr. KEMPTHORNE, Mr. ABRAHAM, Mr. HELMS, Mr. THURMOND, Mr. KYL, Mr. HOLLINGS, Mr. MACK, Mr. FAIRCLOTH, Mr. HATCH, Mr. WARNER, Mr. BOND, Mr. SMITH, Mr. ROBERTS, Mr. SANTORUM, Mr. LOTT, and Mr. JEFFORDS):

S. 104. A bill to amend the Nuclear Waste Policy Act of 1982; to the Committee on Energy and Natural Resources.

THE NUCLEAR WASTE POLICY ACT OF 1997

Mr. MURKOWSKI. Mr. President, last summer, the U.S. Court of Appeals issued a ruling that confirmed something that many of us already understood: the Federal Government has an obligation to provide a safe, centralized storage place for our Nation's spent nuclear fuel and nuclear waste, beginning less than 1 year from today.

This is a commitment that Congress, and the Department of Energy, made 15 years ago. We've collected $12 billion from America's ratepayers for this purpose. But after spending 6 billion of those dollars, the Federal Government is still not prepared to deliver on its promise to take and safely dispose of our Nation's nuclear waste by 1998. Hardworking Americans have paid for this as part of their monthly electric bill. But they haven't gotten results. So a lawsuit was filed, and the court confirmed that there is a legal obligation, as well as a moral one. We have reached a crossroads. The job of fixing this program is ours. The time for fixing the program is now.

Today, high-level nuclear waste and highly radioactive used nuclear fuel is accumulating at over 80 sites in 41 States, including waste stored at DOE weapons facilities. It is stored in populated areas, near our neighborhoods and schools, on the shores of our lakes and rivers, in the backyard of constituents young and old all across this land. Used nuclear fuel is being stored near the east and west coasts, where most Americans live. It may be in your town. Near your neighborhood.

Unfortunately, used fuel is being stored in pools that were not designed for long-term storage. Some of this fuel is already over 30 years old. Each year that goes by, our ability to continue storage of this used fuel at each of these sites in a safe and responsible

way diminishes. It is irresponsible to let this situation continue. It is unsafe to let this dangerous radioactive material continue to accumulate at more than 80 sites all across the country. It is unwise to block the safe storage of this used fuel in a remote area, away from high populations. This is a national problem that requires a coordinated, national solution.

Today, on behalf of myself, Mr. CRAIG, Mr. GRAMS, Mr. KEMPTHORNE, Mr. ABRAHAM, Mr. HELMS, Mr. THURMOND, Mr. KYL, Mr. HOLLINGS, Mr. MACK, Mr. FAIRCLOTH, Mr. HATCH, Mr. WARNER, Mr. BOND, Mr. ROBERT SMITH, Mr. ROBERTS, Mr. SANTORUM, Mr. LOTT, and Mr. JEFFORDS, I introduce the text of S. 1936, from the 104th Congress, as the Nuclear Waste Policy Act of 1997. This legislation, which was passed by the Senate last summer by a 63-to-37 vote, sets forth a program that will allow the Department of Energy to meet its obligation as soon as possible. The bill provides for an integrated system to manage used fuel from commercial nuclear powerplants and high-level radioactive waste from DOE's nuclear weapons facilities. The integrated system includes construction and operation of a temporary storage center, a safe transportation network to transfer these byproducts, and continuing scientific studies at Yucca Mountain, NV, to determine if it is a suitable repository site.

During floor consideration of S. 1936 last year, we received many constructive suggestions for improving the bill. The final version of S. 1936 passed by the Senate incorporated many of these changes. The most important provisions of the bill include:

Role for EPA.—The bill provides that the Environmental Protection Agency shall issue standards for the protection of the public from releases of radioactive materials from a permanent nuclear waste repository. The Nuclear Regulatory Commission is required to base its licensing determination on whether the repository can be operated in accordance with EPA's radiation protection standards.

National Environmental Policy Act [NEPA].—The bill complies fully with NEPA by requiring two full environmental impact statements, one in advance of operation of the temporary storage facility and one in advance of repository licensing by the Nuclear Regulatory Commission. The bill provides that where Congress has statutorily determined need, location, and size of the facilities, these issues need not be reconsidered.

Transportation routing.—The bill includes language of an amendment offered by Senator MOSELEY-BRAUN, which provides that, in order to ensure that spent nuclear fuel and high-level nuclear waste is transported safely, the Secretary of Energy will use transportation routes that minimize, to the maximum practicable extent, transportation through populated and sensitive environmental areas. The language also requires that the Secretary develop, in consultation with the Secretary of Transportation, a comprehensive management plan that ensures the safe transportation of these materials.

Transportation requirements.—The bill contains language clarifying that transportation of spent fuel under the Nuclear Waste Policy Act shall be governed by all requirements of Federal, State, and local governments and Indian tribes to the same extent that any person engaging in transportation in interstate commerce must comply with those requirements, as provided by the Hazardous Materials Transportation Act. The bill also requires the Secretary to provide technical assistance and funds for training to unions with experience with safety training for transportation workers. In addition, the bill clarifies that existing employee protections in title 49 of the United States Code concerning the refusal to work in hazardous conditions apply to transportation under this act. Finally, S. 1936 provides authority for the Secretary of Transportation to establish training standards, as necessary, for workers engaged in the transportation of spent fuel and high-level waste.

Interim storage facility.—In order to ensure that the size and scope of the interim storage facility is manageable in the context of the overall nuclear waste program, and yet adequate to address the Nation's immediate spent fuel storage needs, the bill would limit the size of phase I of the interim storage facility to 15,000 metric tons of spent fuel and the size of phase II of the facility to 40,000 metric tons. Phase II of the facility would be expandable to 60,000 metric tons if the Secretary fails to meet his projected goals with regard to licensing of the permanent repository site.

Preemption of other laws.—The bill provides that, if any law does not conflict with the provisions of the Nuclear Waste Policy Act and the Atomic Energy Act, that law will govern. State and local laws are preempted only if those laws are inconsistent with or duplicative of the Nuclear Waste Policy Act or the Atomic Energy Act. This language is consistent with the preemption authority found in the existing Hazardous Materials Transportation Act.

Finally, the bill contains bipartisan language that was drafted to address the administration's objections to the siting of an interim facility at the Nevada test site before the viability assessment of the Yucca Mountain permanent repository site was available.—The language provides that construction shall not begin on an interim storage facility at Yucca Mountain before December 31, 1998. The bill provides for the delivery of an assessment of the viability of the Yucca Mountain site to the President and Congress by the Secretary 6 months before the construction can begin on the interim facility. If, based upon the information before him, the President determines, in his discretion, that Yucca Mountain is not suitable for development as a repository, then the Secretary shall cease work on both the interim and permanent repository programs at the Yucca Mountain site. The bill further provides that, if the President makes such a determination, he shall have 18 months to designate an interim storage facility site. If the President fails to designate a site, or if a site he has designated has not be approved by Congress within 2 years of his determination, the Secretary is instructed to construct an interim storage facility at the Yucca Mountain site. This provision ensures that the construction of an interim storage facility at the Yucca Mountain site will not occur before the President and Congress have had an ample opportunity to review the technical assessment of the suitability of the Yucca Mountain site for a permanent repository and to designate an alternative site for interim storage based upon that technical information. However, this provision also ensures that, ultimately, an interim storage facility site will be chosen. Without this assurance, we leave open the possibility we will find in 1998 that we have no interim storage, no permanent repository program and, after more than 15 years and $6 billion spent, that we are back to where we started in 1982 when we passed the first version of the Nuclear Waste Policy Act.

During the debate that will unfold, we will have the Senators from Nevada oppose the bill with all the arguments that they can muster. That's understandable. They are merely doing what Nevadans have asked them to do. Nobody wants nuclear waste in their State, but it has to go somewhere. Both Senators from Nevada are friends of mine. We've talked about this issue at length. They are doing what they feel they must do to satisfy Nevadans. But as U.S. Senators, we must sometimes take a national perspective. We must do what's best for the country as a whole.

No one can continue to pretend that there is an unlimited amount of time to deal with this problem. The Federal Government must act—and act now—to ensure that there is a safe and secure place to put radioactive waste it is obligated to accept. Although the court did not address the issue of remedies, the court was very clear that DOE has an obligation to take spent nuclear fuel in 1998, whether or not a repository is ready.

So far, DOE's only response to the court's decision has been to send out a letter asking for suggestions on how it can meet its obligation to take spent fuel in 1998. Finally, it is clear that we all agree on the question. Now is the time for answers.

We have a clear and simple choice. We can choose to have one remote, safe, and secure nuclear waste storage facility. Or through inaction and delay, we can face an uncertain judicial remedy which will almost certainly be

costly, and which is unlikely to actually move waste out of America's backyards.

It is not morally right to shirk our responsibility to protect the environment and the future of our children and grandchildren. We cannot wait until 1998 to decide whether the Department of Energy will store this nuclear waste. We have received letters from 23 State Governors and attorneys general, including Arizona, Arkansas, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Wisconsin, urging the Congress to pass, and the President to sign, a bill that provides for an interim storage site in Nevada. Congress must speak now and provide the means to build one, safe and monitored facility at the Nevada test site, a unique site so remote that the Government used it to explode nuclear weapons for 50 years, or another site designated by the President and Congress.

The time is now—the Nuclear Waste Policy Act of 1997 is the answer.

Mr. CRAIG. Mr. President, today we begin a new Congress and an urgent environmental problem remains unresolved. Today I am reintroducing legislation to address the problem that continues to vex us—that is, how to address our Nation's high-level nuclear waste disposal. The Nuclear Waste Policy Act of 1997 that is introduced today answers this problem and is responsible, fair, environmentally friendly, and supported by Members of both parties.

Today, high-level nuclear waste and highly radioactive used nuclear fuel continues to accumulate at more than 80 sites in 41 States. Each year, as more and more fuel accumulates and our ability to continue to store this used fuel at each of these sites in a safe and responsible way diminishes. The only responsible choice is to support legislation that solves this problem by safely moving this used fuel to a safe, monitored facility in the remote Nevada desert. This answer will lead us to a safer future for all Americans.

To facilitate our consideration of such legislation, Senator MURKOWSKI and I along with 16 other cosponsors are introducing a bill to amend the Nuclear Waste Policy Act of 1982. This legislation is identical to S. 1936 that passed the Senate toward the end of the past Congress. Unfortunately, that legislation was not acted upon by the other body nor signed into law. It is my intent to assure that is not the fate of this legislation. The Senate Energy and Natural Resources Committee will hold a hearing on this bill on February 5 and will move to a speedy markup. I encourage the Senate and House to act quickly and to send it to the President for his signature.

This bill contains all of the important clarifications and changes addressing the concerns that were raised prior to and during floor debate in the 104th Congress. This is legislation that will allow a solution for nuclear waste disposal. Let us move forward to enact it into law. I encourage the administration to work with us to make that a reality.

This bill provides a clear and simple choice. We can choose to have one, remote, safe, and secure nuclear waste storage facility. Or, through inaction and delay, we can perpetuate the status quo and have 80 such sites spread across the Nation. The courts have made clear the Department of Energy must act to dispose of this material in 1998. It is irresponsible to shirk our responsibility to protect the environment and the future for our children and grandchildren. This Nation needs to confront its nuclear waste problem now. I urge my colleagues to support the Nuclear Waste Policy Act of 1997.

Mr. KEMPTHORNE. Mr. President, I rise in support of the Nuclear Waste Policy Act of 1997 introduced today by my good friends Senator CRAIG and Senator MURKOWSKI, the chairman of the Senate Energy and Natural Resource Committee. This important bill will make substantial, necessary and meaningful progress in our Nation's effort to deal with the problem of radioactive nuclear waste. The bill is similar to the Nuclear Waste Policy Act of 1996 which passed the Senate by a 2-to-1 ratio last year.

The Nuclear Waste Policy Act of 1997, which I am proud to cosponsor, will establish an interim storage facility for spent nuclear fuel and high-level radioactive waste at the Nevada test site. The interim storage site will address our near-term problem of safely storing spent nuclear fuel and high-level waste while the characterization, permitting and construction of the permanent repository at Yucca Mountain proceeds.

My State of Idaho currently stores a wide variety of Department of Energy, Navy and commercial reactor spent nuclear fuel at the Idaho National Engineering Laboratory. This spent nuclear fuel is stored in temporary facilities that are reaching the end of their design life. This phenomenon is happening across the country as temporary storage facilities are used beyond their design life because our Nation has not developed a comprehensive policy of dealing with nuclear waste. Instead of dealing with this difficult issue, for far too long our Government, under Democratic and Republican leadership, has kicked the hard decisions down the road. The Craig-Murkowski bill will tackle this difficult problem and it deserves the support of the Congress and the administration.

The Nuclear Waste Policy Act of 1997 directs the Environmental Protection Agency's role to determine the appropriate radiation protection standards for the interim storage facility. The language directing establishment of an interim storage facility complies with the National Environmental Protection Act which requires preparation of an environmental impact statement before operation of the interim storage facility can begin. The Craig-Murkowski bill also directs that all shipments to the interim storage facility must comply with existing transportation laws and standards.

The Nuclear Waste Policy Act offers justice to the rate payers and electric utilities who have paid into the nuclear waste fund and gotten little if any benefit from those fees. After collecting billions in fees, the Craig-Murkowski bill will force the Federal Government to provide the storage facility promised to those currently storing spent nuclear fuel.

Mr. President, this is a very good bill which solves a vexing nation problem. The Craig-Murkowski bill will make important progress in the way the United States stores radioactive nuclear waste. The bill will show the citizens of this country that this Congress will solve tough problems in a fair and rational manner.

I urge my colleagues to support the Nuclear Waste Policy Act of 1997 and I want to thank Senators CRAIG and MURKOWSKI for their tenacious determination to solve this national problem.

Mr. ABRAHAM. Mr. President, today I join several of my colleagues in cosponsoring the Nuclear Waste Policy Act of 1997. This bill, a replica of the legislation that was passed by the Senate during the 104th Congress, is vital to securing this Nation's commercial waste at a single, safe facility.

I believe an agreement for the consolidation of this Nation's commercial nuclear waste is long overdue. Today, old fuel is stored at over 100 facilities around the country. In 1980, the Department of Energy [DOE] recognized the danger of such a system and entered into an agreement with much of the nuclear power industry to fund the research and development of a central, permanent facility. DOE was to be responsible for collecting and storing the fuel starting in 1988. Since 1980, the DOE has collected over $11 billion of the taxpayers' dollars for this permanent facility. Last year, however, the DOE announced that it will not be able to begin storing waste from commercial reactors until at least the year 2010.

In my opinion, Michigan cannot wait that long. Michigan has four nuclear plants in operation today. All four were designed with some storage capacity, but none are capable of storing used fuel for an extended period of time. Indeed, the Palisades plant in Southaven, MI, has already run out of used fuel storage space. The plant now stores its nuclear waste in steel casks which sit on a platform about 100 yards from Lake Michigan. This storage arrangement illustrates the need for a new national storage policy.

Mr. President, Michigan needs a national storage facility for nuclear waste. I am pleased to be a cosponsor

of the Nuclear Waste Policy Act and hope that both the House and Senate will move quickly to pass this legislation and present it to the President.

By Mr. MOYNIHAN:

S. 105. A bill to repeal the habeas corpus requirement that a Federal court defer to State court judgments and uphold a conviction regardless of whether the Federal court believes that the State court erroneously interpreted Constitutional law, except in cases where the Federal court believes the State court acted in an unreasonable manner; to the Committee on the Judiciary.

HABEAS CORPUS LEGISLATION

Mr. MOYNIHAN. Mr. President, I introduce this bill to repeal an unprecedented provision—unprecedented until the 104th Congress—to tamper with the constitutional protection of habeas corpus.

The provision reads:

(d) An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Last year we enacted a statute which holds that constitutional protections do not exist unless they have been unreasonably violated, an idea that would have confounded the framers. Thus, we introduced a virus that will surely spread throughout our system of laws.

Article I, section 9, clause 2 of the Constitution stipulates, ''The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.''

We are mightily and properly concerned about the public safety, which is why we enacted the counterterrorism bill. But we have not been invaded, Mr. President, and the only rebellion at hand appears to be against the Constitution itself. We are dealing here, sir, with a fundamental provision of law, one of those essential civil liberties which precede and are the basis of political liberties.

The writ of habeas corpus is often referred to as the ''Great Writ of Liberty.'' William Blackstone (1723–80) called it ''the most celebrated writ in English law, and the great and efficacious writ in all manner of illegal imprisonment.''

* * * * *

I repeat what I have said previously here on the Senate floor: If I had to choose between living in a country with habeas corpus but without free elections, or a country with free elections but without habeas corpus, I would choose habeas corpus every time. To say again, this is one of the fundamental civil liberties on which every democratic society of the world has built political liberties that have come subsequently.

I make the point that the abuse of habeas corpus—appeals of capital sentences—is hugely overstated. A 1995 study by the Department of Justice's Bureau of Justice Statistics determined that habeas corpus appeals by death row inmates constitute 1 percent of all Federal habeas filings. Total habeas filings make up 4 percent of the caseload of Federal district courts. And most Federal habeas petitions are disposed of in less than 1 year. The serious delays occur in State courts, which take an average of 5 years to dispose of habeas petitions. If there is delay, the delay is with the State courts.

It is troubling that Congress has undertaken to tamper with the Great Writ in a bill designed to respond to the tragic circumstances of the Oklahoma City bombing last year. Habeas corpus has little to do with terrorism. The Oklahoma City bombing was a Federal crime and will be tried in Federal courts.

Nothing in our present circumstance requires the suspension of habeas corpus, which was the practical effect of the provision in that bill. To require a Federal court to defer to a State court's judgment unless the State court's decision is ''unreasonably wrong'' effectively precludes Federal review. I find this disorienting.

Anthony Lewis has written of the habeas provision in that bill: ''It is a new and remarkable concept in law: that mere wrongness in a constitutional decision is not to be noticed.'' We have agreed to this; to what will we be agreeing next? I restate Mr. Lewis' observation, a person of great experience, long a student of the courts, ''It is a new and remarkable concept in law: that mere wrongness in a constitutional decision is not to be noticed.'' Backward reels the mind.

On December 8, 1995, four former U.S. Attorneys General, two Republicans and two Democrats, all persons with whom I have the honor to be acquainted, Benjamin R. Civiletti, Jr., Edward H. Levi, Nicholas Katzenbach, and Elliot Richardson—I served in administrations with Mr. Levi, Mr. Katzenbach, Mr. Richardson; I have the deepest regard for them—wrote President Clinton. I ask unanimous consent that the full text be printed in the RECORD as follows:

December 8, 1995.

HON. WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The habeas corpus provisions in the Senate terrorism bill, which the House will soon take up, are unconstitutional. Though intended in large part to expedite the death penalty review process, the litigation and constitutional rulings will in fact delay and frustrate the imposition of the death penalty. We strongly urge you to communicate to the Congress your resolve, and your duty under the constitution, to prevent the enactment of such unconstitutional legislation and the consequent disruption of so critical of part of our criminal punishment system.

The constitutional infirmities reside in three provisions of the legislation: one requiring federal courts to defer to erroneous state court rulings on federal constitutional matters, one imposing time limits which could operate to completely bar any federal habeas corpus review at all, and one prevent the federal courts from hearing the evidence necessary to decide a federal courts from hearing the evidence necessary to decide a federal constitutional question. They violate the Habeas Corpus Suspension Clause, the judicial powers of Article III, and due process. None of these provisions appeared in the bill that you and Senator Biden worked out in the last Congress together with representatives of prosecutors' organizations.

The deference requirement would bar any federal court from granting habeas corpus relief where a state court has misapplied the United States Constitution, unless the constitutional error rose to a level of ''unreasonableness.'' The time-limits provisions set a single period of the filing of both state and federal post-conviction petitions (six months in a capital case and one year in other cases), commencing with the date a state conviction become final on direct review. Under these provisions, the entire period could be consumed in the state process, through no fault of the prisoner or counsel, thus creating an absolute bar to the filing of federal habeas corpus petition. Indeed, the period could be consumed before counsel had even been appointed in the state process, so that the inmate would have no notice of the time limit or the fatal consequences of consuming all of it before filing a state petition.

Both of these provisions, by flatly barring federal habeas corpus review under certain circumstances, violate the Constitution's Suspension Clause, which provides: ''The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in the case of rebellion or invasion the public safety may require it'' (Art. I, Sec. 9, cl. 1). Any doubt as to whether this guarantee applies to persons held in state as well as federal custody was removed by the passage of the Fourteenth Amendment and by the amendment's framers' frequent mention of habeas corpus as one of the privileges and immunities so protected.

The preclusion of access to habeas corpus also violates Due Process. A measure is subject to proscription under the due process clause if it ''offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,'' as viewed by ''historical practice.'' *Medina* v. *California,* 112 S.Ct. 2572, 2577 (1992). Independent federal court review of the constitutionality of state criminal judgments has existed since the founding of the Nation, first by writ of error, and since 1867 by writ of habeas corpus. Nothing else is more deeply rooted in America's legal traditions and conscience. There is no case in which ''a state court's incorrect legal determination has ever been allowed to stand because it was reasonable,'' Justice O'Connor found in *Wright* v. *West,* 112 S.Ct. 2482, 2497; ''We have always held that federal courts, even on habeas, have an independent obligation to say what the law is.'' Indeed, Alexander Hamilton argued, in The Federalist No. 84, that the existence of just two protections—habeas corpus and the prohibition against ex post facto laws—obviated the need to add a Bill of Rights to the Constitution.

The deference requirement may also violate the powers granted to the judiciary

under Article III. By stripping the federal courts of authority to exercise independent judgment and forcing them to defer to previous judgments made by state courts, the provision runs afoul of the oldest constitutional mission of the federal courts: ''the duty . . . to say what the law is.'' *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Although Congress is free to alter the federal courts' jurisdiction, it cannot order them how to interpret the Constitution, or dictate any outcome on the merits. *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871). In 1996, the Supreme Court reiterated that Congress has no power to assign ''rubber stamp work'' to an Article III court. ''Congress may be free to establish a . . . scheme that operates without court participation,'' the Court said, ''but that is a matter quite different from instructing a court automatically to enter a judgment pursuant to a decision the court has not authority to evaluate.'' *Gutierrez de Martinez* v. *Lamagno*, 115 S. Ct 2227, 2234.

Finally, in prohibiting evidentiary hearings where the constitutional issue raised does not go to guilt or innocence, the legislation again violates Due Process. A violation of constitutional rights cannot be judged in a vacuum. The determination of the facts assumes ''and importance fully as great as the validity of the substantive rule of law to be applied.'' *Wingo* v. *Wedding*, 418 U.S. 461, 474 (1974).

Prior to 1996, the last time habeas corpus legislation was debated at length in constitutional terms was in 1968. A bill substantially eliminating federal habeas corpus review for state prisoners was defeated because, as Republican Senator Hugh Scott put it at the end of debate, ''if Congress tampers with the great writ, its action would have about as much chance of being held constitutional as the celebrated celluloid dog chasing the asbestos cat through hell.''

In more recent years, the habeas reform debate has been viewed as a mere adjunct of the debate over the death penalty. But when the Senate took up the terrorism bill this year, Senator Moynihan sought to reconnect with the large framework of constitutional liberties: ''If I had to live in a country which had habeas corpus but not free elections,'' he said, ''I would take habeas corpus every time.'' Senator Chafee noted that his uncle, a Harvard law scholar, has called habeas corpus ''the most important human rights provision in the Constitution.'' With the debate back on constitutional grounds, Senator Biden's amendment to delete the deference requirement nearly passed, with 46 votes.

We respectfully ask that you insist, first and foremost, on the preservation of independent federal review, i.e., on the rejection of any requirement that federal courts defer to state court judgments on federal constitutional questions. We also urge that separate time limits be set for filing federal and state habeas corpus petitions—a modest change which need not interfere with the setting of strict time limits—and that they begin to run only upon the appointment of competent counsel. And we urge that evidentiary hearings be permitted wherever the factual record is deficient on an important constitutional issue. Congress can either fix the constitutional flaws now, or wait through several years of litigation and confusion before being sent back to the drawing board. Ultimately, it is the public's interest in the prompt and fair disposition of criminal cases which will suffer. The passage of an unconstitutional bill helps no one.

We respectfully urge you, as both President and a former professor of constitutional law, to call upon Congress to remedy these flaws before sending the terrorism bill to your desk. We request an opportunity to meet with you personally to discuss this matter so vital to the future of the Republic and the liberties we all hold dear.

Sincerely,

BENJAMIN R. CIVILETTI, Jr.,-
Baltimore, MD.
EDWARD H. LEVI,
Chicago, IL.
NICHOLAS deB. KATZENBACH,-
Princeton, NJ.
ELLIOT L. RICHARDSON,
Washington, DC.

Let me read excerpts from the letter:

''The habeas corpus provisions in the Senate bill . . . are unconstitutional. Though intended in large part to expedite the death penalty review process, the litigation and constitutional rulings will in fact delay and frustrate the imposition of the death penalty . . .

The constitutional infirmities . . . violate the Habeas Corpus Suspension Clause, the judicial powers of Article III, and due process . . .

. . . A measure is subject to proscription under the due process clause if it ''offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,'' as viewed by ''historical practice.''

That language is Medina versus California, a 1992 decision. To continue,

Independent federal court review of the constitutionality of state criminal judgments has existed since the founding of the Nation, first by writ of error, and since 1867 by writ of habeas corpus.

Nothing else is more deeply rooted in America's legal traditions and conscience. There is no clause in which ''a state court's incorrect legal determination has ever been allowed to stand because it was reasonable.''

That is Justice O'Connor, in Wright versus West. She goes on, as the attorneys general quote. ''We have always held that federal courts, even on habeas, have an independent obligation to say what the law is.''

If I may interpolate, she is repeating the famous injunction of Justice Marshall in Marbury versus Madison.

The attorneys general go on to say,

Indeed, Alexander Hamilton argued, in The Federalist No. 84, that the existence of just two protections—habeas corpus and the prohibition against ex post facto laws—obviated the need to add a Bill of Rights to the Constitution.

The letter from the Attorneys General continues, but that is the gist of it. I might point out that there was, originally, an objection to ratification of the Constitution, with those objecting arguing that there had to be a Bill of Rights added. Madison wisely added one during the first session of the first Congress. But he and Hamilton and Jay, as authors of The ''Federalist Papers,'' argued that with habeas corpus and the prohibition against ex post facto laws in the Constitution, there would be no need even for a Bill of Rights. We are glad that, in the end, we do have one. But their case was surely strong, and it was so felt by the framers.

To cite Justice O'Connor again: ''A state court's incorrect legal determination has never been allowed to stand because it was reasonable.''

Justice O'Connor went on: ''We have always held that Federal courts, even on habeas, have an independent obligation to say what the law is.''

Mr. President, we can fix this now. Or, as the Attorneys General state, we can ''wait through several years of litigation and confusion before being sent back to the drawing board.'' I fear that we will not fix it now.

We Americans think of ourselves as a new nation. We are not. Of the countries that existed in 1914, there are only eight which have not had their form of government changed by violence since then. Only the United Kingdom goes back to 1787 when the delegates who drafted our Constitution established this Nation, which continues to exist. In those other nations, sir, a compelling struggle took place, from the middle of the 18th century until the middle of the 19th century, and beyond into the 20th, and even to the end of the 20th in some countries, to establish those basic civil liberties which are the foundation of political liberties and, of those, none is so precious as habeas corpus, the ''Great Writ.''

Here we are trivializing this treasure, putting in jeopardy a tradition of protection of individual rights by Federal courts that goes back to our earliest foundation. And the virus will spread. Why are we in such a rush to amend our Constitution? Why do we tamper with provisions as profound to our traditions and liberty as habeas corpus? The Federal courts do not complain. It may be that because we have enacted this, there will be some prisoners who are executed sooner than they otherwise would have been. You may take satisfaction in that or not, as you choose, but we have begun to weaken a tenet of justice at the very base of our liberties. The virus will spread.

This is new. It is profoundly disturbing. It is terribly dangerous. If I may have the presumption to join in the judgment of four Attorneys Generals, Mr. Civiletti, Mr. Levi, Mr. Katzenbach, and Mr. Richardson—and I repeat that I have served in administrations with three of them—this matter is unconstitutional and should be repealed from law.

Fifteen years ago, June 6, 1982, to be precise, I gave the commencement address at St. John University Law School in Brooklyn. I spoke of the proliferation of court-curbing bills at that time. I remarked:

* * * some people—indeed, a great many people—have decided that they do not agree with the Supreme Court and that they are not satisfied to Debate, Legislate, Litigate.

They have embarked upon an altogether new and I believe quite dangerous course of action. A new triumvirate hierarchy has emerged. Convene (meaning the calling of a constitutional convention), Overrule (the passage of legislation designed to overrule a particular Court ruling, when the Court's ruling was based on an interpretation of the Constitution), and Restrict (to restrict the jurisdiction of certain courts to decide particular kinds of cases).

Perhaps the most pernicious of these is the attempt to restrict courts' jurisdictions, for it is * * * profoundly at odds with our Nation's customs and political philosophy.

It is a commonplace that our democracy is characterized by majority rule and minority rights. Our Constitution vests majority rule in the Congress and the President while the courts protect the rights of the minority.

While the legislature makes the laws, and the executive enforces them, it is the courts that tell us what the laws say and whether they conform to the Constitution.

This notion of judicial review has been part of our heritage for nearly two hundred years. There is not a more famous case in American jurisprudence than Marbury v. Madison and few more famous dicta than Chief Justice Marshall's that

''It is emphatically the province and the duty of the judicial department to say what the law is.''

But in order for the court to interpret the law, it must decide cases. If it cannot hear certain cases, then it cannot protect certain rights.

We need to deal resolutely with terrorism. And we have. But the guise of combating terrorism, we have diminished the fundamental civil liberties that Americans have enjoyed for two centuries; therefore the terrorists will have won.

My bill will repeal this dreadful, unconstitutional provision now in public law. I ask unanimous consent that the article entitled ''First in Damage to Constitutional Liberties,'' by Nat Hentoff from the Washington Post of November 16, 1996; and the article entitled ''Clinton's Sorriest Record'' from the New York Times of October 14, 1996; be printed in the Record at the conclusion of my remarks.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 16, 1996]

FIRST IN DAMAGE TO CONSTITUTIONAL LIBERTIES

(By Nat Hentoff)

There have been American presidents to whom the Constitution has been a nuisance to be overruled by an means necessary. In 1798, only seven years after the Bill of Rights was ratified, John Adams triumphantly led Congress in the passage of the Alien and Sedition Acts, which imprisoned a number of journalists and others for bringing the president or Congress into ''contempt or disrepute.'' So much for the First Amendment.

During the Civil War, Abraham Lincoln actually suspended the writ of habeas corpus. Alleged constitutional guarantees of peaceful dissent were swept away during the First World War—with the approval of Woodrow Wilson. For example, there were more than 1,900 prosecutions for anti-war books, newspaper articles, pamphlets and speeches. And Richard Nixon seemed to regard the Bill of Rights as primarily a devilish source of aid to his enemy.

No American president, however, has done so much damage to constitutional liberties as Bill Clinton—often with the consent of Republicans in Congress. But it has been Clinton who had the power and the will to seriously weaken our binding document in ways that were almost entirely ignored by the electorate and the press during the campaign.

Unlike Lincoln, for example, Clinton did a lot more than temporarily suspend habeas corpus. One of his bills that has been enacted into law guts the rights that Thomas Jefferson insisted be included in the Constitution. A state prisoner on death row now has only a year to petition a federal court to review the constitutionality of his trial or sentence. In many previous cases of prisoners eventually freed after years of waiting to be executed, proof of their innocence has been discovered long after the present one year limit.

Moreover, the Clinton administration is—as the ACLU's Laura Murphy recently told the National Law Journal—''the most wiretap-friendly administration in history.''

And Clinton ordered the Justice Department to appeal a unanimous 3rd circuit Court of Appeals decision declaring unconstitutional the Communications Decency Act censoring the Internet, which he signed into law.

There is a chilling insouciance in Clinton's elbowing the Constitution out of the way. He blithely, for instance, has stripped the courts of their power to hear certain kinds of cases. As Anthony Lewis points out in the New York Times, Clinton has denied many people their day in court.

For one example, says Lewis. ''The new immigration law * * * takes away the rights of thousands of aliens who may be entitled to legalize their situation under a 1986 statute giving amnesty to illegal aliens.'' Cases involving as many as 300,000 people who may still qualify for amnesty have been waiting to be decided. All have now been thrown out of court by the new immigration law.

There have been other Clinton revisions of the Constitution, but in sum—as David Boaz of the Cato Institute has accurately put it—Clinton has shown ''a breathtaking view of the power of the Federal government, a view directly opposite the meaning of 'civil libertarian.' ''

During the campaign there was no mention at all of this breathtaking exercise of federal power over constitutional liberties. None by former senator Bob Dole who has largely been in agreement with this big government approach to constitutional ''guarantees.'' Nor did the press ask the candidates about the Constitution.

Laura Murphy concludes that ''both Clinton and Dole are indicative of how far the American people have slipped away from the notions embodied in the Bill of Rights.'' She omitted the role of the press, which seems focused primarily on that part of the First Amendment that protects the press.

Particularly revealing were the endorsements of Clinton by the New York Times, The Washington Post and the New Republic, among others. In none of them was the president's civil liberties record probed. (The Post did mention the FBI files at the White House.) Other ethical problems were cited, but nothing was mentioned about habeas corpus, court-stripping, lowering the content of the Internet to material suitable for children and the Clinton administration's decided lack of concern for privacy protections of the individual against increasingly advanced government technology.

A revealing footnote to the electorate's ignorance of this subverting of the Constitution is a statement by N. Don Wycliff, editorial page editor of the Chicago Tribune. He tells Newsweek that ''people are not engaged in the [political] process because there are no compelling issues driving them to participate. It would be different if we didn't have peace and prosperity.''

What more could we possibly want?

[From the New York Times, Oct. 14, 1996]

ABROAD AT HOME; CLINTON'S SORRIEST RECORD

(By Anthony Lewis)

Bill Clinton has not been called to account in this campaign for the worst aspect of his Presidency. That is his appalling record on constitutional rights.

The Clinton years have seen, among other things, a series of measures stripping the courts of their power to protect individuals from official abuse—the power that has been the key to American freedom. There has been nothing like it since the Radical Republicans, after the Civil War, acted to keep the courts from holding the occupation of the South to constitutional standards.

The Republican Congress of the last two years initiated some of the attacks on the courts. But President Clinton did not resist them as other Presidents have. And he proposed some of the measures trampling on constitutional protections.

Much of the worst has happened this year. President Clinton sponsored a counterterrorism bill that became law with a number of repressive features in it. One had nothing to do with terrorism: a provision gutting the power of Federal courts to examine state criminal convictions, on writs of habeas corpus, to make sure there was no violation of constitutional rights.

The Senate might well have moderated the habeas corpus provision if the President had put up a fight. But he broke a promise and gave way.

The counterterrorism law also allows the Government to deport a legally admitted alien, on the ground that he is suspected of a connection to terrorism, without letting him see or challenge the evidence. And it goes back to the McCarthy period by letting the Government designate organizations as ''terrorist''—a designation that could have included Nelson Mandela's African National Congress before apartheid gave way to democracy in South Africa.

The immigration bill just passed by Congress has many sections prohibiting review by the courts of decisions by the Immigration and Naturalization Service or the Attorney General. Some of those provisions have drastic retroactive consequences.

For example, Congress in 1986 passed an amnesty bill that allowed many undocumented aliens to legalize their presence in this country. They had to file by a certain date, but a large number said they failed to do so because improper I.N.S. regulations discouraged them.

The Supreme Court held that those who could show they were entitled to amnesty but were put off by the I.N.S. rules could file late. Lawsuits involving thousands of people are pending. But the new immigration law throws all those cases—and individuals—out of court.

Another case, in the courts for years, stems from an attempt to deport a group of Palestinians. Their lawyer sued to block the deportation action; a Federal district judge, Stephen V. Wilson, a Reagan appointee, found that it was an unlawful selective proceeding against people for exercising their constitutional right of free speech. The new immigration law says the courts may not hear such cases.

The immigration law protects the I.N.S. from judicial scrutiny in a broader way. Over the years the courts have barred the service from deliberately discriminatory policies, for example the practice of disallowing virtually all asylum claims by people fleeing persecution in certain countries. The law bars all lawsuits of that kind.

Those are just a few examples of recent incursions on due process of law and other constitutional guarantees. A compelling piece by John Heilemann in this month's issue of Wired, the magazine on the social consequences of the computer revolution, concludes that Mr. Clinton's record on individual rights is ''breathtaking in its awfulness.'' He may be, Mr. Heilemann says, ''the worst civil liberties President since Richard Nixon.'' And even President Nixon did not leave a legacy of court-stripping statutes.

It is by no means clear that Bob Dole would do better. He supported some of the worst legislation in the Senate, as the Gingrich Republicans did in the House.

Why? The Soviet threat, which used to be the excuse for shoving the Constitution aside, is gone. Even in the worst days of the Red Scare we did not strip the courts of their protective power. Why are we legislating in panic now? Why, especially, is a lawyer President indifferent to constitutional rights and their protection by the courts?

By Mrs. BOXER.

S. 106. A bill to require that employees who participate in cash or deferred arrangements are free to determine whether to be invested in employer real property and employer securities, and if not, to protect such employees by applying the same prohibited transaction rules that apply to traditional defined benefit pension plans, and for other purposes; to the Committee on Finance.

S. 107. A bill to require the offer in every defined benefit plan of a joint and ⅔ survivor benefit annuity option and to require comparative disclosure of all benefit options to both spouses; to the Committee on Finance.

S. 108. A bill to require annual, detailed investment reports by plans with qualified cash or deferred arrangements, and for other purposes; to the Committee on Labor and Human Resources.

LEGISLATION TO PROTECT AMERICAN PENSION FUNDS

Mrs. BOXER. Mr. President, today I am introducing three bills designed to protect Americans' pension funds.

I. THE 401(K) PENSION PLAN PROTECTION ACT

The first bill, the ''401(k) Pension Plan Protection Act of 1997'', would give employees who participate in a 401(k) plan the assurance that their employer cannot force them to invest their employee contributions in the company.

The 401(k) Pension Protection Act will increase employees' investment freedom and protect employees against low yielding and undiversified 401(k) investments in their employer. It allows employees to protect themselves against loss of jobs and pensions if their employer becomes bankrupt.

Unfortunately, such losses have already occurred. A year ago, Color Tile, –Inc., a nationwide retailer of floor and counter coverings, filed bankruptcy. Color Tile had one pension plan, a 401(k) plan. The 401(k) allowed employees no choice of investments. All investment decisions were made by Color Tile.

At the time of bankruptcy, 83 percent of the 401(k)'s investments were in 44 Color Tile stores. Many of those stores were closed in the bankruptcy. Those investments—and the employees retirement savings—are now at risk of a large, possibly total loss.

In 1991, in my own State, another bankruptcy resulted in a substantial loss to a 401(k) plan enrolling 10,000 employees. Carter Hawley Hales stores went bankrupt with more than 50 percent of its assets invested in Carter Hawley Hale stock. As a result of the bankruptcy, the stock lost 92 percent of its value. Many employees lost a pension and a job simultaneously.

The 401(k) Pension Protection Act is designed to prevent situations such as Color Tile and Carter Hawley Hale from reoccurring. The act would prevent a company from requiring that more than 10 percent of employee contributions to a 401(k) plan, contributions known as salary deferrals, be invested in the employer stock or employer real estate.

The act exempts a certain type of 401(k) plan from the 10 percent limit—where employees are free to direct how their contributions are invested and to move their investments in the 401(k) with reasonable frequency. In such situations, the 10 percent limitation does not apply and employees are free to assume the risk of undiversified investment in their employer.

The 401(k) Pension Protection Act would protect 23 million employees in 401(k) plans investing more than 675 million dollars in assets.

All 401(k) members need the 401(k) Pension Protection Act. Unlike traditional pension plans, companies sponsoring 401(k)s do not guarantee that investments will provide the promised pension. Instead, 401(k) participants bear all risk of undiversified investment in the employer.

Participants in 401(k)s also need the protections of the act because—unlike traditional pension plans—401(k)s are not insured against bankruptcy of the plan sponsor by the Pension Benefit Guaranty Corp., or PBGC.

II. THE PENSION BENEFITS FAIRNESS ACT OF 1997

The second bill that I offer today is the Pension Benefits Fairness Act of 1997. The act would require that traditional pension plans offer equal survivor retirement benefits to both spouses.

Current Federal law requires an unequal survivors retirement benefit option. Unless they voluntarily offer a better benefit, traditional pension plans are required to offer a benefit option that pays one spouse double the amount paid to other spouse, when one spouse dies. Many plans do not voluntarily offer an equal benefit.

Current law also requires that only one spouse be given a description of the retirement benefit option or options offered by the plan. This leaves one spouse in a marriage uninformed of a decision that affects their income for the rest of their life. It is doubly important that they understand the decision to accept a particular benefit because they can never change their decision.

Under current law, the spouse who gets the required description is also the spouse who gets a survivor benefit that is twice as large.

The preferred spouse is the spouse who participated in the retirement plan. This means that the unequal treatment disproportionately impacts women because women's jobs are less often covered by a pension plan. Women need better pension survivor benefits because three out of four marriages they outlive their husbands

The Pension Benefits Fairness Act would correct this problem by requiring that pension plans treat spouses equally with regard to benefits and disclosure of benefit options.

The act imposes no additional pension costs on plans, employers, or participants. The act would increase the benefits paid to the many surviving spouses while resulting in no material reduction in the pension paid to a typical couple.

III. THE SMALL 401(K) PENSION PLAN DISCLOSURE ACT OF 1997

The third pension bill that I introduce today is the Small 401(k) Pension Plan Disclosure Act of 1997.

Current Federal law requires that pension plans file an annual investment report with the Department of Treasury and make the report available if a participant asks for it. Participants in small 401(k)s should not be required to ask where their pension contributions are invested. Participants in small 401(k)s are often hesitant to request the information for fear of being identified as questioning their employer's handling of a 401(k). Participants in large plans, where there is greater anonymity, are less hesitant.

Participants in 401(k)s should know where their plan is invested. Unlike traditional, defined pension plan participants, 401(k) participants have neither a plan sponsor's guarantee nor PBGC insurance against poor investment return. Participants bear the risk themselves.

It is only fair that 401(k) participants be informed how their money is invested.

The Small 401(k) Pension Plan Disclosure Act of 1997 eliminates the need to ask. It requires that the Secretary of Labor issue regulations requiring that small 401(k)s to provide each participant with an annual investment report. The details of the report are left to the Secretary, but certain details are suggested as a guide.

The act also encourages the Secretary to provide for the delivery of reports through company e-mail. This should help minimize the cost of providing reports.

The act exempts 401(k) accounts where participants direct their investments because current law already requires that those participants receive investment descriptions and reports.

Mr. President, these bills increase the retirement security of the American work force, diversify 401(k) investments, require equal benefits for husband and wife, and inform employees in small 401(k) plans where their money is invested.

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

S. 109. A bill to provide Federal housing assistance to Native Hawaiians; to the Committee on Indian Affairs.

THE NATIVE HAWAIIAN HOUSING ASSISTANCE ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce the native Hawaiian Housing Assistance Act of 1997—a measure which seeks to provide housing assistance to those families most in need, both nationally and in my home state of Hawaii—native Hawaiians.

Less than 2 years ago, in 1995, the U.S. Department of Housing and Urban Development released a report entitled, ''Housing Problems and Needs of Native Hawaiians.'' This report found, astoundingly, that native Hawaiians experience the highest percentage of housing problems in the Nation—49 percent—higher than even that of American Indians and Alaska Natives residing on reservation—44 percent—and substantially higher than that of all U.S. households—27 percent.

These findings, taken in conjunction with those of two other reports: The final report of the National Commission on American Indian, Alaska Native, and native Hawaiian Housing, ''Building the Future: a Blueprint for Change'' (1992) and the State Department of Hawaiian home lands report, ''Department of Hawaiian Homelands Beneficiary Needs Study'' (1995), document that:

Native Hawaiians have the worst housing conditions in the State of Hawaii and are seriously overrepresented in the Stat's homeless population, representing over 30 percent of the homeless population.

Among the native Hawaiian population, the needs of the native Hawaiians eligible to reside on lands set aside under the Hawaiian Homes Commission Act are the most severe. Ninety-five percent of the current applicants, approximately 13,000 native Hawaiians, are in need of housing, with one half of those applicant households facing overcrowding and one third paying more than 30 percent of their income for shelter; and under the Department of Housing and Urban Development [HUD] guidelines, 70.8 percent of the Department of Hawaiian Home Lands (DHHL) lessees and applicants fall below the HUD median family income, with more than half having incomes below 30 percent.

Mr. President, I find these statistics deplorable and unconscionable. They are the direct result of a pattern of purposeful neglect on the part of our Federal Government.

At the time of the arrival of Captain Cook to Hawaii's shores in 1778, there was a thriving community of nearly 1 million indigenous inhabitants. But over time, introduced diseases and the devastating physical, cultural, social, and spiritual effects of Western contact nearly decimated the native Hawaiian population. In 1826, less than 50 years later, the native Hawaiian population had decreased to an estimated 142,650, and by 1919, this number had dropped to 22,600.

In recognition of this catastrophic decline, and of the role the Federal Government played in facilitating such a decline, the Congress enacted The Hawaiian Homes Commission Act [HHCA], which set aside 200,000 acres of CEDED public lands for homesteading by native Hawaiians. As then Secretary of the Interior Franklin K. Lane was quoted in the committee report to the HHCA as saying: ''One thing that impressed me—was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers, and many are in poverty.'' Congress thus sought to return the Hawaiian people to the land, thereby revitalizing a dying race.

And yet, despite what arguably were good intentions, the Congress subsequently and systematically failed to appropriate sufficient funds for the administration of the HHCA. Faced with no means of securing the necessary funding which would enable the development of infrastructure or housing, the administrators were forced to lease large tracts of the homelands to non-Hawaiians for commercial and other purposes in order to generate revenue to administer and operate the program. Hawaiians were thereby denied the benefits of residing on those very lands set aside for their survival as the indigenous inhabitants of Hawaii.

Over the years, I am sad to report, this Government has taken the anomalous legal position that native Hawaiians residing on these home lands must be excluded from access to existing Federal Housing and Infrastructure Development programs because the expenditure of Federal funds to benefit these lands was somehow deemed unconstitutional.

While the Clinton administration has reversed this position—arguing before the Ninth Circuit Court of Appeals that the home lands were not set aside exclusively for native Hawaiians—there are those who nonetheless seem to want it both ways. They want to deny that any Federal responsibility flows from the provisions of a Federal law, and yet they want to bar native people from their rights of access to existing Federal housing programs.

It is this reverse discrimination that I find repugnant and unacceptable. It is a mentality that enables the Federal Government to set aside lands for native Hawaiians, retain certain powers over the administration of these lands, and then deny those native Hawaiians residing on these lands access to programs made available to all others, including Indians residing on reservations, on the basis that the lands set aside by the United States only benefit native Hawaiians.

I am happy to report that, with the assistance of outgoing HUD Secretary Cisneros, we have worked to identify and remove some barriers which have prevented native Hawaiians residing on the home lands, from securing access to existing federally-assisted housing programs. For his understanding of and dedication toward these matters, I am most grateful. However, I would be the first to admit that much more remains to be done.

When the National Commission of American Indian, Alaska Native, and Native Hawaiian Housing issued its report, after full consideration of the deplorable housing conditions native Hawaiian families face, they submitted the following recommendation: That Congress enact a ''Native Hawaiian Housing and Infrastructure Assistance Program'' to alleviate and address the severe housing needs of native Hawaiians by extending to them the same Federal housing assistance available to American Indians and Alaska Natives.

This, Mr. President, is exactly what this bill is designed to accomplish. It amends the Native American Housing and Self-Determination Act of 1996 by creating a separate title to establish a parallel housing program for native Hawaiians. This program would not benefit all native Hawaiians, but is limited in scope to those most in need because this Government has consistently denied them access to existing housing programs—those native Hawaiians eligible to reside on the home lands.

This bill would provide funding, in the form of a block grant, to the department of Hawaiian Home Lands, to carry out affordable housing activities which are identical to those activities authorized under the Native American Housing Assistance and Self-Determination Act. The bill provides that, to the extent practicable, the Department shall employ private nonprofit organizations experienced in the planning and development of affordable housing for native Hawaiians. In addition, the bill authorizes the Secretary to adopt modifications which are deemed necessary in order to meet the unique needs of native Hawaiians.

Finally, an additional section of the bill creates a loan guarantee program similar to that which exists for American Indians. Neither of these programs would tap into existing tribal monies, but instead would authorize a separate funding stream.

Mr. President, this is a bill whose foundation is a dual one—one based on need, on statistics which show that native Hawaiians face the highest incidence of housing needs in the nation, and that among the native Hawaiian population, those native Hawaiians eligible to reside on the home lands are the most in need, and one based on the special historical relationship between the United States and the native Hawaiian people.

While history has shown that the Congress has fallen far short of its commitment to provide sufficient funding for the administration of the Hawaiian Homes Commission Act, let history also reflect, that in this, the 105th Congress, we sought to finally, balance the scales, by creating housing opportunities for native Hawaiians similar to those provided to other native Americans.

Mr. President, I thank you for your consideration of this most important measure and ask unanimous consent that the bill be printed in the RECORD in its entirety. I urge my colleagues to act favorably and expeditiously on this measure.

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

S. 109

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 ''Native Hawaiian Housing Assistance Act of 1997''.

SEC. 2. FINDINGS AND PURPOSES.

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

(1) The Federal Government has a responsibility to promote the general welfare of the Nation by employing its resources to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income and by developing effective partnerships with governmental and private entities to accomplish these objectives.

(2) Based upon the status of the Kingdom of Hawaii as an internationally recognized and independent sovereign and the unique historical and political relationship between the United States and Native Hawaiians, the Native Hawaiian people have a continuing right to local autonomy in traditional and cultural affairs and an ongoing right of self-determination and self-governance that has never been extinguished.

(3) The authority of Congress under the Constitution of the United States to legislate and address matters affecting the rights of indigenous peoples of the United States includes the authority to legislate in matters affecting Native Hawaiians.

(4) In 1921, in recognition of the severe decline in the Native Hawaiian population, Congress enacted the Hawaiian Homes Commission Act, 1920, which set aside approximately 200,000 acres of the ceded public lands for homesteading by Native Hawaiians, thereby affirming the special relationship between the United States and the Native Hawaiians.

(5) In 1959, under the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (73 Stat. 4), the United States reaffirmed the special relationship between the United States and the Native Hawaiian people—

(A) by transferring what the United States deemed to be a trust responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but continuing Federal superintendence by retaining the power to enforce the trust, including the exclusive right of the United States to consent to land exchanges and any amendments to the Hawaiian Homes Commission Act, 1920, enacted by the legislature of the State of Hawaii affecting the rights of beneficiaries under such Act; and

(B) by ceding to the State of Hawaii title to the public lands formerly held by the United States, mandating that such lands be held ''in public trust'' for ''the betterment of the conditions of Native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920'', and continuing Federal superintendence by retaining the exclusive legal responsibility to enforce this public trust.

(6) In recognition of the special relationship that exists between the United States and the Native Hawaiian people, Congress has extended to Native Hawaiians the same rights and privileges accorded to American Indians and Alaska Natives under the Native American Programs Act of 1974, the American Indian Religious Freedom Act, the National Museum of the American Indian Act, the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act, the Native American Languages Act, the American Indian, Alaska Native and Native Hawaiian Culture and Arts Development Act, the Job Training and Partnership Act, and the Older Americans Act of 1965.

(7) The special relationship has been recognized and reaffirmed by the United States in the area of housing—

(A) through the authorization of mortgage loans insured by the Federal Housing Administration for the purchase, construction, or refinancing of homes on Hawaiian Home Lands under the National Housing Act;

(B) by mandating Native Hawaiian representation on the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing;

(C) by the inclusion of Native Hawaiians in the Native American Veterans' Home Loan Equity Act; and

(D) by enactment of the Hawaiian Home Lands Recovery Act, which establishes a process that enables the Federal Government to convey lands to the Department of Hawaiian Home Lands equivalent in value to lands acquired by the Federal Government.

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

(1) To implement the recommendation of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing (in this Act referred to as the ''Commission'') that Congress establish a Native Hawaiian Housing and Infrastructure Assistance Program to alleviate and address the severe housing needs of Native Hawaiians by extending to them the same Federal housing assistance available to American Indians and Alaska Natives.

(2) To address the following needs of the Native Hawaiian population, as documented in the Final Report of the Commission, ''Building the Future: A Blueprint for Change'' (1992); the United States Department of Housing and Urban Development report, ''Housing Problems and Needs of Native Hawaiians (1995);'' and the State Department of Hawaiian Home Lands report ''Department of Hawaiian Home Lands Beneficiary Needs Study'' (1995):

(A) Native Hawaiians experience the highest percentage of housing problems in the Nation: 49 percent, compared to 44 percent for American Indian and Alaska Native households in tribal areas, and 27 percent for all United States households, particularly in the area of overcrowding (27 percent versus 3 percent nationally) with 36 percent of Hawaiian homelands households experiencing overcrowding.

(B) Native Hawaiians have the worst housing conditions in the State of Hawaii and are seriously over represented in the State's homeless population, representing over 30 percent.

(C) Among the Native Hawaiian population, the needs of the native Hawaiians eligible for Hawaiian homelands are the most severe. 95 percent of the current applicants, approximately 13,000 Native Hawaiians, are in need of housing, with one-half of those applicant households facing overcrowding and one-third paying more than 30 percent of their income for shelter. Under Department of Housing and Urban Development guidelines, 70.8 percent of Department of Hawaiian Homelands lessees and applicants fall below the Department of Housing and Urban Development median family income, with more than half having incomes below 30 percent.

SEC. 3. HOUSING ASSISTANCE.

The Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104–330) is amended by adding at the end the following new title:

''TITLE VIII—HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

''SEC. 801. DEFINITIONS.

''In this title—

''(1) the term 'Department of Hawaiian Home Lands' means the department of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920;

''(2) the term 'Hawaiian Home Lands' means those lands set aside by the United States for homesteading by Native Hawaiians under the Hawaiian Homes Commission Act, 1920, and any other lands acquired pursuant to that Act; and

''(3) the term 'Native Hawaiian' has the same meaning as in section 201 of the Hawaiian Homes Commission Act, 1920.

''SEC. 802. BLOCK GRANTS FOR AFFORDABLE HOUSING ACTIVITIES.

''(a) AUTHORITY.—For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this title) make grants under this section on behalf of Native Hawaiian families to carry out affordable housing activities in the State of Hawaii. Under such a grant, the Secretary shall provide the grant amounts directly to the Department of Hawaiian Home Lands. The Department of Hawaiian Home Lands shall, to the maximum extent practicable, employ private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians, in order to carry out such activities.

''(b) APPLICABILITY OF OTHER PROVISIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), titles I through IV apply to assistance provided under this section in the same manner as titles I through IV apply to assistance provided on behalf of an Indian tribe under title I.

''(2) EXCEPTION.—The Secretary may by regulation provide for such modifications to the applicability of titles I through IV to assistance provided under this section as the Secretary determines to be necessary to meet the unique housing needs of Native Hawaiians.

''SEC. 803. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated such sums as may be necessary to carry out this title for each of fiscal years 1997, 1998, 1999, 2000, and 2001.''.

SEC. 4. LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING.

Section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a) is amended—

(1) in subsection (k), by adding at the end the following new paragraphs:

''(10) The term 'Hawaiian Home Lands' means those lands set aside by the United States for homesteading by Native Hawaiians under the Hawaiian Homes Commission Act, 1920, and any other lands acquired pursuant to that Act.

''(11) The term 'Native Hawaiian' has the same meaning as in section 201 of the Hawaiian Homes Commission Act, 1920.

''(12) The term 'Native Hawaiian housing authority' means any public body (or agency or instrumentality thereof) established under the laws of the State of Hawaii, that is authorized to engage in or assist in the development or operation of low-income housing for Native Hawaiians, and includes the Department of Hawaiian Home Lands and the Office of Hawaiian Affairs.''; and

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

''(*l*) APPLICABILITY TO NATIVE HAWAIIAN HOUSING.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), subsections (a) through (k) apply to Native Hawaiian families, Native Hawaiian housing authorities, and private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians, in the same manner as those subsections apply to Indian families and to Indian housing authorities, respectively.

''(2) EXCEPTION.—The Secretary may by regulation provide for such modifications to the applicability of subsections (a) through (k) to Native Hawaiian families, Native Hawaiian housing authorities, and private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians as the Secretary determines to be necessary to meet the unique housing needs of Native Hawaiians.

''(3) LIMITATION.—Any assistance provided under this subsection, including any assistance provided to Native Hawaiians not residing on the Hawaiian Home Lands, shall be limited to the State of Hawaii.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.''.

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

S. 110. A bill to amend the Native American Graves Protection and Repatriation Act to provide for improved notification and consent, and for other purposes; to the Committee on Indian Affairs.

THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce a bill to amend the Native American Graves Protection and Repatriation Act to clarify certain provisions of that act as they pertain to Indian tribes and native Hawaiian organizations. This bill is similar to the bill I introduced in the last session of the Congress—a bill which passed this body by unanimous consent on September 13, 1996. Unfortunately, the House of Representatives failed to act on the measure prior to the adjournment of the 104th Congress.

In 1990, the Congress enacted the Native American Graves Protection and Repatriation Act [NAGPRA] to address the growing concern among Indian tribes, Alaska Native villages, and native Hawaiian organizations regarding the proper disposition of thousands of Native American human remains and sacred objects in the possession and control of museums and Federal agencies.

NAGPRA requires museums and Federal agencies to compile summaries and inventories of human remains, associated and unassociated funerary objects, sacred objects, and cultural patrimony, to notify an Indian tribe or native Hawaiian organization that have an ownership or possessory interest in the remains, objects or patrimony, and, upon request, to repatriate those remains or cultural items to the appropriate Indian tribe or native Hawaiian organization.

NAGPRA further provides a process governing the treatment of human remains or cultural items inadvertently discovered and intentionally excavated from Federal or tribal lands.

In the years since the enactment of NAGPRA, native Hawaiians have been at the forefront in the repatriation of ancestral remains and the treatment of ancestral remains inadvertently discovered on Federal lands.

Hundreds of native Hawaiian kupuna—ancestors—have been returned to Hawaii—released from the confines of more than 25 museums in the Untied States, Canada, Switzerland, and Austrialia—and returned to the land of their birth.

Despite these accomplishments, native Hawaiian organizations have experienced difficulty in ensuring the implementation of the act—ironically, not abroad, but in Hawaii.

In written testimony submitted to the Committee on Indian Affairs by Hui Malama I Na Kupuna O Hawaii Nei, a native Hawaiian organization recognized under NAGRPA, for a December 9, 1995 oversight hearing on the act, a number of concerns were raised—concerns which this bill seeks to address, namely: The lack of written consent where native American remains are excavated or removed from Federal lands for purposes of study; following an inadvertent discovery of Native American remains, the lack of assurances that the process for removal complies with the requirements that are associated with an intentional excavation; and the lack of required notification to native Hawaiian organizations when inadvertent discoveries of Native American human remains are made on Federal lands.

In addition to amendments which address these concerns, this bill also incorporates two technical amendments requested by the administration: a provision expanding the responsibility of the NAGPRA Review Committee to include associated funerary objects in the compilation of an inventory of culturally unidentifiable human remains; and provisions providing the Secretary of The Interior with authority to use fines collected to supplement the cost of enforcement-related activities.

As one of the original sponsors of the act, it is my view that these amendments are consistent with the original purpose, spirit, and intent of NAGPRA, and are necessary to clarify the existing law.

It is my expectation that if adopted, these amendments will ensure better cooperation by Federal agencies in the implementation of the act in the State of Hawaii and the rest of the United States. For while these amendments address concerns raised by the native Hawaiian people, they will also serve to benefit Indian country.

The responsibility borne by those who choose, or who are called upon to care for the remains of their ancestors is a heavy one. By acting favorably on this measure, I hope that we can assist these individuals and organizations as they continue in their efforts to bring their ancestors home and provide them with proper treatment when they are disturbed from sacred burial sites.

Mr. President, I thank you for this time today, and I urge my colleagues to support this bill when it comes before the Senate for consideration.

Mr. President, I ask unanimous consent that the test 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. 110

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

SECTION 1. AMENDMENTS TO THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.

(a) WRITTEN CONSENT REQUIRED IF NATIVE AMERICAN REMAINS ARE EXCAVATED OR REMOVED FOR PURPOSES OF STUDY.—Section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)) is amended—

(1) in paragraph (3), by striking ''and'' at the end of the paragraph;

(2) in paragraph (4), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(5) in the case of any intentional excavation or removal of Native American human remains for purposes of study, such remains are excavated or removed after written consent is obtained from—

''(A) lineal descendants, if known or readily ascertainable; or

''(B) each appropriate Indian tribe or Native Hawaiian organization.

The requirement under paragraph (1) shall not be interpreted as allowing or requiring, in the absence of the consent of each appropriate Indian tribe or Native Hawaiian organization, any recordation or analysis that is in addition to any recordation or analysis that is otherwise allowed or required under this Act.''.

(b) REQUIREMENTS FOR INADVERTENT DISCOVERIES.—Section 3(d) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''with respect to Federal lands'' and inserting ''with respect to those Federal lands'';

(B) by inserting after the first sentence the following: ''In any case in which a Federal agency or instrumentality receives notice of a discovery of Native American cultural items on lands with respect to which the Federal agency or instrumentality has management authority, the appropriate official of the Federal agency or instrumentality shall notify each appropriate Indian tribe or Native Hawaiian organization. The notification required under the preceding sentence shall be provided not later than 3 business days after the date on which the Federal agency or instrumentality receives notification of the discovery.''; and

(C) in the last sentence, by inserting '', and, in the case of Federal lands, the appropriate official of the Federal agency or instrumentality with management authority over those lands notified each appropriate Indian tribe or Native Hawaiian organization by the date specified in this paragraph,'' after ''that notification has been received,''; and

(2) in paragraph (2), by adding at the end the following new sentence: ''Any person or entity that disposes of, or controls, a cultural item referred to in the preceding sentence shall comply with the applicable requirements of subsection (c).''.

(c) REVIEW COMMITTEE.—Section 8(c)(5) of the Native American Graves Protection and

Repatriation Act (25 U.S.C. 3006(c)(5)) is amended—

(1) by inserting ''and associated funerary objects'' after ''culturally unidentifiable human remains''; and

(2) by striking ''for developing a process for disposition of such remains'' and inserting ''for developing a process for the disposition of the remains and associated funerary objects''.

(c) ENFORCEMENT.—Section 9 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3007) is amended by adding at the end the following:

''(e) ENFORCEMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the amounts collected by the Secretary as penalties under this section shall be used to supplement the amounts made available by appropriations for conducting enforcement activities related to this section.

''(2) AUTHORITY OF SECRETARY.—In carrying out enforcement activities related to this section, the Secretary may—

''(A) pay any person who furnishes information that leads to the assessment of a civil penalty under this section (other than an officer or employee of the Federal Government or a State or local government (including a tribal government) who furnishes or who renders service in the performance of official duties) the lesser of—

''(i) half of the amount of the civil penalty; or

''(ii) $1,000; and

''(B) reduce the amount of a civil penalty that would otherwise be assessed under this section if the violator against whom the civil penalty is assessed agrees to pay to the aggrieved parties involved an aggregate amount of restitution not to exceed the amount of the reduction.''.

By Mr. INOUYE:

S. 111. A bill to amend the Immigration and Nationality Act to facilitate the immigration to the United States of certain aliens born in the Philippines or Japan who were fathered by United States citizens; to the Committee on the Judiciary.

THE AMERASIAN IMMIGRATION ACT AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, today, I rise to introduce legislation which amends Public Law 97–359, the Amerasian Immigration Act, to include Amerasian children from the Philippines and Japan as eligible applicants. This legislation also expands the eligibility period for the Philippines to November 24, 1992, the date of the last United States military base closure and the date of enactment of the proposed legislation for Japan.

Under the Amerasian Immigration Act (Public Law 97–359) children born in Korea, Laos, Kampuchea, Thailand, and Vietnam after December 31, 1950, and before October 22, 1982, who were fathered by United States citizens, are allowed to immigrate to the United States. The initial legislation introduced in the 97th Congress included Amerasians born in the Philippines and Japan with no time limits concerning their births. The final version as enacted by the Congress included only those areas where the U.S. had engaged in active military combat from the Korea War onward. Consequently, Amerasians from the Philippines and Japan were excluded from eligibility.

Although the Philippines and Japan were not considered war zones from 1950 to 1982, the extent and nature of U.S. military involvement in both countries are not dissimilar to U.S. military involvement in other Asian countries during the Korean and Vietnam conflicts. The role of the Philippines and Japan as vital supply and stationing bases brought tens of thousands of U.S. military personnel to these countries. As a result, interracial relations in both countries were common, leading to a significant number of Amerasian children being fathered by U.S. citizens. There are now over 50,000 Amerasian children in the Philippines. According to the Embassy of Japan, there are 6,000 Amerasian children in Japan born between 1987 and 1992.

Public Law 97–359 was passed in the hope of redressing the situation of Amerasian children in Korea, Laos, Kampuchea, Thailand, and Vietnam who, due to their illegitimate or mixed ethnic make-up, their lack of a father or stable mother figure, or impoverished state, have little hope of escaping their plight. It became the ethical and social obligation of the United States to care for these children.

The stigmatization and ostracism felt by Amerasian children in those countries covered by the Amerasian Immigration Act also is felt by Amerasian children in the Philippines and Japan. These children of American citizens deserve the same viable opportunities of employment, education, and family life that is afforded their counterparts from Korea, Laos, Kampuchea, Thailand, and Vietnam.

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

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

S. 111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204(f)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(f)(2)(A)) is amended—

(1) by inserting ''(I)'' after ''born''; and

(2) by inserting after ''subsection,'' the following: ''(II) in the Philippines after 1950 and before November 24, 1992, or (III) in Japan after 1950 and before the date of enactment of this subclause,''.

By Mr. MOYNIHAN:

S. 112. A bill to amend title 18, United States Code, to regulate the manufacture, importation, and sale of ammunition capable of piercing police body armor; to the Committee on the Judiciary.

LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1997

Mr. MOYNIHAN. Mr. President, I am introducing legislation today to amend Title 18 of the United States Code to strengthen the existing prohibition on handgun ammunition capable of penetrating policy body armor, commonly referred to as bullet-proof vests. This provision would require the Secretary of the Treasury and the Attorney General to develop a uniform ballistics test to determine with precision whether ammunition is capable of penetrating police body armor. The bill also prohibits the manufacture and sale of any handgun ammunition determined by the Secretary of the Treasury and the Attorney General to have armor-piercing capability.

I am encouraged that, on behalf of its 277,000 members, the Fraternal Order of Police has decided to support this bill. In addition the Law Enforcement Steering Committee, which represents eight of the largest Associations of law enforcement officers, has also indicated that they are in support of this bill.

I am also pleased that President Clinton has taken an avid interest in this subject. In a statement similar to remarks he made many times at campaign appearances around the country, President Clinton said to an audience in Cincinnati, Ohio on September 16, 1996:

> So that's my program for the future—do more to break the gangs, ban those cop killer bullets, drug testing for parolees, improve the opportunities for community-based strategies that lower crime and give our kids something to say yes to.

Mr. President, it has been fifteen years since I first introduced legislation in the Senate to outlaw armor-piercing, or ''cop-killer,'' bullets. In 1982, Phil Caruso of the Patrolman's Benevolent Association of New York City alerted me to the existence of a Teflon-coated bullet capable of penetrating the soft body armor police officers were then beginning to wear. Shortly thereafter, I introduced the Law Enforcement Officers Protection Act of 1982 to prohibit the manufacture, importation, and sale of such ammunition.

At that time, armor-piercing bullets—most notably the infamous ''Green Hornet''—were manufactured with a solid steel core. Unlike the softer lead composition of most other ammunition, this hard steel core prevented these rounds from deforming at the point of impact—thus permitting the rounds to penetrate the 18 layers of Kevlar in a standard-issue police vest or ''flak-jacket.'' These bullets could go through a bullet-proof vest like a hot knife through butter. My legislation simply banned any handgun ammunition made with a core of steel or other hard metals.

Despite the strong support of the law enforcement community, it took four years before this seemingly non-controversial legislation was enacted into law. The National Rifle Association initially opposed it—that is, until the NRA realized that a large number of its members were themselves police officers who strongly supported banning these insidious bullets. Only then did the NRA lend its grudging support. The bill passed the Senate on March 6, 1986 by a vote of 97–1, and was signed by President Reagan on August 8, 1986 (Public Law 99–408).

That 1986 Act served us in good stead for 7 years. To the best of my knowledge, not a single law enforcement officer was shot with an armor-piercing bullet. Unfortunately, the ammunition manufacturers eventually found a way around the 1986 law. By 1993, a new Swedish-made armor-piercing round, the M39B, had appeared. This pernicious bullet evaded the 1986 statute's prohibition because of its unique composition. Like most common ammunition, it had a soft lead core, thus exempting it from the 1986 law. But this core was surrounded by a heavy steel jacket, solid enough to allow the bullet to penetrate body armor. Once again, our nation's law enforcement officers were at risk. Immediately upon learning of the existence of the new Swedish round, I introduced a bill to ban it.

Another protracted series of negotiations ensued before we were able to update the 1986 statute to cover the M39B. We did it with the support of law enforcement organizations, and with technical assistance from the Bureau of Alcohol, Tobacco and Firearms. In particular, James O. Pasco, Jr., then the Assistant Director of Congressional Affairs at BATF, worked closely with me and may staff to get it done. The bill passed the Senate by unanimous consent on November 19, 1993 as an amendment to the 1994 Crime Bill.

Despite these legislative successes, it was becoming evident that continuing ''innovations'' in bullet design would result in new armor-piercing rounds capable of evading the ban. It was at this time that some of us began to explore in earnest the idea of developing a new approach to banning these bullets based on their performance, rather than their physical characteristics. Mind, this concept was not entirely new; the idea had been discussed during our efforts in 1986, but the NRA had been immovable on the subject. The NRA's leaders, and their constituent ammunition manufacturers, felt that any such broad-based ban based on a bullet ''performance standard'' would inevitably lead to the outlawing of additional classes of ammunition. They viewed it as a slippery slope, much as they have regarded the assault weapons ban as a slippery slope. The NRA had agreed to the 1986 and 1993 laws only because they were narrowly drawn to cover individual types of bullets.

And so in 1993 I asked the ATF for the technical assistance necessary to write into law an armor-piercing bullet ''performance standard.'' At the time, however, the experts at the ATF informed us that this could not be done. They argued that it was simply too difficult to control for the many variables that contribute to a bullet's capability to penetrate police body armor. We were told that it might be possible in the future to develop a performance-based test for armor-piercing capability, but at the time we had to be content with the existing content-based approach.

Well. Two years passed and the Office of Law Enforcement Standards of the National Institute of Standards and Technology wrote a report describing the methodology for just such a armor-piercing bullet performance test. The report concluded that a test to determine armor-piercing capability could be developed within six months.

So we know it can be done, if only the agencies responsible for enforcing the relevant laws have the will. The legislation I am introducing requires the Secretary of the Treasury, in consultation with the Attorney General, to establish performance standards for the uniform testing of handgun ammunition. Such an objective standard will ensure that *no* rounds capable of penetrating police body armor, regardless of their composition, will ever be available to those who would use them against our law enforcement officers.

I wish to assure the Senate that this measure would in no way infringe upon the rights of legitimate hunters and sportsmen. It would not affect legitimate sporting ammunition used in rifles. It would only restrict the availability of armor-piercing rounds, for which no one can seriously claim there is a genuine sporting use. These cop-killer rounds have no legitimate uses, and they have no business being in the arsenals of criminals. They are designed for one purpose: to kill police officers.

The 1986 and 1993 cop-killer bullet laws I sponsored kept us one step ahead of the designers of new armor-piercing rounds. When the legislation I have introduced today is enacted—and I hope it will be early in the 105th Congress—it will put them out of the cop-killer bullet business permanently.

Mr. President, I ask unanimous consent that the letter of support from the Fraternal Order of Police be printed in the RECORD.

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

JANUARY 16, 1997.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: On behalf of the 277,000 members of the Fraternal Order of Police, I am writing to advise you of our support of legislation which you plan to introduce banning ''cop-killer'' bullets.

Continuing innovations in the construction of ammunition place the vest-wearing police officer in jeopardy. Your bill requiring performance-based evaluations in order to restrict the availability of armor-piercing bullets for hand-guns will secure a greater measure of safety for all of America's law enforcement officers. And though no bill or piece of legislation can protect them fully from the dangers inherent to police work, your bill will enhance the value of the body armor, which, sometimes, is all that stands between life and death.

The F.O.P. supports this effort to quantify and identify ''cop-killer'' bullets for handguns based on their ability to penetrate body armor, to prevent them from being used against law enforcement officers. If I can be of assistance in working to pass this legislation, please do not hesitate to contact me, or Executive Director Jim Pasco, at (202) 547–8189.

Again, thank you for continued concern and support for the safety and protection of America's law enforcement officers.

Sincerely,

GILBERT G. GALLEGOS,
National President.

By Mr. INOUYE:

S. 113. A bill to amend title VII of the Public Health Service Act to establish a psychology post-doctoral fellowship program, and for other purposes; to the Committee on Labor and Human Resources.

THE PUBLIC HEALTH SERVICE ACT AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, I am introducing legislation today to amend Title VII of the Public Health Service Act to establish a psychology post-doctoral program.

Psychologists have made a unique contribution in serving the Nation's medically undeserved populations. Expertise in behavorial science is useful in addressing many of our most distressing concerns such as violence, addiction, mental illness, children's behavior disorders, and family disruption. Establishment of a psychology post-doctoral program could be most effective in finding solutions to these pressing societal issues.

Similar programs supporting additional, specialized training in traditionally undeserved settings or with specific undeserved populations have been demonstrated to be successful in providing services to those same undeserved populations during the years following the training experience. That is, mental health professionals who have participated in these specialized federally funded programs have tended not only to meet their payback obligations, but have continued to work in the public sector or with the undeserved populations with whom they have been trained to work.

While the doctorate in psychology provides broad-based knowledge and mastery in a wide variety of clinical skills, the specialized post-doctoral fellowship programs provide particular diagnostic and treatment skills required to effectively respond to these underserved populations. For example, what looks like severe depression in an elderly person might be a withdrawal related to hearing loss, or what looks like poor academic motivation in a child recently relocated from Southeast Asia might be reflective of a cultural value of reserve rather than a disinterest in academic learning. Each Of these situations requires very different interventions, of course, and specialized assessment skills.

Domestic violence is not just a problem for the criminal justice system, it is a significant public health problem. A single aspect of the issue, domestic violence against women results in almost 100,000 days of hospitalization, 30,000 emergency room visits, and 40,000 visits to physicians each year. Rates of child and spouse abuse in rural areas are particularly high as are the rates of

alcohol abuse and depression in adolescents. A post-doctoral fellowship program in the psychology of rural populations could be of special benefit in addressing these problems.

Given the changing demographics of the Nation—the increasing life span and numbers of the elderly, the rising percentage of minority populations within the country, as well as an increased recognition on the long-term sequel of violence and abuse—and given the demonstrated success and effectiveness of these kinds of specialized training programs, it is incumbent upon us to encourage participation in post-doctoral fellowship programs that respond to the needs of the Nation's underserved.

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

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

S. 113

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

SECTION 1. GRANTS FOR FELLOWSHIPS IN PSYCHOLOGY.

Part E of title VII of the Public Health Service Act (42 U.S.C. 294o) is amended by adding at the end thereof the the following:

"SEC. 779. GRANTS FOR FELLOWSHIPS IN PSYCHOLOGY.

''(a) IN GENERAL.—The Secretary shall establish a psychology post-doctoral fellowship program to make grants to and enter into contracts with eligible entities to encourage the provision of psychological training and services in underserved treatment areas.

''(b) ELIGIBLE ENTITIES.—

''(1) INDIVIDUALS.—In order to receive a grant under this section an individual shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require, including a certification that such individual—

''(A) has received a doctoral degree through a graduate program in psychology provided by an accredited institution at the time such grant is awarded;

''(B) will provide services in a medically underserved population during the period of such grant;

''(C) will comply with the provisions of subsection (c); and

''(D) will provide any other information or assurances as the Secretary determines appropriate.

''(2) INSTITUTIONS.—In order to receive a grant or contract under this section, an institution shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require, including a certification that such institution—

''(A) is an entity, approved by the State, that provides psychological services in medically underserved areas or to medically underserved populations (including entities that care for the mentally retarded, mental health institutions, and prisons);

''(B) will use amounts provided to such institution under this section to provide financial assistance in the form of fellowships to qualified individuals who meet the requirements of subparagraphs (A) through (C) of paragraph (2);

''(C) will not use in excess of 10 percent of amounts provided under this section to pay for the administrative costs of any fellowship programs established with such funds; and

''(D) will provide any other information or assurance as the Secretary determines appropriate.

''(c) CONTINUED PROVISION OF SERVICES.—Any individual who receives a grant or fellowship under this section shall certify to the Secretary that such individual will continue to provide the type of services for which such grant or fellowship is awarded for at least 1 year after the term of the grant or fellowship has expired.

''(d) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations necessary to carry out this section, including regulations necessary to carry out this section, including regulations that define the terms 'medically underserved areas' or 'medically unserved populations'.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $5,000,000 for each of the fiscal years 1998 through 2000.''.

By Mr. INOUYE (for himself, Mr. THOMAS, Mr. COCHRAN, and Mr. STEVENS):

S. 114. A bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment; to the Committee on Finance.

Mr. INOUYE. Mr. President, I rise to introduce legislation to restore the business meals and entertainment tax deduction to 80 percent. I am joined by Senators THOMAS, COCHRAN, AND STEVENS. Restoration of this deduction is essential to the livelihood of the food service, travel and tourism, and entertainment industries throughout the United States. These industries are being economically harmed as a result of this reduction. All are major industries which employ millions of people. many of whom are already feeling the effects of the reduction.

The deduction for business meals and entertainment was reduced from 80 to 50 percent under the Omnibus budget Reconciliation Act of 1993, and went into effect on January 1, 1994. Many companies, small and large, have changed their policies and guidelines on travel and entertainment expenses as a result of the tax reduction in the business meals and entertainment expenses deduction. Businesses have also been forced to curtail company reimbursement policies because of the reduction in the business meals and entertainment expenses deduction. In some cases, businesses have eliminated their expense accounts. Consequently, restaurant establishments, which have replied heavily on business lunch and dinner services, are being adversely affected by the reduction in business meals. For example:

Jay's Restaurant in Dayton, Ohio, closed its lunch service on July 14, 1994, following a 15 percent decrease in lunch business. This decision was based on 2,000 fewer lunch customers from January through June 1994 as compared to the same period in 1993.

The Wall Street Restaurant in Des Moines, Iowa, an upscale restaurant serving American and Continental cuisine, has seen its revenues decline 40 percent since the beginning of 1994. Owner Joey Fasano reduced his staff from 50 to 35 employees.

The Boca in Middlesex County, New Jersey, averaged 40 to 60 lunches per day prior to 1994. The restaurant now serves between 5 to 15 lunches per day. Owner Robert Campione reduced his staff from 18 to 14 employees.

The 37th Street Hideaway Restaurant in New York City did 150 lunches a day prior to 1994. Owner Van Panopoulos now serves 40 lunches and his dinner business has dropped 30 to 40 percent. Mr. Panopoulos reduced his staff from 20 to 10 employees.

Bianco's in Denver, Colorado, closed its lunch service in April 1994 because of the decline in business. Owner Fred White reduced his staff from 26 to 15 employees.

Edward's at Kanoloa in Hawaii has seen its revenues decline by 15 percent since 1994. Owner Edward Frady attributes the decline in his business to the reduction in business meals and entertainment expense deduction.

I sincerely hope that the business meals reduction to 50 percent does not become a Luxury Tax Two, in which the Congress moves toward restoration only after the damage has been done and huge job losses have occurred. Accordingly, I urge my colleagues to join me in cosponsoring this important legislation.

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

S. 114

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

SECTION 1. REPEAL OF REDUCTION IN BUSINESS MEALS AND ENTERTAINMENT TAX DEDUCTION.

(a) IN GENERAL.—Paragraph (1) of 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 striking ''50 percent'' and inserting ''80 percent''.

(b) CONFORMING AMENDMENT.—The heading for section 274(n) is amended by striking ''50'' and inserting ''80''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December, 31, 1996.

By Mr. INOUYE:

S. 115. A bill to increase the role of the Secretary of Transportation in administering section 901 of the Merchant Marine Act, 1936, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MERCHANT MARINE LEGISLATION

Mr. INOUYE. Mr. President, the legislation I am introducing today would centralize the authority in the Secretary of Transportation for administering our cargo preference laws. The background of these laws, the need for them, and the problems with, in my view, necessitate the legislation, are succinctly stated in a Journal of Commerce article dated November 18, 1988. While the printing of this article was several years ago, the background it provides and the light it sheds on our

present needs are still pertinent. I ask unanimous consent that the text of the bill and the article be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 115

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

SECTION 1. TRANSPORTATION IN AMERICAN VESSELS OF GOVERNMENT PERSONNEL AND CERTAIN CARGOES.

Section 901(b)(2) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241 (b)(2)), is amended to read as follows:

''(2)(A) The Secretary of Transportation shall have the sole responsibility for determining and designating the programs that are subject to the requirements of this subsection. Each department or agency that has responsibility for a program that is designated by the Secretary of Transportation pursuant to the preceding sentence shall, for the purposes of this subsection, administer such program pursuant to regulations promulgated by such Secretary.

''(B) The Secretary of Transportation shall—

''(i) review the administration of the programs referred to in subparagraph (A); and

''(ii) on an annual basis, submit a report to Congress concerning the administration of such programs.''.

[From the Journal of Commerce, November 18, 1988]

CARGO PREFERENCE

What It Is: A series of statutes, going back to 1904, intended to assure U.S.-flag ships a minimum share of cargoes produced by U.S. government programs. It is the oldest U.S. maritime promotional program and while subsidies and financing aids have shrunk over the years, preference has survived.

Background: The preference laws began by tracking this country's extension of its military and naval power, starting with the Spanish-American War. More recently, they have come to reflect the expansion of government programs extending U.S. economic power and interest abroad.

The Military Transportation Act of 1904 was the first of the preference statutes and its requirement for U.S.-flag vessel use, 100 percent, is the highest.

In 1934 Congress adopted Public Resolution 17 to require that half of the exports financed by the Reconstruction Finance Corp. were to move in U.S.-flag vessels. Later that resolution was made to apply to financing of the Export-Import Bank, established originally to facilitate trade with the Soviet Union.

In the early postwar period, Congress acted each year to apply the resolution's 50 percent U.S.-flag share to foreign aid shipments. It permanently inserted the requirements into the 1954 Agricultural Trade Development and Assistance Act, better known as Food for Peace and PL–480.

Public Law 664 in 1961 made clear that preference should benefit and protect all U.S.-flag vessels, not just liners, and that all U.S. programs, including those where nonmilitary agencies procured equipment, materials or commodities for themselves or foreign governments, had to use U.S. flags to the extent of 50 percent.

Importance to Carriers: In the last year for which statistics are available, calendar 1986, U.S.-flag carriers hauled more than 33 million metric tons of ****preference********cargo****, somewhat more than the 28.5 million tons of commercial shipments carried that year. As an industry, the revenue amounted to about $502 million.

Necessity for Preference: Preference statutes are formally predicated on the need for assured cargoes to encourage the existence of a U.S.-flag merchant fleet to act as a military auxiliary in times of national emergencies.

Past efforts to apply preference to commercial cargoes have failed, reflecting U.S. governmental sensitivity to objections by this country's trading partners as well as stern opposition form U.S. exporters, importers and agricultural interests. The availability of preference cargoes has unquestionably kept some U.S. carriers in business but critics argue that preference has encouraged keeping obsolete vessels in operation long after they should have been scrapped.

Extent of Program: The Defense Department, the Agriculture Department and the Agency for International Development are the agencies most heavily involved in utilizing shipping and observing cargo preference. But there are at least 10 others with the same cargo preference responsibilities although smaller volumes. The Export-Import Bank in 1987 reported an unusually high, 91 percent rate of U.S.-flag vessel use. It brought participating carriers some $14.5 million in revenue.

Problems: The Maritime Administration is responsible for monitoring other government agencies to try to make sure they live up to preference requirements. In fiscal year 1987, those agencies met the cargo share minimums for the most part. Among the exceptions were cases in which the cargo origins and destinations were such that U.S.-flag vessels were simply not available.

Despite Reagan administration pledges to honor cargo preference requirements, the Navy and the Agriculture Department have had a number of preference fights with the maritime industry.

One produced an agreement by which the carriers agreed to forgo preference claims on new Agriculture Department-supported export programs with commercial-like terms in return for increasing to 75 percent their share of giveaway relief food shipments.

In another such dispute, the Navy and the U.S. State Department were forced to negotiate a cargo-sharing agreement with Iceland for military shipments there. Iceland threatened the future of U.S. bases in that country if the United States didn't agree to a departure from 100 percent U.S.-flag carriage of defense shipments.

There have been other, largely budget-driven attempts to bypass preference, but carriers and their supporters in Congress generally have managed to forestall them.

Comment: Budgetary austerity and the Defense Department's strict insistence of competitive procurement have combined to make for increasing carrier dissatisfaction, especially with the Navy's Military Sealift Command.

Efforts already are under way to change the competitive procurement system the command uses. Carriers hope generally, to end the pressures they believe force rates downward to depressed levels.

The presidentially appointed Commission on Merchant Marine and Defense has recommended that all U.S.-flag preference requirements programs be raised to 100 percent but the tight budget and such interests as farmers and traders will work against such a step. Agricultural interests have tried unsuccessfully to have existing preference removed from government programs in the belief that they inhibit U.S. farm exports.

By Mr. INOUYE:

S. 116. A bill to restore the traditional day of observance of Memorial Day; to the Committee on the Judiciary.

MEMORIAL DAY LEGISLATION

Mr. INOUYE. Mr. President, in our effort to accommodate many Americans by making the last Monday in May, Memorial Day, we have lost sight of the significance of this day to our nation. My bill would restore Memorial Day to May 30 and authorize our flag to fly at half mast on that day. In addition, this legislation would authorize the President to issue a proclamation designating Memorial Day and Veterans Day as days for prayer and ceremonies. This legislation would help restore the recognition our veterans deserve for the sacrifices they have made on behalf of our nation.

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. 116

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

SECTION 1. RESTORATION OF TRADITIONAL DAY OF OBSERVANCE OF MEMORIAL DAY.

(a) IN GENERAL.—Section 6103(a) of title 5, United States Code, is amended in the item relating to Memorial Day by striking out ''the last Monday in May.'' and inserting in lieu thereof ''May 30.''.

(b) DISPLAY OF FLAG.—Section 2(d) of the joint resolution entitled ''An Act to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America'', approved June 22, 1942 (36 U.S.C. 174(d)), is amended by striking out ''the last Monday in May;'' and inserting in lieu thereof ''May 30;''.

(c) PROCLAMATION.—The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe Memorial Day as a day for prayer and ceremonies showing respect for American veterans of wars and other military conflicts.

By Mr. INOUYE:

S. 117. A bill to amend the Internal Revenue Code of 1986 to provide for the tax treatment of residential ground rents, and for other purposes; to the Committee on Finance.

RESIDENTIAL GROUND RENTS LEGISLATION

Mr. INOUYE. Mr. President, I rise today to speak on an issue of great importance to Hawaii's leasehold homeowners. In fiscal year 1992, at my request, the Congress appropriated $400,000 to study the feasibility of reforming the Internal Revenue Code to address ground lease rent payments and to determine what role, if any, the Federal Government should play in encouraging lease to fee conversions. The nationwide study was conducted by the Hawaii Real Estate and Research Center.

The legislation I am introducing today is based on the recommendations of this study. The bill would: First, provide a mortgage interest deduction for residential leasehold properties by allowing the nonredeemable ground

lease rents to be claimed as an interest deduction; and second, include a tax credit for up to $5,000 for certain transaction costs on the transfer of certain residential leasehold land for a 5-year period, ending on December 31, 2001. Transaction costs include closing costs, attorneys' fees, surveys and appraisals, and telephone, office, and travel expenses.

In most private home ownership situations in this country, a homeowner owns both the building and land. Under a leasehold arrangement a homeowner owns the building—single-family home, condominium, or cooperative apartment—on leased land. The research conducted under the leasehold study shows that residential leaseholds are not uncommon in other parts of the United States and elsewhere in the world. Residential leaseholds exist in places such as Baltimore, MD, Irvine, CA, native American lands in Palm Springs, CA, Fairhope, AL, Pearl River Basin, MS, and New York, NY.

The study further indicates that there are few States that regulate residential leaseholds. Of those that do, the most common requirement applies only to condominium or time share units and is one requiring adequate disclosure of the lease terms. For the most part, States are unaware of any leasehold problems in their jurisdictions. However, residential leaseholds have proven to be problematic for the State of Hawaii.

The formation of Hawaii's land tenure system can be traced back to 1778 when British Capt. James Cook made his first contact with the Hawaiian civilization. Leasing was the preferred system to maintain control and retain a portfolio asset value. Residential leaseholds were first developed on the Island of Oahu after World War II. Population increases created a demand for housing and other types of real estate development. Federal income tax policy encouraged the retention of land to avoid payment of large capital gains taxes.

Hawaii's land tenure system is now anomalous to the rest of the United States because of the concentration of land in the hands of government, large charitable trusts, large agriculturally based companies and owners of small parcels or urban properties. High land prices and high renegotiated rents continue to create instability in Hawaii's residential leasehold system. In 1967, the Hawaii State Legislature enacted a Land Reform Act which did not become effective until the U.S. Supreme Court issued its 1984 decision in *Hawaii Housing Authority* v. *Midkiff*, 104 S. Ct. 231 (1984). The act and the Supreme Court decision basically divided the market into a ''single-family home market in which leaseholds were subject to mandatory conversion, and a leasehold condominium market which did not come within the scope of the law.''

Mandatory conversions on the single-family home market occurred from 1979 to 1982, and 1986 to 1990. As of 1992, there are approximately 4,600 single-family homes remaining in residential leaseholds. However, resolution over condominium leasehold reform remains uncertain. In 1990, the Honolulu City Council enacted legislation that would cap lease rent increases. The constitutionality of the law as challenged in U.S. District Court, District of Hawaii. The court found the law unconstitutional because the formula it used to arrive at permitted lease rent was illogical.

In 1991, due to the Hawaii State Legislature's unwillingness to address the leasehold problems, the Honolulu City Council again enacted a mandatory leasehold conversion law for leasehold condominiums, Ordinance 01–95. The constitutionality of this law is currently being challenged in the Federal court. Another bill which linked lease rent increases with the Consumer Price Index and the level of disposable income available to condominium owners was also considered. This bill, similar to the one enacted in 1990, was found to be unconstitutional.

The uncertainty in the residential leasehold market continues to create economic and emotional distress for the leasehold residents of Hawaii. Voluntary conversion has helped to ease the situation and substantially reduce the stock of leasehold residential units in Hawaii. Yet, voluntary conversion is not enough to resolve the residential leasehold problems.

My legislation will help reduce the economic hardship due to the uncertainty in Hawaii's residential leasehold system. The leasehold study contains an analysis of the tax revenue effects of this legislation by allowing individual tax deductions for residential ground rent. The analysis suggests that there are potential revenues to the Federal Government if this legislation is enacted into law.

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

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

S. 117

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

SECTION 1. MORTGAGE INTEREST DEDUCTION FOR QUALIFIED NON-REDEEMABLE GROUND RENTS.

(a) IN GENERAL.—Section 163(c) of the Internal Revenue Code of 1986 is amended to read as follows:

''(c) GROUND RENTS.—For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) or a qualified non-redeemable ground rent shall be treated as interest on an indebtedness secured by a mortgage.''

(b) TREATMENT OF QUALIFIED NON-REDEEMABLE GROUND RENTS.—

(1) IN GENERAL.—Subsections (a), (b), and (d) of section 1055 of the Internal Revenue Code of 1986 (relating to redeemable ground rents) are amended by inserting ''or qualified non-redeemable'' after ''redeemable'' each place it appears.

(2) DEFINITION.—Section 1055 of such Code is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

''(d) QUALIFIED NON-REDEEMABLE GROUND RENT.—For purposes of this subtitle, the term 'qualified non-redeemable ground rent' means a ground rent with respect to which—

''(1) there is a lease of land which is for a term in excess of 15 years,

''(2) no portion of any payment is allocable to the use of any property other than the land surface,

''(3) the lessor's interest in the land is primarily a security interest to protect the rental payments to which the lessor is entitled under the lease, and

''(4) the leased property must be used as the taxpayer's principal residence (within the meaning of section 1034).''

(3) CONFORMING AMENDMENTS.—

(A) The heading for section 1055 of such Code is amended by striking ''redeemable''.

(B) The item relating to section 1055 in the table of sections for part IV of subchapter O of chapter 1 of subtitle A of such Code is amended by striking ''Redeemable ground'' and inserting ''Ground''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, with respect to taxable years ending after such date.

SEC. 2. CREDIT FOR TRANSACTION COSTS ON THE TRANSFER OF LAND SUBJECT TO CERTAIN GROUND RENTS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by inserting after section 30A the following new section:

''SEC. 30B. CREDIT FOR TRANSACTION COSTS.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the transaction costs relating to any sale or exchange of land subject to ground rents with respect to which immediately after and for at least 1 year prior to such sale or exchange—

''(A) the transferee is the lessee who owns a dwelling unit on the land being transferred, and

''(B) the transferor is the lessor.

''(2) CREDIT ALLOWED TO BOTH TRANSFEROR AND TRANSFEREE.—The credit allowed under paragraph (1) shall be allowed to both the transferor and the transferee.

''(b) LIMITATIONS.—

''(1) LIMITATION PER DWELLING UNIT.—The amount of the credit allowed to a taxpayer under subsection (a) for any taxable year shall not exceed the lesser of—

''(A) $5,000 per dwelling unit, or

''(B) 10 percent of the sale price of the land.

''(2) LIMITATION BASED ON TAXABLE INCOME.—The amount of the credit allowed to a taxpayer under subsection (a) for any taxable year shall not exceed the sum of—

''(A) 20 percent of the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 28, 29, 30, and 30A plus

''(B) the alternative minimum tax imposed by section 55.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) TRANSACTION COSTS.—

''(A) IN GENERAL.—The term 'transaction costs' means any expenditure directly associated with a transaction, the purpose of which is to convey to the lessee, by the lessor, land subject to ground rents.

''(B) SPECIFIC EXPENDITURES.—Such term includes closing costs, attorney fees, surveys

and appraisals, and telephone, office, and travel expenses incurred in negotiations with respect to such transaction.

''(C) LOST RENTS NOT INCLUDED.—Such term does not include lost rents due to the premature termination of an existing lease.

''(2) DWELLING UNIT.—A dwelling unit shall include any structure or portion of any structure which serves as the principal residence (within the meaning of section 1034) for the lessee.

''(3) REDUCTION IN BASIS.—The basis of property acquired in a transaction to which this section applies shall be reduced by the amount of credit allowed under subsection (a).

''(4) ELECTION.—This section shall apply to any taxpayer for the taxable year only if such taxpayer elects to have this section so apply.

''(d) CARRYOVER OF CREDIT.—

''(1) CARRYOVER PERIOD.—If the credit allowed to the taxpayer under subsection (a) for any taxable year exceeds the amount of the limitation imposed by subsection (b)(2) for such taxable year (hereafter in this subsection referred to as the 'unused credit year'), such excess shall be a carryover to each of the 5 succeeding taxable years.

''(2) AMOUNT CARRIED TO EACH YEAR.—

''(A) ENTIRE AMOUNT CARRIED TO FIRST YEAR.—The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 5 taxable years to which (by reason of paragraph (1)) such credit may be carried.

''(B) AMOUNT CARRIED TO OTHER 4 YEARS.—The amount of unused credit for the unused credit year shall be carried to each of the remaining 4 taxable years to the extent that such unused credit may not be taken into account for a prior taxable year because of the limitation imposed by subsection (b)(2).

''(e) TERMINATION.—This section shall not apply to any transaction cost paid or incurred in taxable years beginning after December 31, 2001.''

(b) CLERICAL AMENDMENT.—The table of sections for such subpart B is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B. Credit for transaction costs on the transfer of land subject to certain ground rents.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 1996.

By Mr. INOUYE:

S. 118. A bill to provide for the completion of the naturalization process for certain nationals of the Philippines; to the Committee on the Judiciary.

FILIPINO NATURALIZATION LEGISLATION

Mr. INOUYE.

Mr. President, section 405 of the Immigration Act of 1990 was enacted to make naturalization under section 329 of the Immigration and Nationality Act available to those Filipino World War II veterans whose military service during the liberation of the Philippines makes them deserving of United States citizenship. The naturalization authority to allow the veterans to be naturalized in the Philippines was first granted under Section 113 of the fiscal year 1993 Departments of Commerce, Justice, State, Judiciary and related agencies appropriations bill.

The original intent of Congress in providing the Immigration and Naturalization Service [INS] with the authority to naturalize applicants in the Philippines was to relieve the unnecessary hardships that section 405 applicants would encounter by having to travel to the United States for an interview and naturalization ceremony, since many are elderly and have no relatives in the United States. The initial period for filing an application under this provision was from November 29, 1990 to November 30, 1992. Section 113 further extended the filing period to February 3, 1995.

Unfortunately, the authority to naturalize applicants in the Philippines has now expired. The legislation I am introducing today would immediately restore, for a 5-year period, the authority for the U.S. Embassy in Manila to complete the naturalization process of approximately 12,000 remaining applications which were properly filed under section 405 of the 1990 Act. The legislation does not extend the application period. The legislation also makes clear that naturalization is available only to those applicants who were found by the Recovered Personnel Division of the U.S. Army and the Guerrilla Affairs Division of the U.S. Army to deserve benefits from the U.S. Government.

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

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

S. 118

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

SEC. ___. COMPLETION OF THE NATURALIZATION PROCESS FOR CERTAIN NATIONALS OF THE PHILIPPINES.

(a) IN GENERAL.—Section 405 of the Immigration and Nationality Act of 1990 (8 U.S.C. 1440 note) is amended—

(1) by striking subparagraph (B) of subsection (a)(1) and inserting the following:

''(B) who—

''(i) is listed on the final roster prepared by the Recovered Personnel Division of the United States Army of those who served honorably in an active duty status within the Philippine Army during the World War II occupation and liberation of the Philippines,

''(ii) is listed on the final roster prepared by the Guerrilla Affairs Division of the United States Army of those who received recognition as having served honorably in an active duty status within a recognized guerrilla unit during the World War II occupation and liberation of the Philippines, or

''(iii) served honorably in an active duty status within the Philippine Scouts or within any other component of the United States Armed Forces in the Far East (other than a component described in clause (i) or (ii)) at any time during the period beginning September 1, 1939, and ending December 31, 1946;'';

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

''(3)(A) For purposes of the second sentence of section 329(a) and section 329(b)(3) of the Immigration and Nationality Act, the executive department under which a person served shall be—

''(i) in the case of an applicant claiming to have served in the Philippine Army, the United States Department of the Army;

''(ii) in the case of an applicant claiming to have served in a recognized guerrilla unit, the United States Department of the Army or, in the event the Department of the Army has no record of military service of such applicant, the General Headquarters of the Armed Forces of the Philippines; or

''(iii) in the case of an applicant claiming to have served in the Philippine Scouts or any other component of the United States Armed Forces in the Far East (other than a component described in clause (i) or (ii)) at any time during the period beginning September 1, 1939, and ending December 31, 1946, the United States executive department (or successor thereto) that exercised supervision over such component.

''(B) An executive department specified in subparagraph (A) may not make a determination under the second sentence of section 329(a) with respect to the service or separation from service of a person described in paragraph (1) except pursuant to a request from the Service.''; and

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

''(d) IMPLEMENTATION.—(1) Notwithstanding any other provision of law, for purposes of the naturalization of natives of the Philippines under this section—

''(A) the processing of applications for naturalization, filed in accordance with the provisions of this section, including necessary interviews, shall be conducted in the Philippines by employees of the Service designated pursuant to section 335(b) of the Immigration and Nationality Act; and

''(B) oaths of allegiance for applications for naturalization under this section shall be administered in the Philippines by employees of the Service designated pursuant to section 335(b) of that Act.

''(2) Notwithstanding paragraph (1), applications for naturalization, including necessary interviews, may continue to be processed, and oaths of allegiance may continue to be taken in the United States.''.

(b) REPEAL.—Section 113 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1440 note), is repealed.

(c) EFFECTIVE DATE; TERMINATION DATE.—

(1) APPLICATION TO PENDING APPLICATIONS.—The amendment made by subsection (a) shall apply to applications filed before February 3, 1995.

(2) TERMINATION DATE.—The authority provided by the amendment made by subsection (a) shall expire February 3, 2001.

By Mr. INOUYE:

S. 119. A bill to amend title VII of the Public Health Service Act to ensure that social work students or social work schools are eligible for support under the Health Careers Opportunity Program, the Minority Centers of Excellence Program, and programs of grants for training projects in geriatrics, and to establish a social work training program; to the Committee on Labor and Human Resources.

PUBLIC HEALTH SERVICE ACT AMENDMENTS

Mr. INOUYE. Mr. President, on behalf of our Nation's clinical social workers, I am introducing legislation to amend the Public Health Service Act. This legislation will: First, establish a new social work training program; second, ensure that social work students are eligible for support under the Health Careers Opportunity Program and that social work schools are eligible for support under the Minority Centers for Excellence programs;

Third, permit schools offering degrees in social work to obtain grants for training projects in geriatrics; and fourth, ensure that social work is recognized as a profession under the Public Health Maintenance Organization [HMO] Act.

Despite the impressive range of services social workers provide to the people of this Nation, particularly our elderly, disadvantaged, and minority populations, few Federal programs exist to provide opportunities for social work training in health and mental health care. This legislation builds on the health professions education legislation enacted by the 102d Congress enabling schools of social work to apply for AIDS training funding and resources to establish collaborative relationships with rural health care providers and schools of medicine or osteopathic medicine. This bill provides funding for traineeships and fellowships for individuals who plan to specialize in, practice, or teach social work, or for operating approved social work training programs; it assists disadvantaged students to earn graduate degrees in social work with concentrations in health or mental health; it provides new resources and opportunities in social work training for minorities; and it encourages schools of social work to expand programs in geriatrics. Finally, the recognition of social work as a profession merely codifies current social work practice and reflects the modifications made by the Medicare HMO legislation.

I believe it is important to ensure that the special expertise and skills social workers possess continue to be available to the citizens of this Nation. This legislation, by providing financial assistance to schools of social work and social work students, recognizes the long history and critical importance of the services provided by social work professionals. In addition since social workers have provided quality mental health services to our citizens for a long time and continue to be at the forefront of establishing innovative programs to serve our disadvantaged populations, I believe that it is time to provide them with the proper recognition of their profession that they have clearly earned and deserve.

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

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

S. 119

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

SECTION 1. SOCIAL WORK STUDENTS.

(a) SCHOLARSHIPS, GENERALLY.—Section 737(a)(3) of the Public Health Service Act (42 U.S.C. 293a(a)(3)) is amended by striking ''offering graduate programs in clinical psychology'' and inserting ''offering graduate programs in clinical psychology, graduate programs in clinical social work, or programs in social work''.

(b) FACULTY POSITIONS.—Section 738(a)(3) of the Public Health Service Act (42 U.S.C. 293b(a)(3)) is amended by striking ''offering graduate programs in clinical psychology'' and inserting ''offering graduate programs in clinical psychology, graduate programs in clinical social work, or programs in social work''.

(c) HEALTH PROFESSIONS SCHOOL.—Section 739(h)(1)(A) of the Public Health Service Act (42 U.S.C. 293c(h)(1)(A)) is amended by striking ''or a school of pharmacy'' and inserting ''a school of pharmacy, or a school offering graduate programs in clinical social work, or programs in social work''.

(d) HEALTH CAREERS OPPORTUNITIES PROGRAM.—Section 740(a)(1) of the Public Health Service Act (42 U.S.C. 293d(a)(1)) is amended by striking ''which offer graduate programs in clinical psychology'' and inserting ''offering graduate programs in clinical psychology or programs in social work''.

SEC. 2. GERIATRICS TRAINING PROJECTS.

Section 777(b)(1) of the Public Health Service Act (42 U.S.C. 294o(b)(1)) is amended by inserting ''schools offering degrees in social work,'' after ''teaching hospitals,''.

SEC. 3. SOCIAL WORK TRAINING PROGRAM.

Part E of title VII of the Public Health Service Act (42 U.S.C. 294n et seq.) is amended by adding at the end the following:

''SEC. 779. SOCIAL WORK TRAINING PROGRAM.

''(a) TRAINING GENERALLY.—The Secretary may make grants to, or enter into contracts with, any public or nonprofit private hospital, school offering programs in social work, or to or with a public or private nonprofit entity (which the Secretary has determined is capable of carrying out such grant or contract)—

''(1) to plan, develop, and operate, or participate in, an approved social work training program (including an approved residency or internship program) for students, interns, residents, or practicing physicians;

''(2) to provide financial assistance (in the form of traineeships and fellowships) to students, interns, residents, practicing physicians, or other individuals, who are in need thereof, who are participants in any such program, and who plan to specialize or work in the practice of social work;

''(3) to plan, develop, and operate a program for the training of individuals who plan to teach in social work training programs; and

''(4) to provide financial assistance (in the form of traineeships and fellowships) to individuals who are participants in any such program and who plan to teach in a social work training program.

''(b) ACADEMIC ADMINISTRATIVE UNITS.—

''(1) IN GENERAL.—The Secretary may make grants to or enter into contracts with schools offering programs in social work to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in social work.

''(2) PREFERENCE IN MAKING AWARDS.—In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant for such an award that agrees to expend the award for the purpose of—

''(A) establishing an academic administrative unit for programs in social work; or

''(B) substantially expanding the programs of such a unit.

''(c) DURATION OF AWARD.—The period during which payments are made to an entity from an award of a grant or contract under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

''(d) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1998 through 2000.

''(2) ALLOCATION.—Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than 20 percent for awards of grants and contracts under subsection (b).''.

SEC. 4. CLINICAL SOCIAL WORKER SERVICES.

Section 1302 of the Public Health Service Act (42 U.S.C. 300e–1) is amended—

(1) in paragraphs (1) and (2), by inserting ''clinical social worker,'' after ''psychologist,'' each place it appears;

(2) in paragraph (4)(A), by striking ''and psychologists'' and inserting ''psychologists, and clinical social workers''; and

(3) in paragraph (5), by inserting ''clinical social work,'' after ''psychology,''.

By Mr. INOUYE:

S. 120. A bill to amend title VII of the Public Health Service Act to make certain graduate programs in clinical psychology eligible to participate in various health professions loan programs; to the Committee on Labor and Human Resources.

PUBLIC HEALTH SERVICE ACT AMENDMENTS

Mr. INOUYE. Mr. President, I am introducing legislation today to modify Title VII of the U.S. Public Health Service Act in order to provide students enrolled in graduate psychology programs with the opportunity to participate in various health professions loan programs.

Providing students enrolled in graduate psychology programs with eligibility for financial assistance in the form of loans, loan guarantees, and scholarships will facilitate a much needed infusion of behavioral science expertise into our public health efforts. There is a growing recognition of the valuable contribution that is being made by our nation's psychologists toward solving some of our Nation's most distressing problems such as domestic violence, addictions, occupational stress, child abuse, and depression.

The participation of students of all kinds is vital to the success of health care training. The Title VII programs play a significant role in providing financial support for the recruitment of minorities, women, and individuals from economically disadvantaged backgrounds. Minority therapists, for example, have an advantage in the provision of critical services to minority populations because they are more likely to understand or, perhaps, share the cultural background of their clients and are often able to communicate to them in their own language. Also significant is the fact that, when compared with non-minority graduates, ethnic minority graduates are less likely to work in private practice and more likely to work in community or non-profit settings, where ethnic minority and economically disadvantaged individuals are more likely to seek care.

It is important that a continued emphasis be placed on the needy populations of our nation and that continued support be provided for the training of individuals who are most likely to provide services in underserved areas.

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

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

S. 120

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

SECTION 1. PARTICIPATION IN VARIOUS HEALTH PROFESSIONS LOAN PROGRAMS.

(a) LOAN AGREEMENTS.—Section 721 of the Public Health Service Act (42 U.S.C. 292q) is amended—

(1) in subsection (a), by inserting '', or any public or nonprofit schools that offer graduate programs in clinical psychology'' after ''veterinary medicine'';

(2) in subsection (b)(4), by striking ''or doctor of veterinary medicine or an equivalent degree'' and inserting ''doctor of veterinary medicine or an equivalent degree, or a graduate degree in clinical psychology''; and

(3) in subsection (c)(1), by inserting '', or schools that offer graduate programs in clinical psychology'' after ''veterinary medicine''.

(b) LOAN PROVISIONS.—Section 722 of the Public Health Service Act (42 U.S.C. 292r) is amended—

(1) in subsection (b)(1), by striking ''or doctor of veterinary medicine or an equivalent degree'' and inserting ''doctor of veterinary medicine or an equivalent degree, or a graduate degree in clinical psychology''; and

(2) in subsection (k)—

(A) in the matter preceding paragraph (1), by striking ''or podiatry'' and inserting ''podiatry, or clinical psychology''; and

(B) in paragraph (4), by striking ''or podiatric medicine'' and inserting ''podiatric medicine, or clinical psychology''.

By Mr. MOYNIHAN (for himself, Mr. CHAFEE, Mr. KENNEDY, and Ms. MOSELEY-BRAUN):

S. 121. A bill to amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes; to the Committee on Finance.

THE HIGHER EDUCATION BOND PARITY ACT

S. 122. A bill to amend the Internal Revenue Code of 1986 to correct the treatment of tax-exempt financing of professional sports facilities; to the Committee on Finance.

THE STOP TAX-EXEMPT ARENA DEBT ISSUANCE ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce two tax bills which I introduced together for the first time last summer. The two bills are both significant in their own rights. Yet, when taken together, they correct a serious misallocation of our limited resources under present law: a tax subsidy that inures largely to the benefit of wealthy sports franchise owners and their players would be replaced with increased for higher education and research.

The first bill, the Higher Education Bond Parity Act of 1997, has been introduced several times previously by this Senator, with several of my distinguished colleagues as cosponsors. It would undo what ought never have been done. It would remove the ''private activity'' label from the tax-exempt bonds of private, nonprofits higher education institutions and other organizations, and thereby eliminate the arbitrary $150 million cap on the amount of tax-exempt bonds that such as institution may have outstanding.

The Tax Reform Act of 1986 imposed the ''private activity'' label (and a $150 million cap) on bonds issued on behalf on nonprofit institutions, collectively known as section 501(c)(3) organizations. This was a serious error. The cap has relegated private, higher education institutions to a diminished, restricted status, relative to their public counterparts.

Already, this has caused observable, harmful effects on many of our Nation's leading colleges and universities. Thirty-four of them presently are at or near the $150 million cap, and unlike their public counterparts are precluded from using tax-exempt to finance classrooms, libraries, research laboratories, and the like. A few years ago, as the $150 million cap was bargaining to take effect, 19 of the universities that ranked in the top 50 in research undertaking were private institutions. Today, only 14 of those 19 private institutions remain in the top 50, and all but one are foreclosed form tax-exempt financing as a result of the $150 million per institution limit.

We must act soon to restore the access of private colleges and universities to tax-exempt financing equal to that of their pubic counterparts. Otherwise, the vitality of our private institutions in higher education and research will be at risk. And we will lose a distinguishing feature of American society of inestimable value—the singular degree to which we maintain an independent sector—''private universit[ies] in the public service,'' to paraphrase the motto of New York University. This is no longer so in most of the democratic world; it never was so in the rest. It is a treasure and a phenomenon that has clearly produced excellence—indeed, the envy of the world—and it must be sustained.

The practical effect of the $150 million cap is to deny tax-exempt financing to large, private, research-oriented educational institutions most in need of capital to carry out their research mission. This will have a predictable impact over a generation: the distribution of major research in this country will inevitably shift to public institutions. If I may use California as an example, we could look up one day and find Stanford to be still an institution of the greatest quality as an undergraduate teaching facility—with a fine law school and excellent liberal arts degree program—but with all the big science projects at Berkeley, the State institution.

By removing the ''private activity'' label, this legislation will restore the parity of treatment of private nonprofit institutions and their public counterparts, and reinstate proper recognition in the tax code of the essential public purposes served by such private institutions.

The capital needs of private colleges and universities merit the close attention of this body. The cost of these changes is modest, given their importance. The staff of the Joint Committee on Taxation has estimated the revenue loss previously at $308 million over 5 years. The Senate has twice passed legislation to remove the ''private activity'' label and the $150 million bond cap—in the Family Tax Fairness, Economic Growth, and Health Care Access Act of 1992 (H.R. 4210) and the Revenue Act of 1992 (H.R. 11)—only to have both bills vetoed for other reasons by President Bush. We should correct this error before it is too late. Otherwise, we will soon look up and find that we do not recognize the higher education sector.

Mr. President, the second tax bill I introduce today—the Stop Tax-exempt Arena Debt Issuance Act (or STADIA for short)—was introduced by this Senator for the first time last summer. Since that time, the bill has attracted the close scrutiny of bond counsel and their clients and has received much attention in the press almost all of which has been favorable.

Mr. Keith Olbermann, anchor of ESPN's Sportscenter program, even declared that the introduction of the bill was ''paramount among all other sports stories'' last year. Mr. Olbermann's support for this legislation is so emphatic that he compared its author to Dr. Jonas Salk. Passage of the bill, Mr. Olbermann says, is ''the vaccine that * * * could conceivably at least towards the cure, if not cure immediately, almost all the ills of sports.''

Mr. Olbermann is far too generous to this Senator, but he is right about the importance of this bill, both to sports fans and to taxpayers. This bill closes a big loophole, a loophole that ultimately injures State and local governments and other issuers of tax-exempt bonds, that provides an unintended Federal subsidy (in fact, contravenes Congressional intent), that underwrites bidding wars among cities battling for professional sports franchises, and that contributes to the enrichment of persons who need no Federal assistance whatsoever.

A decade ago, I was much involved in the drafting of the Tax Reform Act of 1986. A major objective of that legislation was to simplify the Tax Code by eliminating a large number of loopholes that had come to be viewed as unfair because they primarily benefited small groups of taxpayers. One of the loopholes we sought to close in 1986 was one that permitted builders of professional sports facilities to use tax-exempt bonds. Mind, we had nothing

against new stadium construction, but we made the judgment that scarce Federal resources could surely be used in ways that would better serve the public good. The increasing proliferation of tax-exempt bonds had driven up interest costs for financing roads, schools, libraries, and other governmental purposes, led to mounting revenue losses to the U.S. Treasury, caused an inefficient allocation of capital, and allowed wealthy taxpayers to shield a growing amount of their investment income from income tax by purchasing tax-exempt bonds. Thus, we expressly forbade use of ''private activity'' bonds for sports facilities, intending to eliminate tax-exempt financing of these facilities altogether.

Unfortunately, our effort in 1986 backfired. Team owners, with help from clever tax counsel, soon recognized that the change could work to their advantage. As columnist Neal R. Pierce wrote recently, team owners ''were not checkmated for long. They were soon exhibiting the gall to ask mayors to finance their stadiums with [governmental] purpose bonds.'' Congress did not anticipate this. After all, by law, governmental bonds used to build stadiums would be tax-exempt only if no more than 10 percent of the debt service is derived from stadium revenue sources. In other words, non-stadium governmental revenues (i.e., tax revenues, lottery proceeds, and the like) must be used to repay the bulk of the debt, freeing team owners to pocket stadium revenues. Who would have thought that local officials, in order to keep or get a team, would capitulate to team owners—granting concessionary stadium leases and committing limited government revenues to repay stadium debt, thereby hindering their own ability to provide schools, roads and other public investments?

The result has been a stadium construction boom unlike anything we have ever seen. In the last 6 years alone, over $4 billion has been spent on building 30 professional sports stadiums. According to Prof. Robert Baade, an economist at Lake Forest College in Illinois and a stadium finance expert, that amount could ''completely refurbish the physical plants of the nation's public elementary and secondary schools.'' An additional $7 billion of stadiums are in the planning stages, and no end is in sight.

What is driving the demand for new stadiums? Mainly, team owners' bottom lines and rising player salaries. Although our existing stadiums are generally quite serviceable, team owners can generate greater income, increase their franchise values dramatically, and compete for high-priced free agents with new tax-subsidized, single-purpose stadiums equipped with luxury skyboxes, club seats and the like. Thus, using their monopoly power, owners threaten to move, forcing bidding wars among cities. End result: new, tax-subsidized stadiums with fancy amenities and sweetheart lease deals.

To cite a case in point, Mr. Art Modell recently moved the Cleveland Browns professional football team from Cleveland to Baltimore to become the Ravens. Prior to relocating, Mr. Modell had said, ''I am not about to rape the city [of Cleveland] as others in my league have done. You will never hear me say 'if I don't get this I'm moving.' You can go to press on that one. I couldn't live with myself if I did that.'' Obviously, Mr. Modell changed his mind. And why? An extraordinary stadium deal with the State of Maryland.

The State of Maryland (and the local sports authority) provided the land on which the stadium is located, issued $87 million in tax-exempt bonds (yielding interest savings of approximately $60 million over a 30 year period as compared to taxable bonds), and contributed $30 million in cash and $64 million in state lottery revenues toward construction of the stadium. Mr. Modell agreed to contribute $24 million toward the project and, in return, receives rent-free use of the stadium (the franchise pays only for the operating and maintenance costs), $65 million in sales of rights to purchase season tickets (so called ''personal seat licenses''), all revenues from selling the right to name the stadium luxury suites, premium seats, in-park advertising, and concessions, and 50 percent of all revenues from stadium events other than Ravens' games (with the right to control the booking of those events).

Financial World reports that the value of the Baltimore Ravens' franchise increased from $165 million in 1992 (i.e., before the move from Cleveland) to an estimated $250 million, after its first season in the new stadium. It's little wonder that Mr. Modell recently stated: ''The pride and presence of a professional football team is far more important than 30 libraries, and I say that with all due respect to the learning process.''

Meanwhile, the City of Cleveland has agreed to construct a new, $225 million stadium to house an expansion football team. When Mr. Modell decided to move his team to Baltimore, the NFL agreed to create a new Cleveland football team with the same name: the Cleveland Browns. Most cities are not as fortunate when a team leaves.

We are even reaching a point at which stadiums are being abandoned before they have been used for 10 or 15 years. A recent article in Barron's reports that this owner-perceived ''economic obsolescence'' has doomed even recently-built venues:

> The eight-year-old Miami Arena is facing a future without its two major tenants, the Florida Panthers hockey team and the Miami Heat basketball franchise, because of inadequate seating capacity and a paucity of luxury suites. The Panthers have already cut a deal to move to a new facility that nearby Broward County is building for them at a cost of around $200 million. Plans call for Dade County to build a new $210 million arena before the end of the decade, despite the fact that the move will leave local taxpayers stuck with servicing the debt on two Miami arenas rather than just one.

How do taxpayers benefit from all this? They don't. Tickets prices go way up—and stay up—after a new stadium opens. So while fans are asked to foot the bills through tax subsides, many no longer can afford the price of admission. A study of Newsday recently found that tickets prices rose by 32 percent in five new baseball stadiums, as compared to a major league average of 8 percent. Not to mention the refreshments and other concessions, which also cost more in the new venues.

According to Barron's the projects ''cater largely to well-heeled fans, meaning the folks who can afford to pay for seats in glassed-in luxury boxes. While the suit-and-cell-phone crowd get all the best seats, the average taxpayer is consigned to 'cheap seats' in nosebleed land or, more often, for following his favorite team on television.''

Nor do these new stadiums provide much, if any, economic benefit to their local communities. Professor Baade studied new stadiums in 30 metropolitan areas. He found no discernible positive impact on economic development in 27 of the areas, and a negative impact in the other 3.

Any job growth that does result is extremely expensive. The Congressional Research Service [CRS] reports that the new $177 million football stadium for the Baltimore Ravens is expected to cost $127,000 per job created. By contrast, the cost per job generated by Maryland's economic development program is just $6,250. Another recent study in New York found that a proposed $1 billion stadium for the Yankees would cost over $500,000 for every job created.

Finally, Federal taxpayers receive absolutely no economic benefit for providing this subsidy. As CRS points out, ''Almost all stadium spending is spending that would have been made on other activities within the United States, which means that benefits to the nation as a whole are near zero.'' After all, these teams will invariably locate somewhere in the United States, it is just a matter of where. And should the Federal taxpayers in the team's current home town be forced to pay for the team's new stadium in the new city? The answer is unmistakably no.

The STADIA bill would save about $50 million a year now spent to subsidize professional sports stadiums. So I ask you once again this year, should we subsidize the commercial pursuits of wealthy team owners, encourage escalating player salaries, and underwrite bidding wars among cities seeking (or fighting to keep) professional sports teams, or, would our scarce resources be put to better use for public needs, like higher education and research? To my mind, this is not a difficult choice.

Mr. President, I ask unanimous consent that the two bills be printed in the RECORD, along with explanatory statements. I also ask unanimous consent that the following articles be printed

in the RECORD following the bills and explanatory statements.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 121

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 ''Higher Education Bond Parity Act''.

SEC. 2. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO GOVERNMENTAL BONDS.

(a) IN GENERAL.—Section 150(a) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by striking paragraphs (2) and (4), by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following:

''(2) EXEMPT PERSON.—

''(A) IN GENERAL.—The term 'exempt person' means—

''(i) a governmental unit, or

''(ii) a 501(c)(3) organization, but only with respect to its activities which do not constitute unrelated trades or businesses as determined by applying section 513(a).

''(B) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term 'governmental unit' does not include the United States or any agency or instrumentality thereof.

''(C) 501(c)(3) ORGANIZATION.—The term '501(c)(3) organization' means any organization described in section 501(c)(3) and exempt from tax under section 501(a).''.

(b) REPEAL OF QUALIFIED 501(c)(3) BOND DESIGNATION.—Section 145 of the Internal Revenue Code of 1986 (relating to qualified 501(c)(3) bonds) is repealed.

(c) CONFORMING AMENDMENTS.—

(1) Section 141(b)(3) of the Internal Revenue Code of 1986 is amended—

(A) in subparagraphs (A)(ii)(I) and (B)(ii), by striking ''government use'' and inserting ''exempt person use'';

(B) in subparagraph (B), by striking ''a government use'' and inserting ''an exempt person use'';

(C) in subparagraphs (A)(ii)(II) and (B), by striking ''related business use'' and inserting ''related private business use'';

(D) in the heading of subparagraph (B), by striking ''RELATED BUSINESS USE'' and inserting ''RELATED PRIVATE BUSINESS USE''; and

(E) in the heading thereof, by striking ''GOVERNMENT USE'' and inserting ''EXEMPT PERSON USE''.

(2) Section 141(b)(6)(A) of such Code is amended by striking ''a governmental unit'' and inserting ''an exempt person''.

(3) Section 141(b)(7) of such Code is amended—

(A) by striking ''government use'' and inserting ''exempt person use''; and

(B) in the heading thereof, by striking ''GOVERNMENT USE'' and inserting ''EXEMPT PERSON USE''.

(4) Section 141(b) of such Code is amended by striking paragraph (9).

(5) Section 141(c)(1) of such Code is amended by striking ''governmental units'' and inserting ''exempt persons''.

(6) Section 141 of such Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) CERTAIN ISSUES USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if any portion of the net proceeds of the issue are to be used (directly or indirectly) by an exempt person described in section 150(a)(2)(A)(ii) to provide residential rental property for family units. This paragraph shall not apply if the bond would not be a private activity bond if the section 501(c)(3) organization were not an exempt person.

''(2) EXCEPTION FOR BONDS USED TO PROVIDE QUALIFIED RESIDENTIAL RENTAL PROJECTS.—Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

''(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

''(B) qualified residential rental projects (as defined in section 142(d)), or

''(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

''(3) SUBSTANTIAL REHABILITATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

''(B) EXCEPTION.—For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

''(4) CERTAIN PROPERTY TREATED AS NEW PROPERTY.—Solely for purposes of determining under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

''(A) IN GENERAL.—If—

''(i) the 1st use of property is pursuant to taxable financing,

''(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

''(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

''(B) SPECIAL RULE WHERE NO OPERATING STATE OR LOCAL PROGRAM FOR TAX-EXEMPT FINANCING.—If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) TAX-EXEMPT FINANCING.—The term 'tax-exempt financing' means financing provided by tax-exempt bonds.

''(ii) TAXABLE FINANCING.—The term 'taxable financing' means financing which is not tax-exempt financing.''.

(7) Section 141(f) of such Code, as redesignated by paragraph (6), is amended—

(A) at the end of subparagraph (E), by adding ''or'';

(B) at the end of subparagraph (F), by striking '', or'' and inserting a period; and

(C) by striking subparagraph (G).

(8) The last sentence of section 144(b)(1) of such Code is amended by striking ''(determined'' and all that follows to the period.

(9) Section 144(c)(2)(C)(ii) of such Code is amended by striking ''a governmental unit'' and inserting ''an exempt person''.

(10) Section 146(g) of such Code is amended—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(C) by striking ''Paragraph (4)'' and inserting ''Paragraph (3)''.

(11) The heading of section 146(k)(3) of such Code is amended by striking ''GOVERNMENTAL'' and inserting ''EXEMPT PERSON''.

(12) The heading of section 146(m) of such Code is amended by striking ''GOVERNMENT'' and inserting ''EXEMPT PERSON''.

(13) Section 147(b) of such Code is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(14) Section 147(h) of such Code is amended to read as follows:

''(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE REVENUE BONDS AND QUALIFIED STUDENT LOAN BONDS.—Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond.''.

(15) Section 148(d)(3)(F) of such Code is amended—

(A) by striking ''or which is a qualified 501(c)(3) bond''; and

(B) in the heading thereof, by striking ''GOVERNMENTAL USE BONDS AND QUALIFIED 501(C)(3)'' and inserting ''EXEMPT PERSON''.

(16) Section 148(f)(4)(B)(ii)(II) of such Code is amended by striking ''(other than a qualified 501(c)(3) bond)''.

(17) Section 148(f)(4)(C)(iv) of such Code is amended—

(A) by striking ''a governmental unit or a 501(c)(3) organization'' both places it appears and inserting ''an exempt person'';

(B) by striking ''qualified 501(c)(3) bonds,''; and

(C) by striking the comma after ''private activity bonds'' the first place it appears.

(18) Section 148(f)(7)(A) of such Code is amended by striking ''(other than a qualified 501(c)(3) bond)''.

(19) Section 149(d)(2) of such Code is amended—

(A) by striking ''(other than a qualified 501(c)(3) bond)''; and

(B) in the heading thereof, by striking ''CERTAIN PRIVATE'' and inserting ''PRIVATE''.

(20) Section 149(e)(2) of such Code is amended—

(A) in the second sentence, by striking ''which is not a private activity bond'' and inserting ''which is a bond issued for an exempt person described in section 150(a)(2)(A)(i)''; and

(B) by adding at the end the following: ''Subparagraph (D) shall not apply to any bond which is not a private activity bond but which would be such a bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person.''.

(21) The heading of section 150(b) of such Code is amended by striking ''TAX-EXEMPT PRIVATE ACTIVITY BONDS'' and inserting ''CERTAIN TAX-EXEMPT BONDS''.

(22) Section 150(b)(3) of such Code is amended—

(A) in subparagraph (A), by inserting ''owned by a 501(c)(3) organization'' after ''any facility'';

(B) in subparagraph (A), by striking ''any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond'' and inserting ''any bond which, when issued, purported to be a tax-exempt bond, and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person''; and

(C) by striking the heading thereof and inserting ''BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—''.

(23) Section 150(b)(5) of such Code is amended—

(A) in subparagraph (A), by striking ''private activity'';

(B) in subparagraph (A), by inserting ''and which would be a private activity bond if the 501(c)(3) organization using the proceeds

thereof were not an exempt person'' after ''tax-exempt bond'';

(C) by striking subparagraph (B) and inserting the following:

''(B) such facility is required to be owned by an exempt person, and''; and

(D) in the heading thereof, by striking ''GOVERNMENTAL UNITS OR 501(C)(3) ORGANIZATIONS'' and inserting ''EXEMPT PERSONS''.

(24) Section 150 of such Code is amended by adding at the end the following:

''(f) CERTAIN RULES TO APPLY TO BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

''(1) IN GENERAL.—Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person unless such bond satisfies the requirements of subsections (b) and (f) of section 147.

''(2) SPECIAL RULE FOR POOLED FINANCING OF 501(C)(3) ORGANIZATION.—

''(A) IN GENERAL.—At the election of the issuer, a bond described in paragraph (1) shall be treated as meeting the requirements of section 147(b) if such bond meets the requirements of subparagraph (B).

''(B) REQUIREMENTS.—A bond meets the requirements of this subparagraph if—

''(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

''(ii) each loan described in clause (i) satisfies the requirements of section 147(b) (determined by treating each loan as a separate issue),

''(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

''(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued).''.

(25) Section 1302 of the Tax Reform Act of 1986 is repealed.

(26) Section 57(a)(5)(C) of such Code is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(27) Section 103(b)(3) of such Code is amended by inserting ''and section 150(f)'' after ''section 149''.

(28) Section 265(b)(3) of such Code is amended—

(A) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) CERTAIN BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of clause (i)(II), there shall not be treated as a private activity bond any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A)).''; and

(B) in subparagraph (C)(ii)(I), by striking ''(other than a qualified 501(c)(3) bond, as defined in section 145)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to bonds (including refunding bonds) issued with respect to capital expenditures made on or after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to bonds issued before January 1, 1997, for purposes of applying section 148(f)(4)(D) of the Internal Revenue Code of 1986.

HIGHER EDUCATION BOND PARITY ACT OF 1997

PRESENT LAW

Interest on State and local governmental bonds generally is excluded from income if the bonds are issued to finance direct activities of these governments (sec. 103). Interest on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless a specific exception is included in the Code. One such exception is for private activity bonds issued to finance activities of private, charitable organizations described in Code section 501(c)(3) (''section 501(c)(3) organizations'') when the activities do not constitute an unrelated trade business (sec. 141(e)(1)(G)).

Classification of section 501(c)(3) organization bonds as private activity bonds

Before enactment of the Tax Reform Act of 1986, States and local governments and section 501(c)(3) organizations were defined as ''exempt persons,'' under the Code bond provisions. As exempt persons, section 501(c)(3) organizations were not treated as ''private'' persons, and their bonds were not ''industrial development bonds'' or ''private loan bonds'' (the predecessor categories to current private activity bonds). Under present law, a bond is a private activity bond if its proceeds are used in a manner violating either (a) a private business test or (b) a private loan test. The private business test is a conjunctive two-pronged test. First, the test limits private business use of governmental bonds to no more than 10 percent of the proceeds.[1] Second, no more than 10 percent of the debt service on the bonds may be secured by or derived from private business users of the proceeds. The private loan test limits to the lesser of 5 percent or $5 million the amount of governmental bond proceeds that may be used to finance loans to persons other than governmental units.

Special restrictions on tax-exemption for section 501(c)(3) organization bonds

Present law treats section 501(c)(3) organizations as private persons; thus, bonds for their use may only be issued as private activity ''qualified 501(c)(3) bonds,'' subject to the restrictions of Code section 145. The most significant of these restrictions limits the amount of outstanding bonds from which a section 501(c)(3) organization may benefit to $150 million. In applying this ''$150 million limit,'' all section 501(c)(3) organizations under common management or control are treated as a single organization. The limit does not apply to bonds for hospital facilities, defined to include only acute care, primarily impatient, organizations. A second restriction limits to no more than five percent the amount of the net proceeds of a bond issue that may be used to finance any activities (including all costs of issuing the bonds) other than the exempt purposes of the section 501(c)(3) organization.

Legislation enacted in 1988 imposed low-income tenant occupancy restrictions on existing residential rental property that is acquired by section 501(c)(3) organizations in tax-exempt-bond-financed transactions. These restrictions required that a minimum number of the housing units comprising the property be continuously occupied by tenants having a family incomes of 50 percent (60 percent in certain cases) of area median income for periods of up to 15 years. These same low-income tenant occupancy requirements apply to for-profit developers receiving tax-exempt private activity bond financing.

Other restrictions

Several restrictions are imposed on private activity bonds generally that do not apply to bonds used to finance State and local government activities. Many of these restrictions also apply to qualified 501(c)(3) bonds. No more than two percent of the proceeds of a bond issue may be used to finance the costs of issuing the bonds, and these monies are not counted in determining whether the bonds satisfy the requirement that at least 95 percent of the net proceeds of each bond issue be used for the exempt activities qualifying the bonds for tax-exemption.

The weighted average maturity of a bond issue may not exceed 120 percent of the average economic life of the property financed with the proceeds. A public hearing must be held and an elected public official must approve the bonds before they are issued (or the bonds must be approved by voter referendum).

If property financed with private activity bonds is converted to use not qualifying for tax-exempt financing, certain loan interest penalties are imposed.

Both governmental and private activity bonds are subject to numerous other Code restrictions, including the following:

1. The amount of arbitrage profits that may be earned on tax-exempt bonds is strictly limited, and most such profits must be rebated to the Federal Government;

2. Banks may not deduct interest they pay to the extent of their investments in most tax-exempt bonds; and

3. Interest on private activity bonds, other than qualified 501(c)(3) bonds, is a preference item in calculating the alternative minimum tax.

REASONS FOR CHANGE

A distinguishing feature of American society is the singular degree to which the United States maintains a private, non-profit sector of private higher education, health care, and other charitable institutions in the public service. It is important to assist these private institutions in their advancement of the public good. The restrictions of present law place these section 501(c)(3) organizations at a financial disadvantage relative to substantially identical governmental institutions, and are particularly inappropriate. For example, private, non-profit research universities are subject to the $150 million limitation on outstanding bonds, whereas State-sponsored universities competing for the same research projects do not operate under a comparable restriction. A public hospital generally has unlimited access to tax-exempt bond financing, while a private, non-profit hospital is subject to a $150 million limitation on outstanding bonds to the extent the bonds finance health care facilities that do not qualify under the present-law definition of hospital. These and other restrictions inhibit the ability of America's private, non-profit institutions to modernize their health care facilities and to build state-of-the-art research facilities for the advancement of science, medicine, and other educational endeavors.

Footnotes at end of article.

Inhibiting the access of private, non-profit research institutions to sources of capital financing, in relation to their public counterparts, distorts the distribution of major research among the leading institutions, and over time will lead to the decline of research undertakings by private, non-profit universities. The tax-exempt bond rules should reduce these distortions by treating more equally State and local governments and those private organizations which are engaged in similar actions advancing the public good.

EXPLANATION OF PROVISION

The bill amends the tax-exempt bond provisions of the Code to conform generally the treatment of bonds for section 501(c)(3) organizations to that provided for bonds issued to finance direct State or local government activities, including construction of public hospitals and university facilities. Certain restrictions, described below, that have been imposed on qualified 501(c)(3) bonds (but not on governmental bonds) since 1986, and that address specialized policy concerns, are retained.

Repeal of private activity bond classification for bonds for section 501(c)(3) organizations

The concept of an ''exempt person'' that existed under the Code bond provisions before 1986, is reenacted. An exempt person is defined as (a) a State or local governmental unit or (b) a section 501(c)(3) organization, when carrying out its exempt activities under Code section 501(a). Thus, bonds for section 501(c)(3) organizations are generally no longer classified as private activity bonds. Financing for unrelated business activities of such organizations continue to be treated as a private activity for which tax-exempt financing is not authorized.

As exempt persons, section 501(c)(3) organizations are subject to the same limits as States and local governments on using their bond proceeds to finance private business activities or to make private loans. Thus, generally no more than 10 percent of the bond proceeds[2] can be used in a business use of a person other than an exempt person if the Code private payment test is satisfied, and no more than 5 percent ($5 million if less) can be used to make loans to such ''nonexempt'' persons.

Repeal of most additional special restrictions on section 501(c)(3) organization bonds

Persent Code section 145, which establishes additional restrictions on qualified 501(c)(3) bonds, is repealed, along with the restriction on bond-financed costs of issuance for section 501(c)(3) organization bonds (sec. 147(h)). This eliminates the $150 million limit on non-hospital bonds for section 501(c)(3) organizations.

Retention of certain specialized requirements for section 501(c)(3) organization bonds

The bill retains certain specialized restrictions on bonds for section 501(c)(3) organizations. First, the bill retains the requirement that existing residential rental property acquired by a section 501(c)(3) organization in a tax-exempt-bond-financed transaction satisfy the same low-income tenant requirements as similar housing financing for for-profit developers. Second, the bill retains the present-law maturity limitations applicable to bonds for section 501(c)(3) organizations, and the public approval requirements applicable generally to private activity bonds. Third, the bill continues to apply the penalties on changes in use of tax-exempt-bond-financed section 501(c)(3) organization property to a use not qualified for such financing.

Finally, the bill makes no amendments, other than technical conforming amendments, to the tax-exempt arbitrage restrictions, the alternative minimum tax tax-exempt bond preference, or the provisions generally disallowing interest paid by banks on monies used to acquire or carry tax-exempt bonds.

EFFECTIVE DATE

The provision is generally effective for bonds issued with respect to capital expenditures made after the date of enactment. The provision does not apply to bonds issued prior to January 1, 1997 for the purposes of applying the rebate requirements under Section 148(f)(4)(D).

FOOTNOTES

[1]No more than 5 percent of bond proceeds may be used in a private business use that is unrelated to the governmental purpose of the bond issue. the 10-percent debt service test, described below, likewise is reduced to 5 percent in the case of such ''disproportionate'' private business use.

[2]This limit would be reduced to 5 percent in the case of disproportionate private use as under the present-law governmental bond disproportionate private use limit.

S. 122

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 ''Stop Tax-Exempt Arena Debt Issuance Act''.

SEC. 2. TREATMENT OF TAX-EXEMPT FINANCING OF PROFESSIONAL SPORTS FACILITIES.

(a) IN GENERAL.—Section 141 of the Internal Revenue Code of 1986 (defining private activity bond and qualified bond) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) CERTAIN ISSUES USED FOR PROFESSIONAL SPORTS FACILITIES TREATED AS PRIVATE ACTIVITY BONDS.—

''(1) IN GENERAL.—For purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) to provide professional sports facilities exceeds the lesser of—

''(A) 5 percent of such proceeds, or

''(B) $5,000,000.

''(2) BOND NOT TREATED AS A QUALIFIED BOND.—For purposes of this title, any bond described in paragraph (1) shall not be a qualified bond.

''(3) PROFESSIONAL SPORTS FACILITIES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'professional sports facilities' means real property or related improvements used for professional sports exhibitions, games, or training, regardless if the admission of the public or press is allowed or paid.

''(B) USE FOR PROFESSIONAL SPORTS.—Any use of facilities which generates a direct or indirect monetary benefit (other than reimbursement for out-of pocket expenses) for a person who uses such facilities for professional sports exhibitions, games, or training shall be treated as a use described in subparagraph (A).

''(4) ANTI-ABUSE REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including such regulations as may be appropriate to prevent avoidance of such purposes through related persons, use of related facilities or multiuse complexes, or otherwise.''

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendments made by this section shall apply to bonds issued on or after the first date of committee action.

(2) EXCEPTION FOR CONSTRUCTION, BINDING AGREEMENTS, OR APPROVED PROJECTS.—The amendments made by this section shall not apply to bonds—

(A) the proceeds of which are used for—

(i) the construction or rehabilitation of a facility—

(I) if such construction or rehabilitation began before June 14, 1996, and was completed on or after such date, or

(II) if a State or political subdivision thereof has entered into a binding contract before June 14, 1996, that requires the incurrence of significant expenditures for such construction or rehabilitation, and some of such expenditures are incurred on or after such date; or

(ii) the acquisition of a facility pursuant to a binding contract entered into by a State or political subdivision thereof before June 14, 1996, and

(B) which are the subject of an official action taken by relevant government officials before June 14, 1996—

(i) approving the issuance of such bonds, or

(ii) approving the submission of the approval of such issuance to a voter referendum.

(3) EXCEPTION FOR FINAL BOND RESOLUTIONS.—The amendments made by this section shall not apply to bonds the proceeds of which are used for the construction or rehabilitation of a facility if a State or political subdivision thereof has completed all necessary governmental approvals for the issuance of such bonds before June 14, 1996.

(4) SIGNIFICANT EXPENDITURES.—For purposes of paragraph (2)(A)(i)(II), the term ''significant expenditures'' means expenditures equal to or exceeding 10 percent of the reasonably anticipated cost of the construction or rehabilitation of the facility involved.

(5) EXCEPTION FOR CERTAIN CURRENT REFUNDINGS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any bond the proceeds of which are used exclusively to refund a qualified bond (or a bond which is a part of a series of refundings of a qualified bond) if—

(i) the amount of the refunding bond does not exceed the outstanding principal amount of the refunded bond,

(ii) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

(iii) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of clause (ii), average maturity shall be determined in accordance with section 147(b)(2)(A) of the Internal Revenue Code of 1986.

(B) QUALIFIED BOND.—For purposes of subparagraph (A), the term ''qualified bond'' means any tax-exempt bond to finance a professional sports facility (as defined in section 141(e)(3) of such Code, as added by subsection (a)) issued before the first date of committee action.

THE STOP TAX-EXEMPT ARENA DEBT ISSUANCE ACT

PRESENT LAW

Interest on State and local governmental bonds generally is excluded from income if the bonds are issued to finance direct activities of these governments (sec. 103). Interest on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless the bonds satisfy certain requirements. Private activity bonds must be within certain statewide volume limitations, must not violate the arbitrage and other applicable restrictions, and must finance activities within one of the categories specified in the Code. The

Tax Reform Act of 1986 repealed the private activity bond category for sports facilities; therefore no private activity bonds may be issued for this purpose.

Bonds issued by State and local governments are considered to be government use bonds, unless the bonds are classified as private activity bonds. Bonds are deemed to be private activity bonds if both the (i) private business use test and (ii) private security or payment test are met. The private business use test is met if more than 10 percent of the bond proceeds, including facilities financed with the bond proceeds, is used in a nongovernmental trade or business. The private security or payment test is met if more than 10 percent of the bond repayments is secured by privately used property, or is derived from the payments of private business users. Additionally, bonds are deemed to be private activity bonds if more than five percent of the bond proceeds or $5 million are used to finance loans to persons other than governmental units.

REASONS FOR CHANGE

The use of tax-exempt financing for professional sports facilities provides an indirect and inefficient federal tax subsidy. Congress intended to eliminate this subsidy for professional sports facilities in the Tax Reform Act of 1986, by repealing the private activity bond category for sports facilities. Congress did not intend to continue the subsidy by allowing the use of tax-exempt bonds to finance the identical underlying private business use through alternative financing arrangements.

In addition, the use of tax-exempt bonds to finance professional sports facilities is particularly inappropriate where the facilities to be built are used to entice professional sports franchises to relocate.

EXPLANATION OF PROVISION

The bill would provide that bonds issued to finance professional sports facilities are private activity bonds, and that such bonds are not qualified bonds. Therefore, professional sports facilities will not qualify for tax-exempt bond financing.

A professional sports facility is defined to include real property and related improvements which are used for professional sports exhibitions, games, or training, whether or not admission of the public or press is allowed or paid. In addition, a facility that is used for a purpose other than professional sports will nevertheless be treated as being used for professional sports if the facility generates a direct or indirect monetary benefit (other than reimbursement for out-of-pocket expenses) for a person who uses the facility for professional sports. These benefits are intended to include an interest in revenues from parking fees, food and beverage sales, advertising and sports facility naming rights, television rights, ticket sales, private suites and club seats, and concessions.

Public use infrastructure improvements that connect to larger public-use systems, such as highway access ramps and sewer and water connections, are not intended to be subject to the bill. Thus, bonds issued to finance such improvements could still qualify for tax-exempt status., if such bonds otherwise qualify for such status under applicable tax-exempt bond rules. Improvements which generate a direct or indirect monetary benefit for a person who uses the facility for professional sports are meant to be covered by the bill. For example, if a professional sports team owner receives revenues from the use of a parking garage, the garage is not eligible for tax-exempt financing under the bill.

The Secretary of the Treasury is authorized to issue anti-abuse regulations to prevent transactions intended to improperly divert the indirect Federal subsidy for traditional governmental uses inherent in tax-exempt bonds for the benefit of professional sports facilities or professional sports teams. It is intended that no tax-exempt bond proceeds may finance a ball park used for professional sports exhibitions, even if the ball park is made a part of a larger multi-use complex used 365 days a year for other purposes. In addition, it is intended that reciprocal usage of sports facilities by professional sports franchises that divide their usage among several facilities in order to avoid the 5% use test be aggregated for purposes of this provision.

No inference is intended regarding the rules under present law regarding the issuance or holding of, or interest paid or accrued on, any bonds issued prior to the effective date of this bill to finance sports facilities.

EFFECTIVE DATE

The bill is effective with respect to bonds issued on or after the first date of committee action.

The bill does not apply to bonds issued to finance a professional sports facility if actual construction or rehabilitation of the facility began prior to June 14, 1996 (or a State or political subdivision thereof had entered into a binding contract prior to that date to construct, rehabilitate or acquire the facility) and such bonds are the subject of appropriate official action approving the bonds or submitting approval to a voter referendum. In addition, the bill does not apply to bonds issued to finance a professional sports facility if a State or policical subdivision thereof has completed all necessary governmental approvals for the issuance of such bonds.

The bill does not apply to the issuance of certain current refunding bonds, where the refunded bonds are qualified bonds issued prior to the first date of committee action, the average maturity and outstanding principal amount of the refunding bonds do not exceed that of the refunded bonds, the proceeds of the refunding bonds are used to redeem the refunded bonds within 90 days, and the refunding bonds are otherwise permissible under applicable provisions of the Code.

[From Barron's, August 19, 1996]

FOUL PLAY?

TEAM OWNERS GET SPORTS PALACES AND FAT CONCESSION DEALS.

TAXPAYERS GET STUCK WITH THE TAB.

(By Jonathan R. Laing)

Sports stadiums have come to play an almost religious role in American culture, a fact noted by observers as varied as famed architect Philip Johnson and best-selling author James Michener. Like cathedrals of yore, today's towering sports venues often dazzle the masses with their immense size and evoke fervent emotions with their ritual events. And for some fans, cheering along with a crowd of 60,000 people is about as close to a religious experience as they'll ever get.

This facet of American life is worth contemplating, if for no other reason than, in the 1990s alone, 30 professional sports palaces have been built in the U.S., at a total cost of over $4 billion. And the trend shows no signs of stopping. Over the next five to seven years, according to Fitch Investors Services, some 40 more major-league teams are likely to get new homes. Total price tag: an added $7 billion.

The surge of building activity is mind-boggling on a number of counts. To begin with, it is being financed mainly by state and local governments in spite of the fact that budgets are tight everywhere, leaving schools and social programs facing deep cutbacks. Yet in referendum after referendum, voters regularly approve large dollops of city and state backing to projects that will cater largely to well-heeled fans, meaning the folks who can afford to pay for seats in glassed-in luxury boxes. While the suit-and-cell-phone crowd get all the best seats for corporate entertaining, the average taxpayer is consigned to ''cheap'' seats in nosebleed land or, more often, to following his favorite team on cable television.

But voters don't seem to mind. In Cincinnati last March they decided to raise Hamilton County's sales tax to 6% from 5.5%, to help pay for a $540 million plan to eventually raze the city's Riverfront Stadium and replace it with separate, state-of-the-art edifices for the Bengals football squad and the Reds baseball team.

And even in places where referenda have failed, local politicians leap into the fray to rescue beleaguered projects. Example: When a proposal to use proceeds from a statewide lottery to fund a new ballpark for the Milwaukee Brewers went down to defeat, the Wisconsin State Legislature gave the venture new life by approving a hike in the sales tax in the five-county area around Milwaukee to finance the bulk of the proposed $250 million project. Likewise, two defeats for stadium referenda in Seattle were insufficient to keep the Washington State Legislature from meeting in emergency session to approve a financial package clearing the way for a new $300 million baseball stadium for the Seattle Mariners, complete with a retractable roof.

Even privately financed facilities, of which there are a handful, typically benefit from public subsidies in the form of land donations and free infrastructure improvements. The Carolina Panthers' new $170 million Ericsson Stadium in Charlotte, for instance, received plenty of such goodies, as will a proposed $250 million downtown baseball stadium for San Francisco's Giants.

Perhaps more bizarre, many of the stadiums that have already been demolished or are slated for abandonment are relatively new and in good condition. The days may be numbered, for example, for the multi-use ovals built in the early 'Seventies such as Veterans Stadium in Philadelphia and Three Rivers Stadium in Pittsburgh. Both of these facilities will likely lose their baseball and football teams. Such stadiums simply lack the skyboxes and other revenue-producing ''fan amenities'' demanded by today's team owners.

So-called ''economic obsolesence'' may also doom venues of even newer vintage. The eight-year-old Miami Arena is facing a future without its two major tenants, the Florida Panthers hockey team and the Miami Heat basketball franchise, because of inadequate seating capacity and a paucity of luxury suites.

The Panthers have already cut a deal to move to a new facility that nearby Broward County is building for them at a cost of around $200 million. Plans call for Dade County to build a new $210 million arena for the Heat before the end of the decade, despite the fact that the move will leave local taxpayers stuck with servicing the debt on two Miami arenas rather than just one.

''The shelf life on sports facilities seems to be ever-compressing as teams force local authorities and municipalities to build them new venues so that every conceivable source of revenue they can identify can be engineered into the new structure,'' observes Robert Baade, an economist at Lake Forest College in Illinois. ''The situation of the Miami Arena and other modern facilities that are being scrapped is crazy. For the more than $4 billion that has so far been spent on new stadiums, we could completely refurbish the physical plants of the nation's public elementary and secondary schools.''

The new stadiums befit the crass commercialism and endless cross-marketing of the current business era. The games themselves are almost submerged in a sea of collateral activity, including food courts, sports bars, interactive game rooms, private clubs and sports-merchandise stores. Inside the arenas, there are intrusive Jumbotron video systems and lavish corporate entertainment in skyboxes, which run as high as $250,000 a year at Boston's Fleet Arena, where the Celtics and Bruins now play.

No possible revenue source goes untapped. Corporations like United Airlines, BancOne and Coors buy the rights to put their names on stadiums for more than $1 million a year in some instances. The sensory overload of advertising signage is distracting, to say the least. No area is sacrosanct, including the wall behind homeplate. Teams in the National Basketball Association are now minting advertising revenues by selling ads that silently scroll on computer-controlled signboards at courtside.

The Portland Trail Blazers, owned by Microsoft billionaire Paul Allen, have taken high-tech amenities to an as-yet-unsurpassed level in their new Rose Garden arena. Some of its club seats feature fiber-optic wiring allowing spectators to play music, order food or punch up replays on their own video screens. The arena also plans to experiment with online kiosks that will hawk computer hardware and software.

Team owners argue that enhanced revenues are essential for acquiring or retaining top athletes in the high-stakes world of professional sports. But there is another factor at work. Unlike fees paid by television networks and general-admission revenues, a stadium's income from premium seats, concessions, stadium advertising, parking and the like generally doesn't have to be shared with other teams in the league.

Yet both the NFL and NBA have attempted to institute some controls on players' salaries by establishing league-wide team salary caps. And scant linkage has been established between the size of team payrolls and performance in baseball and hockey. Otherwise, the New York Yankees of the past two decades, with their bloated salary structure, might have enjoyed the dominance of the Yankee dynasties of yore.

Even so, a veritable stadium arms race seems only to be intensifying. Even teams in leagues with salary caps claim to need additional stadium revenues because the teams with the highest revenues keep driving up the averages upon which the caps are based. ''This is certainly true in the NBA, where top-grossing teams like the Bulls, the Knicks and the Lakers are creating problems for the rest of the league,'' Jerry Reinsdorf, controlling partner of the Chicago Bulls and White Sox, explains. ''All I can say is that I'm glad I have two new stadiums [the United Center and New Comiskey Park] with strong in-park revenues.''

What's indisputable, though, is that new venues enrich team owners by fattening the teams' bottom lines and franchise values. It's no accident, for example, that four of the top 10 most valuable baseball franchises in Financial World magazine's latest annual survey—the Baltimore Orioles, Toronto blue Jays, Texas Rangers and Colorado Rockies—boast new stadiums, which give them the financial heft to compete with teams in larger advertising markets such as New York, Chicago and Los Angeles. Likewise, new stadiums have helped the Phoenix Suns, Detroit Pistons and Chicago Bulls push the New York Knicks for the top spot among basketball franchises on Financial World's list.

And in all of professional sports, no team comes close to the Dallas Cowboys franchise, with its estimated value of $272 million. Team owner Jerry Jones was lucky to inherit a stadium already loaded with skyboxes in 1988 to which he added some 80 suites. In addition, he has inked stadium sponsorship agreements with the likes of Nike, PepsiCo. American Express and AT&T. As a result, Financial World estimates that the Cowboys earned revenues of nearly $40 million on their stadium, compared with a league average of just $6.2 million. Such riches gave Jones the bucks to exploit loopholes in the salary cap, enabling him to carry a payroll some 50% larger than the NFL average.

In Jones' case, he financed his own stadium improvements. But in the main, it's the taxpayer who ends up subsidizing the stadiums that shower such wealth on the owners. And these days, teams seem to hold all the cards in their negotiations with local politicians. For the demand for professional franchises from cities wanting the cachet of being ''big league'' far exceeds the supply of teams, even with the big leagues' steady expansion efforts. ''No city can take its teams for granted or they will find another locale in which to realize team value,'' explains Reinsdorf, who cynically played of the state of Illinois against St. Petersburg, Fla, to win a $150 million in tax-exempt funding to build the New Comiskey Park in 1991.

Observers are still agog at the deal the former Los Angeles Rams football team negotiated to move to St. Louis last year. The city, state and St. Louis County incurred some $262 million in debt to provide the team with the 70,000-seat Trans World Dome. Then the city sold instruments called ''personal seat licenses,'' requiring football-crazy fans to pay as much as $4,500 just for the privilege of buying season tickets for the stadium's best 45,000 seats. The $70 million or so in proceeds from these licenses didn't go toward the constructions costs of the new stadium, however, Instead, the Rams were allowed to use the funds to defray some $20 million in moving costs, build a $10 million practice facility and clean up some debts in their old home in Anaheim.

And that's not all. The Rams were able to lock in an annual rent over a 30-year lease period of just $250,000, the fifth-lowest rent rate in the NFL. Yet the Rams will receive 100% of the revenues from the stadium's 100 luxury suites and 6,250 club seats. On top of that, the team got the option to add 20 more luxury boxes and convert 4,500 more seats to club status, plus a guarantee that 85% of all suites and club seats will be sold over the next 15 years. The team also gets all concession revenues generated by the stadium, $4.5 million of the first $6 million received in stadium advertising and 90% of any ad revenues over $6 million. The Rams also get to pocket the $1.3 million a year that Trans World Airlines is paying for the stadium naming rights. Lastly, St. Louis agreed to build a store for the Rams to sell team merchandise.

The total package of the stadium construction costs, debt-service expense and other goodies doled out by St. Louis will end up costing area taxpayers more than $700 million, according to a reckoning by a St. Louis public-interest group. A consultant who represented the Rams was heard to crow, ''This will be the best stadium deal ever in the NFL, except for the next one.''

Truer words were never spoken, for the new Baltimore Ravens (formerly the Cleveland Browns) won an extraordinary deal on their $200 million stadium currently under construction in the shadow of Oriole Park at Camden Yards. The new stadium will be financed by state lottery proceeds and revenue bonds. In addition to being able to keep the $65 million in personal seat license fees, the Ravens will be charged no rent over their 30-year lease other than a 10% tax on all tickets. The team will be responsible only for covering operating and maintenance expenses of the facility.

The Ravens will be able to keep all stadium revenues from the luxury suites, premium seats, concessions and in-park advertising, plus it will garner 50% from all revenues at the stadium from non-football events. No wonder S&P described the deal cooked up by Ravens owner Art Modell as ''Maryland throws the bomb.''

Financial World estimates that after its first season in the new stadium (1998), the Ravens' franchise value will appreciate some 50%, to around $250 million, and could be second only to the Dallas Cowboys'.

In the stadium game, spin, bargaining ploys and fancy dancing are difficult to separate from concrete developments. Proposed new stadium packages are leaked to the local press only to go through myriad changes before ground is broken and financing is in place.

George Steinbrenner wants out of the Bronx. One month he is rumored to be looking at suburban New Jersey for his Yankees, the next he's said to be considering a proposal by New York City to build a facility on Manhattan's West Side that would cost $1 billion. Not to be outdone, the Mets are said to be angling for a new stadium next to Shea that would cost around $450 million and, perhaps, include a theme park in the complex.

Rick Horrow, a Miami-based stadium development consultant to the NFL, ticks off the names of 12 football teams that have unsettled stadium situations and are likely to move to new facilities in the years ahead: the Minnesota Vikings, Chicago Bears, Tampa Bay Buccaneers, San Francisco 49ers, Seattle Seahawks, Denver Broncos, Arizona Cardinals, Philadelphia Eagles, Pittsburgh Steelers, Washington Redskins, Detroit Lions and New England Patriots. One proposal calls for the Pats to move from Foxboro, Mass., to a domed stadium in downtown Boston that would be part of a $750 million convention-center megaplex.

These NFL teams should be able to exert plenty of leverage over their local politicians. According to Horrow, cities such as Houston, Los Angeles, Memphis, Orlando, Sacramento, Toronto and Mexico City all hunger for an NFL franchise. Various suburban locations also beckon.

Likewise, such arenas as the L.A. Forum, Houston's Summit Arena, Dallas's Reunion Arena, Charlotte Coliseum and Indianapolis's Market Square Arena are all likely to lose their NBA tenants despite the recent vintage of many of these facilities. The Detroit Pistons' Palace at Auburn Hills, with its rows of skyboxes encircling the arena, changed the entire economics of indoor venues following its opening in 1988.

Some obstacles could block this torrent of prospective stadium deals. Of greatest moment, perhaps, is a bill that was introduced two months ago by Sen. Daniel Patrick Moynihan (D.–N.Y.) that would outlaw tax-exempt bond financing for professional sports facilities. He argues that such financing in effect constitutes a subsidy by federal taxpayers that largely enriches team owners and serves no legitimate public purpose.

Even Moynihan concedes that the proposal has no chance of passing in the current session of Congress. Nor are the bill's prospects very bright next year. The U.S. Council of Mayors and other lobbying organizations have already mounted a jihad against the measure. And it doesn't hurt that professional sports has the stature of organized religion these days.

Nonetheless, the bill has temporarily cast a pall over certain stadium plans that are being considered. The fear is that the bill might someday pass in its current form. Particularly vulnerable would be new football

and baseball stadiums. They almost always require some tax-exempt financing because of their high price tags—$200 million and up.

John Gillespie, a managing director of Bear Stearns's sports facility banking team, estimates that at current spreads, the cost of the typical stadium proposal would rise by 15%–20% if public authorities were forced to switch from the tax-exempt to the taxable public-debt market. Says Gillespie: ''Clearly, a number of stadium deals wouldn't fly under these circumstances because even on a tax-exempt basis they were pushing the envelope on a feasibility basis. I don't think the bill has a prayer of passing, but then, I'm prejudiced.''

Ironically, past attempts by Congress to curb the use of tax-exempt financing for sports stadiums have only exacerbated the problem. The Tax Reform Act of 1986, for example, declared that public financings of stadiums would lose their tax-exemption if more than 10% of the revenues earned by the facility were subsequently used to service the construction debt.

Rather than quashing such activity, the stricture left municipalities even more at the mercy of team owners. To retain local franchises or attract new teams, public officials were compelled to tap revenue streams other than the stadium to back construction debt. Today's stadium bonds are backed by general revenue sources as diverse as state lotteries, sales taxes, hotel and motel occupancy imposts, car-rental fees and alcohol and tobacco taxes.

The balance of power has shifted so dramatically in recent years that public stadium authorities consider themselves fortunate if pro sports teams pay enough rent to cover the operating costs of the facility, let alone contribute anything to debt service.

''The new structure is inequitable in that it forces broad categories of people in a given area to finance a facility that only benefits fans, team owners and athletes,'' asserted Dennis Zimmerman, an economist at the Library of Congress's Congressional Research Service, whose study on the subject of tax-exempt stadium financing helped spur the Moynihan bill. ''Certainly federal taxpayers receive no benefits for granting this subsidy.''

Cities try to make new stadiums more palatable to their electorates by offering up ''economic impact'' studies showing the gains in regional income and employment that the project will produce. The financial benefits trumpeted in such studies are so humongous that he multimillion-dollar cost of the sport palaces seems almost trivial by comparison.

The University of Cincinnati Center for Economic Education concluded last January, for example, that the $540 million project to build a new football stadium and a new baseball stadium in Cincinnati would generate more than $1.1 billion in economic activity. In subsequent years, the study said the Cincinnati area could count on $73 million annually in added spending by local consumers, $4.4 million a year in taxes and $28 million per year in local spending by out-of-town fans.

But such impact studies are often flawed. Stanford University economist Roger Noll points out that the majority of fans attending games come from within a 20-mile radius of the venue. Any money they end up dropping at the ballpark would likely have been spent on other modes of local recreation or entertainment. Americans, after all, spend virtually all their income anyway. This ''substitution effect'' means that stadiums may actually represent very little, if any, net economic gain to local businesses.

The studies also play games with the multiplier or ripple effect of fan spending. They assume that all the munificence earned by the players, owners and concessionaires is repatriated to the local economy. Lake Forest College economist Robert Baade argues that the money frequently doesn't stay put and that this ''leakage'' can actually have a negative impact. He has, in fact, developed econometric models indicating that in some 36 instances new stadiums had a nonexistent or even negative impact on local job and income growth.

Few stadium projects have been as trumpeted as the Gateway Development in Cleveland. The site encompasses two new facilities, including the Indians' Jacobs Field, with its retro charm, and the Cavaliers' sleek Gund Arena. The two new venues draw sellout crowds totaling five million fans a year, and they are credited with having sparked a revival in the once-sagging fortunes of downtown Cleveland. But as the Indians streak toward their second straight pennant, the project's finances continue to deteriorate. The problem lies in construction cost overruns incurred by both facilities and the fact that Gateway Development Corp., the quasi-public authority that owns both venues, isn't getting enough from its leases with the Indians and Cavs to pay the debt service on some $120 million in bonds that helped finance the Gund project.

As a result, Cuyahoga County, which guaranteed the debt, has had to ante up some $23 million to cover Gateway's arrears, and will likely to be forced to lay out at least $70 million more over the next 16 years. At that point, Gateway will have the opportunity to renegotiate the Indians' lease and perhaps have a prayer of meeting its obligations.

Meantime, the city of Cleveland is taking a bath on some $40 million in bonds it sold to build two parking garages for the Gateway complex. The city is having to subsidize the debt service on the bonds because of lower-than-projected parking revenues.

''The facilities are beautiful, the teams are minting money, and the county and city taxpayers are left holding the bag,'' grouses Steve Letsky, Cuyahoga County's director of accounting. ''We're paying a hell of a price for downtown economic redevelopment.''

Even more gruesome was the bloodletting the Province of Ontario took on Toronto's Skydome, a combination stadium, hotel and entertainment complex that opened in 1989. Ontario got stuck with the huge cost overruns, and by late 1991 the province ended up taking a nearly $200 million loss when it dumped its controlling interest in the project for $110 million.

Even with that writedown, the Skydome's financial future is by no means secure. Attendance has waned from the halcyon days of the early 'Nineties as the Blue Jays have sunk in the standings. The all-important leases on the stadium's luxury suites are due to expire in two years, and revenues could take a tumble.

With deals like this going down, it's little wonder that the halo effect of having a new stadium seems to be diminishing. Brian McGough, a J.P. Morgan investment banker involved in stadium deals, reports that a recent study shows that new venues seem to spur attendance for just about three years. Comiskey Park and the Ballpark at Arlington, Texas, aren't packing in fans they way they did only a few years ago, despite the fact that both stadiums have baseball teams that are very much in contention for the pennant.

Resistance to the stadium-building boom does seem to be mounting. Several politicians have been forced to walk the plank recently for backing sales-tax increases to fund new baseball stadiums. Among the banished were a Maricopa County commissioner from Arizona's Sun City and a Wisconsin state senator from Racine, one of the five counties that will contribute tax revenues for the Milwaukee Brewers' new stadium.

Nonetheless, new stadium projects seem to have a dynamic that defies all considerations of economic prudence and taxpayer unrest. For when all else fails, public officials invariable justify their reflexive resort to the public purse by prattling on about pro sports' positive impact on civic pride and quality of life.

Perhaps new stadiums appeal to some deeply-rooted edifice complex-the plaque on the wall of the venue conferring a measure of immortality to the politicians who built it. Maybe it's true that without a vibrant pro sports scene, major corporation won't put their headquarters in certain cities. Or possibility the local citizenry walk just a little taller in burgs that are genuinely big-league. ''Psychic reward,'' as economists call it.

Whatever the case, the surge in popularity of pro sports is a worldwide phenomenon. Social scientists advance in all kinds of theories to explain the boom. Increasing job specialization is deemed to have robbed modern man of satisfaction in his workaday world, forcing him to turn to sports for tangibility of results. Others commentators claim that pro athletes have become proxies for acting out the aggressions of increasingly alienated populations around the globe.

Rand Araskog, chairman of ITT Corp., obviously believes in a bright future for pro sports and franchise values. ITT teamed up with Cablevision in 1994 to buy Madison Square Garden, the New York Knicks and the Rangers from Viacom for $1 billion. The operation's cash flow has burgeoned since.

According to Araskog and ITT President Robert Bowman, a myriad of factors will propel the pro sports boom. More and more media and entertainment companies are buying pro sport franchises because they afford relatively cheap and compellingly dramatic programming. ComCast and Walt Disney are merely the most recent corporate entrants. Women are increasingly hooked on pro sports as a result of federal laws that require schools to spend equal amounts of men's and women's sports.

As for international interest, the National Basketball Association is just the first pro league in the U.S. to catch the worldwide tidal wave. Others will follow. And finally, technology, with its proliferation of sports delivery mechanisms and its promise of eventually bringing the playing field into the living room, will only enhance the appeal.

Bear Stearns's Gillespie goes so far as to predict that pro sports franchises will double in value in the next five to six years. One can only hope he's right. Maybe then team owners will stop hitting up taxpayers for new stadiums and pay the freight themselves.

COSTLY BUILDING BOOM

More than $4 billion has been spent on sports arenas, with $7 billion more expected.

Facility	Team	Approx total cost in millions	Opened	Debt type
Skydome	Toronto Blue Jays	$600	1989	P/P

Facility	Team	Approx total cost in millions	Opened	Debt type
TWA Dome at America's Center	St. Louis Rams	290	1995	Public
Molson Centre	Montreal Canadians	230	1996	Private
Coors Field	Colorado Rockies	215	1995	Public
Georgia Dome	Atlanta Falcons	214	1992	Public
CoreStates Center	Philadelphia Flyers/76ers	210	1996	Private
Orioles Park at Camden Yards	Baltimore Orioles	210	1992	Public
Corel Center (Palladium	Ottawa Senators	200	1996	P/P
Ballpark of Arlington	Texas Rangers	191	1994	P/P
Alamodome	San Antonio Spurs	186	1993	Public
GM Place	Vancouver Canucks/Grizzlies	180	1995	Private
United Center	Chicago Blackhawks/Bulls	180	1994	Private
Jacobs Field	Cleveland Indians	168	1994	P/P
San Jose Arena	San Jose Sharks	163	1993	P/P
Fleet Center	Boston Celtics/Bruins	160	1995	Private
Gund Arena	Cleveland Cavaliers	155	1994	P/P
Comiskey Park	Chicago White Sox	150	1991	Public
Rose Garden	Portland Trail Blazers	145	1995	P/P
Gator Bowl	Jacksonville Jaguars	136	1995	Public
Marine Midland Arena	Buffalo Sabres	128	1996	P/P
Arrowhead Pond of Anaheim	Anaheim Mighty Ducks	120	1993	P/P
Ice Palace	Tampa Bay Lightning	120	1996	P/P
Target Center	Minnesota Timberwolves	104	1990	P/P
America West Arena	Phoenix Suns	101	1992	P/P
Orlando Arena	Orlando Magic/Solar Bears	100	1989	P/P
Kiel Center	St. Louis Blues	99	1994	Private
Bradley Center	Milwaukee Bucks	80	1988	Private
Ericsson Stadium	Carolina Panthers	70	1996	Private
Palace of Auburn Hills	Detroit Pistons	70	1988	Private
Charlotte Coliseum	Charlotte Hornets	58	1988	Public
Delta Center	Utah Jazz	55	1991	Private
Miami Arena	Miami Heat/Florida Panthers	52	1988	P/P
Arco Arena	Sacramento Kings	40	1988	Private

[From the New York Times, July 27, 1996]

PICKING UP THE TAB FOR FIELDS OF DREAMS TAXPAYERS BUILD STADIUMS; OWNERS CASH IN

(By Leslie Wayne)

WASHINGTON.—In Baltimore, the Ravens, formerly the Cleveland Browns, are coming to a $200 million football stadium to be built on their behalf. Nashville has lured the Oilers from Houston with the promise of a sparkling new $389 million stadium. In New York, there is talk of a new ball-park for the Yankees, while discussion continues about replacing venerable Tiger Stadium in Detroit and Fenway Park in Boston, both now celebrating their 84th anniversaries.

But even as multimillion-dollar sports places are being proposed for assorted Bears, Bengals, Hawks, Vikings and other professional teams, a lot of people in Washington would like to clamp down on lucrative public subsidies that they contend do much more to help already-wealthy professional sports team owners than the communities that support the teams.

Senator Daniel Patrick Moynihan, a New York Democrat, has fired the opening shot by introducing legislation to end the use of tax-free dollars to build sports stadiums. But, retreating under a hail of lobbying fire, Mr. Moynihan admits his measure has no chance of being enacted this year. Still, that has not stopped him from vigorously arguing that Federal tax dollars would be better devoted to public needs like higher education than subsidizing the current stadium building boom.

''Building new professional sports facilities is fine by me,'' Mr. Moynihan said. ''Let the new stadiums be built. But, please, do not ask the American taxpayer to pay for them.''

With an estimated $6 billion of new sports stadiums and arenas on the drawing boards, the mere introduction of a bill that would prevent local governments from tapping the tax-exempt municipal bond market for such projects is sending shock waves through the world of sports finance. ''The Moynihan bill has had an immediate, horrendous impact,'' said Howard Richard, a lawyer at Katten Muchin & Zavis in Chicago. ''There's intense lobbying. No one believes this bill will pass, but it is wreaking havoc with the market''.

The controversy over stadium financing dates back to the 1988 Tax Reform Act, which was though to have eliminated the public subsidies by forcing team owners to finance stadiums with taxable, rather than tax-free dollars.

That effort, however, backfired. With team owners precluded from tapping the public bond markets and reluctant to use more costly taxable debt, sports-starved cities stepped in to build and own the stadiums themselves, using municipal bonds.

And since the 1986 tax act prevents stadium revenues from being used to pay off any tax-free, stadium-related debt, a bizarre situation has developed. The municipality is often forced to pay with its own dollars for all of the borrowings, but the team owner virtually alone gets the revenues from the stadium. Under the tax code, only a small portion of the stadium revenues and lease payments—less than 10 percent—can be drawn on by municipalities to repay tax-free stadium debt.

Some of the newest, and most stylish, stadiums rely exclusively on public debt: Camden Yards and Ravens Stadium in Baltimore and the new Comiskey Park in Chicago are just a few of many. To pay off this debt, local governments have had to raise taxes, tap lottery proceeds or use other public revenues. Other stadiums, like the indoor America West Arena in Phoenix, were built as public-private partnerships, with some construction costs footed by the team owner; it all depends on the bargain struck. In all, $3.9 billion in public debt for stadiums has been issued since 1990.

Teams owners, to bring their franchise to town or to be persuaded to stay put, are demanding not just new and bigger stadiums, but more ways to make money from them: luxury skyboxes that rent for $50,000 to $200,000 a year; ''personal seat licenses,'' which are options bought by ticket holders to insure season tickets in perpetuity; new tiers of ''club seats'' that cost more than regular seats. And then there are ''pouring rights,'' which are paid by beverage companies to peddle their beers and soda; more ''totem'' space to sell advertising, and bigger car-parking concessions.

''We thought we shut down public financing to private sports stadiums in 1986,'' said Senator Byron L. Dorgan, a Democrat from North Dakota who is a supporter of the Moynihan measure. ''Now a decade later, we see that the only remaining healthy public housing is in sports stadiums for wealthy team owners. We thought we closed a loophole and they found a way through it.''

Brian McGough, who specializes in stadium financing for J.P. Morgan & Company, explained the unintended consequences of the legislation; ''Congress forced public officials back into the arms of team owners. It was a sea change difference.''

The effect of these changes has been to give team owners more financial leverage in bargaining with local governments. And experts say the new-found riches from stadium deals, television contracts and other sources have been an important factor in the escalating salaries in professional sports. When some team owners have more cash in hand, they bid up everyone's prices for top players—witness the $98 million, seven-year contract for the basketball player Juwan Howard to join the Miami Heat or the $121 million, seven-year contract for Shaquille O'Neal to move to the Los Angeles Lakers.

''A lot of these financial benefits flow to the talent because talent is key, especially in basketball,'' said Mr. Richard, the Chicago lawyer. ''Look at the Chicago Bulls. You are seeing a $25 million raise for Micheal Jordan and millions for others. They say that this is creating the necessity for a new stadium because they need the skybox revenues to pay for the players. When you see all these salaries and the new stadiums, what is the cause and what is the effect?''

More troubling to critics is the evidence that the money spent on sports stadiums provides few economic benefits to the surrounding community. Indeed, several studies indicate that communities could benefit more if these investments, which cost taxpayers hundreds of millions of dollars a year, were spent on other forms of economic development.

''The economic research on whether these stadiums provide benefits for state and local taxpayers suggest that they do not,'' said Dennis Zimmerman, author of a Congressional Research Service report on stadium financing. ''There are a lot more productive things that state and local governments could have done with this money.''

Mr. Zimmerman, using data the State of Maryland offered in making the case for building the Ravens' new stadium, found that more jobs could be created by investing the same $177 million in the state's ''Sunny Day'' economic development fund. He also concluded that in many cases the money local governments saved by issuing tax-free municipal bonds to build these stadiums ended up costing Federal taxpayers more than the local benefit.

''It would be cheaper for the Federal Government to just give a subsidy for these stadiums,'' Mr. Zimmerman said.

Robert Baade, an economist at Lake Forest College, is one of the strongest critics of

the present system. ''The distribution of income and benefits is skewed: The owners and the players get the lion's share,'' Mr. Baade said, ''If I've raised taxes to finance a stadium, I can't argue that every dollar of that stadium is a boon to the economy.''

Opponents of Mr. Moynihan's measure argue that eliminating tax-free dollars for sports stadiums would take decision-making away from local officials and increase the costs to municipalities by forcing them to borrow in the taxable markets. Indeed, the only way some of these stadiums can be built, they say, is with lower-cost public debt. Football stadiums, in particular, could become endangered, since they often cost as much as $200 million, yet may be used for only eight to 10 games a year, making it hard to generate enough revenues to repay the debts.

''A stadium is not conceptually different from a lot of other public projects,'' said Micah Green, the Washington lobbyist for the Public Securities Association, a trade group representing the municipal bond industry. ''If cities and states decide to raise taxes to pay for these stadiums, then that's O.K. That makes it a governmental bond. The local decision of the electorate is the best test.''

(Sometimes, however, local sentiment has to be swayed. The Ravens Stadium proposal passed by only two votes amid controversy in the Maryland Senate. Cincinnati voters approved two new stadiums to replace Riverfront Stadium only after a hard-fought campaign by downtown boosters. In Nashville, opponents forced the city's first-ever bond referendum before the new Oilers stadium won approval.)

Six local government organizations, including the United States Conference of Mayors and the National League of Cities, sent a letter to Mr. Moynihan arguing against his proposal. ''It is simply not good public policy to constrain local flexibility in deciding what projects to undertake on a tax-exempt basis,'' the letter said.

Cathy Spain, the Washington lobbyist for the Government Finance Officers Association, said her group opposes the strict restrictions that preclude the use of stadium-related revenues from repaying municipal debt. Ms. Spain said the association's warnings to Congress about the problem went unheeded when the tax act was changed in 1986. Now, she said, her group would like to allow, say, 25 percent of stadium revenues to be diverted to municipalities instead of team owners.

Stadium financing experts say that regardless of the economics, the lure of professional sports is so strong that politicians and communities will still seek to attract and keep the limited number of sports teams available.

And what about cities that just say no? They may be better off in purely economic terms, but still left with an empty feeling.

''St. Louis lost the football Cardinals to Phoenix because they refused to build a new stadium,'' said James Gray, assistant director at the National Sports Law Institute in Milwaukee. ''Now they are paying triple to lure the Rams from Los Angeles. Being part of a major league is something unique in our society. Lots of people believe it's a worthwhile investment and will do anything to keep a team there.''

[From ESPNET Sports Zone, ESPN Studios]

YOUR TAX DOLLARS IN ACTION—FOR REAL

(By Keith Olbermann)

The biggest sports story of the week got about as little publicity as possible.

Legislation has been introduced in the U.S. Senate that would cripple so-called ''Franchise Free Agency,'' stop the merry-go-round of teams blackmailing cities and cities bribing teams with public funds, and restore a little sanity to the ever decreasingly sane world of sports.

The ''Stop Tax-Exempt Arena Debt Issuance Act,'' sponsored by Sen. Daniel Patrick Moynihan, D-N.Y., would make it illegal for states, counties or cities to try to float tax-free bonds to build new sports stadiums and arenas. It's what we've been crying for here for months, and as pathetic as most of our politicians are, I am ready to nominate Sen. Moynihan for Deity.

A Congressional Research Service report recently concluded that the most frequently-used justification for building a new park for a ballclub, that the ancillary financial benefits created by such a new facility more than make up for the huge expense, is a falsehood. Just as Stanford economist Roger Moll pointed out several months ago: if stadiums really made money, the teams would build them themselves, wouldn't they?

If passed, the measure would virtually stop the kind of rapacious marriages of glory-hungry politicians and money-hungry owners that greased the skids for the Cleveland Browns move to Baltimore. The Brewers need a new stadium in Milwaukee? Have a lovely time building it, Bud. Oh, you'll move to Charlotte instead: Have a lovely time getting a business loan to build Selig Stadium there. No more endless threats from George Steinbrenner to move the Yankees to New Jersey. No more repeat winners in Owner Blackmail like the Seattle Mariners. No more publicly-funded white elephants like ThunderDome in St. Petersburg or the Alamodome in San Antonio.

Enactment of this law might go even further toward righting the sports ship. If owners couldn't count on government to pull their chestnuts out of the financial fire, they could not possibly continue to permit salaries to spiral upward. They could not possibly continue to jack ticket prices upward as a prerequisite to not moving elsewhere (see ''Whalers, Hartford''). Some of the less economically-skilled owners might even sell out, and might find that the only corporations willing to take the franchise off their hands would be the same kind of community-based, almost not-for-profit group that owns the Green Bay Packers—a team that if owned by a Bill Bidwill or a Georgia Frontiere would have moved out 20 years ago.

In short, this is genius—and, though I swore I'd never say anything like this about any issue: let your congressman or senator know how you feel. We'll keep you posted on the progress of Sen. Moynihan's measure in this cyberspace.

By Mr. INOUYE:

S. 123. A bill to amend title 10, United States Code, to increase the grade provided for the heads of the nurse corps of the Armed Forces; to the Committee on Armed Services.

THE U.S. MILITARY CHIEF NURSE CORPS AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce an amendment that would change existing law regarding the designated position and grade for the Chief Nurses of the United States Army, the United States Navy, and the United States Air Force. Currently the Chief Nurses of the three branches of the military are one-star level general officer grades; this law would change the current grade to Major General in the United States Army and Air Force and Rear Admiral (upper half) in the United States Navy. Our military Chief Nurses have an awesome responsibility—a degree of responsibility that is absolutely deserving of this change in grade.

You might be surprised at how big their scope of duties actually is. For example, the Chiefs are responsible for both peacetime and wartime health care doctrine, standards and policy for all nursing personnel within their respective branches. In fact, the Chief Nurses are responsible for more than 80,000 Army, 5,200 Navy, and 26,000 Air Force nursing personnel. This includes officer and enlisted nursing specialties in the active, reserve and guard components of the military. This level of responsibility certainly supports the need to change the grade for the Chief Nurses which would insure that they have a seat at the corporate table of policy and decision making.

There has been much discussion about the so-called glass ceilings that unfairly impact the ability of women to achieve the same status as their male counterparts. While I do not want to make this a gender-discrimination issue, the reality is that military nurses hit two glass ceilings: one as a nurse in a physician-dominated health care system and one as a woman in a male-dominated military system. The simple fact is that organizations are best served when the leadership is composed of a mix of specialty and gender groups—of equal rank—who bring their unique talents to the corporate table. For military nurses, the two-star level of general officer Chief Nurse will insure that nurses indeed get to the corporate executive table.

I strongly believe that it is very important, and past time, that we recognize the extensive scope and level of responsibility the military Chief Nurses have and make sure that future military health care organizations will continue to benefit from their expertise and unique contributions.

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

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

S. 123

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

SECTION 1. INCREASED GRADE FOR HEADS OF NURSE CORPS.

(a) ARMY.—Section 3069(b) of title 10, United States Code, is amended by striking out ''brigadier general'' in the second sentence and inserting in lieu thereof ''major general''.

(b) NAVY.—The first sentence of section 5150(c) of such title is amended—

(1) by inserting ''rear admiral (upper half) in the case of an officer in the Nurse Corps or'' after ''for promotion to the grade of''; and

(2) by inserting ''in the case of an officer in the Medical Service Corps'' after ''rear admiral (lower half)''.

(c) AIR FORCE.—Section 8069(b) of such title is amended by striking out ''brigadier general'' in the second sentence and inserting in lieu thereof ''major general''.

By Mr. GRAMM (for himself, Mr. MACK and Mrs. HUTCHINSON):

S. 124. A bill to invest in the future of the United States by doubling the amount authorized for basic science and medical research; to the Committee on Labor and Human Resources.

THE NATIONAL RESEARCH INVESTMENT ACT OF 1997

Mr. GRAMM. Mr. President, in 1965, 5.7 percent of the federal budget was spent on non-defense research and development. Thirty-two years later, that figure has dropped by two-thirds to 1.9 percent. In no year since 1970 has the United States spent as large a percentage of its GDP on non-defense research and development as Japan or Germany. Unfortunately, recent signs point to this situation becoming worse rather than better. From 1992 through 1995, for the first time in 25 years, real federal spending on research declined for 4 straight years. If we don't restore the high priority once afforded science and technology in the federal budget and increase federal investment in research, it will be impossible to maintain the United States' position as the technological leader of the world.

As a nation, we have an interest in the research funding decisions of the private sector. Investing in basic science and medical research can provide much needed help to all our technology companies without giving any single company a special advantage over its competitors. Our goal should be to raise all the boats in the harbor, not just the ones belonging to the politically well-connected.

The United States simply does not spend enough on basic research. This bill would double the amount spent by the federal government on non-defense research over ten years in a dozen agencies, programs, and activities, from $32.5 billion in FY 1997 to $65 billion in FY 2007, making sure that within that amount the funding for the National Institutes of Health would double from $12.75 billion to $25.5 billion. At the same time, in order to be sure the increase in funding is spent wisely, the bill gives priority to investments in basic science and medical research in order to develop new scientific knowledge which will be available in the public domain. The legislation does not allow funds to be used for the commercialization of technologies, and allocates funds using a peer review system. Expanding the nations's commitment to basic research in science and medicine is a critically important investment in the future of our Nation.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 125. A bill to provide that the Federal medical assistance percentage for any State or territory shall not be less than 60 percent; to the Committee on Finance.

FEDERAL MEDICAL ASSISTANCE LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill, cosponsored by Senator D'Amoto, to revise the formula for determining the Federal Medical Assistance Percentage.

Medicaid services and associated administrative costs are financed jointly by the Federal government and the States. The formula for the Federal share of a State's payments for services, known as the Federal Medical Assistance Percentage [FMAP], was established when Medicaid was created as part of the Social Security Amendments of 1965. The Federal share of administrative costs is 50 percent for all States, though higher rates are applicable for specific items.

The FMAP is an exotic creature, derived from the Hill-Burton Hospital Survey and Construction Act of 1946, specifically designed to provide a higher Federal matching rate for states with lower per capita income. Rather than comparing per capita income directly, the HILL-BURTON formula is designed to exaggerate the differences between States' per capita income. A Senate colleague once described it to me as the South's revenge for the war between the States.

The Federal government's share depends upon the square of the ratio of state per capita income to national per capita income. Per capita income is only a proxy but not the only proxy for measuring the States' relative fiscal capacity. In March 1982, the Advisory Commission on Intergovernmental Relations stated that,

> * * * the use of a single index, resident per capita income, to measure fiscal capacity, seriously misrepresents the actual ability of many governments to raise revenue. Because states tax a wide range of economic activities other than the income of their residents, the per capita income measure fails to account for sources of revenue to which income is only related in part. This misrepresentation results in the systematic over and understatement of the ability of many states to raise revenue. In addition, the recent evidence suggests that per capita income has deteriorated as a measure of capacity.

Sqaring the ratio of state per capita income to national per capita income exaggerates the differences between States with regard to this incomplete proxy. Suppose my income is $1 and your income $2. The difference we have to make up is $1. If we compare squares, the difference we have to make up is $3.

I proposed a change to the HILL-BURTON formula in June of 1977—at a commencement address at Kingsborough Community College in Brooklyn, New York—to compare square roots. Going back to our example, if we were to compare square roots, the difference would only be 59 cents—better than $3. Nonetheless, the idea has not caught on.

Current law stipulates that no State may have an FMAP lower than 50 percent or higher than 83 percent. In Fiscal Year 1997, 11 States and the District of Columbia receive the minimum 50 percent FMAP while Mississippi receives the highest FMAP of 77.22 percent. States are responsible for the nonfederal share of Medicaid costs. Meaning that a State with a FMAP of 50 percent puts up 50 percent of the money and the Federal government puts up 50 percent of the money. A State with a FMAP of 80 percent puts up 20 percent of the funds with a Federal match of 80 percent. This inequity has existed for over 50 years. It is time for change.

The bill I introduce today would change the minimum FMAP from 50 percent to 60 percent. A modest proposal. As I mentioned before, there are 11 States and the District of Columbia which receive 50 percent. An additional 14 States have an FMAP between 50 and 60 percent. All other States get more.

The Finance Committee passed this measure as part of its Budget Reconciliation Recommendations in 1995 but it never became law.

This legislation gives high cost States such as New York the flexibility to realize savings without cost to the Federal government. It does not propose to change the amount of Federal funds such States receive. With an FMAP of 50 percent, a State receiving $1000 in Federal funds would be required to match it with $1000. With a 60 percent FMAP, the same State would still receive $1000 in Federal funds but would only be required to put up $667, a one-third reduction in the amount of state money required.

Allocation formulas are designed to target Federal funds to States according to need. The FMAP does not. The savings realized by a 60 percent minimum would provide some relief for States with low matching rates and would make the FMAP a bit less regressive. Adjusted for the cost-of-living, New York has the fifth highest poverty rate in the nation. Yet it has an FMAP of 50 percent. Arkansas has the 24th highest poverty rate, yet has an FMAP of 73.29. Our current formula is a regressive one that needs repair.

I urge my colleagues to support this measure.

By Mr. INOUYE:

S. 126. A bill to amend title VII of the Public Health Service Act to revise and extend certain programs relating to the education of individuals as health professionals, and for other purposes; to the Committee on Labor and Human Resources.

PHYSICAL THERAPY AND OCCUPATION THERAPY EDUCATION ACT OF 1997

Mr. INOUYE. Mr. President, today, I am introducing The Physical Therapy and Occupational Therapy Education Act of 1997. This legislation will assist in educating physical therapy and occupational therapy practitioners to meet the growing demand for the valuable services they provide in our communities.

In its most recent report, the Department of Labor's Bureau of Labor Statistics projected that the demand for services provided by physical therapy practitioners will increase dramatically over the next decade. According

to the Bureau, between 1994 and 2005 the increase in demand will create a need for 81,000 additional physical therapists, an 80 percent increase over 1994 figures. Demand for physical therapist assistants is expected to grow at an even faster rate, experiencing an 83 percent increase over the same time period.

The Bureau also predicts increasing demand for practitioners in the field of occupational therapy. Between 1994 and 2005 the increase in demand will create a need for 39,000 occupational therapists, a 72 percent increase over 1994 figures. Demand for occupational therapist assistants is projected to experience an 82 percent increase over the same time period.

Several factors contribute to the present need for Federal support in this area. The rapid aging of our nation's population, the demands of the AIDS crisis, increasing emphasis on health promotion and disease prevention, and the growth of home health care have out paced our ability to educate an adequate number of physical therapy and occupational therapy practitioners. In addition, technological advances are allowing injured and disabled individuals to survive conditions that in the past would have proven fatal.

America's inability to educate an adequate number of physical therapists and occupational therapists has led to an increased reliance on foreign-educated, non-immigrant temporary workers (H–1B visa holders). The U.S. Commission on Immigration Reform has identified the physical therapy and occupational therapy fields as having among the highest number of H–1B visa holders in the U.S., second only to computer specialists.

According to the Immigration and Naturalization Service (INS), we know that 1,389 H–1B visa holders sought employment as physical therapists in 1994. This number represents 5.9 percent of the 23,500 arrivals for which the INS can verify their known occupation. An additional 82,399 holders of H–1B visas were reported to have entered the U.S. in 1994 for which the INS does not have occupation data. If we assume that the same percentage of H–1B visa holders are seeking employment in physical therapy as in the known-occupation pool, we can calculate that an additional 4,861 foreign-educated physical therapists were also seeking employment (5.9 percent of 82,399 aliens). Thus, the total number of foreign-educated physical therapists seeking employment in the U.S. during 1994 was approximately 6,250. In comparison, U.S. programs of physical therapy graduated a total of 5,846 physical therapists from 141 institutions nationwide in the same year.

While the INS does not categorize occupational therapy as a separate profession when tracking H–1B visa entrants, the National Board for Certification in Occupational Therapy documents that the percentage of newly certified occupational therapists who are foreign graduates has risen from 3 percent in 1985 to more than 20 percent in 1995.

The legislation I introduce today would provide necessary assistance to physical therapy and occupational therapy programs throughout the country to meet the health care demands of the 21st century. In awarding grants, preference would be given to those applicants that seek to educate and train practitioners at clinical sites in either rural or urban medically underserved communities.

In addition to a shortage of practitioners, the present shortage of physical therapy and occupational therapy faculty impedes the expansion of established programs. The critical shortage of doctoral-prepared physical therapists and occupational therapists has resulted in an almost nonexistent pool of potential faculty. Presently, there exist 117 faculty vacancies among the 131 accredited, professional-level physical therapy programs in the U.S. Similarly, during the '93-'94 academic year there existed 51 faculty vacancies among the 85 accredited, professional-level occupational therapy programs. The legislation I introduce today would assist in the development of a pool of qualified faculty by giving preference to those grant applicants seeking to develop and expand post-professional programs for the advanced training of physical therapists and occupational therapists.

The investment we make through passage of The Physical Therapy and Occupational Therapy Education Act of 1997 will help reduce America's dependence on foreign labor and help create high-skilled, high-wage employment opportunities for American citizens. I look forward to working with my colleagues in the Congress to enact this important legislation.

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

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

S. 126

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 ''Physical Therapy and Occupational Therapy Education Act of 1997''.

SEC. 2. PHYSICAL THERAPY AND OCCUPATIONAL THERAPY.

Subpart II of part D of title VII of the Public Health Service Act (42 U.S.C. 294d et seq.) is amended by adding at the end the following:

''SEC. 768. PHYSICAL THERAPY AND OCCUPATIONAL THERAPY.

''(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, programs of physical therapy and occupational therapy for the purpose of planning and implementing projects to recruit and retain faculty and students, develop curriculum, support the distribution of physical therapy and occupational therapy practitioners in underserved areas, or support the continuing development of these professions.

''(b) PREFERENCE IN MAKING GRANTS.—In making grants under subsection (a), the Secretary shall give preference to qualified applicants that seek to educate physical therapists or occupational therapists in rural or urban medically underserved communities, or to expand post-professional programs for the advanced education of physical therapy or occupational therapy practitioners.

''(c) PEER REVIEW.—Each peer review group under section 798(a) that is reviewing proposals for grants or contracts under subsection (a) shall include not fewer than 2 physical therapists or occupational therapists.

''(d) REPORT TO CONGRESS.—

''(1) IN GENERAL.—The Secretary shall prepare a report that—

''(A) summarizes the applications submitted to the Secretary for grants or contracts under subsection (a);

''(B) specifies the identity of entities receiving the grants or contracts; and

''(C) evaluates the effectiveness of the program based upon the objectives established by the entities receiving the grants or contracts.

''(2) DATE CERTAIN FOR SUBMISSION.—Not later than February 1, 2001, the Secretary shall submit the report prepared under paragraph (1) to the Committee on Commerce and the Committee on Appropriations of the House of Representatives, the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate.

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $3,000,000 for each of the fiscal years 1997 through 2000.''.

Mr. MOYNIHAN (for himself, Mr. ROTH, Mr. CHAFEE, Mr. BAUCUS, Mr. BINGAMAN, Mrs. BOXER, Mr. BRYAN, Mr. CRAIG, Mr. D'AMATO, Mr. FORD, Mr. GLENN, Mr. GRASSLEY, Mr. HATCH, Mr. KENNEDY, Mr. KERRY, Mr. KYL, Mr. LEAHY, Mr. LIEBERMAN, Mr. MCCONNELL, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. ROBB, Mr. ROCKEFELLER, Mr. SHELBY, Mr. TORRICELLI, and Mr. WYDEN):

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; to the Committee on Finance.

THE EMPLOYEE EDUCATIONAL ASSISTANCE ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation that will make permanent the tax exclusion for employer-provided educational assistance under section 127 of the Internal Revenue Code. This bill, which is cosponsored by the distinguished chairman of the Committee on Finance, Senator ROTH, and by Senators BAUCUS, BOXER, BRYAN, CHAFEE, CRAIG, D'AMATO, FORD, GLENN, GRASSLEY, HATCH, KENNEDY, KERRY, KYL, LEAHY, LIEBERMAN, MCCONNELL, MOSELEY-BRAUN, MURRAY, ROBB, ROCKEFELLER, SARBANES, SHELBY, TORRICELLI, WYDEN, AND BINGAMAN ensures that employees may receive up to $5,250 annually in tuition reimbursements or similar educational benefits for both undergraduate and graduate education from their employers on a tax-free basis.

Section 127 is one of the most successful education programs that the Federal Government has ever undertaken. A million persons benefit from this provision every year. And they benefit in the most auspicious of circumstances. An employer recognizes that the worker is capable of doing work at higher levels and skills and says, ''Will you go to school and get a degree so we can put you in a higher position than you have now—and with better compensation?'' Unlike so many of our job training programs that have depended on the hope that in the aftermath of the training there will be a job, here you have a situation where the worker already has a job and the employer agrees that the worker should enlarge his or her situation in a manner that is beneficial to all concerned.

This is a program that works. Yet, outside the organizations involved, not many people know of this program. It administers itself. It has no bureaucracy—there is no bureau in the Department of Education for employer-provided educational assistance, no titles, no confirmations, no assistant secretaries. There is nothing except individual contracts, employee and employer, with a great value-added.

Since its inception in 1978, section 127 has enabled millions of workers to advance their education and improve their job skills without incurring additional taxes and a reduction in take-home pay. Without section 127, workers will find that the additional taxes or reduction in take-home pay impose a significant, even prohibitive, financial obstacle to further education. For example, an unmarried clerical worker pursuing a college diploma who has income of $21,000 in 1997 and who receives tuition reimbursement for two semesters of night courses—worth approximately $4,000—would owe additional Federal income and payroll taxes of $866 on this educational assistance. If the worker has children and was receiving the earned income tax credit, the worker would owe additional taxes—including loss of the EITC benefits—of up to $1,708.

Section 127 makes an important contribution to simplicity in the tax law. Absent section 127, a worker receiving educational benefits from an employer is taxed on the value of the education received, unless the education is directly related to the worker's current job. Permanent reinstatement of section 127 will allow workers to receive employer-provided educational assistance on a tax-free basis, without the need to consult a tax advisor to determine whether the education is directly related to their current job.

A well-trained and educated work force is a key to our Nation's competitiveness in the global economy of the 21st century. Pressures from international competition and technological change require constant adjustment by our work force. Education and retraining will be necessary to maintain and strengthen American industry's competitive position. Section 127 has an important, perhaps vital, role to play in this regard. It permits employees to adapt and retrain without incurring additional tax liabilities and a reduction in take-home pay. By removing the tax burden from workers seeking education and retraining, section 127 helps to maintain American workers as the most productive in the industrialized and developing world.

Section 127 has also helped to improve the quality of America's public education system, at a fraction of the cost of direct-aid programs. A survey by the National Education Association a few years ago found that almost half of all American public school systems provide tuition assistance to teachers seeking advanced training and degrees. This has enabled thousands of public school teachers to obtain advanced degrees, augmenting the quality of instruction in our schools.

Our most recent extension of section 127 last year excluded expenses of pursuing graduate level education for courses beginning after June 30, 1996. This was a serious mistake. Historically, one quarter of the individuals who have used section 127 went to graduate schools. Ask major employer about their training systems, and they will say nothing is more helpful than being able to send a promising young person, or middle management person, to a graduate school to learn a new field that has developed since that person had his education.

When we eliminate graduate level education from section 127, we impose a tax increase on many citizens who work and go to graduate school at the same time. But not all of them. Only the ones whose education does not directly relate to their current jobs. For these unlucky persons, we have erected a barrier to their upward mobility. Who are these people? The engineer seeking a masters degree in geology to enter the field of environmental science. The bank teller seeking an MBA in finance or an MPA in accounting. The production line worker seeking an MBA in management.

Simple equity among taxpayers demands that section 127 be made permanent. Contrast each of the above examples with the following: The environmental geologist seeking a masters in geology, the bank accountant seeking an MPA, and the management trainee seeking an MBA each qualify for tax-free education. There is no justification for this difference in tax treatment.

Thus, section 127 removes a tax bias against lesser-skilled workers. The tax bias arises because lesser-skilled workers have narrower job descriptions, and a correspondingly greater difficulty proving that educational expenses directly relate to their current jobs. Less-skilled workers are in greater need of remedial and basic education. And they are the ones least able to afford the imposition of tax on their educational benefits.

It is important to note that employer-provided educational assistance is not an extravagant benefit for highly paid executives. It largely benefits low- and moderate-income employees seeking access to higher education and further job training. A study published by the National Association of Independent Colleges and Universities in December, 1995 found that 85 percent of section 127 recipients in the 1992–93 academic year earned less than $50,000, with the average recipient earning less than $33,000. An earlier Coopers & Lybrand study indicated that over 70 percent of recipients of section 127 benefits in 1986 were earning less than $30,000, and that participation rates decline as salary levels increase.

I hope that Congress will recognize the importance of this provision, and enact it permanently. Our on-again, off-again approach to section 127 creates great practical difficulties for the intended beneficiaries. Workers cannot plan sensibly for their educational goals, not knowing the extent to which accepting educational assistance may reduce their take-home pay. As for employers, the fits and starts of the legislative history of section 127 have been a serious administrative nuisance: there have been 8 retroactive extensions of this provision since 1978. If section 127 is in force, then there is no need to withhold taxes on educational benefits provided; if not, the job-relatedness of the educational assistance must be ascertained, a value assigned, and withholding adjusted accordingly. Uncertainty about the program's continuance magnifies this burden, and discourages employers from providing educational benefits.

For example, section 127 expired for a time after 1994. During 1995, employers did not know whether to withhold taxes or curtail their educational assistance programs. Workers did not know whether they would face large tax bills, and possible penalties and interest, and thus faced considerable risk in planning for their education. Some of my constituents who called my office reported that they were taking fewer courses—or no courses—due to this uncertainty. And when we failed to extend the provision by the end of 1995, employers had to guess as to how to report their worker's incomes on the W–2 tax statements, and employees had to guess whether to pay tax on the benefits they received. In the Small Business Job Protection Act of 1996 enacted last August, we finally extended the provision retroactively to the beginning of 1995. As a result, we had to instruct the IRS to expeditiously issue guidance to employers and workers on how to obtain refunds.

The provision expires after June 30, 1997. Will we subject our constituents, once again, to similar confusion? The legislation I introduce today would restore certainty to section 127 by extending it retroactively—from July 1, 1996—for graduate level education, and maintaining it on a permanent basis for all education.

Thomas Jefferson, as ever, was right to observe that American liberty depends on an educated electorate. In 1816, the year in which the Senate Committee on Finance was founded, Jefferson warned ''If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.''

Previous efforts to extend this provision have enjoyed broad and bipartisan support. Encouraging workers to further their education and to improve their job skills is an important national priority. It is crucial for preserving our competitive position in the global economy. Permitting employees to receive educational assistance on a tax-free basis, without incurring significant cuts in take-home pay, is a demonstrated, cost-effective means for achieving these objectives. This is a wonderful piece of unobtrusive social policy.

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. 127

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 ''Employee Educational Assistance Act''.

SEC. 2. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE PROGRAMS.

(a) PERMANENT EXTENSION.—Section 127 of the Internal Revenue Code of 1986 (relating to exclusion for educational assistance programs) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) REPEAL OF LIMITATION ON GRADUATE EDUCATION.—The last sentence of section 127(c)(1) of such Code is amended by striking '', and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree''.

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1996.

(2) GRADUATE EDUCATION.—The amendment made by subsection (b) shall apply with respect to expenses relating to courses beginning after June 30, 1996.

(3) EXPEDITED PROCEDURES.—The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1996 or 1997 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee's signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee.

By Mr. INOUYE:

S. 128. A bill to amend the Public Health Service Act to provide health care practitioners in rural areas with training in preventive health care, including both physical and mental care, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH CARE TRAINING ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce the Rural Preventive Health Care Training Act of 1997, a bill that responds to the dire situation our rural communities face in obtaining quality health care and disease prevention programs.

Almost one fourth of Americans live in rural areas and thus frequently lack access to adequate physical and mental health care. For example, approximately 1,700 rural communities in virtually every state of the union suffer critical shortages of health care providers. As many as 21 million of the 34 million people living in underserved rural areas are without access to a primary care provider. In areas where providers exist, there are numerous limits to access, such as geography and distance, lack of transportation, and lack of knowledge about available resources. Additionally, due to the diversity of rural populations, ranging from native Americans to migrant farm workers, language and cultural obstacles are often a factor.

Compound these problems with slim financial resources and many of America's rural communities go without vital health care, especially preventive care. Children fail to receive immunizations and routine checkups. Preventable illnesses and injuries occur needlessly and lead to expensive hospitalizations. Early symptoms of emotional problems and substance abuse go undetected and often develop into full blown disorders.

An Institute of Medicine (IOM) report from their two-year study entitled, ''Reducing Risks for Mental Disorders: Frontiers for Preventive Intervention Research'' highlights the benefits of preventive care for all health problems. Rural health care providers face a lack of training opportunities. Training in prevention is crucial in order to meet the demand for care in underserved areas.

Beyond the scope of simple prevention training, interdisciplinary preventive training in rural health is important because of a growing array of evidence that links mental disorders to physical ailments. For example, it has been estimated that from fifty to seventy percent of visits to physicians for medical symptoms are due in part or whole to psychosocial problems. By encouraging interdisciplinary training, rural communities can integrate the behavioral, biological, and psychological sciences to form the most effective preventive care possible.

The problems with quality, access, and understanding of health care in rural areas all suggest that promoting interdisciplinary training of psychologists, nurses, and social workers is essential. The need becomes clearer when considering that many of the behavior-related problems afflicting rural communities are amenable to proven risk reduction strategies that are best provided by trained mental health care professionals.

Interdisciplinary team prevention training will facilitate both health and mental health clinics sharing single service sites and routine consultation between groups. Social workers, psychologists, clinical psychiatric nurse specialists, and paraprofessionals play an important role in extending rural mental health services to those in need. Linkage of these services can provide better utilization of existing mental health care personnel, increase awareness and understanding of mental health services, and contribute to the overall health of rural communities.

The Rural Preventive Health Care Training Act of 1997, targeted specifically toward rural communities, would implement the risk-reduction model described in the IOM study. This model is based on the identification of risk factors for a certain disorder and the implementation of specific preventive strategies to target groups with those risk factors. The IOM Committee aptly demonstrates that methods of risk reduction have proven highly successful in many health-related areas, such as cardiovascular disease, smoking reduction, and the numerous childhood diseases and conditions that are preventable by early prenatal care for pregnant women.

The cost of human suffering caused by poor health is immeasurable, but the huge financial burden placed on communities, families, and individuals is evident. By implementing preventive measures, the potential for savings in psychological and financial realms is enormous. This savings is the goal of the Rural Preventive Health Care Training Act of 1997.

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

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

S. 128

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 Preventive Health Care Training Act of 1997''.

SEC. 2. PREVENTIVE HEALTH CARE TRAINING.

Section 778 of the Public Health Service Act (42 U.S.C. 294p) is amended—

(1) in subsection (b)(3)(C), by striking ''this section'' and inserting ''subsection (a)'';

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively;

(3) by inserting after subsection (d) the following new subsection:

''(e) PREVENTIVE HEALTH CARE TRAINING.—

''(1) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, eligible applicants to enable such applicants to provide preventive health care training, in accordance with paragraph (3), to health care practitioners practicing in rural areas. Such training shall, to the extent practicable, include training in health care to prevent both physical and mental disorders before the initial occurrence of such disorders. In carrying out this paragraph, the Secretary shall encourage, but may not require, the use of

interdisciplinary training project applications.

''(2) LIMITATION.—To be eligible to receive training using assistance provided under paragraph (1), a health care practitioner shall be determined by the eligible applicant involved to be practicing, or desiring to practice, in a rural area.

''(3) USE OF ASSISTANCE.—Amounts received under a grant made or contract entered into under this subsection shall be used—

''(A) to provide student stipends to individuals attending rural community colleges or other institutions that service predominantly rural communities, for the purpose of enabling the individuals to receive preventive health care training;

''(B) to increase staff support at rural community colleges or other institutions that service predominantly rural communities to facilitate the provision of preventive health care training;

''(C) to provide training in appropriate research and program evaluation skills in rural communities;

''(D) to create and implement innovative programs and curricula with a specific prevention component; and

''(E) for other purposes as the Secretary determines to be appropriate.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, $5,000,000 for each of fiscal years 1998 through 2000.''; and

(4) in subsection (g) (as so redesignated), by inserting ''except subsection (e),'' after ''section,''.

By Mr. INOUYE:

S. 129. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores; to the Committee on Armed Services.

FORMER PRISONERS OF WAR LEGISLATION

Mr. INOUYE. Mr. President, today I am introducing legislation to enable those former prisoners of war who have been separated honorably from their respective services and who have been rated to have a 30 percent service-connected disability to have the use of both the military commissary and post exchange privileges. While I realize that it is impossible to adequately compensate one who has endured long periods of incarceration at the hands of our Nation's enemies, I do feel that this gesture is both meaningful and important to those concerned. It also serves as a reminder that our Nation has not forgotten their sacrifices.

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. 129

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

SECTION 1. USE OF COMMISSARY AND EXCHANGE STORES BY CERTAIN DISABLED FORMER PRISONERS OF WAR.

(a) IN GENERAL.—Chapter 54 of title 10, United States Code, is amended by inserting after section 1064 the following new section:

''§ 1064a. Use of commissary stores by certain disabled former prisoners of war

''(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, former prisoners of war described in subsection (b) may use commissary and exchange stores.

''(b) COVERED INDIVIDUALS.—Subsection (a) applies to any former prisoner of war who—

''(1) is separated from active duty in the armed forces under honorable conditions; and

''(2) has a service-connected disability rated by the Secretary of Veterans Affairs at 30 percent or more.

''(c) DEFINITIONS.—In this section:

''(1) The term 'former prisoner of war' has the meaning given the term in section 101(32) of title 38.

''(2) The term 'service-connected' has the meaning given the term in section 101(16) of title 38.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1064 the following new item:

''1064a. Use of commissary stores by certain disabled former prisoners of war.''.

By Mr. INOUYE:

S. 130. A bill to amend the Internal Revenue Code of 1986 to provide a credit for the purchase of child restraint systems used in motor vehicles; to the Committee on Finance.

CHILD RESTRAINT SYSTEM AMENDMENTS ACT OF 1997

Mr. INOUYE. Mr. President, today I am introducing legislation to provide for a federal income tax credit for those families who purchase a child restraint system for their automobiles.

Accidents and injuries continue to cause almost half of the deaths of children between the ages of one and four, more than half of the deaths of children between five and fifteen, and continue to be the leading cause of death among children and young adults.

It is my understanding that although the Department of Transportation has made injury prevention among children a top priority, a significant number of parents either do not have adequate child restraint systems or do not have them properly installed.

It is imperative that we create this opportunity to provide America's parents with a financially accessible alternative to the insufficient level of child safety measures currently available for use in automobiles.

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

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

S. 130

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

SECTION 1. CREDIT FOR PURCHASE OF CHILD RESTRAINT SYSTEMS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by adding at the end the following:

''SEC. 25A. PURCHASE OF CHILD RESTRAINT SYSTEM.

''(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the costs incurred by the taxpayer during such taxable year in purchasing a qualified child restraint system for any child of the taxpayer.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CHILD RESTRAINT SYSTEM.—The term 'qualified child restraint system' means any child restraint system which meets the requirements of section 571.213 of title 49 of the Code of Federal Regulations.

''(2) CHILD.—The term 'child' has the meaning given the term in section 151(c)(3).''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25 the following:

''Sec. 25A. Purchase of child restraint system.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1996.

By Mr. MOYNIHAN (for himself, Mr. LIEBERMAN, and Mr. JEFFORDS):

S. 131. A bill to amend chapter 5 of title 13, United States Code, to require that any data relating to the incidence of poverty produced or published by the Secretary of Commerce for subnational areas is corrected for differences in the cost of living in those areas; to the Committee on Governmental Affairs.

THE POVERTY DATA CORRECTION ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise today to introduce the Poverty Data Correction Act of 1997, a bill to require that any data relating to the incidence of poverty in subnational areas be corrected for the differences in the cost of living in those areas. This legislation, cosponsored by Senators LIEBERMAN and JEFFORDS, would correct a long-standing inequity and would provide us with more accurate information on the number of Americans living in poverty.

Mr. President, residents of New York and Connecticut earn more than do the residents of Mississippi or Alabama. But they also must spend more. The 1990 Census of Population and Housing, for instance, determined that homeowner costs with a mortgage averaged $1,096 per month in Connecticut, $894 in New York State—not city, $555 in Alabama, and $511 in Mississippi. The national average was $737.

Yet, we have a national poverty threshold adjusted only by family size and composition, not by where the family lives. A family of four just above the poverty threshold in New York City is demonstrably worse off than a family of four just below the threshold in, say, rural Arkansas. And yet the family in New York might be ineligible for aid, and will not count in the poverty population tallies used to allocate funds while the Arkansas family will receive aid, and will be counted.

An August 7, 1994 New York Times editorial endorsing a version of this bill introduced in the 104th Congress sums it up nicely:

The cost of food, rent and other consumer goods can be twice as high in Manhattan as

in Little Rock, Ark. Yet the income cutoff for poverty programs is the same in both places, $14,769 for a family of four. That produces the ridiculous and unfair result that a Manhattan family earning $15,000 does not qualify for Federal nutrition or education programs while an Arkansas family earning $14,500—the equivalent of $29,000 in Manhattan—does.

* * * Federal poverty levels are supposed to identify families that cannot buy minimally decent food, clothes and shelter. To act as if living costs do not matter, or as if financially strapped states will pick up where Washington leaves off, amounts to a vicious attack on the poor who happen to live in high-cost states.

Professor Herman B. ''Dutch'' Leonard and Senior Research Associate Monica Friar of the Taubman Center for State and local government at Harvard have devised an index of poverty statistics that reflects the differences in the cost of living between States. If we look at the ''Friar-Leonard State Cost-of-Living index,'' as it has come to be known, we find that New York has a cost-adjusted poverty rate of 20.4 percent, the fifth highest in the Nation. Florida has the 12th highest adjusted poverty rate; Arkansas drops from 14th to 24th. New York fifth; Arkansas 24th. Georgia as the 25th highest. It is no longer the case that the incidence of poverty is highest in the Mississippi Delta or Appalachia. The fifth highest poverty rate is in New York. We seem not to have grasped this.

In 1995, a National Academy of Sciences (NAS) panel of experts released a study on redefining poverty. Our poverty index dates back to the work of Social Security Administration economist Mollie Orshansky who, in the early 1960s, hit upon the idea of a nutritional standard, not unlike the ''pennyloaf'' of bread of the 18th century British poor laws. Our poverty standard would be three times the cost of the Department of Agriculture-defined minimally adequate ''food basket.'' During consideration of the Family Support Act of 1988, I included a provision mandating the National Academy of Sciences to determine if our poverty measure is outdated and how it might be improved. The study, edited by Constance F. Citro and Robert T. Michael, is entitled Measuring Poverty: A New Approach. A Congressional Research Service review of the report states:

The NAS panel * * * makes several recommendations which, if fully adopted, could dramatically alter the way poverty in the U.S. is measured, how federal funds are allotted to the States, and how eligibility for many Federal programs is determined. The recommended poverty measure would be based on more items in the family budget, would take major noncash benefits and taxes into account, and would be adjusted for regional differences in living costs.

* * * Under the current measure the share of the poor population living in each region was: Northeast: 16.9 percent; Midwest: 21.7 percent; South: 40.0 percent; and West: 21.4 percent. Under the proposed new measure, the estimated share in each region would be: Northeast: 18.9 percent; Midwest: 20.0 percent; South 36.4 percent; and West: 24.5 percent.

Mr. President, our current poverty data are inaccurate. And these substandard data are used in allocation formulas used to distribute millions of Federal dollars each year. As a result, States with high costs of living—States like New York, Connecticut, Vermont, Hawaii, and California, just to name a few—are not getting their fair share of Federal dollars because differences in the cost of living are ignored. And the poor of these high cost States are penalized because they happen to live there. It is time to correct this inequity.

I ask unanimous consent that the New York Times editorial be inserted into the RECORD.

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

[From the New York Times, Aug. 7, 1994]

POVERTY IS UNFAIRLY DEFINED

The cost of food, rent and other consumer goods can be twice as high in Manhattan as in Little Rock, Ark. Yet the income cutoff for poverty programs is the same in both places, $14,764 for a family of four. That produces the ridiculous and unfair result that a Manhattan family earning $15,000 does not qualify for Federal nutrition or education programs while an Arkansas family earning $14,500—the equivalent of $29,000 in Manhattan—does.

The Federal definition of poverty is blind to the real costs paid by people struggling to purchase the necessities of life. That is why Senator Joseph Lieberman, Democrat of Connecticut, and Representative Dean Gallo, Republican of New Jersey, have proposed bills that would adjust poverty levels for state differences in the cost of living. That way poor families in Los Angeles and Philadelphia will get their fair share of the $20 billion or more that Congress spends on need-based programs. Senator Daniel Patrick Moynihan of New York, an expert on poverty, says that adjusting poverty levels for living costs will produce poverty rates in New York nearly as high as those in the Deep South.

The only argument against the bills is that high-income states like New York and California can afford to pay more to help their poor than can low-income states like Mississippi and South Carolina. But the poor in New York are not just the responsibility of taxpayers in New York; helping the poor is every American's duty, best carried out by Federal payments that take account of differences in the cost of living. Of course, wealthy states like New York will pay a disproportionate share of the taxes that support such payments.

The argument for letting rich states take care of ''their'' own poor fails for another reason: they will shirk. If state governments try to finance generous welfare, they trigger in-migration of the poor and out-migration of wealthy taxpayers. Therefore they underfinance welfare; over the past two decades, states welfare benefits have dwindled.

Federal poverty levels are supposed to identify families that cannot buy minimally decent food, clothes and shelter. To act as if living costs do not matter, or as if financially strapped states will pick up where Washington leaves off, amounts to a vicious attack on the poor who happen to live in high-cost states.

By Mr. MOYNIHAN:

S. 132. A bill to prohibit the use of certain ammunition, and for other purposes. A bill to prohibit the use of certain ammunition, and for other purposes; to the Committee on the Judiciary.

S. 133. A bill to amend the Internal Revenue Code of 1986 to increase the tax on handgun ammunition, to impose the special occupational tax and registration requirements on importers and manufacturers of handgun ammunition, and for other purposes; to the Committee on Finance.

LEGISLATION TO CONTROL DESTRUCTIVE AMMUNITION

Mr. MOYNIHAN. Mr. President, I introduce two measures to help fight the epidemic of bullet-related violence in America: the Real Cost of Destructive Ammunition Act and the Destructive Ammunition Prohibition Act of 1997. The purpose of these bills is to prevent from reaching the marketplace some of the most deadly rounds of ammunition ever produced.

Some of my colleagues may remember the Black Talon. It is a hollow-tipped bullet, singular among handgun ammunition in its capacity for destruction. Upon impact with human tissue, the bullet produces razor-sharp radial petals that produce a devastating wound. It is the very same bullet that a crazed gunman fired at unsuspecting passengers on a Long Island Railroad train in December 1993, Killing the husband of now Congresswoman CAROLYN MCCARTHY and injuring her son. That same month, it was also used in the shooting of Officer Jason E. White of the District of Columbia Metropolitan Police Department, just 15 blocks from the Capitol.

I first learned of the Black Talon in a letter I received from Dr. E.J. Gallagher, director of Emergency Medicine at Albert Einstein College of Medicine at the Municipal Hospital Trauma Center in the Bronx. Dr. Gallagher wrote that he has never seen a more lethal projectile. On November 3, 1993, I introduced a bill to tax the Black Talon at 10,000 percent. Nineteen days later, Olin Corp., the manufacturer of the Black Talon, announced that it would withdraw sale of the bullet to the general public. Unfortunately, the 103d Congress came to a close without the bill having won passage.

As a result, there is nothing in law to prevent the reintroduction of this pernicious bullet, nor is there any existing impediment to the sale of similar rounds that might be produced by another manufacturer. So today I reintroduce the bill to tax the Black Talon as well as a bill to prohibit the sale of the Black Talon to the public. Both bills would apply to any bullet with the same physical characteristics as the Black Talon. These bullets have no place in the armory of criminals.

It has been estimated that the cost of hospital services for treating bullet-related injuries is $1 billion per year, with the total cost to the economy of such injuries approximately $14 billion.

We can ill afford further increases in this number, but this would surely be the result if bullets with the destructive capacity of the Black Talon are allowed onto the streets.

Mr. President, despite the fact that the national crime rate has decreased in recent months, the number of deaths and injuries caused by bullet wounds is still at an unconscionable level. It is time we took meaningful steps to put an end to the massacres that occur daily as a result of gunshots. How better a beginning than to go after the most insidious culprits of this violence? I urge my colleagues to support these measures and to prevent these bullets from appearing on the market.

By Mr. MOYNIHAN:

S. 134. A bill to amend title 18, United States Code, with respect to the licensing of ammunition manufacturers, and for other purposes; to the Committee on the Judiciary.

THE HANDGUN AMMUNITION CONTROL ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise today to introduce a measure to improve our information about the regulation and criminal use of ammunition and to prevent the irresponsible production of ammunition. This bill has three components. First, it would require importers and manufacturers of ammunition to keep records and submit an annual report to the Bureau of Alcohol, Tobacco and Firearms [BATF] on the disposition of ammunition, including the amount, caliber and type of ammunition imported or manufactured. Second, it would require the Secretary of the Treasury, in consultation with the National Academy of Sciences, to conduct a study of ammunition use and make recommendations on the efficacy of reducing crime by restricting access to ammunition. Finally, it would amend title 18 of the United States Code to raise the application fee for a license to manufacture certain calibers of ammunition.

While there are enough handguns in circulation to last well into the 22d century, there is perhaps only a 4-year supply of ammunition. But how much of what kind of ammunition? Where does it come from? Where does it go? There are currently no reporting requirements for manufacturers or importers of ammunition; earlier reporting requirements were repealed in 1986. The Federal Bureau of Investigation's annual Uniform Crime Reports, based on information provided by local law enforcement agencies, does not record the caliber, type, or quantity of ammunition used in crime. In short, our data base is woefully inadequate.

I supported the Brady law, which requires a waiting period before the purchase of a handgun, and the recent ban on semi-automatic weapons. But while the debate over gun control continues, I offer another alternative: Ammunition control. After all, as I have said before, guns do not kill people; bullets do.

Ammunition control is not a new idea. In 1982 Phil Caruso of the New York City Patrolmen's Benevolent Association asked me do something about armor-piercing bullets. Jacketed in tungsten or other materials, these rounds could penetrate four police flak jackets and five Los Angeles County telephone books. They are of no sporting value. I introduced legislation, the Law Enforcement Officers Protection Act, to ban the cop-killer bullets in the 97th, 98th, and 99th Congresses. It enjoyed the overwhelming support of law enforcement groups and, ultimately, tacit support from the National Rifle Association. It was finally signed into law by President Reagan on August 28, 1986.

The crime bill enacted in 1994 contained may amendment to broaden the 1986 ban to cover new thick steel-jacketed armor-piercing rounds.

Out cities are becoming more ware of the benefits to be gained from ammunition control. The District of Columbia and some other cities prohibit a person from possessing ammunition without a valid license for a firearm of the same caliber or gauge as the ammunition. Beginning in 1990, the city of Los Angeles banned the sale of all ammunition 1 week prior to Independence Day and New Year's Day in an effort to reduce injuries and deaths caused by the firing of guns into the air. And in September 1994, the city of Chicago became the first in America to ban the sale of all handgun ammunition.

Such efforts are laudable. But they are isolated attempts to cure what is in truth a national disease. We need to do more, but to do so, we need information to guide policymaking. This bill would fulfill that need by requiring annual reports to BATF by manufacturers and importers and by directing a study by the National Academy of Sciences. We also need to encourage manufacturers of ammunition to be more responsible. By substantially increasing application fees for licenses to manufacturer .25 caliber, .32 caliber, and 9-mm ammunition, this bill would discourage the reckless production of unsafe ammunition or ammunition which causes excesses damage.

I urge my colleagues to support this measure.

By Mr. MOYNIHAN:

S. 135. A bill to provide for the collection and dissemination of information on injuries, death, and family dissolution due to bullet-related violence, to require the keeping of records with respect to dispositions of ammunition and to increase taxes on certain bullets; to the Committee on Finance.

THE VIOLENT CRIME CONTROL ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill that comprehensively seeks to control the epidemic proportions of violence in America. This legislation, the Violent Crime Control Act of 1997, combines most of the provisions of two of the other crime-related bills I am introducing today as well.

By including two different crime-related provisions, my bill attacks the crime epidemic on more than just one front. If we are truly serious about confronting our Nation's crime problem, we must learn more about the nature of the epidemic of bullet-related violence and ways to control it. To do this, we must require records to be keep on the disposition of ammunition.

In October 1992, the Senate Finance Committee received testimony that public health and safety experts have, independently, concluded that there is an epidemic of bullet-related violence. The figures are staggering.

In 1995, bullets were in the murders of 23,673 people in the United States. By focusing on bullets, and not guns, we recognize that much like nuclear waste, guns remain active for centuries. With minimum care, they do not deteriorate. However, bullets are consumed. Estimates suggest we have only a 4-years supply of them.

Not only am I proposing that we tax bullets used disproportionately in crimes, 9 millimeter, .25 and .32 caliber bullets, I also believe we must set up a Bullet Death and Injury Control Program within the Centers for Disease Control's National Center for Injury Prevention and Control. This Center will enhance our knowledge of the distribution and status of bullet-related death and injury and subsequently make recommendations about the extent and nature of bullet-related violence.

So that the Center would have substantive information to study and analyze, this bill also requires importers and manufacturers of ammunition to keep records and submit an annual report to the Bureau of Alcohol, Tobacco, and Firearms [BATF] on the disposition of ammunition. Currently, importers and manufacturers of ammunition are not required to do so.

Clearly, it will take intense effort on all of our parts to reduce violent crime in America. We must confront this epidemic from several different range, recognizing that there is no simple solution.

By Mr. MOYNIHAN:

S. 136. A bill to amend chapter 44 of title 18, United States Code, to prohibit the manufacture, transfer, or importation of .25 caliber and .32 caliber and 9 millimeter ammunition; to the Committee on the Judiciary.

VIOLENT CRIME REDUCTION ACT

S. 137. A bill to tax 9 millimeter, .25 caliber, and .32 caliber bullets; to the Committee on Finance.

REAL COST OF HANDGUN AMMUNITION ACT OF 1997

Mr. MOYNIHAN. Mr. President, I introduce two bills: the Violent Crime Reduction Act of 1997 and the Real Cost of Handgun Ammunition Act of 1997. Their purposes are to ban or heavily tax .25 caliber, .32 caliber, and 9 mm ammunition. These calibers of bullets are used disproportionately in crime. They are not sporting or hunting rounds, but instead are the bullets of

choice for drug dealers and violent felons. Every year they contribute overwhelmingly to the pervasive loss of life caused by bullet wounds.

Today marks the fourth time in as many Congresses that I have introduced legislation to ban or tax these pernicious bullets. As the terrible gunshot death toll in the United States continues unabated, so too does the need for these bills, which, by keeping these bullets out of the hands of criminals, would save a significant number of lives.

The number of Americans killed or wounded each year by bullets demonstrates their true cost to American society. Just look at the data:

In 1995, 13,673 people—68.2 percent of all people murdered—were murdered by gunshot. In addition, others lost their lives to bullets by shooting themselves, either purposefully or accidentally. And although no national statistics are kept on bullet-related injuries, studies suggest they occur two to five times more frequently than do deaths.

The lifetime risk of death from homicide in U.S. males is 1 in 164, about the same as the risk of death in battle faced by U.S. servicemen in the Vietnam war. For black males, the lifetime risk of death from homicide is 1 in 28, twice the risk of death in battle faced by Marines in Vietnam.

As noted by Susan Baker and her colleagues in the book ''Epidemiology and Health Policy,'' edited by Sol Levine and Abraham Lilienfeld:

> There is a correlation between rates of private ownership of guns and gun-related death rates; guns cause two-thirds of family homicides; and small easily concealed weapons comprise the majority of guns used for homicides, suicides and unintentional death.

Baker states that:

> * * * these facts of the epidemiology of firearm-related deaths and injuries have important implications. Combined with their lethality, the widespread availability of easily concealed handguns for impetuous use by people who are angry, drunk, or frightened appears to be a major determinant of the high firearm death rate in the United States. Each contributing factor has implications for prevention. Unfortunately, issues related to gun control have evoked such strong sentiments that epidemiologic data are rarely employed to good advantage.

Strongly held views on both sides of the gun control issue have made the subject difficult for epidemiologists. I would suggest that a good deal of energy is wasted in this never-ending debate, for gun control as we know it misses the point. We ought to focus on the bullets and not the guns.

I would remind the Senate of our experience in controlling epidemics. Although the science of epidemiology traces its roots to antiquity—Hippocrates stressed the importance of considering environmental influences on human diseases—the first modern epidemiological study was conducted by James Lind in 1747. His efforts led to the eventual control of scurvy. It wasn't until 1795 that the British Navy accepted his analysis and required limes in shipboard diets. Most solutions are not perfect. Disease is rarely eliminated. But might epidemiology be applied in the case of bullets to reduce suffering? I believe so.

In 1854 John Snow and William Farr collected data that clearly showed cholera was caused by contaminated drinking water. Snow removed the handle of the Broad Street pump in London to prevent people from drawing water from this contaminated water source and the disease stopped in that population. His observations led to a legislative mandate that all London water companies filter their water by 1857. Cholera epidemics subsided. Now treatment of sewage prevents cholera from entering our rivers and lakes, and the disinfection of drinking water makes water distribution systems uninhabitable for cholera vibrio, identified by Robert Koch as the causative agent 26 years after Snow's study.

In 1900, Walter Reed identified mosquitos as the carriers of yellow fever. Subsequent mosquito control efforts by another U.S. Army doctor, William Gorgas, enabled the United States to complete the Panama Canal. The French failed because their workers were too sick from yellow fever to work. Now that it is known that yellow fever is caused by a virus, vaccines are used to eliminate the spread of the disease.

These pioneering epidemiology success stories showed the world that epidemics require an interaction between three things: the host—the person who becomes sick or, in the case of bullets, the shooting victim); the agent—the cause of sickness, or the bullet); and the environment—the setting in which the sickness occurs or, in the case of bullets, violent behavior. Interrupt this epidemiological triad and you reduce or eliminate disease and injury.

How might this approach applies to the control of bullet-related injury and death? Again, we are contemplating something different from gun control. There is a precedent here. In the middle of this century it was recognized that epidemiology could be applied to automobile death and injury. From a governmental perspective, this hypothesis was first adopted in 1959, late in the administration of Gov. Averell Harriman of New York State. In the 1960 Presidential campaign, I drafted a statement on the subject which was released by Senator John F. Kennedy as part of a general response to enquiries from the American Automobile Association. Then Senator Kennedy stated:

> Traffic accidents constitute one of the greatest, perhaps the greatest of the nation's public health problems. They waste as much as 2 percent of our gross national product every year and bring endless suffering. The new highways will do much to control the rise of the traffic toll, but by themselves they will not reduce it. A great deal more investigation and research is needed. Some of this has already begun in connection with the highway program. It should be extended until highway safety research takes its place as an equal of the many similar programs of health research which the federal government supports.

Experience in the 1950's and early 1960's prior to passage of the Motor Vehicle Safety Act, showed that traffic safety enforcement campaigns designed to change human behavior did not improve traffic safety. In fact, the death and injury toll mounted. I was Assistant Secretary of Labor in the mid-1960's when Congress was developing the Motor Vehicle Safety Act, and I was called to testify.

It was clear to me and others that motor vehicle injuries and deaths could not be limited by regulating driver behavior. Nonetheless, we had an epidemic on our hands and we needed to do something about it. My friend William Haddon, the first Administrator of the National Highway Traffic Safety Administration, recognized that automobile fatalities were caused not by the initial collision, when the automobile strikes some object, but by a second collision, in which energy from the first collision is transferred to the interior of the car, causing the driver and occupants to strike the steering wheel, dashboard, or other structures in the passenger compartment. The second collision is the agent of injury to the hosts—the car's occupants.

Efforts to make automobiles crashworthy follow examples used to control infectious disease epidemics. Reduce or eliminate the agent of injury. Seatbelts, padded dashboards, and airbags are all specifically designed to reduce, if not eliminate, injury caused by the agent of automobile injuries, energy transfer to the human body during the second collision. In fact, we've done nothing revolutionary. All of the technology used to date to make cars crashworthy, including airbags, was developed prior to 1970.

Experience shows the approach worked. Of course, it could have worked better, but it worked. Had we been able to totally eliminate the agent—the second collision—the cure would have been complete. Nonetheless, merely by focusing on simple, achievable remedies, we reduced the traffic death and injury epidemic by 30 percent. Motor vehicle deaths declined in absolute terms by 13 percent from 1980 to 1990, despite significant increases in the number of drivers, vehicles, and miles driven. Driver behavior is changing, too. National seatbelt usage is up dramatically, 60 percent now compared to 14 percent in 1984. These efforts have resulted in some 15,000 lives saved and 100,000 injuries avoided each year.

We can apply that experience to the epidemic of murder and injury from bullets. The environment in which these deaths and injuries occur is complex. Many factors likely contribute to the rise in bullet-related injury. Here is an important similarity with the situation we faced 25 years ago regarding automobile safety. We found we could not easily alter the behavior of millions of drivers, but we could—easily—

change the behavior of three or four automobile manufacturers. Likewise, we simply cannot do much to change the environment—violent behavior—in which gun-related injury occurs, nor do we know how. We can, however, do something about the agent causing the injury: bullets. Ban them. At least the rounds used disproportionately to cause death and injury; that is, the .25 caliber, .32 caliber, and 9 millimeter bullets. These three rounds account for the ammunition used in about 13 percent of licensed guns in New York City, yet they are involved in one-third of all homicides. They are not, as I have said, useful for sport or hunting. They are used for violence. If we fail to confront the fact that these rounds are used disproportionately in crimes, innocent people will continue to die.

I have called on Congress during the past several sessions to ban or heavily tax these bullets. This would not be the first time that Congress has banned a particular round of ammunition. In 1986, it passed legislation written by the Senator from New York banning the so-called ''cop-killer'' bullet. This round, jacketed with tungsten alloys, steel, brass, or any number of other metals, had been demonstrated to penetrate no fewer than four police flak jackets and an additional five Los Angeles County phonebooks at one time. In 1982, the New York Police Benevolent Association came to me and asked me to do something about the ready availability of these bullets. The result was the Law Enforcement Officers Protection Act, which we introduced in 1982, 1983, and for the last time during the 99th Congress. In the end, with the tacit support of the National Rifle Association, the measure passed the Congress and was signed by the President as Public Law 99–408 on August 28, 1986. In the 1994 crime bill, we enacted my amendment to broaden the ban to include new thick steel-jacketed armor-piercing rounds.

There are some 220 million firearms in circulation in the United States today. They are, in essence, simple machines, and with minimal care, remain working for centuries. However, estimates suggest that we have only a 4-year supply of bullets. Some 2 billion cartridges are used each year. At any given time there are some 7.5 billion rounds in factory, commercial, or household inventory.

In all cases, with the exception of pistol whipping, gun-related injuries are caused not by the gun, but by the agents involved in the second collision: the bullets. Eliminating the most dangerous rounds would not end the problem of handgun killings. But it would reduce it. A 30-percent reduction in bullet-related deaths, for instance, would save over 10,000 lives each year and prevent up to 50,000 wounds.

Water treatment efforts to reduce typhoid fever in the United States took about 60 years. Slow sand filters were installed in certain cities in the 1880's, and water chlorination treatment began in the 1910's. The death rate from typhoid in Albany, NY, prior to 1889, when the municipal water supply was treated by sand filtration, was about 100 fatalities per 100,000 people each year. The rate dropped to about 25 typhoid deaths per year after 1889, and dropped again to about 10 typhoid deaths per year after 1915, when chlorination was introduced. By 1950, the death rate from typhoid fever had dropped to zero. It will likely take longer than 60 years to eliminate bullet-related death and injury, but we need to start with achievable measures to break the deadly interactions between people, bullets, and violent behavior.

The bills I introduce today would begin the process. They would begin to control the problem by banning or taxing those rounds used disproportionately in crime—the .25-caliber, .32-caliber, and 9-millimeter rounds. The bills recognize the epidemic nature of the problem, building on findings contained in the June 10, 1992 issue of the Journal of the American Medical Association which was devoted entirely to the subject of violence, principally violence associated with firearms.

Mr. President, it is time to confront the epidemic of bullet-related violence. I urge my colleagues to support these bills.

By Mr. DASCHLE (for himself, Mr. HOLLINGS, Mr. KENNEDY, Ms. MIKULSKI, Mr. LEVIN, MS. MOSELEY-BRAUN, Mrs. BOXER, Mrs. FEINSTEIN, Mr. INOUYE, Mrs. MURRAY, Mr. JOHNSON, Mr. BRYAN, Mr. SARBANES, Mr. FORD, and Mr. LAUTENBERG):

S. 143. A bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer; to the Committee on Labor and Human Resources.

THE BREAST CANCER PATIENT PROTECTION ACT OF 1997

Mr. DASCHLE. Mr. President, today Senator HOLLINGS and I are introducing the Breast Cancer Patient Protection Act of 1997. I want to thank Senators KENNEDY, MILULSKI, MOSELEY-BRAUN, BOXER, FEINSTEIN, LEVIN, INOUYE, MURRAY, JOHNSON, BRYAN, SARBANES, FORD and LANDRIEU, for joining us as original cosponsors. We welcome the support of all of our colleagues, on both sides of the aisle, for this important legislation. Our bill is a companion to H.R. 135, which was introduced in the House of Representatives by Representatives DELAURO, DINGELL, and ROUKEMA on January 7, 1997.

I bring this bill to the Senate both to put an end to the relatively new practice of forcing women to have mastectomies on an outpatient basis and to begin a discussion on how to develop and maintain policies that protect patients and ensure continued access to affordable high quality medical care.

Every 3 minutes another woman is diagnosed with breast cancer. This year alone, more than 180,000 women will find out they have breast cancer. This disease strikes at the core of American families, taking our mothers, wives, sisters, and daughters on an often terrifying tour of our health care system.

The Breast Cancer Patient Protection Act seeks to make the journey less worrisome by requiring insurance companies to provide at least a minimum amount of inpatient hospital care for patients undergoing mastectomies or lymph node dissections for the treatment of breast cancer. The language is modeled after last year's carefully drafted and unanimously supported compromise agreement that established a similar policy to end the practice of drive-through deliveries.

The bill was designed in part to counter a consulting firm's recommendation to its insurance company clients that both mastectomies and lymph node dissections be performed on an outpatients basis. As a result, some surgeons have been forced to send patients home still groggy from anesthesia and with drainage tubes in place. Yet, with few exceptions, hospitalization following major breast cancer surgery is necessary not only to control pain and manage postoperative care, but also to provide a supportive environment for women who have undergone an undeniably traumatic and challenging surgery.

Under this targeted legislation, women would be guaranteed at least 48 hours of impatient care following a mastectomy, and a minimum of 24 hours following lymph node dissection for the treatment of breast cancer. patients and their physicians—not insurance companies—could jointly decide whether it is appropriate for the patient to leave the hospital earlier. These timeframes, which were designed in consultation with surgeons who specialize in this area, reflect the minimum amount of inpatient care thought to be necessary following these procedures. It is our hope that insurers would choose to make an investment in the future health of their enrollees by allowing coverage for as long as the provider determines to be medically appropriate to ensure a proper recovery.

I would also like to call to your attention Senator KENNEDY's forthcoming bill that will require insurance companies who cover mastectomies to also cover reconstruction surgery. Too often, women and their physicians are faced with having to justify to the insurance carrier the clear need for reconstruction surgery following amputation of a diseased breast. This is wrong. Women who have undergone difficult and disfiguring surgery for

breast cancer should not have to undergo additional hardship while simply seeking to made physically whole again. Senator KENNEDY'S bill, which I will cosponsor, will address this important issue.

While these bills respond to ill-conceived policies that we believe have dangerous implications for women with breast cancer, let them serve as reminders of our broken health care system. Addressing health insurance problems relating to quality of care and patient protection issues on a piecemeal basis may be our only way to accomplish meaningful reforms in this increasingly important area.

With one in eight women likely to develop breast cancer, it is increasingly likely that all of our families will be in some way affected by this devastating disease. Let us take this small step to ensure the experience is not aggravated by unnecessarily difficult encounters with the companies that have agreed under contract to stand by us not only in health but also in sickness.

This bill is strongly supported by the National Breast Cancer Coalition, the National Alliance of Breast Cancer Organizations, the American College of Surgeons, the American Society of Plastic and Reconstructive Surgeons, the Y-Me National Breast Cancer Organization, the American Cancer Society, Families USA, and the Women's Legal Defense Fund.

Together, I am hopeful that we can put critical health care decisions back in the hands of breast cancer patients and their physicians.

Mr. President, I ask that the full text of the Breast Cancer Patient Protection Act be inserted following may remarks.

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

S. 143

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 ''Breast Cancer Patient Protection Act of 1997''.

SEC. 2. COVERAGE OF MINIMUM HOSPITAL STAY FOR CERTAIN BREAST CANCER TREATMENT.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

(A) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act, as amended by section 703(a) of Public Law 104–204, is amended by adding at the end the following new section:

''SEC. 2706. STANDARDS RELATING TO BENEFITS FOR CERTAIN BREAST CANCER TREATMENT.

''(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY FOLLOWING MASTECTOMY OR LYMPH NODE DISSECTION.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, may not—

''(A) except as provided in paragraph (2)—

''(i) restrict benefits for any hospital length of stay in connection with a mastectomy for the treatment of breast cancer to less than 48 hours, or

''(ii) restrict benefits for any hospital length of stay in connection with a lymph node dissection for the treatment of breast cancer to less than 24 hours, or

''(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

''(2) EXCEPTION.—Paragraph (1)(A) shall not apply in connection with any group health plan or health insurance issuer in any case in which the decision to discharge the woman involved prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the woman.

''(b) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

''(1) deny to a woman eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) provide monetary payments or rebates to women to encourage such women to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

''(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

''(c) RULES OF CONSTRUCTION.—

''(1) Nothing in this section shall be construed to require a woman who is a participant or beneficiary—

''(A) to undergo a mastectomy or lymph node dissection in a hospital; or

''(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

''(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

''(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

''(d) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 713(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.

''(e) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(f) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

''(1) IN GENERAL.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 2723(d)(1)) for a State that regulates such coverage that is described in any of the following subparagraphs:

''(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection for treatment of breast cancer.

''(B) Such State law requires, in connection with such coverage for surgical treatment of breast cancer, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the woman involved.

''(2) CONSTRUCTION.—Section 2723(a)(1) shall not be construed as superseding a State law described in paragraph (1).''.

(B) CONFORMING AMENDMENT.—Section 2723(c) of such Act (42 U.S.C. 300gg–23(c)), as amended by section 604(b)(2) of Public Law 104–204, is amended by striking ''section 2704'' and inserting ''sections 2704 and 2706''.

(2) ERISA AMENDMENTS.—

(A) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as amended by section 702(a) of Public Law 104–204, is amended by adding at the end the following new section:

''SEC. 713. STANDARDS RELATING TO BENEFITS FOR CERTAIN BREAST CANCER TREATMENT.

''(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY FOLLOWING MASTECTOMY OR LYMPH NODE DISSECTION.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, may not—

''(A) except as provided in paragraph (2)—

''(i) restrict benefits for any hospital length of stay in connection with a mastectomy for the treatment of breast cancer to less than 48 hours, or

''(ii) restrict benefits for any hospital length of stay in connection with a lymph node dissection for the treatment of breast cancer to less than 24 hours, or

''(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

''(2) EXCEPTION.—Paragraph (1)(A) shall not apply in connection with any group health plan or health insurance issuer in any case in which the decision to discharge the woman involved prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the woman.

''(b) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

''(1) deny to a woman eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) provide monetary payments or rebates to women to encourage such women to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

''(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

''(c) RULES OF CONSTRUCTION.—

''(1) Nothing in this section shall be construed to require a woman who is a participant or beneficiary—

''(A) to undergo a mastectomy or lymph node dissection in a hospital; or

''(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

''(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

''(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

''(d) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a)(1), for purposes of assuring notice of such requirements under the plan; except that the summary description required to be provided under the last sentence of section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.

''(e) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(f) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

''(1) IN GENERAL.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 731(d)(1)) for a State that regulates such coverage that is described in any of the following subparagraphs:

''(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection for treatment of breast cancer.

''(B) Such State law requires, in connection with such coverage for surgical treatment of breast cancer, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the woman involved.

''(2) CONSTRUCTION.—Section 731(a)(1) shall not be construed as superseding a State law described in paragraph (1).''.

(B) CONFORMING AMENDMENTS.—

(i) Section 731(c) of such Act (29 U.S.C. 1191(c)), as amended by section 603(b)(1) of Public Law 104–204, is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(ii) Section 732(a) of such Act (29 U.S.C. 1191a(a)), as amended by section 603(b)(2) of Public Law 104–204, is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(iii) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Standards relating to benefits for certain breast cancer treatment.''.

(b) INDIVIDUAL HEALTH INSURANCE.—

(1) IN GENERAL.—Part B of title XXVII of the Public Health Service Act, as amended by section 605(a) of Public Law 104–204, is amended by inserting after section 2751 the following new section:

''SEC. 2752. STANDARDS RELATING TO BENEFITS FOR CERTAIN BREAST CANCER TREATMENT.

''(a) IN GENERAL.—The provisions of section 2706 (other than subsection (d)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

''(b) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 713(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.

''(c) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

''(1) IN GENERAL.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 2723(d)(1)) for a State that regulates such coverage that is described in any of the following subparagraphs:

''(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection for treatment of breast cancer.

''(B) Such State law requires, in connection with such coverage for surgical treatment of breast cancer, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the woman involved.

''(2) CONSTRUCTION.—Section 2762(a) shall not be construed as superseding a State law described in paragraph (1).''.

(2) CONFORMING AMENDMENT.—Section 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2)), as added by section 605(b)(3)(B) of Public Law 104–204, is amended by striking ''section 2751'' and inserting ''sections 2751 and 2752''.

(c) EFFECTIVE DATES.—

(1) GROUP MARKET.—The amendments made by subsection (a) shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.

(2) INDIVIDUAL MARKET.—The amendment made by subsection (b) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after such date.

Ms. MOSELEY-BRAUN. Mr. President, I am pleased to join the list of cosponsors of the Breast Cancer Patient Protection Act of 1997. I think this act is vitally important to prevent health providers from cutting costs at the expense of women's health.

Breast cancer is the most common cancer among women. This year alone approximately 184,300 women will be diagnosed with breast cancer while another 44,300 women will die of the disease. Breast cancer is a disease that will affect one in every eight women. With statistics like these, it is possible that every family in America will feel the effects of this disease.

This act would ensure that health insurers which already provide for the treatment of breast cancer cover a minimum hospital stay of 48 hours for patients undergoing mastectomies and 24 hours for those undergoing lymph node removal if she and her doctor choose. I am cosponsoring this bill to ensure that breast cancer surgery is not relegated to routine outpatient surgery.

The average hospital stay of a breast cancer patient has dwindled from 4–6 to 2–3 days and currently some patients are sent home a few hours after their operation. Both the American College of Surgeons and the American Medical Association believe that most patients require hospital stays that are longer than the current trends. In addition, accepted practice has shown that breast cancer surgery patients require at least 48 hours in the hospital after a mastectomy and 24 hours' hospital stay after a lymph node removal.

The important aspect of this matter is that women are being sent home after breast cancer surgery before they are neither physically nor emotionally ready to be released from the hospital. The reason for sending these women home has nothing to do with medical standards of care and everything to do with the bottom line. I support the Breast Cancer Patient Protection Act because it will allow the decisions on how long to stay in the hospital to be determined by the patient and her doctor. If it is determined that the patient is not in need of a 48-hour stay, the doctor may release the patient from hospital care. The crucial distinction between this scenario and what is currently being practiced is that insurers will not be able to force someone out on a purely arbitrary basis. Decisions will be made based on the needs of the patient rather than the fiscal concerns of the insurer.

This legislation enjoys the support of the National Breast Cancer Coalition, the National Association of Breast Care Organizations, the Y-me National Breast Cancer Organization, the Families USA foundation, the Women's

Legal Defense Fund, and the American Society of Plastic and Reconstructive Surgeons.

I have given careful consideration to the issues involved and believe that this act will ensure that American women receive the health care treatment and coverage that they are entitled to. I strongly encourage all of my colleagues to endorse this effort.

Mr. FORD. Mr. President, I rise in support of the Breast Cancer Protection Act introduced earlier today by my friend the Democratic Leader, Senator Tom DASCHLE. I am pleased to be an original cosponsor of this important legislation to provide women with breast cancer the best care and health coverage available.

I come here not as an authority on this subject, but as one of the many Americans who have been touched by this disease. My own daughter is a breast cancer survivor, as is a former staff member. Unfortunately, another member of my staff for 18 years, Martha Moloney, was not so lucky. After a long battle with breast cancer, she died in November 1995.

It is for these women, and the thousands of others affected by this disease, that I lend my support to this effort to ensure all women with breast cancer are treated with dignity and respect. Rather than being rushed out the door hours after a breast cancer surgery, women deserve to consult with their physician to determine the appropriate hospital stay. That is why I am supporting the Breast Cancer Protection Act to provide a minimum hospital stay of 48 hours for mastectomies and 24 hours for lymph node removals.

Over the past 10 years, the length of hospitalization for patients undergoing breast cancer surgery has decreased significantly. Today, hospitalization time for patients undergoing mastectomies has dwindled to a mere 2–3 days, down from 4–6 days, 10 years ago.

Under pressure to cut costs, surgeons have been instructed by managed care companies to perform lymph node dissections and even mastectomies as outpatient surgery. I have heard stories about companies that require patients to be sent home a few hours after their surgery, even though they may be in severe pain, groggy from anesthesia, and have surgical tubes still in place. Some companies have even denied women hospitalization on the day of their surgery. These situations place doctors in the difficult position of having to choose between delivering the quality care their patients deserve and a penalty for failing to follow an insurer's guidelines.

Mr. President, women with breast cancer suffer not only from physical pain but also emotional and psychological trauma. They should not have to worry whether their physician is struggling to comply with an arbitrary length of stay guideline or their own best health interests. The Breast Cancer Protection Act will help ease their anxiety by ensuring that crucial health decisions are left in the hands of doctors and patients, not accountants.

I am pleased to support this important effort to provide women with breast cancer the thorough health care coverage they deserve.

Mr. Johnson. Mr. President, I am proud and grateful to be here today as a co-sponsor of The Beast Cancer Patient Protection Act of 1997. I am proud because this bill is the right thing to do—it's a common sense measure that protects women undergoing breast cancer treatments. And I am grateful because, as the husband of a woman who has suffered from breast cancer, I know that every step makes a difference in preserving and protecting the quality of life for those afflicted with this disease.

As health care costs spiral out of control, more and more decisions are being made based on the bottom-line rather than on the needs of the patient. A twenty-four hour stay is not always long enough for a mother and newborn child. And a twenty-four hour stay is often not long enough for a woman who has undergone surgical treatment for breast cancer.

I know this not just from literature or fact sheets or discussions with health care professionals. I know that twenty-four hours isn't long enough for everyone because I helped my wife home from the hospital after her cancer surgery. With tubes running everywhere, we brought her into our home twenty-two hours after her surgery. Many families aren't equipped to give the care needed. And many women aren't well enough to give themselves the care needed. An additional twenty-four hours in the hospital can decrease the risk of infection, allow women to rest more comfortably, and ensure that any crucial health care decision is being made in the best possible environment.

My wife and I are not alone. Nearly one out of every eight women will develop breast cancer. Approximately, 185,000 women will be diagnosed with the disease this year. Sadly, more than 44,000 women will also die from this disease in the next 365 days. The numbers of those afflicted with this disease must decrease, but the options must increase.

These are our grandmothers, our mothers, our daughters, our sisters, our wives. They deserve the best that we can give.

This bill does not do it all, but, as we look for a cure and other innovative treatments, it is part of a package to ease the pain of this invasive disease. I will do all that I can to make sure this bill becomes law.

Mr. HOLLINGS. Mr. President, first I want to thank my colleague, Senator DASCHLE, for introducing this legislation in the Senate. Also, I must thank Congresswoman ROSA DELAURO for taking the lead in the House in protecting mastectomy patients from new Health Management Organization [HMO] payment guidelines. Today, one in eight American women develop breast cancer, and they and their families will thank her when the bipartisan members of this Congress act to ensure that medical decisions for mastectomy patients are made by the doctors and patients involved in the case, rather than by HMO's or insurers.

When I notified one constituent that I would help introduce legislation to guarantee women at least 48 hours of hospital coverage for mastectomies and 24 hours for lymph node removals, he asked ''what have we come to when we need legislation like this?'' What have we come to, indeed.

Most Senators are not doctors, but common sense dictates that mastectomy is not generally an outpatient procedure. Not only the pain, but also the need to tend drainage tubes and the psychological shock usually require at least two days of medical care and adjustment, and often more. Unfortunately, managed care payment rules have led to cases where women are forced out of the hospital on the same day as their mastectomies, before spending a night in the hospital.

These extreme cases are part of a nationwide reduction in hospital stays for women with breast cancer. Outpatient mastectomies have risen from less than two percent of mastectomies 5 years ago to nearly 8 percent now. Mastectomy patients overall now spend only half of the time in the hospital that they would have ten years ago—2–3 days rather than 4–6. Medical experts know that sometimes a shorter stay is appropriate or even requested by a patient who wants to get home and has access to adequate follow-up care. But we obviously need to take note of increased pressure to send women home early. Medical and personal considerations between the patient and attending physician, and not HMO financial rules, should be the determining factor.

I am still collecting data in my home State of South Carolina, which is among the States least affected so far by HMO's. With our more personalized medicine, we have not seen the same-day discharges without an overnight stay. But South Carolina has a relatively high number of mastectomies and it appears that many South Carolina women stay 21 hours, or 23 hours in the hospital after their surgery. Again, something is wrong when patients tell me that they felt like the stay was too short, the newfound pain was still there, and the medical practitioners speak in terms of 21 or 23 hours. Obviously, this is someone's attempt to call a procedure ''outpatient'' by not covering 24 hours in the hospital, and it represents a more subtle affect of insurance payment rules on medicine which this Congress should consider.

Mr. President, I will also join my colleagues, Senator D'AMATO and Senator SNOWE, in introducing slightly broader legislation. I am heartened that so many Senators of both parties are anxious to pass legislation in this area and

I commend their bipartisanship. I invite all of my colleagues to join these efforts to make sure in this Congress that doctors and breast cancer patients, rather than insurers, determine the best length of stay in the hospital for each mastectomy case.

Mr. KENNEDY. Mr. President, I join Senator DASCHLE in introducing legislation to ban the abusive practice of drive-by" mastectomies. This legislation will respond to the concerns of women throughout the country who fear that, in dealing with the cruel disease of breast cancer, their health plan's bottom line will take precedence over their health needs. This legislation will require health insurers to provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer. The legislation allows outpatient surgery when the patient and the doctor decide that a hospital stay is not necessary, but it prohibits a health plan from forcing patients to go home on the same day that they have these major surgical procedures.

The Daschle bill is a companion to bipartisan legislation (H.R.135) introduced by Representative ROSA DELAURO in the House of Representatives. It will ban an abusive practice that even the health plans themselves have recognized should not be tolerated.

This legislation is of major importance to millions of women. Breast cancer is the most common solid tissue cancer among women. In 1996, approximately 184,000 new cases of invasive breast cancer were diagnosed. It is now the leading cause of death in women between the ages of 40 and 55.

This legislation is supported by the National Breast Cancer Coalition the National Association of Breast Care Organizations, the Y-me National Breast Cancer Organization, the Families USA Foundation, the Women's Legal Defense Fund, and the American Society of Plastic and Reconstructive Surgeons. It prohibits plans from requiring hospital stays shorter than 48 hours for patients after mastectomy and 24 hours after lymph node dissection.

Decisions about the need for hospital care after such surgery should be made by a woman and her doctor. The social, medical, geographic and health issues unique to each person must be considered in deciding the required amount of in-hospital care. In certain circumstances and with proper support, it may be possible for some women to undergo these procedures with a shorter hospital stay, or even on occasion as an outpatient. Each circumstance is unique.

This bill preserves every woman's ability to avail herself of needed services without fear of penalty or prejudice. It does not require a stay in the hospital for any fixed period of time. Rather, it guarantees that hospital care will be provided when it is needed.

Last year, Congress voted overwhelmingly to ban the practice of health plans forcing excessively short stays after delivery of a baby. This legislation is a further needed step to protect consumers against a particularly abusive practice, and I look forward to its early bipartisan approval by Congress.

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

S. 144. A bill to establish the Commission to Study the Federal Statistical System, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL STATISTICAL SYSTEM LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to reintroduce, along with Senator KERREY of Nebraska, legislation to establish a commission to study the Federal Statistical System.

Statistics are part of our constitutional arrangement, which provides for a decennial census that, among other purposes, is the basis for apportionment of membership in the House of Representatives. I quote from Article I, Section I:

* * * enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

But, while the Constitution directed that there be a census, there was, initially, no Census Bureau. The earliest censuses were conducted by U.S. marshals. Later on, statistical bureaus in State governments collected the data, with a Superintendent of the Census overseeing from Washington. It was not until 1902 that a permanent Bureau of the Census was created by the Congress, housed initially in the Interior Department. In 1903 the Bureau was transferred to the newly established Department of Commerce and Labor.

The Statistics of Income Division of the Internal Revenue Service, which was originally an independent body, began collecting data in 1866. It too was transferred to the new Department of Commerce and Labor in 1903, but then was put in the Treasury Department in 1913 following ratification of the 16th amendment, which gave Congress the power to impose an income tax.

A Bureau of Labor, created in 1884, was also initially in the Interior Department. The first Commissioner, appointed in 1885, was Colonel Carroll D. Wright, a distinguished Civil War veteran of the New Hampshire Volunteers. A self-trained social scientist, Colonel Wright pioneered techniques for collecting and analyzing survey data on income, prices, and wages. He had previously served as chief of the Massachusetts Bureau of Statistics, a post he held for 15 years, and in that capacity had supervised the 1880 Federal census in Massachusetts.

In 1888, the Bureau of Labor became an independent agency. In 1903 it was once again made a Bureau, joining other statistical agencies in the Department of Commerce and Labor. When a new Department of Labor was formed in 1913, giving labor an independent voice—as labor was ''removed'' from the Department of Commerce and Labor—what we now know as the Bureau of Labor Statistics was transferred to it.

And so it went. Statistical agencies sprung up as needed. And they moved back and forth as new executive departments were formed. Today, some 89 different organizations in the Federal Government comprise parts of our national statistical infrastructure. Eleven of these organizations have as their primary function the generation of data. These 11 organizations are:

Agency	Department	Date Established
National Agricultural Statistical Service	Agriculture	1863
Statistics of Income Division, IRS	Treasury	1866
Economic Research Service	Agriculture	1867
National Center for Education Statistics	Education	1867
Bureau of Labor Statistics	Labor	1884
Bureau of the Census	Commerce	1902
Bureau of Economic Analysis	Commerce	1912
National Center for Health Statistics	Health and Human Services.	1912
Bureau of Justice Statistics	Justice	1968
Energy Information Administration	Energy	1974
Bureau of Transportation Statistics	Transportation	1991

NEED FOR LEGISLATION

President Kennedy once said:

Democracy is a difficult kind of government. It requires the highest qualities of self-discipline, restraint, a willingness to make commitments and sacrifices for the general interest, and also it requires knowledge.

That knowledge often comes from accurate statistics. You cannot begin to solve a problem until you can measure it.

This legislation would require the new commission to conduct a comprehensive examination of our current statistical system and focus particularly on the agencies that produce data as their primary product—agencies such as the Bureau of Economic Analysis [BEA] and the Bureau of Labor Statistics [BLS].

In September 1996, prior to the first introduction of this bill, I received a letter from nine former chairmen of the Council of Economic Advisers [CEA] endorsing this legislation. Excluding the two most recent chairs, who were still serving in the Clinton administration, the signatories include virtually every living chair of the CEA. While acknowledging that the United States ''possesses a first-class statistical system,'' these former chairmen remind us that ''problems periodically arise under the current system of widely scattered responsibilities.'' They conclude as follows:

Without at all prejudging the appropriate measures to deal with these difficult problems, we believe that a thoroughgoing review by a highly qualified and bipartisan Commission as provided in your Bill has great promise of showing the way to major improvements.

The letter is signed by: Michael J. Boskin, Martin Feldstein, Alan Greenspan, Paul W. McCracken, Raymond J.

Saulnier, Charles L. Schultze, Beryl W. Sprinkel, Herbert Stein, and Murray Weidenbaum.

I ask unanimous consent that the full text of this letter be printed in the RECORD following my statement.

It happens that this Senator's association with the statistical system in the executive branch began over three decades ago. I was Assistant Secretary of Labor for Policy and Planning in the administration of President John F. Kennedy. This was a new position in which I was nominally responsible for, inter alia, the Bureau of Labor Statistics. I say nominally out of respect for the independence of that venerable institution, which as I noted earlier long predated the Department of Labor itself. The then-Commissioner of the BLS, Ewan Clague, could not have been more friendly and supportive. And so were the statisticians, who undertook to teach me to the extent I was teachable. They even shared professional confidences. And so it was that I came to have some familiarity with the field.

For example, we had just received a report on price indexes from a committee led by George J. Stigler, who later won a Nobel prize in economics.

The Committee stressed the importance of accurate and timely statistics, noting that:

> The periodic revision of price indexes, and the almost continuous alterations in details of their calculation, are essential if the indexes are to serve their primary function of measuring the average movements of prices.

And while the recently released Final Report of the Advisory Commission To Study The Consumer Index (The Boskin Commission) focused primarily on the extent to which changes in the CPI overstate inflation, the Boskin Commission also addressed issues related to the effectiveness of Federal statistical programs and recommended that:

> Congress should enact the legislation necessary for the Department of Commerce and Labor to share information in the interest of improving accuracy and timeliness of economic statistics and to reduce the resources consumed in their development and production.

Our Government officials are not oblivious to the growing need for reform. In fact, Under Secretary of Commerce for Economic Affairs Everett M. Ehrlich has been most forthcoming on this point. In a November 24, 1996 New York Times article, Under Secretary Ehrlich states:

> Our statistical system is failing to keep track with a rapidly changing economy. The data we provide give us a good picture of where we are in the business cycle but risk misrepresenting such long-term phenomena as inflation, productivity growth and the economy's changing composition.

To address this problem, Under Secretary Ehrlich has proposed a 3-year program to improve the Department of Commerce's measurement of statistics.

There is, of course, a long history of attempts to reform our Nation's statistical infrastructure. Between 1903 and 1990, 16 different committees, commissions, and study groups have convened to assess our statistical infrastructure, but in most cases little or no action has been taken on their recommendations. The result of this inaction has been an ever-expanding statistical system. It continues to grow in order to meet new data needs, but with little or no regard for the overall objectives of the system. Janet L. Norwood, former Commissioner of the BLS, writes in her book Organizing to Count:

> The U.S. system has neither the advantages that come from centralization nor the efficiency that comes from strong coordination in decentralization. As presently organized, therefore, the country's statistical system will be hard pressed to meet the demands of a technologically advanced, increasingly internationalized world in which the demand for objective data of high quality is steadily rising.

In this era of government downsizing and budget cutting it is unlikely that Congress will appropriate more funds for statistical agencies. It is clear that to preserve and improve the statistical system we must consider reforming it, yet we must not attempt to reform the system until we have heard from experts in the field. It is also clear there is a need for a comprehensive review of the Federal statistical infrastructure. For if the public loses confidence in our statistics, they are likely to lose confidence in our policies as well.

DESCRIPTION OF LEGISLATION

The legislation established the Commission to Study the Federal Statistical System. The Commission would consist of 13 members: 5 appointed by the President with no more than 3 from the same political party, 4 appointed by the President pro tempore of the Senate with no more than 2 from the same political party, and 4 appointed by the Speaker of the House with no more than 2 from the same political party. A chairman would be selected by the President from the appointed members. The members must have expertise in statistical policy with a background in disciplines such as actuarial science, demography, economics, finance, and management.

The Commission will conduct a comprehensive study of all matters relating to the Federal statistical infrastructure, including: and examination of multipurpose statistical agencies such as the Bureau of Labor Statistics [BLS]; a review and evaluation of the mission and organizational structure of statistical agencies, including activities that should be expanded or eliminated and the advantages and disadvantages of a centralized statistical agency; an examination of the methodology involved in producing data and the accuracy of the data itself; a review of interagency coordination and standardization of collection procedures; a review of information technology and an assessment of how data is disseminated to the public; an identification and examination of issues regarding individual privacy in the context of statistical data; a comparison of our system with the systems of other nations; and recommendations for a strategy to maintain a modern and efficient statistical infrastructure.

All of these objectives will be addressed in an interim report due no later than June 1, 1998, with a final report due January 15, 1999.

The Commission is expected to spend $10 million: $2.5 million in 1997, $5 million in 1998, and $2.5 million in 1999. The Commission will cease to exist 90 days after the final report is submitted.

This legislation is only a first step, but an essential one. The Commission will provide Congress with a blueprint for reform. It will be up to us to finally take action after nearly a century of inattention to this very important issue.

Mr. President, I ask unanimous consent that the text of the legislation be printed in the RECORD immediately after my statement.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 144

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 ''Commission to Study the Federal Statistical System Act of 1997''.

SEC. 2. FINDINGS.

The Congress, recognizing the importance of statistical information in the development and administration of policies for the private and public sector, finds that—

(1) accurate Federal statistics are required to develop, implement, and evaluate government policies and laws;

(2) Federal spending consistent with legislative intent requires accurate and appropriate statistical information;

(3) business and individual economic decisions are influenced by Federal statistics and contracts are often based on such statistics;

(4) statistical information on the manufacturing and agricultural sectors is more complete than statistical information regarding the service sector which employs more than half the Nation's workforce;

(5) experts in the private and public sector have long-standing concerns about the accuracy and adequacy of numerous Federal statistics, including the Consumer Price Index, gross domestic product, trade data, wage data, and the poverty rate;

(6) Federal statistical data should be accurate, consistent, continuous, and be designed to best serve explicitly stated purposes;

(7) the Federal statistical infrastructure should be modernized to accommodate the increasingly complex and ever changing American economy;

(8) Federal statistical agencies should utilize all practical technologies to disseminate statistics to the public;

(9) the Federal statistical infrastructure should maintain the privacy of individuals; and

(10) the Federal statistical system should be designed to limit redundancy of activities while achieving the maximum practical level of knowledge, expertise, and data.

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Commission to Study the Federal Statistical System (hereafter in this Act referred to as the ''Commission'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 13 members of whom—

(A) 5 shall be appointed by the President;

(B) 4 shall be appointed by the President pro tempore of the Senate, in consultation with the Majority Leader and Minority Leader of the Senate; and

(C) 4 shall be appointed by the Speaker of the House of Representatives, in consultation with the Majority Leader and Minority Leader of the House of Representatives.

(2) POLITICAL PARTY LIMITATION.—(A) Of the 5 members of the Commission appointed under paragraph (1)(A), no more than 3 members may be members of the same political party.

(B) Of the 4 members of the Commission appointed under subparagraphs (B) and (C) of paragraph (1), respectively, no more than 2 members may be members of the same political party.

(3) CONSULTATION BEFORE APPOINTMENTS.—In making appointments under paragraph (1), the President, the President pro tempore of the Senate, and the Speaker of the House of Representatives shall consult with the National Academy of Sciences and appropriate professional organizations, such as the American Economic Association and the American Statistical Association.

(4) QUALIFICATIONS.—An individual appointed to serve on the Commission—

(A) shall have expertise in statistical policy and a background in such disciplines as actuarial science, demography, economics, finance, and management;

(B) may not be a Federal officer or employee; and

(C) should be an academician, a statistics user in the private sector, a corporate manager with experience related to information technology, or a former government official with experience related to—

(i) the Bureau of Labor Statistics of the Department of Labor; or

(ii) the Bureau of Economic Analysis or the Bureau of the Census of the Department of Commerce.

(5) DATE.—The appointments of the members of the Commission shall be made no later than 150 days after the date of the enactment of this Act.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) MEETINGS.—The Commission shall meet at the call of the Chairman.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRMAN.—The President shall designate a Chairman of the Commission from among the members.

SEC. 4. FUNCTIONS OF THE COMMISSION.

(a) STUDY.—

(1) IN GENERAL.—The Commission shall conduct a comprehensive study of all matters relating to the Federal statistical infrastructure, including longitudinal surveys conducted by private agencies and partially funded by the Federal Government, for the purpose of identifying opportunities to improve the quality of statistics in the United States.

(2) STUDY AND RECOMMENDATIONS.—The matters studied by and recommendations of the Commission shall include—

(A) an evaluation of the accuracy and appropriateness of key statistical indicators and recommendations on ways to improve such accuracy and appropriateness so that the indicators better serve the major purposes for which they were intended;

(B) an examination of multipurpose statistical agencies that collect and analyze data of broad interest across department and functional areas, such as the Bureau of Economic Analysis and the Bureau of the Census of the Commerce Department, and the Bureau of Labor Statistics of the Labor Department, for the purpose of understanding the interrelationship and flow of data among agencies;

(C) a review and evaluation of the collection of data for purposes of administering such programs as Old-Age, Survivors and Disability Insurance and Unemployment Insurance under the Social Security Act;

(D) a review and evaluation of the mission and organization of various statistical agencies, including—

(i) recommendations with respect to statistical activities that should be expanded or eliminated;

(ii) the order of priority such activities should be carried out;

(iii) a review of the advantages and disadvantages of a centralized statistical agency or a partial consolidation of the agencies for the Federal Government; and

(iv) an assessment of which agencies could be consolidated into such an agency;

(E) an examination of the methodology involved in producing official data and recommendations for technical changes to improve statistics;

(F) a review of interagency coordination of statistical data and recommendations of methods to standardize collection procedures and surveys, as appropriate, and presentation of data throughout the Federal system;

(G) a review of information technology and recommendations of appropriate methods for disseminating statistical data, with special emphasis on resources, such as the Internet, that allow the public to obtain and report information in a timely and cost-effective manner;

(H) an identification and examination of issues regarding individual privacy in the context of statistical data;

(I) a comparison of the United States statistical system to statistical systems of other nations for the purposes of identifying best practices and developing a system of maintaining best practices over time;

(J) a consideration of the coordination of statistical data with other nations and international agencies, such as the Organization for Economic Cooperation and Development; and

(K) a recommendation of a strategy for maintaining a modern and efficient Federal statistical infrastructure to produce meaningful information as the United States society and economy change.

(b) REPORT.—

(1) INTERIM REPORT.—No later than June 1, 1998, the Commission shall submit an interim report on the study conducted under subsection (a) to the President and to the Congress.

(2) FINAL REPORT.—No later than January 15, 1999, the Commission shall submit a final report to the President and the Congress which shall contain a detailed statement of the findings and conclusions of the Commission, and recommendations for such legislation and administrative actions as the Commission considers appropriate.

SEC. 5. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 6. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) IN GENERAL.—Subject to paragraph (2), each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(2) CHAIRMAN.—The Chairman shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level III of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission. Such travel may include travel outside the United States.

(c) STAFF.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission shall, without regard to the provisions of title 5, United States Code, relating to the competitive service, appoint an executive director who shall be paid at a rate equivalent to a rate established for the Senior Executive Service under section 5382 of title 5, United States Code. The Commission shall appoint such additional personnel as the Commission determines to be necessary to provide support for the Commission, and may compensate such additional personnel without regard to the provisions of title 5, United States Code, relating to the competitive service.

(2) LIMITATION.—The total number of employees of the Commission (including the executive director) may not exceed 30.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 7. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits the final report of the Commission.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $2,500,000 for fiscal year 1997, $5,000,000 for fiscal year 1998, and $2,500,000 for fiscal year 1999 to the Commission to carry out the purposes of this Act.

SEPTEMBER 23, 1996.

Hon. DANIEL P. MOYNIHAN,
Hon. J. ROBERT KERREY,
U.S. Senate,
Washington, DC.

DEAR SENATORS MOYNIHAN AND KERREY: All of us are former Chairmen of the Council of Economic Advisers. We write to support the basic objectives and approach of your Bill to establish the Commission to Study the Federal Statistical System.

The United States possesses a first-class statistical system. All of us have in the past relied heavily upon the availability of reasonably accurate and timely federal statistics on the national economy. Similarly, our professional training leads us to recognize how important a good system of statistical information is for the efficient operations of our complex private economy. But we are also painfully aware that important problems of bureaucratic organization and methodology need to be examined and dealt with if the federal statistical system is to continue to meet essential public and private needs.

All of us have particular reason to remember the problems which periodically arise under the current system of widely scattered responsibilities. Instead of reflecting a balance among the relative priorities of one statistical collection effort against others, statistical priorities are set in a system within which individual Cabinet Secretaries recommend budgetary tradeoffs between their own substantive programs and the statistical operations which their departments, sometimes by historical accident, are responsible for collecting. Moreover, long range planning of improvements in the federal statistical system to meet the changing nature and needs of the economy is hard to organize in the present framework. The Office of Management and Budget and the Council of Economic Advisers put a lot of effort into trying to coordinate the system, often with success, but often swimming upstream against the system.

We are also aware, as of course are you, of a number of longstanding substantive and methodological difficulties with which the current system is grappling. These include the increasing importance in the national economy of the service sector, whose output and productivity are especially hard to measure, and the pervasive effect both on measures of national output and income and on the federal budget of the accuracy (or inaccuracy) with which our measures of prices capture changes in the quality of the goods and services we buy.

Without at all prejudging the appropriate measures to deal with these difficult problems, we believe that a thoroughgoing review by a highly qualified and bipartisan Commission as provided in your Bill has great promise of showing the way to major improvements.

Sincerely,

Professor Michael J. Boskin, Stanford University; Dr. Martin Feldstein, National Bureau of Economic Research; Alan Greenspan; Professor Paul W. McCracken, University of Michigan; Raymond J. Saulnier; Charles L. Schultze, The Brookings Institution; Beryl W. Sprinkel; Herbert Stein, American Enterprise Institute; Professor Murray Weidenbaum, Center for the Study of American Business.

By Mr. MOYNIHAN:

S. 145. A bill to repeal the prohibition against government restrictions on communications between government agencies and the INS; to the Committee on the Judiciary.

GOVERNMENT AGENCIES LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation to repeal section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and subsections (a) and (b) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 434 of the first act provides that:

> Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service (INS) information regarding the immigration status, lawful or unlawful, of an alien in the United States.

This provision, along with portions of section 642 of the aforementioned illegal immigration law, conflicts with an executive order, issued by the mayor of New York in 1985, prohibiting city employees from reporting suspected illegal aliens to the Immigration and Naturalization Service unless the alien has been charged with a crime. The executive order, which is similar to local laws in other States and cities, was intended to ensure that fear of deportation does not deter illegal aliens from seeking emergency medical attention, reporting crimes, and so forth.

On September 8, 1995, during Senate consideration of H.R. 4, the Work Opportunity Act of 1995, Senators SANTORUM and NICKLES offered this provision as an amendment. The amendment was adopted by a vote of 91 to 6. The Senators who voted ''no'' were: AKAKA, CAMPBELL, INOUYE, MOSELEY-BRAUN, MOYNIHAN, and SIMON.

Four of these six—Senators AKAKA, MOSELEY-BRAUN, SIMON, and the Senator from New York—were also among the 11 Democrats who voted against H.R. 4 when it passed the Senate 11 days later on September 19, 1995. The provision remained in H.R. 3734, the welfare bill recently signed by President Clinton.

Mayor Rudolph W. Giuliani of New York City filed suit last year to challenge section 434 of the new welfare law and section 642 of the illegal immigration law in U.S. District Court and I introduced a similar bill at the time. The mayor's lawsuit deserves to succeed for the same reason this legislation deserves to pass: the provisions at issue are onerous and represent bad public policy.

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. 145

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

SECTION 1. REPEAL OF THE PROHIBITION AGAINST GOVERNMENT RESTRICTIONS ON COMMUNICATIONS BETWEEN GOVERNMENT AGENCIES AND THE INS.

(a) WELFARE.—Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, 110 Stat. 2275) is repealed.

(b) IMMIGRATION.—Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208, 110 Stat 3009–1834) is amended—

(1) by striking subsections (a) and (b); and

(2) in subsection (c), by striking ''(c) OBLIGATION TO RESPOND TO INQUIRIES.—''.

By Mr. FRIST (for Mr. ROCKEFELLER (for himself and Mr. FRIST)):

S. 146. A bill to permit medicare beneficiaries to enroll with qualified provider-sponsored organizations under title XVIII of the Social Security Act, and for other purposes; to the Committee on Finance.

THE PROVIDER-SPONSORED ORGANIZATION ACT OF 1997

● Mr. ROCKEFELLER. Mr. President. I am extremely pleased to be introducing legislation with my colleague from Tennessee, Senator FRIST, that will give Medicare beneficiaries the opportunity to receive their health care services from a locally-based, provider-owned and operated, health care plan.

In my own State of West Virginia, the health care landscape is changing rapidly. Managed care is becoming more prominent, and, with it, a concern that profits are being put ahead of a patient's health care needs. My constituents want to be sure that their doctor is making his or her own medical decisions on patient care and treatment. They do not want to be told that their care is being directed by anonymous insurance officials in another State available only through a 1–800 phone number.

Under current law, Medicare beneficiaries have a choice of receiving their health care services under traditional Medicare fee-for-service or from a Health Maintenance Organization (HMO). Our legislation would allow seniors to choose another option and would make sure that patient care and treatment decisions remain in the hands of health care providers. This is accomplished by allowing provider-sponsored organizations [PSOs] to directly provide benefits to Medicare beneficiaries without the insurance middleman. Our bill would mean that insurance administrative and overhead costs would be reduced, freeing funds which are better spent on patient care costs.

Our legislation is necessary because insurance regulations in most States do not take into account the unique characteristics of a PSO. Only 4 States have adopted licensure requirements aimed at encouraging the development of provider sponsored organizations. Our bill carves out a time-limited Federal role of 4 years for direct federal Medicare certification as a qualified PSO. During those 4 years, a PSO could

apply directly to the Medicare Program to be designated as a qualified PSO that would be paid on a capitated prospective basis and could serve Medicare beneficiaries. Beginning on January 1, 2002, State licensure would replace the Federal certification process as long as a State's standards for PSOs were sufficiently similar to Federal PSO standards. PSOs could continue to apply for a Federal waiver after the initial 4 years if a State failed to act on a PSO's application within a reasonable time period or if a State continued to apply unfair or unreasonable criteria for PSOs to enter the market.

Mr. President, our bill is actually quite similar to legislation enacted in the early 70s directed at promoting and fostering the growth of HMOs. According to a recent issue briefing prepared by the Congressional Research Service on the HMO debate in the 1970s, ''state solvency requirements were seen as excessive and unappreciative of the unique resources available to a HMO . . . the outcome of the debate was the Health Maintenance Organization Act . . . which enabled HMOs meeting Federal requirements to be exempt from specific State laws.'' In many States, the State HMO requirements that evolved were designed to address issues presented by large, insurer-owned and operated HMOs, not smaller community-based provider organizations.

Our bill does not in any way weaken quality assurance or solvency standards for PSOs that choose to contract directly with the Medicare program. Our legislation is very specific on the solvency and quality standards that must be met in order for a PSO to be federally qualified. Overall, I believe, our standards are even more detailed and explicit than current Medicare law relating to quality and solvency for HMOs.

Our bill retains all of the consumer protections in current law that apply to health plans that serve Medicare beneficiaries. Beneficiaries would continue to be protected from incurring any financial liability if a health care plan became insolvent. In addition, rules on open enrollment and arranging for continuing Medigap coverage—without any pre-existing condition limitations—would apply as they do under current Medicare law. Our legislation would also require Medicare to contract with local agencies for ongoing monitoring of PSO performance and beneficiary access to services.

Specifically on solvency, our legislation builds on fiscal soundness and solvency standards that were developed by the National Association of Insurance Commissioners [NAIC]. Our bill slightly modifies the HMO Model Act to take into account how affiliation arrangements are structured within PSOs. It also recognizes a variety of alternative means, that many States already use, of meeting the solvency standards. In this way, our approach goes beyond earlier PSO legislative proposals which merely required the Secretary to develop specific solvency standards. I believe this approach will address concerns raised by some that complete secretarial discretion on fiscal soundness and solvency would somehow result in weakened solvency standards.

In 1972, a proxy measure for quality was enacted by Congress which required health plans to meet an arbitrary standard of plan enrollment. Under the so-called ''50–50 rule,'' a health plan's Medicare and Medicaid enrolles cannot exceed 50 percent of its total enrollment. The underlying premise of the 50–50 rule is that if a plan has a significant enrollment of private or commercial enrolles its quality will be higher than a health plan strictly serving Medicaid or Medicare beneficiaries. This is an issue that is especially important in rural States like West Virginia. Many rural provider networks—which this bill seeks to encourage—would be unable to meet a 50–50 enrollment quota because a disproportionate share of the elderly reside in rural areas.

Also, since adoption of the 50–50 rule, there have been significant advances made in measuring and assuring quality care. While still far from perfect, I believe that we have gained sufficient knowledge to adopt an approach that relies on specific quality standards, rather than a rough proxy based on a plan's enrollment mix. Quality assurance will continue to be a work in progress, but our bill begins to lay the groundwork for explicitly setting and measuring the quality of health care received by Medicare beneficiaries. Under our bill, the 50–50 rule would be waived for any health plan that contracts with the Medicare Program if the plan meets the enhanced quality requirements in our bill and also has experience in providing managed or coordinated care. PSOs would go further by adhering to additional standards governing utilization review to reduce intrusions into the doctor patient relationship, as well as how physicians participate in PSO networks.

Mr. President, last year Congress debated a variety of ways to improve quality and to put an end to medical decision-making driven by a desire to earn hefty profits for a company's stockholders. Our bill gives health care providers the opportunity to get back in the driver's seat. In addition, by cutting out the insurance company middleman, more money could be spent on providing patient care instead of on processing claims and realizing profits.

I look forward to discussing this issue and pursuing the goal of this new bill later this year with my colleagues in the Finance Committee as we look at a variety of ways to improve and strengthen the Medicare program.

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. 146

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Provider-Sponsored Organization Act of 1997''.

(b) REFERENCES TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

SEC. 2. QUALIFIED PROVIDER-SPONSORED ORGANIZATIONS AS MEDICARE HEALTH PLAN OPTION.

Section 1876(b) (42 U.S.C. 1395mm(b)) is amended to read as follows:

''(b)(1) For purposes of this section, the term 'eligible organization' means a public or private entity (which may be a health maintenance organization, a competitive medical plan, or a qualified provider-sponsored organization) that—

''(A) is organized and licensed under State law to offer prepaid health services or health benefits coverage in each State in which the entity seeks to enroll individuals who are entitled to benefits under this title; and

''(B) is described in paragraph (2), (3), or (4).

''(2) An entity is described in this paragraph if the entity is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act).

''(3)(A) An entity is described in this paragraph if the entity—

''(i) provides to enrolled members health care services that include at least—

''(I) physicians' services performed by physicians (as defined in section 1861(r)(1));

''(II) inpatient hospital services;

''(III) laboratory, X-ray, emergency, and preventive services; and

''(IV) out-of-area coverage;

''(ii) is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member;

''(iii) provides physicians' services primarily—

''(I) directly through physicians who are either employees or partners of such organization; or

''(II) through contracts with individual physicians or 1 or more groups of physicians (organized on a group practice or individual practice basis);

''(iv) except as provided in subsection (i), assumes full financial risk on a prospective basis for the provision of health care services listed in clause (i), except that such entity may—

''(I) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in clause (i), the aggregate value of which exceeds $5,000 in any year;

''(II) obtain insurance or make other arrangements for the cost of health care services listed in clause (i) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity;

''(III) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its

fiscal years exceed 115 percent of its income for such fiscal year; and

''(IV) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions; and

''(v) has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

''(B) Subparagraph (A)(i)(II) shall not apply to an entity that has contracted with a single State agency administering a State plan approved under title XIX for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.

''(4) An entity is described in this paragraph if the entity is a qualified provider-sponsored organization (as defined in subsection (l)(1)(A)).''.

SEC. 3. PARTIAL RISK ARRANGEMENTS.

Section 1876 (42 U.S.C. 1395mm) is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (h) the following:

''(i) The Secretary may enter into a partial risk contract with an eligible organization under which—

''(1) notwithstanding subsection (b)(3)(A)(iv), the organization and the program established under this title share the financial risk associated with the services the organization provides to individuals entitled to benefits under part A and enrolled under part B or enrolled under part B only;

''(2) notwithstanding subsections (a)(1) and (h)(2), payment is based on—

''(A) a blend of—

''(i) the payments that would otherwise be made to such organization under a risk-sharing contract under subsection (g); and

''(ii) the payments that would be made to such organization under a reasonable cost reimbursement contract under subsection (h); or

''(B) any other methodology agreed upon by the Secretary and the organization; and

''(3) adjustments, if appropriate, are made to payments to the organization under this section to reflect any risk assumed by such program.''.

SEC. 4. STANDARDS AND REQUIREMENTS FOR QUALIFIED PROVIDER-SPONSORED ORGANIZATIONS.

Section 1876 (42 U.S.C. 1395mm), as amended by section 3 of this Act, is amended by adding at the end the following:

''(l)(1)(A) For purposes of this section, the term 'qualified provider-sponsored organization' means a provider-sponsored organization that—

''(i) provides a substantial proportion (as defined by the Secretary, in accordance with subparagraph (C) and the regulations established under section 1889) of the health care items and services under the contract under this section directly through the provider or through an affiliated group of providers that comprise the organization; and

''(ii) is certified under section 1890 as meeting the regulations established under section 1889, which, except as provided in the succeeding paragraphs of this subsection, shall be based on the requirements that apply to an organization described in subsection (b)(3) with a risk contract under subsection (g).

''(B) For purposes of this section, the term 'provider-sponsored organization' means a public or private entity that is a provider or a group of affiliated providers organized to deliver a spectrum of health care services (including basic hospital and physicians' services) under contract to purchasers of such services.

''(C) In defining a 'substantial proportion' for purposes of subparagraph (A)(i), the Secretary—

''(i) shall take into account the need for such an organization to assume responsibility for providing—

''(I) significantly more than the majority of the items and services under the contract under this section through its own affiliated providers; and

''(II) most of the remainder of the items and services under the contract through providers with which the organization has an agreement to provide such items and services,

in order to assure financial stability and to address the practical considerations involved in integrating the delivery of a wide range of service providers;

''(ii) shall take into account the need for such an organization to provide a limited proportion of the items and services under the contract through providers that are neither affiliated with nor have an agreement with the organization; and

''(iii) may allow for variation in the definition of substantial proportion among such organizations based on relevant differences among the organizations, such as their location in an urban or rural area.

''(D) For purposes of this paragraph, a provider is 'affiliated' with another provider if, through contract, ownership, or otherwise—

''(i) one provider, directly or indirectly, controls, is controlled by, or is under the control of the other;

''(ii) each provider is a participant in a lawful combination under which each provider shares, directly or indirectly, substantial financial risk in connection with their operations;

''(iii) both providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986; or

''(iv) both providers are part of an affiliated service group under section 414 of such Code.

''(E) For purposes of subparagraph (D), control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance rights of another.

''(2)(A) Subject to subparagraph (B), subsection (b)(1)(A) (relating to State licensure) shall not apply to a qualified provider-sponsored organization.

''(B) Beginning on January 1, 2002, subsection (b)(1)(A) shall only apply (and subparagraph (A) of this paragraph shall no longer apply) to a qualified provider-sponsored organization in a State if—

''(i) the financial solvency and capital adequacy standards for licensure of the organization under the laws of the State are identical to the regulations established under section 1889; and

''(ii) the standards for licensure of the organization under the laws of the State (other than the standards referred to in clause (i)) are substantially equivalent to the standards established by regulations under section 1889.

''(C)(i) A provider-sponsored organization, to which subsection (b)(1)(A) applies by reason of subparagraph (B), that seeks to operate in a State under a full risk contract under subsection (g) or a partial risk contract under subsection (i) may apply for a waiver of the requirement of subsection (b)(1)(A) for that organization operating in that State.

''(ii) The Secretary shall act on such a waiver application within 60 days after the date it is filed and shall grant a waiver for an organization with respect to a State if the Secretary determines that—

''(I) the State did not act upon a licensure application within 90 days after the date it was filed; or

''(II)(aa) the State denied a licensure application; and

''(bb) the State's licensing standards or review process are determined by the Secretary to impose unreasonable barriers to market entry, including through the imposition of any requirements, procedures, or other standards on such organization that are not generally applicable to any other entities engaged in substantially similar activities.

''(iii) In the case of a waiver granted under this paragraph for an organization—

''(I) the waiver shall be effective for a 24-month period, except that it may be renewed based on a subsequent application filed during the last 6 months of such period;

''(II) if the State failed to meet the requirement of clause (ii)(I)—

''(aa) any application for a renewal may be made on the basis described in clause (ii)(I) only if the State does not act on a pending licensure application during the 24-month period specified in subclause (I);

''(bb) any application for renewal (other than one made on the basis described in clause (ii)(I)) may be made only on the basis described in clause (ii)(II); and

''(cc) the waiver shall cease to be effective on approval of the licensure application by the State during such 24-month period; and

''(III) any provisions of State law that relate to the licensing of the organization and prohibit the organization from providing coverage pursuant to a contract under this title shall be superseded during the period for which such waiver is effective.

''(D) Nothing in this paragraph shall be construed as—

''(i) limiting the number of times such a waiver may be renewed under subparagraph (C)(iii)(I); or

''(ii) affecting the operation of section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

''(3) The requirement of subsection (b)(3)(A)(i) (relating to benefit package for commercial enrollees) shall not apply to a qualified provider-sponsored organization.

''(4) The requirement of subsection (b)(3)(A)(iii) (relating to delivery of physicians' services) shall apply to a qualified provider-sponsored organization, except that the Secretary shall by regulation specify alternative delivery models or arrangements that may be used by such organizations in lieu of the models or arrangements specified in such subsection.

''(5) The requirement of subsection (b)(3)(A)(iv) (relating to risk assumption) shall apply to a qualified provider-sponsored organization, except that any such organization with a full risk contract under subsection (g) may (with the approval of the Secretary) obtain insurance or make other arrangements for covering costs in excess of those permitted to be covered by such insurance and any arrangements under subsection (b)(3)(A)(iv)(III).

''(6)(A) A qualified provider-sponsored organization shall be treated as meeting the requirement of subsection (b)(3)(A)(v) (relating to adequate provision against risk of insolvency) if the organization is fiscally sound.

''(B) A qualified provider-sponsored organization shall be treated as fiscally sound for purposes of subparagraph (A) if the organization—

''(i) has a net worth that is not less than the required net worth (as defined in subparagraph (C)); and

''(ii) has established adequate claims reserves (as defined in subparagraph (D)).

''(C) For purposes of subparagraph (B)(i), the term 'required net worth' means—

''(i) in the case of an organization with a full risk contract under subsection (g), a net worth (determined in accordance with statutory accounting principles for insurance companies and health maintenance organizations), not less than the greatest of—

''(I) $1,500,000 at the time of application and $1,000,000 thereafter,

''(II) the sum of—

''(aa) 8 percent of the cost of health services that are not provided directly by the organization or its affiliated providers to enrollees; and

''(bb) 4 percent of the estimated annual costs of health services provided directly by the organization or its affiliated providers to enrollees; or

''(III) 3 months of uncovered expenditures; and

''(ii) in the case of an organization with a partial risk contract under subsection (i), an amount determined in accordance with clause (i), except that in applying subclause (II) of such clause, the Secretary shall substitute for the percentages specified in such subclause such lower percentages as are appropriate to reflect the risk-sharing arrangements under the contract.

''(D) For purposes of subparagraph (B)(ii), the term 'adequate claims reserves' means, with respect to an organization, reserves for claims that are—

''(i) incurred but not reported; or

''(ii) reported but unpaid,

that are determined in accordance with statutory accounting principles for insurance companies and health maintenance organizations and with professional standards of actuarial practice and are certified by an independent actuary as adequate in light of the operations and contracts of the organization.

''(E) In applying statutory accounting principles for purposes of determining the net worth of an organization under subparagraph (B)(i), the Secretary shall—

''(i) treat as 'admitted assets'—

''(I) land, buildings, and equipment of the organization used for the direct provision of health care services;

''(II) any receivables from governmental programs due for more than 90 days; and

''(III) any other assets designated by the Secretary; and

''(ii) recognize, as a contribution to surplus, amounts received under subordinated debt (meeting such requirements as the Secretary may specify).

''(F) The Secretary shall recognize ways of complying with the requirement of subparagraph (A) other than by means of subparagraph (B), including (alone or in combination)—

''(i) letters of credit from a bank;

''(ii) financial guarantees from financially strong parties including affiliates;

''(iii) unrestricted fund balances;

''(iv) diversity of lines of business and presence of nonrisk related revenue;

''(v) certification of fiscal soundness by an independent actuary;

''(vi) reinsurance ceded to, or stop loss insurance purchased through, a recognized commercial insurance company; and

''(vii) any other methods that the Secretary determines are acceptable for such purpose.

''(7)(A) A qualified provider-sponsored organization shall not be treated as meeting the requirements of subsection (c)(6) (relating to an ongoing quality assurance program) unless the quality assurance program of the organization meets the requirements of subparagraphs (B) and (C).

''(B) A quality assurance program meets the requirements of this subparagraph if the program—

''(i) stresses health outcomes;

''(ii) provides opportunities for input by physicians and other health care professionals;

''(iii) monitors and evaluates high volume and high risk services and the care of acute and chronic conditions;

''(iv) evaluates the continuity and coordination of care that enrollees receive;

''(v) establishes mechanisms to detect both underutilization and overutilization of services;

''(vi) after identifying areas for improvement, establishes or alters practice parameters;

''(vii) takes action to improve quality and assess the effectiveness of such action through systematic followup;

''(viii) makes available information on quality and outcomes measures to facilitate beneficiary comparison and choice of health coverage options (in such form and on such quality and outcomes measures as the Secretary determines to be appropriate); and

''(ix) is evaluated on an ongoing basis as to its effectiveness.

''(C) If a qualified provider-sponsored organization utilizes case-by-case utilization review, the organization shall—

''(i) base such review on written protocols developed on the basis of current standards of medical practice; and

''(ii) implement a plan under which—

''(I) such review is coordinated with the quality assurance program of the organization; and

''(II) a transition is made from relying predominantly on case-by-case review to review focusing on patterns of care.

''(D) A qualified provider-sponsored organization shall be treated as meeting the requirements of subparagraphs (A) and (B) and the requirements of subsection (c)(6) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization meets standards that are no less stringent than the standards established under section 1889 to carry out this paragraph and subsection (c).''.

SEC. 5. EXEMPTION FROM CERTAIN ENROLLMENT REQUIREMENTS FOR ELIGIBLE ORGANIZATIONS MEETING ENHANCED QUALITY ASSURANCE REQUIREMENTS.

(a) IN GENERAL.—Section 1876 of the Social Security Act (42 U.S.C. 1395mm), as amended by section 4 of this Act, is amended by adding at the end the following:

''(m)(1) An eligible organization shall be deemed to meet the requirements of subsection (f) (relating to enrollment composition) if the organization demonstrates that it—

''(A) is capable of providing coordinated care in accordance with the quality assurance standards established under subsections (c)(6) and (l)(7)(B); and

''(B) has experience, under a past or present arrangement, providing coordinated care to individuals (other than individuals who are entitled to benefits under this title) who are enrollees, participants, or beneficiaries of a health plan or a State plan approved under title XIX.

''(2) An eligible organization shall be treated as meeting the quality assurance standards referred to in paragraph (1)(A) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization meets standards that are no less stringent than the requirements of that subparagraph.

''(3) For purposes of paragraph (1), the term 'health plan' means—

''(A) any contract of insurance, including any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, that is provided by a carrier; and

''(B) an employee welfare benefit plan insofar as the plan provides health benefits and is funded in a manner other than through the purchase of one or more policies or contracts described in subparagraph (A).

''(4) For purposes of paragraph (3), the term 'carrier' means a licensed insurance company, a hospital or medical service corporation (including an existing Blue Cross or Blue Shield organization), or any other entity licensed or certified by a State to provide health insurance or health benefits.''.

(b) SIZE REQUIREMENT FOR ELIGIBLE ORGANIZATIONS.—Section 1876(g)(1) (42 U.S.C. 1395mm(g)(1)) is amended—

(1) by striking ''5000'' and inserting ''1500''; and

(2) by striking ''fewer'' and inserting ''500 or more''.

(c) CONFORMING AMENDMENT.—Section 1876(f)(1) (42 U.S.C. 1395mm(f)(1)) is amended by striking ''Each eligible'' and inserting ''Except as provided in subsection (m), each eligible''.

SEC. 6. ADJUSTED COMMUNITY RATE FOR A QUALIFIED PROVIDER-SPONSORED ORGANIZATION.

Section 1876(g) (42 U.S.C. 1395mm(g)) is amended by adding at the end the following:

''(7) In the case of a qualified provider-sponsored organization, the adjusted community rate under subsection (e)(3) and paragraph (2) may be computed (in a manner specified by the Secretary) using data in the general commercial marketplace or (during a transition period) based on the costs incurred by the organization in providing such a product.''.

SEC. 7. PROCEDURES RELATING TO PARTICIPATION OF A PHYSICIAN IN A QUALIFIED PROVIDER-SPONSORED ORGANIZATION.

Section 1876 (42 U.S.C. 1395mm), as amended by section 5 of this Act, is amended by adding at the end the following:

''(n) A qualified provider-sponsored organization shall not be treated as meeting the requirements of this section unless the organization—

''(1) establishes reasonable procedures, as determined by the Secretary, relating to the participation (under an agreement between a physician or group of physicians and the organization) of physicians under contracts under this section, including procedures to provide—

''(A) notice of the rules regarding participation;

''(B) written notice of a participation decision that is adverse to a physician; and

''(C) a process within the organization for appealing an adverse decision, including the presentation of information and views of the physician regarding such decision; and

''(2) consults with physicians who have entered into participation agreements with the organization regarding the organization's medical policy, quality, and medical management procedures.

Paragraph (1)(C) shall not be construed to require a live evidentiary hearing, a verbatim record, or representation of the appealing party by legal counsel.''.

SEC. 8. ESTABLISHMENT OF REGULATIONS; CERTIFICATION PROCEDURES.

Part C of title XVIII (42 U.S.C. 1395x et seq.) is amended by inserting after section 1888 (42 U.S.C. 1395yy) the following:

''ESTABLISHMENT OF REGULATIONS FOR QUALIFIED PROVIDER-SPONSORED ORGANIZATIONS

''SEC. 1889. (a) INTERIM REGULATIONS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations to implement the requirements for qualified provider-sponsored organizations under section 1876). Such regulations shall be issued on an interim basis, but shall become effective upon publication and shall remain in effect until the end of December 31, 2001.

''(2) CONSULTATION.—In developing regulations under this subsection, the Secretary shall consult with the National Association of Insurance Commissioners, the American Academy of Actuaries, State health departments, associations representing provider-sponsored organizations, quality experts (including private accreditation organizations), and medicare beneficiaries.

''(3) CONTRACTS WITH STATE AGENCIES.—The Secretary shall enter into contracts with appropriate State agencies to monitor performance and beneficiary access to services provided under this title during the period in which interim regulations are in effect under this subsection.

''(b) PERMANENT REGULATIONS.—

''(1) IN GENERAL.—Not later than July 1, 2001, the Secretary shall issue permanent regulations to implement the requirements for qualified provider-sponsored organizations under section 1876.

''(2) CONSULTATION.—In developing regulations under this subsection, the Secretary shall consult with the organizations and individuals listed in subsection (a)(2).

''(3) EFFECTIVE DATE.—The permanent regulations developed under this subsection shall be effective on and after January 1, 2002.

''CERTIFICATION OF PROVIDER-SPONSORED ORGANIZATIONS

''SEC. 1890. (a) IN GENERAL.—

''(1) PROCESS FOR CERTIFICATION.—The Secretary shall establish a process for the certification of provider-sponsored organizations as qualified provider-sponsored organizations under section 1876. Such process shall provide that an application for certification shall be approved or denied not later than 90 days after receipt of a complete application.

''(2) FEES.—The Secretary may impose user fees on entities seeking certification under this subsection in such amounts as the Secretary deems sufficient to pay the costs to the Secretary resulting from the certification process.

''(b) DECERTIFICATION.—If a qualified provider-sponsored organization is decertified under this section, the organization shall notify each enrollee with the organization under section 1876 of such decertification.''.

SEC. 9. DEMONSTRATION OF COORDINATED ACUTE AND LONG-TERM CARE BENEFITS; QUALIFIED PROVIDER-SPONSORED ORGANIZATIONS UNDER MEDICAID PROGRAMS.

(a) DEMONSTRATION OF COORDINATED ACUTE AND LONG-TERM CARE BENEFITS.—The Secretary of Health and Human Services shall provide, in not less than 10 States, for demonstration projects that permit State medicaid programs under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to be treated as eligible organizations under section 1876 of that Act (42 U.S.C. 1395mm) for the purpose of demonstrating the delivery of primary, acute, and long-term care through an integrated delivery network that emphasizes noninstitutional care to individuals who are—

(1) eligible to enroll with an organization under such section; and

(2) eligible to receive medical assistance under a State program approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) PROVIDER-SPONSORED ORGANIZATIONS UNDER MEDICAID PROGRAMS.—Section 1903(m)(1)(A) (42 U.S.C. 1396b(m)(1)(A)) is amended, in the matter preceding clause (i), by inserting ''(which may be a provider-sponsored organization, as defined in section 1876(l)(1)(B))'' after ''public or private organization''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1866(a)(1)(O) is amended by striking ''1876(i)(2)(A)'' and inserting ''1876(j)(2)(A)''.

(2) Section 1877(e)(3)(B)(i)(II) is amended by striking ''1876(i)(8)(A)(ii)'' and inserting ''1876(j)(8)(A)(ii)''.

SEC. 10. REPORT ON MEDICARE CONTRACTS INVOLVING PARTIAL RISK.

(a) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall submit a report to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate.

(b) CONTENTS OF REPORT.—The report described in subsection (a) shall include—

(1) the number and type of partial-risk contracts entered into by the Secretary under section 1876(i) of the Social Security Act (42 U.S.C. 1395mm(i));

(2) the type of eligible organizations operating such contracts;

(3) the impact such contracts have had on increasing beneficiary access and choice under the medicare program under title XVIII of that Act (42 U.S.C. 1395 et seq.); and

(4) a recommendation as to whether the Secretary should continue to enter into partial-risk contracts under section 1876(i) of that Act (42 U.S.C. 1395mm(i)).

SEC. 11. EFFECTIVE DATES; INTERIM FINAL REGULATIONS.

(a) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(2) ELIGIBLE ORGANIZATION AMENDMENTS.—The amendments made by sections 2 through 8 shall take effect on the date of enactment of this Act and shall apply to contract years beginning on or after January 1, 1998.

(b) USE OF INTERIM FINAL REGULATIONS.—In order to carry out the amendments made by this Act in a timely manner for eligible organizations under section 1876 of the Social Security Act (42 U.S.C. 1395mm), excluding organizations described in subsection (b)(4) of that section, the Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and opportunity for public comment.●

Mr. FRIST. Mr. President, earlier today the President of the United States announced that in his budget, which will be released on February 6, that he would aim to achieve approximately $138 billion in savings in the Medicare program. He described this as a first gesture, which I think should be applauded because the President clearly recognized the importance of saving Medicare and strengthening it for future generations.

The real issue is what policy lies behind that number of $138 billion in savings. And to make it a legitimate first step, a first step that really does start the debate in Medicare, we need to make sure that there is policy which does things like expand choice for senior citizens, give them the same options that most other people today have. The structural reform I think should include looking at some of the payment methodology, another element that relates to this choice in the structural reform. We have to accomplish this structural reform if we are going to truly strengthen the Medicare program and not just play with numbers.

Again, we will be looking at a lot of numbers over the next several weeks. I, as a physician, will keep coming back to the importance of having true structural reform built into the program, both part A and part B, in the overall Medicare program so that we truly will strengthen the system and make sure it is there for not only the 38 million Americans today, senior citizens and individuals with disabilities, but is there 5 years from now, 10 years from now, 15, 20 years from now on into the future.

I say all that to preface my reason for rising today, and that is to introduce a bill, the Provider Sponsored Organization Act of 1997, to be introduced along with my distinguished colleague from West Virginia, Mr. ROCKEFELLER. This bill, I believe, offers one of those very important structural components which does expand choice for our senior citizens, which when injected into the Medicare system today will do something very important, and that is inject quality into the considerations of options and choices among Medicare recipients. I will explain this shortly.

Provider sponsored organizations, or PSOs, are integrated health care delivery systems that are sponsored by local health care providers, physicians in hospitals at the local level. Their purpose is to deliver a full spectrum of health services. Very specifically, this bill establishes the Federal solvency requirements, the licensing requirements and those quality standards that PSOs, provider sponsored organizations, must meet in order to come to the table and participate in the Medicare Program.

It was more than 20 years ago that Congress really stepped up to the plate and, I think, quite innovatively provided Federal guidance for the entry of a brand-new phenomenon, and that was of HMOs, health maintenance organizations. HMOs were established with the primary purpose of coordinating health care delivery in such a way that there could be competition and in some way control those skyrocketing costs that previously had been associated with the fee-for-service programs. What it did, it allowed a combining of the financing delivery system to the health care delivery system.

Today Senator ROCKEFELLER and I are proposing to level the playing field once again with our bill to allow PSOs, for the first time, to have access to the Medicare market. Our bill sets the national rules by which these locally-based networks of providers may compete head to head with the traditional managed care organizations. All of that is done with the hope that the providers, the physicians, the hospitals,

the frontline people who are taking care of patients, will be able to more actively participate in coordinating the overall health care for Medicare beneficiaries. We trust that free and fair competition will give Medicare beneficiaries more choices and ultimately improve the cost, and as I will discuss shortly, the quality of the services they receive.

All of us know that today's health care market in its broadest sense is in the midst of dynamic change. The cost of care does continue to rise rapidly. There are a growing number of Americans all across this country who are shifting from a traditional fee-for-service model to a managed-care model. Today's paper, the Washington Post, released new figures that show that 75 percent, three-quarters of all working Americans today, receive their health insurance benefits through some type of managed care. Unfortunately, I think, in many ways, the accompanying perception with this shift of managed care, although it is not always fair, has been that managed care companies focus almost entirely on cutting costs, and then only after costs are cut is the quality issue discussed.

In addition, physicians who have to clear practice decisions through managed care organizations, and I can recall before coming to the U.S. Senate 3 years ago picking up the telephone and calling a bureaucrat or someone sitting 200, 300 and 400 miles away, to ask if I could discharge my patient, or if my patient met criteria for discharge, whether the hematic or blood count was appropriate, this intrusion is really resented by physicians, that health care delivery which really is in this country a pact, a relationship between a doctor and a patient.

The mother-may-I mentality that has emerged has frustrated both parties and providers and led them to question who is in charge. Is it the physician, working with the patient, taking care, who knows that patient, who has been trained to take care of that patient, or is it a bureaucrat or somebody hundreds of miles away?

On the other side of the coin, it is very clear that managed care has been very successful in forcing an out-of-date delivery system to be more accountable. This has had very important benefits for patients. That leads me to think of how outcomes, data and results are studied very carefully by most managed care organizations, driving us into the whole realm of quality assessment. That has been a huge contribution of managed care, as well as HMOs. Much of that would not have occurred without HMOs or managed care.

Amidst all this change is a great deal of uncertainty. We have senior citizens who are scared to death to change anything, and that was reinforced in the recent campaigns where huge advertising campaigns were put on television, ''Don't change anything.'' Today, purchasers, consumers and providers are really forcing attention back to that issue of quality. As a physician, I find that very encouraging.

People will still tell you today though, as you travel across Tennessee or our respective States, that their fear of managed care stems a great deal from the fact that they feel their physician is no longer in charge of their case, that somebody who is watching just the dollars and cents or some bureaucrat is now in charge of their care.

Now, this has generated, and it really starts at a grassroots level, has generated a lot of proposals in the last several months, both at the State level and at the Federal level. That includes the ban on the gag rule clauses and various length-of-stay proposals after various procedures that are done in the hospital.

America's largest health care payer today is the Federal Medicare Program. It has had difficulty, interestingly enough, in attracting seniors to managed care. The figure that I just mentioned, three-quarters of all people today being in managed care, contrasts with those senior citizens, all of whom are in Medicare. Only 11 percent, only 11 percent compared to 75 percent of Medicare beneficiaries are signed up to participate. It is very clear that our senior citizens have a great fear today of being herded into the traditional managed care plans where they have a fear they will not include the physician they choose or the hospital that they might choose.

The outmoded blank check mentality, on the other hand, of fee-for-service system is not sustainable over time. It can be one of the choices, but it cannot be and will not be the only choice. Given that Medicare's own trustees have reported that the program is going to be bankrupt in 4 to 5 years, Medicare clearly has to find a way to have its growth slowed.

Medicare beneficiaries who fear managed care may well feel much more secure knowing that they have the choice of a health care plan that is actually run by providers—doctors working with hospitals, and not just a business, not just a traditional insurance company.

PSOs will help push the market to elevate the level of quality at all levels of plans of negotiation and delivery because of the direct involvement of physicians with hospitals, of the people who are actually delivering that care in every step of the process. Quality, all of a sudden, becomes the primary goal. Once at the negotiating table, you bring physicians into the room.

Many see all of this as an ''us-versus-them scenario.'' In fact, neither group acts alone when funds are limited, whether care is paid for by a Government program, an employer, an insurer, an individual. Medicare providers and plan administrators simply must work together to increase the value of health care dollars.

Before coming to the U.S. Senate, as one who used to negotiate, as a transplant surgeon and running a large transplant center I negotiated with managed care plans. Based on that negotiation, all too often quality was not the issue, really, at the table. People would come in and say, ''I need a discount of 10 percent, of 15 percent or 20 percent.'' What was missing at that table was someone—a group of providers, physicians with hospitals, working together—who would ask those questions about quality. Why do they ask the questions about quality? Because they are on the frontline. At the table we will bring physicians who are delivering that care to individuals.

That to me is one of the most exciting things about this bill. It injects quality back into the marketplace. Is there any evidence today that senior citizens will respond to this alternative? This year the Health Care Financing Administration established the demonstration project called Medicare Choices.

This pilot project is examining ways of expanding the choice of health care plan options available to Medicare beneficiaries. Included in this demonstration are a number of PSO's. Senator MACK recently shared with me his experience in Florida with this new demonstration project during its first 3 weeks of enrollment. A participating PSO in Orlando received 5,500 phone calls from interested beneficiaries in the first 5 days. They have already processed enrollment for 400 Medicare beneficiaries. They started out holding 13 informational seminars each week and had 600 attendees. They are now conducting 15 seminars a week with 700 attendees. In addition, the PSO staffs have been making home visits to those beneficiaries who are unable to come to the seminars, and as a result of those home visits, they are enrolling seven to nine individuals a day. The Orlando PSO has already enrolled another 400 beneficiaries just for February. So, yes, I think our senior citizens will respond to this new option, this new option that expands choice, when we bring physicians and hospitals through a PSO entity to the table.

Clearly, we can make managed care options more attractive to America's seniors by allowing PSO's to participate in the Medicare program. What are the other advantages that provider-sponsored organizations offer? These groups offer many advantages.

First, ''one-stop shopping'' for a coordinated package of health care services really saves time and the expense of negotiating with individual provider contracts.

Second, because it is the providers who are coordinating care, clinical decisions and utilization reviews are conducted by the providers themselves and not by a faceless third party charged with conducting these reviews.

Third, incentives to control costs are borne by the only group that can truly deliver systematic quality improvement and cost efficiency over the long run. Why? Because it is the providers who are monitoring that quality. It is

the physicians and hospitals who are actually providing that care and, thus, they are in a position to best monitor that quality.

Finally, PSO's simply tend to have much lower startup and administrative costs, making it easier for them to enter the market in those key areas that we need to look at, and that is the rural areas. These rural areas have a real risk of being underserved without this new entity, a PSO.

What are the advantages of the PSO's—provider-sponsored organizations—for the country as a whole? The managed care industry has been able to change our paradigms about health care tremendously over the last 10 years. Health care is becoming less costly and more efficient. But now we have to come back to quality and inject quality back into the system and the effectiveness of that health care delivery. By bringing providers, the people delivering that care every day, to the table for the first time in Medicare, PSO's will create that opportunity.

The PSO's are really in the health care business day in and day out. Remember, it is a group of physicians who, every day, are taking care of patients who we are bringing to the table for the first time. PSO's are in the health care business, not in the insurance business, and they are currently excluded from fair participation in the market by a system ill-suited to their needs. Let me give a couple of examples.

Providers navigating the complex State licensure process for the first time are really at a significant disadvantage compared to the very large insurance companies and the large managed care plans. In a competitive marketplace, the timing of entry is critical.

Even though PSO's do not take on the same level of insurance risk as other players, PSO's are now required to submit the same State-defined solvency tests and net worth requirements as HMO's. Since the law now only allows Medicare to contract with organizations that are licensed by the States as HMO's, many PSO's are forced to perform administrative contortions in order to serve Medicare patients—contortions that make them look like insurance companies, even though, in reality, they are not.

How does the Provider Sponsored Organization Act develop solutions to the problem?

First, it recognizes the potential for PSO's to serve beneficiaries by enabling them to contract directly with Medicare, thus expanding the range of choices available to each Medicare beneficiary.

Second, it will provide Federal leadership to the States in fashioning a more nationally consistent, streamlined PSO approval process.

However, with access must come accountability. This bill will also require PSO's to meet strict standards that ensure that they are able to take on the financial risks associated with delivering health care services for a set fee, but these are tailored to their primary role as providers, as physicians and hospitals; it will require collective accountability, where quality and cost are both measured by overall practice patterns across the entire PSO, not by case-by-case utilization review; finally, it will set a standard for quality assurance, a standard that will set the pace for the rest of the industry.

This legislation—I need to be very clear about this—does not, in any way, eclipse other health care plans. Rather, it complements, adds to the existing menu of health care services. Qualified provider-sponsored organizations will challenge all health care organizations participating with Medicare to meet the goal of an integrated health system, a system which truly provides an environment with lower costs, better care, higher quality, and preserved relationships between caregivers and their patients.

Mr. President, I send the bill to the desk and ask that it be referred to the appropriate committee.

The PRESIDING OFFICER. The bill will be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. I ask unanimous consent that a letter of endorsement from a wide variety of hospital associations be printed in the RECORD.

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

JANUARY 21, 1997.

Hon. BILL FRIST,
U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: We endorse enthusiastically ''The Provider Sponsored Organization Act of 1997'' which you are introducing in the Senate today. This legislation provides an important new health care choice for Medicare beneficiaries, the Provider Sponsored Organization (PSO) option.

Medicare beneficiaries deserve a greater variety of high quality health care options from which they can choose—and PSOs provide an outstanding additional choice for them. Medicare PSOs will hold down health care costs by directly managing both the use of services and the cost of providing those services. These PSOs will offer affordable, high-quality and coordinated care and be sponsored by organizations that are concerned about the health of the entire community. Because the PSO focused on the Community, its medical management policies are locally focused rather than nationally driven. And, in a PSO plan, a consumer is more likely to maintain stable relationships with his or her personal physician and community hospital, whereas other health plans may change their rosters of participating providers from year to year.

Your legislation recognizes that Medicare PSOs will not be in the insurance business, but will focus on what has been their primary business for years, the delivery of high quality care. The bill requires, however, high solvency standards for those participating in the program and organizational arrangements that assure the plans are integrated, fully operational, and responsive to the needs of the Medicare beneficiaries that they will serve. Also, Medicare PSOs will reduce administrative expenses in comparison to many of the options offered to Medicare beneficiaries today by stream-ling the organization of administrative functions between the provider and the Medicare program.

In short, Medicare beneficiaries need and deserve additional health care choices built from the base of their local community of hospitals and doctors. And they should be assured the uniformity of plan standards that only federal regulation can bring.

We look forward to working with you to seek enactment of this important legislation in the first session of the 105th Congress.

Sincerely,

American Hospital Association; Association of American Medial Colleges; Catholic Health Association; Federation of American Health Systems; InterHealth; National Association of Childrens' Hospitals; National Association of Public Hospitals; Premier, Inc.; Voluntary Hospitals of America.

By Mr. DASCHLE (for himself, Mr. CHAFEE, Mr. KENNEDY, Mr. JOHNSON, and Mr. REID):

S. 147. A bill to amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the Medicaid program, and for other purposes; to the Committee on Finance.

THE MEDICAID SUBSTANCE ABUSE TREATMENT ACT

By Mr. DASCHLE (for himself, Mr. CHAFEE, Mr. BINGAMAN, Mr. INOUYE, Mrs. MURRAY, Mr. JOHNSON, Mr. CAMPBELL and Mr. REID):

S. 148. A bill to amend the Public Health Service Act to provide a comprehensive program for the prevention of Fetal Alcohol Syndrome; to the Committee on Labor and Human Resources.

THE COMPREHENSIVE FETAL ALCOHOL SYNDROME PREVENTION ACT

Mr. DASCHLE. Mr. President, today I am introducing two bipartisan bills to help prevent the tragic occurrence of alcohol-related birth defects, including both fetal alcohol syndrome [FAS] and fetal alcohol effects [FAE]. I speak on behalf of all cosponsors when I say we are hopeful we can move these two simple, but important, pieces of legislation this year.

FAS and FAE are devastating, complex birth defects. Many people fail to realize that FAS is the leading cause of mental retardation. Too many women remain uninformed about the real dangers of alcohol consumption during pregnancy. And, unfortunately, misconceptions about the impact of alcohol intake during pregnancy are not limited to the general public. Even some health care providers are unaware of the danger of drinking during pregnancy, and for many years it was widely held that moderate alcohol consumption during pregnancy was beneficial. I am happy to report that several medical schools have begun teaching their students about FAS and FAE, and I remain hopeful that medical professionals will continue to learn more

about how to appropriately diagnose and counsel women who are pregnant or are considering pregnancy.

Recent estimates indicate that up to 12,000 children are born each year in the United States with FAS. Thousands more are born with FAE. It is estimated that the incidence of FAS may be as high as one per 100 in some Native American communities.

The costs associated with caring for individuals with FAS are staggering. The Centers for Disease Control and Prevention estimates that the lifetime cost of treating an individual with FAS is almost $1.4 million. The total cost in terms of health care and social services to treat all Americans with FAS was estimated to be $2.7 billion in 1995. This is an extraordinary and unnecessary expense, especially when one considers that all alcohol-related birth defects are 100 percent preventable.

The first step toward illuminating this devastating disease is raising the public's consciousness about FAS/FAE. Although great strides have been made in this regard, much more work remains to be done. The Comprehensive Fetal Alcohol Syndrome Prevention Act attempts to fill in the gaps in our current FAS/FAE prevention system. It contains four major components, representing the provisions of the original legislation that have not yet been enacted. These provisions include the initiation of a coordinated education and public awareness campaign; increased support for basic and applied epidemiologic research into the causes, treatment and prevention of FAS/FAE; widespread dissemination of FAS/FAE diagnostic criteria; and the establishment of an interagency task force to coordinate the wide range of Federal efforts in combating FAS/FAE.

A prevention strategy cannot succeed in the absence of increased access to comprehensive treatment programs for pregnant addicted women. Many pregnant substance abusers are denied treatment because facilities refuse to accept them, or the women cannot accept treatment because they lack adequate child care for their existing children while they receive treatment. In fact, many treatment programs specifically exclude pregnant women or women with children. To make matters worse, while Medicaid covers some services associated with substance abuse, like outpatient treatment and detoxification, it rails to cover nonhospital based residential treatment, which is considered by most health care professionals to be the most effective method of overcoming addiction.

The Medicaid Substance Abuse Treatment Act would permit coverage of residential alcohol and drug treatment for pregnant women and certain family members under the Medicaid program, thereby assuring a stable source of funding for States that wish to establish these programs. The bill has three primary objectives. First, it would facilitate the participation of pregnant women who are substance abusers in alcohol and drug treatment programs. Second, by increasing the availability of comprehensive and effective treatment programs for pregnant women and, thus, improving a woman's chances of bearing healthy children, it would help combat the serious and ever-growing problem of drug-impaired infants and children, many of whom are born with FAS and FAE. Third, it would address the unique situation of pregnant addicted Native American and Alaska Native women in Indian Health Service areas.

Mr. President, the cost of prevention is substantially less than the downstream costs in money and human capital of caring of children and adults who have been impaired due to prenatal exposure to alcohol and drugs. These prevention and treatment services are an investment that yields substantial long-term dividends—both on a societal level, as costs and efforts associated with taking care of children born with alcohol-related birth defects decline, and on an individual level, as mothers plagued by alcohol and drug addiction are given the means to heal themselves and give their unborn children a healthier start in life.

FAS and FAE represent a national tragedy that reaches across economic and social boundaries. With researchers from Columbia University reporting that at least one of every five pregnant women uses alcohol and/or other drugs during pregnancy, the demand for a comprehensive and determined response to this devastating problem is clear. I welcome the support of my colleagues on these important bills.

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

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

S. 147

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 ''Medicaid Substance Abuse Treatment Act of 1997''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) a woman's ability to bear healthy children is threatened by the consequences of alcoholism and drug addiction and particularly by the use of alcohol and drugs during pregnancy;

(2) hundreds of thousands of infants each year are born drug-exposed, approximately 12,000 infants are born each year with fetal alcohol syndrome, and thousands more are born each year with fetal alcohol effects, a less severe version of fetal alcohol syndrome;

(3) drug use during pregnancy can result in low birthweight, physical deformities, mental retardation, learning disabilities, and heightened nervousness and irritability in newborns;

(4) fetal alcohol syndrome is the leading identifiable cause of mental retardation in the United States and the only cause that is 100 percent preventable;

(5) drug-impaired individuals pose extraordinary societal costs in terms of medical, educational, foster care, residential, and support services over the lifetimes of such individuals;

(6) women, in general, are underrepresented in drug and alcohol treatment programs;

(7) due to fears among service providers concerning the risks pregnancies pose, pregnant women face more obstacles to substance abuse treatment than do other addicts and many substance abuse treatment programs, in fact, exclude pregnant women or women with children;

(8) residential alcohol and drug treatment is an important prevention strategy to prevent low birthweight, transmission of AIDS, and chronic physical, mental, and emotional disabilities associated with prenatal exposure to alcohol and other drugs;

(9) effective substance abuse treatment must address the special needs of pregnant women who are alcohol or drug dependent, including substance-abusing women who may often face such problems as domestic violence, incest and other sexual abuse, poor housing, poverty, unemployment, lack of education and job skills, lack of access to health care, emotional problems, chemical dependency in their family backgrounds, single parenthood, and the need to ensure child care for existing children while undergoing substance abuse treatment;

(10) nonhospital residential treatment is an important component of comprehensive and effective substance abuse treatment for pregnant addicted women, many of whom need long-term, intensive habilitation outside of their communities to recover from their addiction and take care of themselves and their families; and

(11) a gap exists under the medicaid program for the financing of comprehensive residential care in the existing continuum of covered alcoholism and drug abuse treatment services for pregnant medicaid beneficiaries.

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

(1) to increase the ability of pregnant women who are substance abusers to participate in alcohol and drug treatment;

(2) to ensure the availability of comprehensive and effective treatment programs for pregnant women, thus promoting a woman's ability to bear healthy children;

(3) to ensure that nonhospital residential treatment is available to those low-income pregnant addicted women who need long-term, intensive habilitation to recover from their addiction;

(4) to create a new optional medicaid residential treatment service for alcoholism and drug dependency treatment; and

(5) to define the core services that must be provided by treatment providers to ensure that needed services will be available and appropriate.

SEC. 3. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES FOR PREGNANT WOMEN, CARETAKER PARENTS, AND THEIR CHILDREN.

(a) COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES.—

(1) OPTIONAL COVERAGE.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)—

(i) in paragraph (24), by striking ''and'' at the end;

(ii) by redesignating paragraph (25) as paragraph (26); and

(iii) by inserting after paragraph (24) the following new paragraph:

''(25) alcoholism and drug dependency residential treatment services (to the extent allowed and as defined in section 1931); and''; and

(B) in the sentence following paragraph (26), as so redesignated—

(i) in subparagraph (A), by striking ''or'' at the end;

(ii) in subparagraph (B), by striking the period and inserting ''; or''; and

(iii) by inserting after subdivision (B) the following:

''(C) any such payments with respect to alcoholism and drug dependency residential treatment services under paragraph (25) for individuals not described in section 1932(d).''.

(2) ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES DEFINED.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(A) by redesignating section 1932 as section 1933; and

(B) by inserting after section 1931, the following:

''ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES

''SEC. 1932. (a) ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES.—The term 'alcoholism and drug dependency residential treatment services' means all the required services described in subsection (b) which are provided—

''(1) in a coordinated manner by a residential treatment facility that meets the requirements of subsection (c) either directly or through arrangements with—

''(A) public and nonprofit private entities;

''(B) licensed practitioners or federally qualified health centers with respect to medical services; or

''(C) the Indian Health Service or a tribal or Indian organization that has entered into a contract with the Secretary under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) or section 502 of the Indian Health Care Improvement Act (25 U.S.C. 1652) with respect to such services provided to women eligible to receive services in Indian Health Facilities; and

''(2) pursuant to a written individualized treatment plan prepared for each individual, which plan—

''(A) states specific objectives necessary to meet the individual's needs;

''(B) describes the services to be provided to the individual to achieve those objectives;

''(C) is established in consultation with the individual;

''(D) is periodically reviewed and (as appropriate) revised by the staff of the facility in consultation with the individual;

''(E) reflects the preferences of the individual; and

''(F) is established in a manner which promotes the active involvement of the individual in the development of the plan and its objectives.

''(b) REQUIRED SERVICES DEFINED.—

''(1) IN GENERAL.—The required services described in this subsection are as follows:

''(A) Counseling, addiction education, and treatment provided on an individual, group, and family basis and provided pursuant to individualized treatment plans, including the opportunity for involvement in Alcoholics Anonymous and Narcotics Anonymous.

''(B) Parenting skills training.

''(C) Education concerning prevention of HIV infection.

''(D) Assessment of each individual's need for domestic violence counseling and sexual abuse counseling and provision of such counseling where needed.

''(E) Room and board in a structured environment with on-site supervision 24 hours-a-day.

''(F) Therapeutic child care or counseling for children of individuals in treatment.

''(G) Assisting parents in obtaining access to—

''(i) developmental services (to the extent available) for their preschool children;

''(ii) public education for their school-age children, including assistance in enrolling them in school; and

''(iii) public education for parents who have not completed high school.

''(H) Facilitating access to prenatal and postpartum health care for women, to pediatric health care for infants and children, and to other health and social services where appropriate and to the extent available, including services under title V, services and nutritional supplements provided under the special supplemental food program for women, infants, and children (WIC) under section 17 of the Child Nutrition Act of 1966, services provided by federally qualified health centers, outpatient pediatric services, well-baby care, and early and periodic screening, diagnostic, and treatment services (as defined in section 1905(r)).

''(I) Ensuring supervision of children during times their mother is in therapy or engaged in other necessary health or rehabilitative activities, including facilitating access to child care services under title IV and title XX.

''(J) Planning for and counseling to assist reentry into society, including appropriate outpatient treatment and counseling after discharge (which may be provided by the same program, if available and appropriate) to assist in preventing relapses, assistance in obtaining suitable affordable housing and employment upon discharge, and referrals to appropriate educational, vocational, and other employment-related programs (to the extent available).

''(K) Continuing specialized training for staff in the special needs of residents and their children, designed to enable such staff to stay abreast of the latest and most effective treatment techniques.

''(2) REQUIREMENT FOR CERTAIN SERVICES.—Services under subparagraphs (A), (B), (C), and (D), of paragraph (1) shall be provided in a cultural context that is appropriate to the individuals and in a manner that ensures that the individuals can communicate effectively, either directly or through interpreters, with persons providing services.

''(3) LIMITATIONS ON COVERAGE.—

''(A) IN GENERAL.—Subject to subparagraph (B), services described in paragraph (1) shall be covered in the amount, duration, and scope therapeutically required for each eligible individual in need of such services.

''(B) RESTRICTIONS ON LIMITING COVERAGE.—A State plan shall not limit coverage of alcoholism and drug dependency residential treatment services for any period of less than 12 months per individual, except in those instances where a finding is made that such services are no longer therapeutically necessary for an individual.

''(c) FACILITY REQUIREMENTS.—The requirements of this subsection with respect to a facility are as follows:

''(1) The agency designated by the chief executive officer of the State to administer the State's alcohol and drug abuse prevention and treatment activities and programs has certified to the single State agency under section 1902(a)(5) that the facility—

''(A) is able to provide all the services described in subsection (b) either directly or through arrangements with—

''(i) public and nonprofit private entities;

''(ii) licensed practitioners or federally qualified health centers with respect to medical services; or

''(iii) the Indian Health Service or with a tribal or Indian organization that has entered into a contract with the Secretary under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) or section 502 of the Indian Health Care Improvement Act (25 U.S.C. 1652) with respect to such services provided to women eligible to receive services in Indian Health Facilities; and

''(B) except for Indian Health Facilities, meets all applicable State licensure or certification requirements for a facility of that type.

''(2)(A) The facility or a distinct part of the facility provides room and board, except that—

''(i) subject to subparagraph (B), the facility shall have no more than 40 beds; and

''(ii) subject to subparagraph (C), the facility shall not be licensed as a hospital.

''(B) The single State agency may waive the bed limit under subparagraph (A)(i) for one or more facilities subject to review by the Secretary. Waivers, where granted, must be made pursuant to standards and procedures set out in the State plan and must require the facility seeking a waiver to demonstrate that—

''(i) the facility will be able to maintain a therapeutic, family-like environment;

''(ii) the facility can provide quality care in the delivery of each of the services identified in subsection (b);

''(iii) the size of the facility will be appropriate to the surrounding community; and

''(iv) the development of smaller facilities is not feasible in that geographic area.

''(C) The Secretary may waive the requirement under subparagraph (A)(ii) that a facility not be a hospital, if the Secretary finds that such facility is located in an Indian Health Service area and that such facility is the only or one of the only facilities available in such area to provide services under this section.

''(3) With respect to a facility providing the services described in subsection (b) to an individual eligible to receive services in Indian Health Facilities, such a facility demonstrates (as required by the Secretary) an ability to meet the special needs of Indian and Native Alaskan women.

''(d) ELIGIBLE INDIVIDUALS.—

''(1) IN GENERAL.—A State plan shall limit coverage of alcoholism and drug dependency residential treatment services under section 1905(a)(24) to the following individuals otherwise eligible for medical assistance under this title:

''(A) Women during pregnancy, and until the end of the 12th month following the termination of the pregnancy.

''(B) Children of a woman described in subparagraph (A).

''(C) At the option of a State, a caretaker parent or parents and children of such a parent.

''(2) INITIAL ASSESSMENT OF ELIGIBLE INDIVIDUALS.—An initial assessment of eligible individuals specified in paragraph (1) seeking alcoholism and drug dependency residential treatment services shall be performed by the agency designated by the chief executive officer of the State to administer the State's alcohol and drug abuse treatment activities (or its designee). Such assessment shall determine whether such individuals are in need of alcoholism or drug dependency treatment services and, if so, the treatment setting (such as inpatient hospital, nonhospital residential, or outpatient) that is most appropriate in meeting such individual's health and therapeutic needs and the needs of such individual's dependent children, if any.

''(e) OVERALL CAP ON MEDICAL ASSISTANCE AND ALLOCATION OF BEDS.—

''(1) TOTAL AMOUNT OF SERVICES AS MEDICAL ASSISTANCE.—

''(A) IN GENERAL.—The total amount of services provided under this section as medical assistance for which payment may be made available under section 1903 shall be limited to the total number of beds allowed to be allocated for such services in any given year as specified under subparagraph (B).

''(B) TOTAL NUMBER OF BEDS.—The total number of beds allowed to be allocated under this subparagraph (subject to paragraph (2)(C)) for the furnishing of services under this section and for which Federal medical assistance may be made available under section 1903 is for calendar year—

''(i) 1998, 1,080 beds;

''(ii) 1998, 2,000 beds;

''(iii) 2000, 3,500 beds;

''(iv) 2001, 5,000 beds;

''(v) 2002, 6,000 beds; and

''(vi) 2003 and for calendar years thereafter, a number of beds determined appropriate by the Secretary.

''(2) ALLOCATION OF BEDS.—

''(A) INITIAL ALLOCATION FORMULA.—For each calendar year, a State exercising the option to provide the services described in this section shall be allocated from the total number of beds available under paragraph (1)(B)—

''(i) in calendar years 1998 and 1999, 20 beds;

''(ii) in calendar years 2000, 2001, and 2002, 40 beds; and

''(iii) in calendar year 2003 and for each calendar year thereafter, a number of beds determined based on a formula (as provided by the Secretary) distributing beds to States on the basis of the relative percentage of women of childbearing age in a State.

''(B) REALLOCATION OF BEDS.—The Secretary shall provide that in allocating the number of beds made available to a State for the furnishing of services under this section that, to the extent not all States are exercising the option of providing services under this section and there are beds available that have not been allocated in a year as provided in paragraph (1)(B), that such beds shall be reallocated among States which are furnishing services under this section based on a formula (as provided by the Secretary) distributing beds to States on the basis of the relative percentage of women of childbearing age in a State.

''(C) INDIAN HEALTH SERVICE AREAS.—In addition to the beds allowed to be allocated under paragraph (1)(B) there shall be an additional 20 beds allocated in any calendar year to States for each Indian Health Service area within the State to be utilized by Indian Health Facilities within such an area and, to the extent such beds are not utilized by a State, the beds shall be reapportioned to Indian Health Service areas in other States.''.

(3) MAINTENANCE OF STATE FINANCIAL EFFORT AND 100 PERCENT FEDERAL MATCHING FOR SERVICES FOR INDIAN AND NATIVE ALASKAN WOMEN IN INDIAN HEALTH SERVICES AREAS.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end the following new subsections:

''(x) No payment shall be made to a State under this section in a State fiscal year for alcoholism and drug dependency residential treatment services (described in section 1932) unless the State provides assurances satisfactory to the Secretary that the State is maintaining State expenditures for such services at a level that is not less than the average annual level maintained by the State for such services for the 2-year period preceding such fiscal year.

''(y) Notwithstanding the preceding provisions of this section, the Federal medical assistance percentage for purposes of payment under this section for services described in section 1932 provided to individuals residing on or receiving services in an Indian Health Service area shall be 100 percent.''.

(b) PAYMENT ON A COST-RELATED BASIS.—Section 1902(a)(13) of the Social Security Act (42 U.S.C. 1396a(a)(13)) is amended—

(1) by striking ''and'' at the end of subparagraph (E);

(2) by adding ''and'' at the end of subparagraph (F); and

(3) by adding at the end the following new subparagraph:

''(G) for payment for alcoholism and drug dependency residential treatment services which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide all the services listed in section 1932(b) in conformity with applicable Federal and State laws, regulations, and quality and safety standards and to assure that individuals eligible for such services have reasonable access to such services;''.

(c) CONFORMING AMENDMENTS.—

(1) CLARIFICATION OF OPTIONAL COVERAGE FOR SPECIFIED INDIVIDUALS.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended, in the matter following subparagraph (F)—

(A) by striking ''; and (XIII)'' and inserting '', (XIII)''; and

(B) by inserting before the semicolon at the end the following: '', and (XIII) the making available of alcoholism and drug dependency residential treatment services to individuals described in section 1932(d) shall not, by reason of this paragraph, require the making of such services available to other individuals''.

(2) CONTINUATION OF ELIGIBILITY FOR ALCOHOLISM AND DRUG DEPENDENCY TREATMENT FOR PREGNANT WOMEN FOR 12 MONTHS FOLLOWING END OF PREGNANCY.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended in subsection (e)(5) by striking ''under the plan,'' and all through the period at the end and inserting ''under the plan—

''(A) as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends; and

''(B) for alcoholism and drug dependency residential treatment services under section 1932 through the end of the 1-year period beginning on the last day of her pregnancy.''.

(3) REDESIGNATIONS.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is further amended in subsection (a)(10)(C)(iv), by striking ''(24)'' and inserting ''(25)''.

(d) ANNUAL EDUCATION AND TRAINING IN INDIAN HEALTH SERVICE AREAS.—The Secretary of Health and Human Services in cooperation with the Indian Health Service shall conduct on at least an annual basis training and education in each of the 12 Indian Health Service areas for tribes, Indian organizations, residential treatment providers, and State health care workers regarding the availability and nature of residential treatment services available in such areas under the provisions of this Act.

(e) EFFECTIVE DATE; TRANSITION.—(1) The amendments made by this section apply to alcoholism and drug dependency residential treatment services furnished on or after January 1, 1998, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State under title XIX of the Social Security Act with regard to alcoholism and drug dependency residential treatment services (as defined in section 1932(a) of such Act) made available under such title on or after January 1, 1998, before the date the Secretary issues final regulations to carry out the amendments made by this section, if the services are provided under its plan in good faith compliance with such amendments.

S. 148

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 ''Comprehensive Fetal Alcohol Syndrome Prevention Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) Fetal Alcohol Syndrome is the leading known cause of mental retardation, and it is 100 percent preventable;

(2) each year, up to 12,000 infants are born in the United States with Fetal Alcohol Syndrome, suffering irreversible physical and mental damage;

(3) thousands more infants are born each year with Fetal Alcohol Effects, which are lesser, though still serious, alcohol-related birth defects;

(4) children of women who use alcohol while pregnant have a significantly higher infant mortality rate (13.3 per 1000) than children of those women who do not use alcohol (8.6 per 1000);

(5) Fetal Alcohol Syndrome and Fetal Alcohol Effects are national problems which can impact any child, family, or community, but their threat to American Indians and Alaska Natives is especially alarming;

(6) in some American Indian communities, where alcohol dependency rates reach 50 percent and above, the chances of a newborn suffering Fetal Alcohol Syndrome or Fetal Alcohol Effects are up to 30 times greater than national averages;

(7) in addition to the immeasurable toll on children and their families, Fetal Alcohol Syndrome and Fetal Alcohol Effects pose extraordinary financial costs to the Nation, including the costs of health care, education, foster care, job training, and general support services for affected individuals;

(8) the total cost to the economy of Fetal Alcohol Syndrome was approximately $2,500,000,000 in 1995, and over a lifetime, health care costs for one Fetal Alcohol Syndrome child are estimated to be at least $1,400,000;

(9) researchers have determined that the possibility of giving birth to a baby with Fetal Alcohol Syndrome or Fetal Alcohol Effects increases in proportion to the amount and frequency of alcohol consumed by a pregnant woman, and that stopping alcohol consumption at any point in the pregnancy reduces the emotional, physical, and mental consequences of alcohol exposure to the baby; and

(10) though approximately 1 out of every 5 pregnant women drink alcohol during their pregnancy, we know of no safe dose of alcohol during pregnancy, or of any safe time to drink during pregnancy, thus, it is in the best interest of the Nation for the Federal Government to take an active role in encouraging all women to abstain from alcohol consumption during pregnancy.

SEC. 3. PURPOSE.

It is the purpose of this Act to establish, within the Department of Health and Human Services, a comprehensive program to help prevent Fetal Alcohol Syndrome and Fetal Alcohol Effects nationwide. Such program shall—

(1) coordinate, support, and conduct basic and applied epidemiologic research concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects;

(2) coordinate, support, and conduct national, State, and community-based public awareness, prevention, and education programs on Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

(3) foster coordination among all Federal agencies that conduct or support Fetal Alcohol Syndrome and Fetal Alcohol Effects research, programs, and surveillance and otherwise meet the general needs of populations actually or potentially impacted by Fetal Alcohol Syndrome and Fetal Alcohol Effects.

SEC. 4. ESTABLISHMENT OF PROGRAM.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following:

"PART O—FETAL ALCOHOL SYNDROME PREVENTION PROGRAM

"SEC. 399G. ESTABLISHMENT OF FETAL ALCOHOL SYNDROME PREVENTION PROGRAM.

''(a) FETAL ALCOHOL SYNDROME PREVENTION PROGRAM.—The Secretary shall establish a comprehensive Fetal Alcohol Syndrome and Fetal Alcohol Effects prevention program that shall include—

''(1) an education and public awareness program to—

''(A) support, conduct, and evaluate the effectiveness of—

''(i) training programs concerning the prevention, diagnosis, and treatment of Fetal Alcohol Syndrome and Fetal Alcohol Effects;

''(ii) prevention and education programs, including school health education and school-based clinic programs for school-age children, concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

''(iii) public and community awareness programs concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects;

''(B) provide technical and consultative assistance to States, Indian tribal governments, local governments, scientific and academic institutions, and nonprofit organizations concerning the programs referred to in subparagraph (A); and

''(C) award grants to, and enter into cooperative agreements and contracts with, States, Indian tribal governments, local governments, scientific and academic institutions, and nonprofit organizations for the purpose of—

''(i) evaluating the effectiveness, with particular emphasis on the cultural competency and age-appropriateness, of programs referred to in subparagraph (A);

''(ii) providing training in the prevention, diagnosis, and treatment of Fetal Alcohol Syndrome and Fetal Alcohol Effects;

''(iii) educating school-age children, including pregnant and high-risk youth, concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects, with priority given to programs that are part of a sequential, comprehensive school health education program; and

''(iv) increasing public and community awareness concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects through culturally competent projects, programs, and campaigns, and improving the understanding of the general public and targeted groups concerning the most effective intervention methods to prevent fetal exposure to alcohol;

''(2) an applied epidemiologic research and prevention program to—

''(A) support and conduct research on the causes, mechanisms, diagnostic methods, treatment, and prevention of Fetal Alcohol Syndrome and Fetal Alcohol Effects;

''(B) provide technical and consultative assistance and training to States, Tribal governments, local governments, scientific and academic institutions, and nonprofit organizations engaged in the conduct of—

''(i) Fetal Alcohol Syndrome prevention and early intervention programs; and

''(ii) research relating to the causes, mechanisms, diagnosis methods, treatment, and prevention of Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

''(C) award grants to, and enter into cooperative agreements and contracts with, States, Indian tribal governments, local governments, scientific and academic institutions, and nonprofit organizations for the purpose of—

''(i) conducting innovative demonstration and evaluation projects designed to determine effective strategies, including community-based prevention programs and multicultural education campaigns, for preventing and intervening in fetal exposure to alcohol;

''(ii) improving and coordinating the surveillance and ongoing assessment methods implemented by such entities and the Federal Government with respect to Fetal Alcohol Syndrome and Fetal Alcohol Effects;

''(iii) developing and evaluating effective age-appropriate and culturally competent prevention programs for children, adolescents, and adults identified as being at-risk of becoming chemically dependent on alcohol and associated with or developing Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

''(iv) facilitating coordination and collaboration among Federal, State, local government, Indian tribal, and community-based Fetal Alcohol Syndrome prevention programs;

''(3) a basic research program to support and conduct basic research on services and effective prevention treatments and interventions for pregnant alcohol-dependent women and individuals with Fetal Alcohol Syndrome and Fetal Alcohol Effects;

''(4) a procedure for disseminating the Fetal Alcohol Syndrome and Fetal Alcohol Effects diagnostic criteria developed pursuant to section 705 of the ADAMHA Reorganization Act (42 U.S.C. 485n note) to health care providers, educators, social workers, child welfare workers, and other individuals; and

''(5) the establishment, in accordance with subsection (b), of an interagency task force on Fetal Alcohol Syndrome and Fetal Alcohol Effects to foster coordination among all Federal agencies that conduct or support Fetal Alcohol Syndrome and Fetal Alcohol Effects research, programs, and surveillance, and otherwise meet the general needs of populations actually or potentially impacted by Fetal Alcohol Syndrome and Fetal Alcohol Effects.

''(b) INTERAGENCY TASK FORCE.—

''(1) MEMBERSHIP.—The Task Force established pursuant to paragraph (5) of subsection (a) shall—

''(A) be chaired by the Secretary or a designee of the Secretary, and staffed by the Administration; and

''(B) include representatives from all relevant agencies and offices within the Department of Health and Human Services, the Department of Agriculture, the Department of Education, the Department of Defense, the Department of the Interior, the Department of Justice, the Department of Veterans Affairs, the Bureau of Alcohol, Tobacco and Firearms, the Federal Trade Commission, and any other relevant Federal agency.

''(2) FUNCTIONS.—The Task Force shall—

''(A) coordinate all Federal programs and research concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects, including programs that—

''(i) target individuals, families, and populations identified as being at risk of acquiring Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

''(ii) provide health, education, treatment, and social services to infants, children, and adults with Fetal Alcohol Syndrome and Fetal Alcohol Effects;

''(B) coordinate its efforts with existing Department of Health and Human Services task forces on substance abuse prevention and maternal and child health; and

''(C) report on a biennial basis to the Secretary and relevant committees of Congress on the current and planned activities of the participating agencies.

''(c) SCIENTIFIC RESEARCH AND TRAINING.—The Director of the National Institute on Alcohol Abuse and Alcoholism, with the cooperation of members of the interagency task force established under subsection (b), shall establish a collaborative program to provide for the conduct and support of research, training, and dissemination of information to researchers, clinicians, health professionals and the public, with respect to the cause, prevention, diagnosis, and treatment of Fetal Alcohol Syndrome and the related condition know as Fetal Alcohol Effects.

"SEC. 399H. ELIGIBILITY.

''To be eligible to receive a grant, or enter into a cooperative agreement or contract under this part, an entity shall—

''(1) be a State, Indian tribal government, local government, scientific or academic institution, or nonprofit organization; and

''(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may prescribe, including a description of the activities that the entity intends to carry out using amounts received under this part.

"SEC. 399I. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this part, such sums as are necessary for each of the fiscal years 1997 through 2001.''.

Mr. DASCHLE. Mr. President, today I am reintroducing two bipartisan bills to help prevent the tragic occurrence of alcohol-related birth defects, including both fetal alcohol syndrome [FAS] and fetal alcohol effects [FAE]. I speak on behalf of all cosponsors when I say we are hopeful we can move these two simple, but important pieces of legislation this year.

Recent estimates indicate that up to 12,000 children are born each year in the United States with FAS. Thousands more are born with FAE. It is estimated that the incidence of FAS may be as high as one per 100 in some Native American communities.

FAS and FAE are devastating, complex birth defects. Many people fail to realize that FAS is the leading cause of mental retardation. Too many women remain uninformed about the real dangers of alcohol consumption during pregnancy. In fact, at least one recently published popular pregnancy book actually recommends a drink or two to relax later in pregnancy. And, unfortunately, misconceptions about the impact of alcohol intake during pregnancy are not limited to the general public. For many years it was widely, though mistakenly, believed in the medical community that moderate alcohol consumption during pregnancy was beneficial. These misperceptions are not only frightening, but life threatening. Children born to women who drink alcohol during pregnancy have a 50 percent higher infant mortality rate than the children of women who abstain. Fortunately, several medical and nursing schools have begun offering a course specifically on FAS and

FAE. I remain hopeful that medical professionals will continue to learn more about how to appropriately counsel women who are pregnant or are considering pregnancy and how to recognize and diagnose children who may be suffering from FAS or FAE.

The costs associated with caring for the individual with FAS and FAE are staggering. The Centers for Disease Control and Prevention estimates that the lifetime cost of treating an individual with FAS is almost $1.4 million. The total costs in terms of health care and social services to treat all Americans with FAS was estimated to be $2.7 billion 1995. This is an extraordinary and unnecessary expense, especially when one considers that all alcohol-related birth defects are 100% preventable.

The first step eliminating this devastating disease is raising the public's consciousness about FAS/FAE. Although great strides have been made in this regard, much more work remains to be done. The Comprehensive Fetal Alcohol Syndrome Prevention Act attempts to fill in the gaps in our current FAS/FAE prevention system. In contains four major components, representing the provisions of the original legislation that have not yet been enacted. These provisions include the initiation of a coordinated education and public awareness campaign; increased support for basic and applied epidemiologic research into the causes, treatment and prevention of FAS/FAE; widespread dissemination of FAS/FAE diagnostic criteria; and the establishment of an inter-agency task force to coordinate the wide range of federal efforts in combating FAS/FAE.

A prevention strategy cannot succeed in the absence of increases access to comprehensive treatment programs for pregnant addicted women. Many pregnant substance abusers are denied treatment because facilities specifically exclude them, or they cannot find or afford adequate child care for their existing children while they receive residential treatment. To make matters worse, while Medicaid covers some services associated with substance abuse, like outpatient treatment and detoxification, it fails to cover non-hospital based residential treatment, which is considered by most health care professionals to be the most effective method of overcoming addiction.

The Medicaid Substance Abuse Treatment Act would create an optional Medicaid benefit that would permit coverage of non-hospital based residential alcohol and drug treatment for Medicaid-eligible pregnant women and their children. This would assure a stable source of funding for states that wish to establish these programs. The bill has three primary objectives. First, it would facilitate the participation of pregnant women who are substance abusers in alcohol and drug treatment programs. Second, by increasing the availability of comprehensive and effective treatment programs for pregnant women and, thus, improving a woman's ability to bear health children, it would help combat the serious and ever-growing problem of drug-impaired infants and children, many of whom are also born with FAS or FAE. Third, it would address the unique situation of pregnant, addicted Native American and Alaska Native women in Indian Health Service areas.

Mr. President, the cost of prevention is substantially less than the downstream costs in money and human capital of caring for children and adults who have been impaired due to prenatal exposure to alcohol and drugs. These prevention and treatment services are an investment that yields substantial long-term dividends—both on a societal level, as costs and efforts associated with taking care of children born with alcohol-related birth defects decline and on a individual level, as mothers plagued by alcohol and drug addiction are given the means to heal themselves and give their unborn children a healthier start in life.

FAS and FAE represent a national tragedy that reaches across economic and social boundaries. With researchers from Columbia University reporting that at least one of every five pregnant women uses alcohol and/or other drugs during pregnancy, the demand for a comprehensive and determined response to this devastating problem is clear. I welcome the support of my colleagues on these important bills.

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

S. 149. A bill to amend the National Narcotics Leadership Act of 1988 to establish qualification standards for individuals nominated to be the Deputy Director of Demand Reduction in the Office of National Drug Control Policy; to the Committee on Labor and Human Resources.

NATIONAL DRUG CONTROL POLICY LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill, cosponsored by Senator CHARLES E. GRASSLEY, to amend the Anti-Drug Abuse Act of 1988 to establish qualification standards for individuals nominated for the position of Deputy Director of Demand Reduction in the Office of National Drug Control Policy.

On May 17, 1988, then-Senate Majority Leader ROBERT S. BYRD established a working group on substance abuse which I was to co-chair with Senator Sam Nunn of Georgia. Interdiction and crackdown were then all the rage. My role on the working group was to assert that, other than to raise the price of drugs somewhat, interdiction was not going to have the slightest effect on supply. We saw the failure of supply side measures during Prohibition and in the French Connection model of cutting off production abroad. Accordingly, any comprehensive legislation should place at least equal emphasis on demand.

The Anti-Drug Abuse Act of 1988, which became law on November 18 of that year, did just that. Section 2012 sets out the purposes of the law. They include: To increase to the greatest extent possible the availability and quality of treatment services so that treatment on request may be provided to all individuals desiring to rid themselves of their substance abuse problem.

The legislation established an Office of National Drug Control Policy in the executive office of the President. It was headed by a so-called czar and included a deputy director of supply reduction and a deputy director for demand reduction. The Deputy Director for Demand would seek a clinical device, a pharmacological block, similar to methadone treatment for heroin. The Deputy Director would know the chemistry of the subject enough to promote some treatment beyond the sort of psychiatric treatment currently available.

President Bush made extraordinary, fine appointments. He appointed Dr. William Bennett as the head of the office. As the Deputy Director for Demand Reduction he appointed Dr. Herbert Kleber, a physician at the Yale Medical School, a research scientist, and exactly the person you would want for this.

Then, after a while, Bennett left, and Kleber also left. Kleber has gone to Columbia College of Physicians and Surgeons and is working at the New York Psychiatric Institute in this field.

Nobody succeeded him in a scientific role. There have been a number of persons in the job. I am sure they are good persons, but they are nothing like what we had in mind in the legislation.

The bill I introduce today would require that the Deputy Director of Demand Reduction have a scientific background and be a leader in the field of substance abuse prevention or treatment. This is no more than what the 1988 Act intended. We enacted a good statute which has been trivialized. If we are serious about getting hold of the drug dealer epidemic in this country, we must have an individual eminent in the field of substance abuse prevention leading the charge on demand reduction.

Mr. GRASSLEY. Mr. President, Senator MOYNIHAN and I are introducing Legislation today to spell out more specifically the requirements for the office of Deputy Director for Demand Reduction at the Office of National Drug Control Policy. I know it is Senator MOYNIHAN'S view, and mine, that this office requires an incumbent of the highest qualifications in the demand reduction area. This is especially true at this time. We have seen 4 years of rising teenage drug use in this country. We have seen initiatives that move us perilously close to legalizing a dangerous drug. We have seen the cynical exploitation of the public's trust in order to do this. In response, we need credible, visible leadership of the highest caliber in the Nation's chief demand reduction office. These qualifications were what Congress had in mind

when we created the Drug Czar's office and the position of Deputy Director for Demand Reduction. Today, we are introducing legislation that will spell out more clearly this intent.

Last year, Congress increased funding to restore the Drug Czar's office to effective staffing levels. This year we will be reviewing the reauthorization of the office. Congress remains deeply interested in ONDCP and I and others will be working to ensure that it is meeting the expectations that we have in it.

As we work during this Congress to ensure a drug-free future for our children, we must have an individual in charge of our national demand reduction efforts who can command the respect of parents, doctors, treatment and prevention specialist, and the public. I am pleased to join Senator MOYNIHAN in this effort. Our legislation will ensure that we will see candidates for this important post who command universal respect. I welcome the support of our colleagues. I look forward to having someone of outstanding capabilities with whom we can work and in whom the public can have confidence.

By Mr. MOYNIHAN (for himself, Mr. D'AMATO, and Mr. DODD):

S. 150. A bill to amend section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), to provide for disclosure of information relating to individuals who committed Nazi war crimes, and for other purposes; to the Committee on the Judiciary.

THE WAR CRIMES DISCLOSURE ACT

Mr. MOYNIHAN. Mr. President, today I am joined by Senators D'AMATO and DODD in introducing the War Crime Disclosure Act. This legislation is a companion to a measure introduced in the House, sponsored by Representative MALONEY.

The measure is a simple one. It requires the disclosure of information under the Freedom of Information Act regarding individuals who participated in Nazi war crimes.

Ideally, such documents would be made available to the public without further legislation and without having to go through the slow process involved in getting information through the Freedom of Information Act [FOIA]. Unfortunately, this is not the case. Researchers seeking information on Nazi war criminals are denied access to relevant materials in the possession of the U.S. Government, even when the disclosure of these documents no longer poses a threat to national security—if indeed such disclosure ever did.

With the passing of time it becomes ever more important to document Nazi war crimes, lest the enormity of those crimes be lost to history. The greater access which this legislation provides will add clarity of this important effort. I applaud those researchers who continue to pursue this important work.

I would also like to call to the attention of my colleagues the excellent work of the Office of Special Investigations of the Department of Justice. This office has a monumental task and I would not wish to add to that burden or divert its officials from their primary goal of pursuing Nazi war criminals. To that end, I would note that this legislation does not apply to the Office of Special Investigations, as it is not identified in paragraph (1)(B) of the bill as a ''specified agency.'' I would also add that there is a provision in the bill which specifically prohibits the disclosure of information which would compromise the work of the Office of Special Investigations.

I would like to thank Representative MALONEY for her original work on this subject in the House of Representatives. I would also thank Senators D'AMATO and DODD for joining me in this effort here in the Senate.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

[From the New York Times, June 25, 1996]

MS. MALONEY AND MR. WALDHEIM

(By A.M. Rosenthal)

For a full half-century, with determination and skill, and with the help of the law, U.S. intelligence agencies have kept secret the record of how they used Nazis for so many years after World War II, what the agencies got from these services—and what they gave as payback.

Despite the secrecy blockade, we do know how one cooperative former Wehrmacht officer and war crimes suspect was treated. We know the U.S. got him the Secretary Generalship of the U.N. as reward and base.

For more than two years, Congress has had legislation before it to allow the public access to information about U.S.-Nazi intelligence relations—a bill introduced by Representative Carolyn B. Maloney, a Manhattan Democrat, and now winding through the legislative process.

If Congress passes her War Crimes Disclosure Act, H.R. 1281, questions critical to history and the conduct of foreign affairs can be answered and the power of government to withhold them reduced. The case of Kurt Waldheim is the most interesting example—the most interesting we know of at the moment.

Did the U.S. know when it backed him for Secretary General that he had been put on the A list of war-crime suspects, adopted in London in 1948, for his work as a Wehrmacht intelligence officer in the Balkans, when tens of thousands of Yugoslavs, Greeks, Italians, Jew and non-Jew, were being deported to death?

If not, isn't that real strange, since the U.S. representative on the War Crimes Commission voted to list him. A report was sent to the State Department. Didn't State give the C.I.A. a copy—a peek?

And when he was running for Secretary General why did State Department biographies omit any reference to his military service—just as he forgot to mention it in his autobiographies?

If all that information was lost by teams of stupid clerks, once the Waldheim name came up for the job why did not the U.S. do the obvious thing—check with Nazi and war-crime records in London and Berlin to see if his name by any chance was among those dearly wanted?

Didn't the British know? They voted for the listing too. And the Russians—Yugoslavia moved to list him when it was a Soviet satellite. Belgrade never told Moscow?

How did Mr. Waldheim repay the U.S. for its enduring fondness to him? Twice it pushed him successfully for the job. The third time it was among few countries that backed him again but lost. Nobody can say the U.S. was not loyal to the end.

Did he also serve the Russians and British? One at a time? Or was he a big-power groupie, serving all?

One thing is not secret any longer, thanks to Prof. Robert Herzstein of the University of South Carolina history department. He has managed through years of perseverance to pry some information loose. He found that while Mr. Waldheim worked for the Austrian bureaucracy, the U.S. Embassy in Vienna year after year sent in blurby reports about his assistance to American foreign policy—friendly, outstanding, cooperative, receptive to American thinking. All the while, this cuddly fellow was on the A list, which was in the locked files or absent with official leave.

On May 24, 1994, I reported on Professor Herzstein's findings and the need for opening files of war-crime suspects. Representative Maloney quickly set to work on her bill to open those files to Freedom of Information requests—providing safeguards for personal privacy, on-going investigations and national security if ever pertinent.

Her first bill expired in the legislative machinery and in 1995 she tried again. She got her hearing recently thanks to the chairman of her subcommittee of the Government Reform Committee—Stephen Horn, the California Republican.

If the leaders of Congress will it, the Maloney bill can be passed this year. I nominate my New York Senators to introduce it in the Senate. It will be a squeeze to get it passed before the end of the year, so kindly ask your representatives and senators to start squeezing.

If not, the laborious legislative procedure will have to be repeated next session. Questions about the Waldheim connection will go unanswered, and also about other cases that may be in the files or strangely misplaced, which will also be of interest.

By Mr. MOYNIHAN:

S. 151. A bill for the relief of Dr. Yuri F. Orlov of Ithaca, New York; to the Committee on Governmental Affairs.

SOVIET DISSIDENT LEGISLATION

Mr. MOYNIHAN. Mr. President, today I rise to introduce a bill to recognize the immeasurable debt which we owe to a leading Soviet dissident. Dr. Yuri F. Orlov, a founding member of the Soviet chapter of Amnesty International and founder of the Moscow Helsinki Watch Group (the first nationwide organization in Soviet history to question government actions), who now lives in Ithaca, New York, is threatened by poverty. Yuri Orlov could not be stopped by the sinister forces of the Soviet Union and, no doubt, he will not be stopped by poverty. But I rise today in hopes that it will not come to that.

Dr. Orlov's career as a dissident began while he was working at the famous Institute for Theoretical and Experimental Physics in Moscow. At the Institute in 1956 he made a pro-democracy speech which cost him his position and forced him to leave Moscow.

He was able to return in 1972, whereupon he began his most outspoken criticism of the Soviet regime.

On September 13, 1973, in response to a government orchestrated-public smear campaign against Audrei Sakharov, Orlov sent ''Thirteen Questions to Brezhnev,'' a letter which advocated freedom of the press and reform of the Soviet economy. One month later, he became a founding member of the Soviet chapter of Amnesty International. His criticism of the Soviet Union left him unemployed and under constant KGB surveillance, but he would not be silenced.

In May, 1976 Dr. Orlov founded the Moscow Helsinki Watch Group to pressure the Soviet Union to honor the human rights obligations it had accepted under the Helsinki Accords signed in 1975. His leadership of the Helsinki Watch Group led to his arrest and, eventually, to a show trial in 1978. He was condemned to seven years in a labor camp and five years in exile.

After having served his prison sentence, and while still in exile, Dr. Orlov was able to immigrate to the United States in 1986 in an exchange arranged by the Reagan Administration. A captured Soviet spy was returned in exchange for the release of Dr. Orlov and a writer for U.S. News & World Report who had been arrested in Moscow, Nicholas Daniloff.

Since then, Dr. Orlov has served as a senior scientist at Cornell University in the Newman Laboratory of Nuclear Studies. Now that he is 72 years old, he is turning his thoughts to retirement. Unfortunately, since he has only been in the United States for 10 years, his retirement income from the Cornell pension plus Social Security will be insufficient: only a fraction of what Cornell faculty of comparable distinction now get at retirement.

His scientific colleagues, Nobel physicist Dr. Hans A. Bethe, Kurt Gottfried of Cornell, and Sidney Drell of Stanford, have made concerted efforts to raise support for Dr. Orlov's retirement, but they are in further need.

To this end, I have agreed to assist these notable scientists in their endeavor to secure a more appropriate recompense for this heroic dissident. That is the purpose that brings me here to the Senate floor today, on the first day of the 105th Congress, to introduce a bill on Dr. Orlov's behalf. While I acknowledge the daunting prospects that face private relief bills these days, I offer the bill at least as a step toward bringing the kind of attention to Dr. Orlov's situation which he deserves.

To understand Dr. Orlov's contributions to ending the Cold War, I would draw my colleagues attention to his autobiography, Dangerous Thoughts: Memoirs of a Russian Life. It captures the fear extant in Soviet society and the courage of men like Orlov, Sakharov, Sharansky, Solzhenitsyn, and others who defied the Soviet regime. Dr. Orlov, who spent 7 years in a labor camp and two years in Siberian exile, never ceased protesting against oppression. Despite deteriorating health and the harsh conditions of the camp, Dr. Orlov smuggled out messages in support of basic rights and nuclear arms control. His bravery and that of his dissident colleagues played no small role in the dissolution of the Soviet Union. I am sure many would agree that we owe them a tremendous debt. This then is a call to all those who agree with that proposition. Dr. Orlov is now in need; please join our endeavor.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 152. A bill to provide for the relief and payment of an equitable claim to the estate of Dr. Beatrice Braude of New York, New York; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill, cosponsored by Senator D'AMATO, to provide for the relief and payment of an equitable claim to the estate of Dr. Beatrice Braude.

Mr. President, this is a measure of justice which brings back memories of an old and awful time. Dr. Braude, a linguist fluent in several languages, was dismissed from her position at the United States Information Agency (USIA) in 1953 as a result of accusations of disloyalty to the United States. The accusations were old; two years earlier, the State Department's Loyalty Security Board had investigated and unanimously voted to dismiss them. The Board sent a letter to Dr. Braude stating ''there is no reasonable doubt as to your loyalty to the United States Government or as to your security risk to the Department of State.''

Dr. Braude was terminated one day after being praised for her work and informed that she probably would be promoted. USIA officials told her that the termination was due to budgetary constraints. Congress had funded the USIA at a level 27 percent below the President's request. The Supplemental Appropriation Act of 1954 (Public Law 83–207) authorized a reduction in force commensurate to the budget cut. Fair enough. As Dr. Braude remarked years later, ''I never felt that I had a lien on a government job.'' But what Dr. Braude did not know is that she was selected for termination because of the old—and answered—charges against her. And because she did not know the real reason for her dismissal, she was denied certain procedural rights (the right to request a hearing, for instance).

The true reason for her dismissal was kept hidden from her. When she was unable, over the next several years, to secure employment anywhere else within the Federal Government—even in a typing pool despite a perfect score on the typing test—she became convinced that she had been blacklisted. She spent the next 30 years fighting to regain employment and restore her reputation. Though she succeeded in 1982 (at the age of 69) in securing a position in the CIA as a language instructor, she still had not been able to clear her name by the time of her death in 1988. The irony of the charges against Dr. Braude is that she was an anti-communist, having witnessed first-hand communist-sponsored terrorism in Europe while she was an assistant cultural affairs officer in Paris and, for a brief period, an exchange officer in Bonn during the late 1940s and early 1950s.

Mr. President, I would like to review the charges against Dr. Braude because they are illustrative of that dark era and instructive to us even today. There were a total of four. First, she was briefly a member of the Washington Book Shop at Farragut Square that the Attorney General later labeled subversive. Second, she had been in contact with Mary Jane Keeney, a Communist Party activist employed at the United Nations. Third, she had been a member of the State Department unit of the Communist-dominated Federal Workers' Union. Fourth, she was an acquaintance of Judith Coplon.

With regard to the first charge, Dr. Braude had indeed joined the Book Shop shortly after her arrival in Washington in 1943. She was eager to meet congenial new people and a friend recommended the Book Shop, which hosted music recitals in the evenings. I must express some sensitivity here: my F.B.I. records report that I was observed several times at a ''leftist musical review'' in suburban Hampstead while I was attending the London School of Economics on a Fulbright Fellowship.

Dr. Braude was aware of the undercurrent of sympathy with the Russian cause at the Book Shop, but her membership paralleled a time of close U.S.-Soviet collaboration. She drifted away from the Book Shop in 1944 because of her distaste for the internal politics of other active members. Her membership at the Book Shop was only discovered when her name appeared on a list of delinquent dues. It appears that her most sinister crime while a member of the book shop was her failure to return a book on time.

Dr. Braude met Mary Jane Keeney on behalf of a third woman who actively aided Nazi victims after the war and was anxious to send clothing to another woman in occupied Germany. Dr. Braude knew nothing of Keeney's political orientation and characterized the meeting as a transitory experience.

With regard to the third charge, Dr. Braude, in response to an interrogatory from the State Department's Loyalty Security Board, argued that she belonged to an anti-Communist faction of the State Department unit of the Federal Workers' Union.

Remember that the Loyalty Security Baird invested these charges and exonerated her.

The fourth charge, which Dr. Braude certainly did not—or could not—deny, was her friendship with Judith Coplon. Braude met Coplon in the summer of 1945 when both women attended a class Herber Marcuse taught at American University. They saw each other infrequently thereafter. In May 1948, Coplon wrote to Braude, then stationed in Paris and living in a hotel on the Left Bank, to announce that she would be visiting shortly and needed a place to stay. Dr. Braude arranged for Coplon to stay at the hotel. Coplon stayed for 6 weeks, during which time Dr. Braude found her behavior very trying. The two parted on unfriendly terms. The friendship they had prior to parting was purely social.

Mr. President, Judith Coplon was a spy. She worked in the Justice Department's Foreign Agents Registration Division, an office integral to the FBI's counter-intelligence efforts. She was arrested early in 1949 while handing over notes on counterintelligence operations to Soviet citizen Valentine Gubitchev, a United Nations employee. Coplon was tried and convicted—there was no doubt of her guilt—but the conviction was overturned on a technicality. Gubitchev was also convicted but was allowed to return to the U.S.S.R. because of his quasi-diplomatic status.

My involvement in Dr. Braude's case dates back to early 1979, when Dr. Braude came to me and my colleague at the time, Senator Javits, and asked us to introduce private relief legislation on her behalf. In 1974, after filing a Freedom of Information Act request and finally learning the true reason for her dismissal, she filed suit in the Court of Claims to clear her name and seek reinstatement and monetary damages for the time she was prevented from working for the Federal Government. The Court, however, dismissed her case on the grounds that the statute of limitations had expired. On March 5, 1979, Senator Javits and I together introduced a bill, S. 546, to waive the statute of limitations on Dr. Braude's case against the U.S. Government and to allow the Court of Claims to render judgment on her claim. The bill passed the Senate on January 30, 1980. Unfortunately, the House failed to take action on the bill before the 96th Congress adjourned.

In 1988, and again in 1990, 1991, and 1993, Senator D'AMATO and I re-introduced similar legislation on Dr. Braude's behalf. Our attempts met with repeated failure. Until at last, on September 21, 1993, we secured passage of Senate Resolution 102, which referred S. 840, the bill we introduced for the relief of the estate of Dr. Braude, to the Court of Claims for consideration as a congressional reference action. The measure compelled the Court to determine the facts underlying Dr. Braude's claim and to report back to Congress on its findings.

The Court held a hearing on the case in November of 1995 and on March 7 of last year Judge Roger B. Andewelt of the Court of Federal Claims issued his verdict that the USIA had wrongfully dismissed Dr. Braude and intentionally concealed the reason for her termination. He concluded that such actions constituted an equitable claim for which compensation is due. Forty-three years after her dismissal from the USIA and 8 years after her death, the Court found in favor of the estate of Dr. Braude.

Senator D'AMATO and I wish to express our profound admiration for Judge Andewelt's decision in which he absolved Dr. Beatrice Braude of the surreptitious charges of disloyalty with which she was never actually confronted. The Court declared that Dr. Braude ''cared about others deeply and was loyal to her friends, family and country.''

We are equally grateful to Christopher N. Sipes and William Livingston, Jr. of Covington & Burling, two of the many lawyers who have handled Dr. Braude's case on a pro bono basis over the years. Mr. Sipes quite properly remarked that the decision represents an important page in the annals of U.S. history: ''The Court of the United States has said it recognizes that this conduct is out of bounds. It tells the government it must acknowledge its wrongs and pay for them.''

Justice Department attorneys have reached a settlement with lawyers representing the estate of Dr. Beatrice Braude concerning monetary damages equitably due for the wrongful dismissal of Dr. Braude from her Federal job in 1953 and subsequent blacklisting. The estate will receive $200,000 in damages. Family members have announced that the funds—which Congress must now appropriate—will be donated to Hunter College, the institution from which Dr. Braude received her bachelor's degree.

Now that the parties to the Braude case have reached an agreement on the monetary damages equitably due to Dr. Braude's estate, Senator D'AMATO and I are offering legislation to release the $200,000 to her estate. I hope that we will have the unqualified and unanimous support of our colleagues.

What happened to Dr. Braude was a personal tragedy. But it was also part of a national tragedy, too. This Nation lost, prematurely and unnecessarily, the exceptional services of a gifted and dedicated public servant. Stanley I. Kutler, a professor of constitutional history at the University of Wisconsin, estimates that Dr. Braude was one of about 1,500 Federal employees who were dismissed as security risks between 1953 and 1956. Another 6,000 resigned under the pressure of security and loyalty inquiries, according to Professor Kutler, who testified as an expert witness on Dr. Braude's behalf. It was, as I said earlier, an awful time. We had settled ''as on a darkling plain, Swept with confused alarm of struggle and flight, Where ignorant armies clash by night.'' It must not happen again.

Mr. MOYNIHAN (for himself and Mr. ASHCROFT):

S. 153. A bill to amend the Age Discrimination in Employment Act of 1967 to allow institutions of higher education to offer faculty members who are serving under an arrangement providing for unlimited tenure, benefits on voluntary retirement that are reduced or eliminated on the basis of age, and for other purposes; to the Committee on Labor and Human Resources.

THE FACULTY RETIREMENT INCENTIVE ACT

Mr. MOYNIHAN. Mr. President, today I rise to introduce the Faculty Retirement Incentive Act. This bill will amend the Age Discrimination in Employment Act of 1967 (ADEA) to allow the use of age-based incentives for the voluntary retirement of tenured faculty at colleges and universities. I am pleased that Senator Ashcroft is an original cosponsor of this legislation.

Since the late 1950s, there has been a vast expansion in the number of individuals pursuing careers in academia. Now, an unusually large cohort of tenured faculty make it difficult for universities to hire more recent graduates. As a practical matter, it is extremely difficult or costly or both for institutions to bring on new tenured faculty except where tenure positions open up as a result of retirement. In order for academic institutions to remain effective centers of teaching and scholarship they must have a balance of old and new faculty. This balance, however, is threatened by continuing uncertainties created by recent legislation.

I support the ADEA, but when it was amended in 1986 to extend the protections of the act to individuals age 70 and over, I expressed concern that the application of this change to the unique situation of tenured faculty members at colleges and universities would affect teaching and scholarship at these institutions. While it did include an exemption from the provisions for the bill for tenured faculty, the exemption only lasted seven years. Therefore, I was pleased when that bill included a request for the National Academy of Sciences (NAS) to appoint a commission to study the impact of removing the mandatory retirement age for faculty members at colleges and universities.

When the National Research Council released this study, Ending Mandatory Retirement for Tenured Faculty: The Consequences for Higher Education, on behalf of NAS in 1991, the report concluded that diminished faculty turnover—particularly at research universities—could increase costs and limit institutional flexibility in responding to changing academic needs, particularly with regard to necessary hires in new and existing disciplines. In concluding that there was ''no strong basis for continuing the exemption for tenured faculty,'' the NAS report presumed that the Federal government would allow ''Practical steps'' such as age-based early-retirement incentives

to mitigate the impact of an uncapped retirement age for tenured faculty. Specifically, the NAS report stated: ''The committee recommends that Congress, the Internal Revenue Service, and the Equal Employment Opportunity Commission permit colleges and universities to offer faculty voluntary-retirement incentive programs that are not classified as an employee benefit, include an upper age limit for participants and limit participation on the basis of institutional needs.''

These practical steps, however, were not taken although the exemption was allowed to run out. Instead, passage of the Older Workers Benefit Protection Act of 1990 (OWBPA) further confused the issue. OWBPA made early-retirement incentives permissible in the context of defined-benefit retirement plans but did not address the status of such incentives in the context of defined-contribution retirement plans. Defined-contribution retirement plans are most popular with tenured faculty due to their pension portability. The OWBPA did not preclude defined-contribution retirement plans, but by not addressing the issue at all, it added to the ambiguity surrounding the matter. Functionally, early-retirement incentives operate in the same manner for both types of plans. There is continued uncertainty, however, whether early-retirement incentives with an upper-age limit that are offered to tenured faculty conflict with the purpose of ADEA of prohibiting arbitrary age discrimination.

I am troubled by the continued uncertainty created by these bills, and I hope that the Faculty Retirement Incentive Act will provide a ''safe harbor'' for colleges and universities by clarifying that the early retirement incentives are permitted by the ADEA. Universities must ensure that older faculty members retire at an appropriate age, not simply to ''make room'' for younger faculty, but to maintain a contemporary, innovative, and creative atmosphere at our nation's colleges and universities.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 154. A bill to improve Orchard Beach, New York; to the Committee on Environment and Public Works.

THE ORCHARD BEACH, NEW YORK IMPROVEMENT ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise today to introduce a most important piece of legislation for the State of New York, and to ask my Senate colleagues for their support. This bill directs the Secretary of the Army to repair a section of waterfront parkland in the Bronx, New York, known as Orchard Beach. My colleague in New York City, Bronx Borough President Fernando Ferrer, has worked hard for many years to get this beach—so beloved by the citizens of the Bronx—restored to its former glory.

Orchard Beach is a splendid natural sanctuary and recreational spot within the Bronx, which is one of New York City's most urbanized areas. Orchard Beach provides a welcome respite from urban living and is particularly valued by low-income families with children who cannot afford summer homes or trips to the tonier beach resorts on Long Island or the Jersey shore. Over two million people visit Orchard Beach annually. For many of New York's working families, it offers the only affordable and convenient place for their children to play in the sea and sand.

In addition, the beach and surrounding wetlands and salt marshes provide a vital habitat for many marine creatures, including crabs, lobsters, striped bass and winter flounder, as well as numerous species of overwintering waterfowl.

But today, the beach is in urgent need of repair—there is widespread erosion due to repeated storm damage, threatening both the recreational utility of the beach and the stability of the animal and ocean life habitats. It seems only appropriate that we come to the rescue of this treasure now before irreversible damage is done.

In the Water Resources Development Acts of 1992 and 1996, a total of $5.6 million was authorized to study and then conduct an Orchard Beach shoreline protection project to address storm damage prevention, recreation, and environmental restoration. The bill I introduce today would help to ensure that this important project for New York goes forward.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 155. A bill to redesignate General Grant National Memorial as Grant's Tomb National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MOYNIHAN. Mr. President, I rise to introduce, along with my friend and colleagues, Senator D'Amato, a bill to designate President Grant's tomb a national monument. This April 27 will be the centennial of the dedication of the tomb. I can think of no better observance than to pass this designation and the other provisions in this bill that would protect and preserve the tomb and make it more attractive to visitors.

The Nation owes President Grant a great debt for his efforts during the Civil War alone. He proved to be the capable general President Lincoln lacked in the early years of that conflict. Grant provided the leadership, strategy, determination, and courage to do what was necessary to win the war. He should also be remembered for his efforts to include Blacks in the Union Army and later for his relentless opposition to the Ku Klux Klan. Many Southerners appreciated his generous terms with General Lee, which included allowing Lee's men to keep their horses for the spring plowing. Grant went on to become the eighteenth President and to serve two terms.

In 1881 the former President moved to New York City, and four years later to Mount McGregor near Saratoga. He died in 1885. In the next few years, 90,000 people contributed to a fundraising effort that brought in $600,000. This was enough to build structure on Riverside Drive in Manhattan modeled on the tombs of the Emperor Hadrian in Rome, Napoleon in Paris, and King Mausolis in Turkey. Inside are two eight-and-a-half ton sarcophagi made of Wisconsin red granite and a great mural depicting Lee's surrender to Grant at Appomattox.

The tomb became a leading attraction for New York residents and for tourists. However, the neighborhood around the tomb has changed in recent years and visitorship is down. Vandalism is an ongoing concern. This bill takes several steps that are past due to protect and preserve the tomb.

The bill would make Grant's Tomb a National Monument and require the Secretary of the Interior to ''administer, repair, restore, preserve, maintain, and promote'' the tomb in accordance with the law applicable to all National Monuments. It requires the Secretary to build a visitors center. It also calls for a study over two years to plan interpretive programs, restoration, and security and maintenance.

This bill addresses the needs at Grant's Tomb. It can again become a leading attraction in New York. More important, the bill does what is right for the memory of our eighteenth President.

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

S. 156. A bill to provide certain benefits of the Pick-Sloan Missouri River Basin program to the Lower Brule Sioux Tribe, and for other purposes; to the Committee on Energy and Natural Resources.

THE LOWER BRULE SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND ACT OF 1997

Mr. DASCHLE. Mr. President, I am pleased to introduce the Lower Brule Sioux Tribe Infrastructure Development Trust Fund of 1997. This legislation is the companion bill to the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, which was signed by President Clinton on October 1, 1996.

When the Senate considered the Crow Creek Sioux bill last fall, I told my colleagues it is important to enact legislation to address similar claims by the Lower Brule Sioux and Cheyenne River Sioux tribes. The introduction of this legislation is intended to start that process for the Lower Brule Sioux Tribe. I intend to introduce similar legislation for the Cheyenne River Sioux Tribe later in this session.

The need for this legislation is great. In 1944, Congress passed the Flood Control Act, authorizing the Pick-Sloan Plan to build five dams on the Missouri River. Four of the Pick-Sloan dams are located in South Dakota. While the

Pick-Sloan Project has been instrumental in providing the region with irrigation, hydropower and flood control capabilities, its construction took a serious toll on many Native American tribes, who were forced to cede land to the project and suffer the turmoil associated with relocating entire communities.

Like many of the tribes along the Missouri River, the Lower Brule Sioux Tribe shouldered a disproportionate amount of the cost to implement the Pick-Sloan project. Three decades ago, the Big Bend and Fort Randall dams flooded more than 22,000 acres of the Lower Brule Sioux land. Over 70 percent of the tribe's residents were forced to settle elsewhere. The tribe suffered the loss of fertile and productive land along the river that provided many of the tribe's basic staples, including wood for fuel and construction, edible plants, and wildlife habitat that supported the game on which the tribe relied for food. This land, which once played such an important role in the day-to-day lives of the tribal members, now lies underneath the Missouri River reservoirs. The tribe was never adequately compensated for this extraordinary loss.

It was not until 1992 that Congress formally acknowledged the federal government's failure to provide the tribes with adequate compensation. The passage of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, which I cosponsored, established a recovery fund to compensate these tribes. This fund is financed entirely from Pick-Sloan power revenues, and payments to the fund are structured in such a way that they will not result in rate increases to power customers. This is appropriate and fair. As with any well-run business, the revenues from the project should be used to pay its costs.

With the legislation that I am introducing today, we have an opportunity to finally compensate the Lower Brule Sioux Tribe for the sacrifices it has had to bear since being relocated forcibly decades ago. We have an opportunity to mitigate the effects of dislocating the tribal communities and inundating the natural resources that the tribe depended upon for its survival. This legislation will help the Lower Brule Sioux Tribe build new facilities and improve existing infrastructure. Hopefully, by doing so, it will improve the lives of tribal residents in a meaningful and lasting way and promote greater economic self-sufficiency.

Under this legislation, a fund similar to the Crow Creek Sioux Infrastructure Development Trust Fund will be established for the Lower Brule Sioux Tribe. The trust fund will be capitalized from hydropower revenues until the fund accumulates $39.3 million—a figure well documented by Dr. Michael Lawson in his study of the history of this issue entitled An Analysis of the Impact of Pick-Sloan Dam Projects on the Lower Brule Sioux Tribe. The tribe will be able to use the interest generated from the fund to finance its own economic development priorities according to a plan prepared in conjunction with the Bureau of Indian Affairs and the Indian Health Service.

Mr. President, in conclusion I want to emphasize the broad support this legislation enjoys in South Dakota. Senator TIM JOHNSON is a cosponsor and Governor Bill Janklow has endorsed this bill. Establishing this fund for the Lower Brule Sioux Tribe benefits the entire state of South Dakota, as well as the tribal members. It will spur greater economic activity within the state and help the Lower Brule Sioux Tribe establish the infrastructure necessary to participate more fully in the region's economy.

It is my hope that my colleagues will join with me in supporting this legislation.

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

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

S. 156

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 ''Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) under the Act of December 22, 1994, commonly known as the ''Flood Control Act of 1994'' (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et seq.) Congress approved the Pick-Sloan Missouri River Basin program—

(A) to promote the general economic development of the United States;

(B) to provide for irrigation above Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the Fort Randall and Big Bend projects are major components of the Pick-Sloan Missouri River Basin program, and contribute to the national economy by generating a substantial amount of hydropower and impounding a substantial quantity of water;

(3) the Fort Randall and Big Bend projects overlie the western boundary of the Lower Brule Indian Reservation, having inundated the fertile, wooded bottom lands of the Tribe along the Missouri River that constituted the most productive agricultural and pastoral lands of the Lower Brule Sioux Tribe and the homeland of the members of the Tribe;

(4) Public Law 85–923 (72 Stat. 1773 et seq.) authorized the acquisition of 7,997 acres of Indian land on the Lower Brule Indian Reservation for the Fort Randall project and Public Law 87–734 (76 Stat. 698 et seq.) authorized the acquisition of 14,299 acres of Indian land on the Lower Brule Indian Reservation for the Big Bend project;

(5) Public Law 87–734 (76 Stat. 698 et seq.) provided for the mitigation of the effects of the Fort Randall and Big Bend projects on the Lower Brule Indian Reservation, by directing the Secretary of the Army to—

(A) as necessary, by reason of the Big Bend project, protect, replace, relocate, or reconstruct—

(i) any essential governmental and agency facilities on the reservation, including schools, hospitals, offices of the Public Health Service and the Bureau of Indian Affairs, service buildings, and employee quarters existing at the time that the projects were carried out; and

(ii) roads, bridges, and incidental matters or facilities in connection with those facilities;

(B) provide for a townsite adequate for 50 homes, including streets and utilities (including water, sewage, and electricity), taking into account the reasonable future growth of the townsite; and

(C) provide for a community center containing space and facilities for community gatherings, tribal offices, tribal council chamber, offices of the Bureau of Indian Affairs, offices and quarters of the Public Health Service, and a combination gymnasium and auditorium;

(6) the requirements under Public Law 87–734 (76 Stat. 698 et seq.) with respect to the mitigation of the effects of the Fort Randall and Big Bend projects on the Lower Brule Indian Reservation have not been fulfilled;

(7) although the national economy has benefited from the Fort Randall and Big Bend projects, the economy on the Lower Brule Indian Reservation remains underdeveloped, in part as a consequence of the failure of the Federal Government to fulfill the obligations of the Federal Government under the laws referred to in paragraph (4);

(8) the economic and social development and cultural preservation of the Lower Brule Sioux Tribe will be enhanced by increased tribal participation in the benefits of the Fort Randall and Big Bend components of the Pick-Sloan Missouri River Basin program; and

(9) the Lower Brule Sioux Tribe is entitled to additional benefits of the Pick-Sloan Missouri River Basin program.

SEC. 3. DEFINITIONS.

In this Act:

(1) FUND.—The term ''Fund'' means the Lower Brule Sioux Tribe Infrastructure Development Trust Fund established under section 4(a).

(2) PLAN.—The term ''plan'' means the plan for socioeconomic recovery and cultural preservation prepared under section 5.

(3) PROGRAM.—The term ''Program'' means the power program of the Pick-Sloan Missouri River Basin program, administered by the Western Area Power Administration.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) TRIBE.—The term ''Tribe'' means the Lower Brule Sioux Tribe of Indians, a band of the Great Sioux Nation recognized by the United States of America.

SEC. 4. ESTABLISHMENT OF LOWER BRULE SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.

(a) LOWER BRULE SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.—There is established in the Treasury of the United States a fund to be known as the ''Lower Brule Sioux Tribe Infrastructure Development Trust Fund''.

(b) FUNDING.—Beginning with fiscal year immediately following the fiscal year during which the aggregate of the amounts deposited in the Crow Creek Sioux Tribe Infrastructure Development Trust Fund is equal to the amount specified in section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (110 Stat. 3026 et seq.), and for each fiscal year thereafter, until such time as the aggregate of the amounts deposited in the Fund is equal to $39,300,000, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

(c) INVESTMENTS.—The Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(d) PAYMENT OF INTEREST TO TRIBE.—

(1) ESTABLISHMENT OF ACCOUNT AND TRANSFER OF INTEREST.—The Secretary of the Treasury shall, in accordance with this subsection, transfer any interest that accrues on amounts deposited under subsection (b) into a separate account established by the Secretary of the Treasury in the Treasury of the United States.

(2) PAYMENTS.—

(A) IN GENERAL.—Beginning with the fiscal year immediately following the fiscal year during which the aggregate of the amounts deposited in the Fund is equal to the amount specified in subsection (b), and for each fiscal year thereafter, all amounts transferred under paragraph (1) shall be available, without fiscal year limitation, to the Secretary of the Interior for use in accordance with subparagraph (C).

(B) WITHDRAWAL AND TRANSFER OF FUNDS.—For each fiscal year specified in subparagraph (A), the Secretary of the Treasury shall withdraw amounts from the account established under paragraph (1) and transfer such amounts to the Secretary of the Interior for use in accordance with subparagraph (C). The Secretary of the Treasury may only withdraw funds from the account for the purpose specified in this paragraph.

(C) PAYMENTS TO TRIBE.—The Secretary of the Interior shall use the amounts transferred under subparagraph (B) only for the purpose of making payments to the Tribe.

(D) USE OF PAYMENTS BY TRIBE.—The Tribe shall use the payments made under subparagraph (C) only for carrying out projects and programs pursuant to the plan prepared under section 5.

(3) PROHIBITION ON PER CAPITA PAYMENTS.—No portion of any payment made under this subsection may be distributed to any member of the Tribe on a per capita basis.

(e) TRANSFERS AND WITHDRAWALS.—Except as provided in subsection (d)(1), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

SEC. 5. PLAN FOR SOCIOECONOMIC RECOVERY AND CULTURAL PRESERVATION.

(a) PLAN.—

(1) IN GENERAL.—The Tribe shall, not later than 2 years after the date of enactment of this Act, prepare a plan for the use of the payments made to the Tribe under section 4(d)(2). In developing the plan, the Tribe shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

(2) REQUIREMENTS FOR PLAN COMPONENTS.—The plan shall, with respect to each component of the plan—

(A) identify the costs and benefits of that component; and

(B) provide plans for that component.

(b) CONTENT OF PLAN.—The plan shall include the following programs and components:

(1) EDUCATIONAL FACILITY.—The plan shall provide for an educational facility to be located on the Lower Brule Indian Reservation.

(2) COMPREHENSIVE INPATIENT AND OUTPATIENT HEALTH CARE FACILITY.—The plan shall provide for a comprehensive inpatient and outpatient health care facility to provide essential services that the Secretary of Health and Human Services, in consultation with the individuals and entities referred to in subsection (a)(1), determines to be—

(A) needed; and

(B) unavailable through facilities of the Indian Health Service on the Lower Brule Indian Reservation in existence at the time of the determination.

(3) WATER SYSTEM.—The plan shall provide for the construction, operation, and maintenance of a municipal, rural, and industrial water system for the Lower Brule Indian Reservation.

(4) RECREATIONAL FACILITIES.—The plan shall provide for recreational facilities suitable for high-density recreation at Lake Sharpe at Big Bend Dam and at other locations on the Lower Brule Indian Reservation in South Dakota.

(5) OTHER PROJECTS AND PROGRAMS.—The plan shall provide for such other projects and programs for the educational, social welfare, economic development, and cultural preservation of the Tribe as the Tribe considers to be appropriate.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this Act, including such funds as may be necessary to cover the administrative expenses of the Fund.

SEC. 7. EFFECT OF PAYMENTS TO TRIBE.

(a) IN GENERAL.—No payment made to the Tribe pursuant to this Act shall result in the reduction or denial of any service or program to which, pursuant to Federal law—

(1) the Tribe is otherwise entitled because of the status of the Tribe as a federally recognized Indian tribe; or

(2) any individual who is a member of the Tribe is entitled because of the status of the individual as a member of the Tribe.

(b) EXEMPTIONS; STATUTORY CONSTRUCTION.—

(1) POWER RATES.—No payment made pursuant to this Act shall affect Pick-Sloan Missouri River Basin power rates.

(2) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed as diminishing or affecting—

(A) any right of the Tribe that is not otherwise addressed in this Act; or

(B) any treaty obligation of the United States.

By Mr. INOUYE:

S. 157. A bill to amend title XIX of the Social Security Act to provide for coverage of services provided by nursing school clinics under State medicaid programs; to the Committee on Finance.

THE NURSING SCHOOL CLINICS ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce the Nursing School Clinics Act of 1997, a bill that has two main purposes. First, it builds on our concerted efforts to provide access to quality health care for all Americans by furnishing grants and incentives for nursing schools to establish primary care clinics in areas where additional medical services are most needed. Second, it provides the opportunity for nursing schools to enhance the scope of their students' training and education by giving them firsthand clinical experience in primary care facilities.

Any good manager knows that when major problems are at hand and resources are tight, the most important act is the one that makes full use of all available resources. The American health care system is particularly deficient in this regard. We all know only too well that many individuals in the Nation have no or inadequate access to health care services, especially if they live in many of our rural towns and villages or inhabit our Indian communities. Many good people are trying to deliver services that are so vitally needed, but we need to do more. We must make full use of all health care practitioners, especially those who have been long waiting to give the nation the full measure of their professional abilities.

Nursing is one of the noblest professions, with an enduring history of offering effective and sensitive care to those in need. Yet it is only in the last few years that we have begun to recognize the role that nurses can play as independent providers of care. Only recently, in 1990, Medicare was changed to authorize direct reimbursements to nurse practitioners. Medicaid is gradually being reformed to incorporate their services more effectively. The Nursing School Clinics Act continues the progress toward fully incorporating nurses in the delivery of health care services. Under the act, nursing schools will be able to establish clinics, supervised and staffed by nurse practitioners and nurse practitioner students, that provide primary care targeted to medically underserved rural and native American populations.

In the process of giving direct ambulatory care to their patients, these clinics will also furnish the forums in which both public and private schools of nursing can design and implement clinical training programs for their students. Simultaneous school-based education and clinical training have been a traditional part of physician development, but nurses have enjoyed fewer opportunities to combine classroom instruction with the practical experience of treating patients. This bill reinforces the principle for nurses of joining schooling with the actual practice of health care.

To accomplish these objectives, title XIX of the Social Security Act is amended to designate that the services provided in these nursing school clinics are reimbursable under Medicaid. The combination of grants and the provision of Medicaid reimbursement furnishes the incentives and operational resources to start the clinics and to keep them going.

To meet the increasing challenges of bringing cost-effective and quality health care to all Americans, we are going to have to think about and debate a variety of proposals, both large and small. Most important, however, we must approach the issue of health care with creativity and determination, ensuring that all reasonable avenues are pursued. Nurses have always been an integral part of health care delivery. The Nursing School Clinics Act of 1997 recognizes the central role they can perform as care givers to the medically underserved.

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

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

S. 157

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

SECTION 1. MEDICAID COVERAGE OF SERVICES PROVIDED BY NURSING SCHOOL CLINICS.

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) in paragraph (24), by striking ''and'' at the end;

(2) by redesignating paragraph (25) as paragraph (26); and

(3) by inserting after paragraph (24), the following:

''(25) nursing school clinic services (as defined in subsection (t)) furnished by or under the supervision of a nurse practitioner or a clinical nurse specialist (as defined in section 1861(aa)(5)), whether or not the nurse practitioner or clinical nurse specialist is under the supervision of, or associated with, a physician or other health care provider; and''.

(b) NURSING SCHOOL CLINIC SERVICES DEFINED.—Section 1905 of such Act (42 U.S.C. 1396d) is amended by adding at the end the following:

''(t) The term 'nursing school clinic services' means services provided by a health care facility operated by an accredited school of nursing which provides primary care, long-term care, mental health counseling, home health counseling, home health care, or other health care services which are within the scope of practice of a registered nurse.''.

(c) CONFORMING AMENDMENTS.—Section 1902 of such Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)(C)(iv), by striking ''through (24)'' and inserting ''through (25)''; and

(2) in subsection (j), by striking ''through (25)'' and inserting ''through (26)''.

(d) EFFECTIVE DATE.—The amendments made by this Act shall be effective with respect to payments made under a State plan under title XIX of the Social Security Act for calendar quarters commencing with the first calendar quarter beginning after the date of the enactment of this Act.

By Mr. INOUYE:

S. 158. A bill to amend title XVII of the Social Security Act to provide improved reimbursement for clinical social worker services under the medicare program, and for other purposes; to the Committee on Finance.

THE CLINICAL SOCIAL WORKER SERVICES ACT OF 1997

Mr. INOUYE. Mr. President, today I am introducing legislation to amend Title XVIII of the Social Security Act to correct discrepancies in the reimbursement of clinical social workers covered through Medicare, Part B. The three proposed changes that are contained in this legislation are necessary to clarify the current payment process for clinical social workers and to establish a reimbursement methodology for the profession that is similar to other health care professionals reimbursed through the Medicare program.

First, this legislation would set payment for clinical social worker services according to a fee schedule established by the Secretary. Currently, the methodology for reimbursing clinical social workers' services is set at a percentage of the fee for another nonphysician provider group, creating a greater differential in charges than that which exists in the marketplace. I am aware of no other provision in the Medicare statute where one nonphysician's reimbursement rate is tied to that of another nonphysician provider. This is a precedent that clinical social workers understandably wish to change. I also wish to see that clinical social workers' services are valued on their own merit.

Second, this legislation makes it clear that services and supplies furnished incident to a clinical social worker's services are a covered Medicare expense, just as these services are currently covered for other mental health professionals in Medicare. Third, the bill would allow a clinical social worker to be reimbursed for services provided to a client who is hospitalized.

Clinical social workers are valued members of our health care provider team. They are legally regulated in every state of our nation and are recognized as independent providers of mental health care throughout the health care system. Clinical social worker services were made available to Medicare beneficiaries through the Omnibus Budget Reconciliation Act of 1989. I believe that it is time now to correct the reimbursement problems that this profession has experienced through Medicare.

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

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

S. 158

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

SECTION 1. IMPROVED REIMBURSEMENT FOR CLINICAL SOCIAL WORKER SERVICES UNDER MEDICARE.

(a) IN GENERAL.—Section 1833(a)(1)(F)(ii) of the Social Security Act (42 U.S.C. 1395l(a)(1)(F)(ii)) is amended to read as follows: ''(ii) the amount determined by a fee schedule established by the Secretary,''.

(b) DEFINITION OF CLINICAL SOCIAL WORKER SERVICES EXPANDED.—Section 1861(hh)(2) of such Act (42 U.S.C. 1395x(hh)(2)) is amended by striking ''services performed by a clinical social worker (as defined in paragraph (1))'' and inserting ''such services and such services and supplies furnished as an incident to such services performed by a clinical social worker (as defined in paragraph (1))''.

(c) CLINICAL SOCIAL WORKER SERVICES NOT TO BE INCLUDED IN INPATIENT HOSPITAL SERVICES.—Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by striking ''and services'' and inserting ''clinical social worker services, and services''.

(d) TREATMENT OF SERVICES FURNISHED IN INPATIENT SETTING.—Section 1832(a)(2)(B)(iii) of such Act (42 U.S.C. 1395k(a)(2)(B)(iii)) is amended by striking ''and services'' and inserting ''clinical social worker services, and services''.

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective with respect to payments made for clinical social worker services furnished on or after January 1, 1998.

By Mr. INOUYE:

S. 159. A bill to amend title XVIII of the Social Security Act to remove the restriction that a clinical psychologist or clinical social worker provide services in a comprehensive outpatient rehabilitation facility to a patient only under the care of a physician, and for other purposes; to the Committee on Finance.

MEDICARE LEGISLATION

Mr. INOUYE. Mr. President, today I am introducing legislation to authorize the autonomous functioning of clinical psychologists and clinical social workers within the Medicare comprehensive outpatient rehabilitation facility program.

In my judgment, it is truly unfortunate that programs such as this currently require clinical supervision of the services provided by certain health professionals and do not allow each of the various health professions to truly function to the extent of their state practice acts. In my judgment, it is especially appropriate that those who need the services of outpatient rehabilitation facilities have access to a wide range of social and behavioral science expertise. Clinical psychologists and clinical social workers are recognized as independent providers of mental health care services through the Federal Employee Health Benefits Program, the Civilian Health and Medical Program of the Uniformed Services, the Medicare (Part B) Program, and numerous private insurance plans.

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

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

S. 159

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

SECTION 1. REMOVAL OF RESTRICTION THAT A CLINICAL PSYCHOLOGIST OR CLINICAL SOCIAL WORKER PROVIDE SERVICES IN A COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY TO A PATIENT ONLY UNDER THE CARE OF A PHYSICIAN.

(a) IN GENERAL.—Section 1861(cc)(2)(E) of the Social Security Act (42 U.S.C. 1395x(cc)(2)(E)) is amended by inserting before the semicolon ''(except with respect to services provided by a clinical psychologist or a clinical social worker)''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to services provided on or after January 1, 1998.

By Mr. INOUYE:

S. 160. A bill to amend title 5, United States Code, to require the issuance of a prisoner-of-war medal to civilian employees of the Federal Government who are forcibly detained or interned by a enemy government or a hostile force under wartime conditions; to the Committee on Governmental Affairs.

PRISONER OF WAR MEDAL LEGISLATION

Mr. INOUYE. Mr. President, all too often we find that our nation's civilians who have been captured by a hostile government do not receive the recognition they deserve. My bill would correct this inequity and provide a prisoner of war medal for civilian employees of the federal government.

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. 160

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

SECTION 1. PRISONER-OF-WAR MEDAL FOR CIVILIAN EMPLOYEES OF THE FEDERAL GOVERNMENT.

(a) AUTHORITY TO ISSUE PRISONER-OF-WAR MEDAL.—(1) Subpart A of part III of title 5, United States Code, is amended by inserting after chapter 23 the following new chapter:

''CHAPTER 25—MISCELLANEOUS AWARDS

''Sec.
''2501. Prisoner-of-war medal: issue.

''§ 2501. Prisoner-of-war medal: issue

''(a) The President shall issue a prisoner-of-war medal to any person who, while serving in any capacity as an officer or employee of the Federal Government, was forcibly detained or interned, not as a result of such person's own willful misconduct—

''(1) by an enemy government or its agents, or a hostile force, during a period of war; or

''(2) by a foreign government or its agents, or a hostile force, during a period other than a period of war in which such person was held under circumstances which the President finds to have been comparable to the circumstances under which members of the armed forces have generally been forcibly detained or interned by enemy governments during periods of war.

''(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

''(c) Not more than one prisoner-of-war medal may be issued to a person under this section or section 1128 of title 10. However, for each succeeding service that would otherwise justify the issuance of such a medal, the President (in the case of service referred to in subsection (a) of this section) or the Secretary concerned (in the case of service referred to in section 1128(a) of title 10) may issue a suitable device to be worn as determined by the President or the Secretary, as the case may be.

''(d) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

''(e) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled, the medal may be issued to the person's representative, as designated by the President.

''(f) Under regulations to be prescribed by the President, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

''(g) In this section, the term 'period of war' has the meaning given such term in section 101(11) of title 38.''.

(2) The table of chapters at the beginning of part III of such title is amended by inserting after the item relating to chapter 23 the following new item:

''25. Miscellaneous Awards ..... 2501''.

(b) APPLICABILITY.—Section 2501 of title 5, United States Code, as added by subsection (a), applies with respect to any person who, after April 5, 1917, is forcibly detained or interned as described in subsection (a) of such section.

By Mr. INOUYE:

S. 161. A bill to amend title 38, United States Code, to revise certain provisions relating to the appointment of clinical and counseling psychologist in the Veterans Health Administration, and for other purposes; to the Committee on Veterans Affairs.

THE VETERANS' HEALTH ADMINISTRATION ACT OF 1997

Mr. INOUYE. Mr. President, I am introducing legislation today to amend chapter 74 of title 38, United States Code, to revise certain provisions relating to the appointment of clinical and counseling psychologists in the Veterans Health Administration (VHA).

The VHA has a long history of maintaining a staff of the very best health care professionals to provide care to those men and women who have served their country in the Armed Forces. It is certainly fitting that this should be done.

Recently a quite distressing situation regarding the care of our veterans has come to my attention. In particular, the recruitment and retention of psychologists in the VHA of the Department of Veterans Affairs has become a significant problem.

The Congress has recognized the important contribution of the behavioral sciences in the treatment of several conditions from which a significant portion of our veterans suffer. For example, programs related to homelessness, substance abuse, and post traumatic stress disorder [PTSD] have received funding from the Congress in recent years.

Certainly, psychologists, as behavioral science experts, are essential to the successful implementation of these programs. However, the high vacancy and turnover rates for psychologists in the VHA (over 11 percent and 18 percent respectively as reported in one recent survey) might seriously jeopardize these programs and will negatively impact overall patient care in the VHA.

Recruitment of psychologists by the VHA is hindered by a number of factors including a pay scale not commensurate with private sector rates of pay as well as by the low number of clinical and counseling psychologists appearing on the register of the Office of Personnel Management [OPM]. Most new hires have no post-doctoral experience and are hired immediately after a VA internship. Recruitment, when successful, takes up to six months or more.

Retention of psychologists in the VA system poses an even more significant problem. I have been informed that almost 40 percent of VHA psychologists had five years or less of post-doctoral experience. Without doubt, our veterans would benefit from a higher percentage of senior staff who are more experienced in working with veterans and their particular concerns. My bill provides incentives for psychologists to continue their work with the VHA and seek additional education and training.

Several factors are associated with the difficulties in retention of VHA psychologists including low salaries and lack of career advancement opportunities. It seems that psychologists are apt to leave the VA system after five years because they have almost reached peak levels for salary and professional development in the VHA. Furthermore, under the present system psychologists cannot be recognized nor appropriately compensated for excellence or for taking on additional responsibilities such as running treatment programs.

In effect, the current system for hiring psychologists in the VHA supports mediocrity, not excellence and mastery. Our veterans with behavioral disorders and mental health problems are deserving of better psychological care from more experienced professionals than they are currently receiving.

A hybrid title 38 appointment authority for psychologists would help ameliorate the recruitment and retention problems in several ways. The length of time it takes to recruit psychologists could be abbreviated by eliminating the requirement for applicants to be rated by the Office of Personnel Management. This would also facilitate the recruitment of applicants who are not recent VA interns by reducing the amount of time between identifying a desirable applicant and being able to offer that applicant a position.

It is expected that problems in retention of behavioral science experts will be greatly alleviated with the implementation of a hybrid title 38 system for VA psychologists, primarily through offering financial incentives for psychologists to pursue professional development with the VHA. Achievements that would merit salary increases under title 38 should include such activities as assuming supervisory responsibilities for clinical programs, implementing innovative clinical treatments that improve the effectiveness and/or efficiency of patient care, making significant contributions to the science of psychology, earning the ABPP diplomate status, and becoming a Fellow of the American Psychological Association.

Currently, psychologists are the only doctoral level health care providers in the VHA who are not included in title 38. This is, without question, a significant factor in the recruitment and retention difficulties that I have addressed. Ultimately, an across-the-board salary increase might be necessary. However, the conversion of psychologists to a hybrid title 38, as proposed by this amendment, would provide relief for these difficulties and enhance the quality of care for our Nations' veterans and their families.

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

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

S. 161

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

SECTION 1. REVISION OF AUTHORITY RELATING TO APPOINTMENT OF CLINICAL AND COUNSELING PSYCHOLOGISTS IN THE VETERANS HEALTH ADMINISTRATION.

(a) IN GENERAL.—Section 7401(3) of title 38, United States Code, is amended by striking out ''who hold diplomas as diplomates in psychology from an accrediting authority approved by the Secretary''.

(b) CERTAIN OTHER APPOINTMENTS.—Section 7405(a) of such title is amended—

(1) in paragraph (1)(B), by striking out ''Certified or'' and inserting in lieu thereof ''Clinical or counseling psychologists, certified or''; and

(2) in paragraph (2)(B), by striking out ''Certified or'' and inserting in lieu thereof ''Clinical or counseling psychologists, certified or''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of enactment of this Act.

(d) APPOINTMENT REQUIREMENT.—Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall begin to make appointments of clinical and counseling psychologists in the Veterans Health Administration under section 7401(3) of title 38, United States Code (as amended by subsection (a)), not later than 1 year after the date of enactment of this Act.

By Mr. INOUYE:

S. 162. A bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

TRAVEL PRIVILEGES LEGISLATION

Mr. INOUYE. Mr. President, today I am introducing a bill which is of great importance to a group of patriotic Americans. This legislation is designed to extend space-available travel privileges on military aircraft to those who have been totally disabled in the service of our country.

Currently, retired members of the Armed Forces are permitted to travel on a space-available basis on nonscheduled military flights within the continental United States and on scheduled overseas flights operated by the Military Airlift Command. My bill would provide the same benefits for 100 percent service-connected disabled veterans.

Surely, we owe these heroic men and women, who have given so much to our country, a debt of gratitude. Of course, we can never repay them for the sacrifice they have made on behalf of our nation but we can surely try to make their lives more pleasant and fulfilling. One way in which we can help is to extend military travel privileges to these distinguished American veterans. I have received numerous letters from all over the country attesting to the importance attached to this issue by veterans. Therefore, I ask that my colleagues show their concern and join me in saying ''thank you'' by supporting this legislation.

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

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

S. 162

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

SECTION 1. TRAVEL ON MILITARY AIRCRAFT OF CERTAIN DISABLED FORMER MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding after section 1060a the following new section:

''§ 1060b. Travel on military aircraft: certain disabled former members of the armed forces

''The Secretary of Defense shall permit any former member of the armed forces who is entitled to compensation under the laws administered by the Secretary of Veterans Affairs for a service-connected disability rated as total to travel, in the same manner and to the same extent as retired members of the armed forces, on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Military Airlift Command. The Secretary of Defense shall permit such travel on a space-available basis.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the item relating to section 1060a the following new item:

''1060b. Travel on military aircraft: certain disabled former members of the armed forces.''.

By Mr. INOUYE:

S. 163. A bill to recognize the organization known as the National Academies of Practice; to the Committee on the Judiciary.

THE NATIONAL ACADEMIES OF PRACTICE RECOGNITION ACT OF 1997

Mr. INOUYE. Mr. President, today I am introducing legislation that would provide a federal charter for the National Academies of Practice. This organization represents outstanding practitioners who have made significant contributions to the practice of applied psychology, medicine, dentistry, nursing, optometry, podiatry, social work, and veterinary medicine. When fully established, each of the nine academies will possess 100 distinguished practitioners selected by their peers. This umbrella organization will be able to provide the Congress of the United States and the executive branch with considerable health policy expertise, especially from the perspective of those individuals who are in the forefront of actually providing health care.

As we continue to grapple with the many complex issues surrounding the delivery of health care services, it is clearly in our best interest to ensure that the Congress have systematic access to the recommendations of an interdisciplinary body of health care practitioners.

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

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

S. 163

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

SECTION 1. CHARTER.

The National Academies of Practice organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a Federal charter.

SEC. 2. CORPORATE POWERS.

The National Academies of Practice (hereafter referred to in this Act as the ''corporation'') shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State in which it is incorporated and subject to the laws of such State.

SEC. 3. PURPOSES OF CORPORATION.

The purposes of the corporation shall be to honor persons who have made significant contributions to the practice of applied psychology, dentistry, medicine, nursing, optometry, osteopathy, podiatry, social work, veterinary medicine, and other health care professions, and to improve the practices in such professions by disseminating information about new techniques and procedures.

SEC. 4. SERVICE OF PROCESS.

With respect to service of process, the corporation shall comply with the laws of the State in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

SEC. 5. MEMBERSHIP.

Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

SEC. 6. BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES.

The composition and the responsibilities of the board of directors of the corporation shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

SEC. 7. OFFICERS OF THE CORPORATION.

The officers of the corporation and the election of such officers shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

SEC. 8. RESTRICTIONS.

(a) USE OF INCOME AND ASSETS.—No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) LOANS.—The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) POLITICAL ACTIVITY.—The corporation, any officer, or any director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) ISSUANCE OF STOCK AND PAYMENT OF DIVIDENDS.—The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) CLAIMS OF FEDERAL APPROVAL.—The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

SEC. 9. LIABILITY.

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SEC. 10. MAINTENANCE AND INSPECTION OF BOOKS AND RECORDS.

(a) BOOKS AND RECORDS OF ACCOUNT.—The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors.

(b) NAMES AND ADDRESSES OF MEMBERS.—The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote in any proceeding of the corporation.

(c) RIGHT TO INSPECT BOOKS AND RECORDS.—All books and records of the corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time.

(d) APPLICATION OF STATE LAW.—Nothing in this section shall be construed to contravene any applicable State law.

SEC. 11. AUDIT OF FINANCIAL TRANSACTIONS.

The first section of the Act entitled ''An Act to provide for audit of accounts of private corporations established under Federal law'', approved August 30, 1964 (36 U.S.C. 1101), is amended—

(1) by redesignating paragraph (72) as paragraph (71);

(2) by designating the paragraph relating to the Non Commissioned Officers Association of the United States of America, Incorporated, as paragraph (72);

(3) by redesignating paragraph (60), relating to the National Mining Hall of Fame and Museum, as paragraph (73); and

(4) by adding at the end the following:

''(75) National Academies of Practice.''.

SEC. 12. ANNUAL REPORT.

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit for such fiscal year required by section 3 of the Act referred to in section 11 of this Act. The report shall not be printed as a public document.

SEC. 13. RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER.

The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

SEC. 14. DEFINITION.

For purposes of this Act, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 15. TAX-EXEMPT STATUS.

The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986 or any corresponding similar provision.

SEC. 16. TERMINATION.

If the corporation fails to comply with any of the restrictions or provisions of this Act the charter granted by this Act shall terminate.

By Mr. INOUYE:

S. 164. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect, to be conducted by a clinical social worker; to the Committee on the Judiciary.

THE PSYCHIATRIC AND PSYCHOLOGICAL EXAMINATIONS ACT OF 1997

Mr. INOUYE. Mr. President, today I am introducing legislation to amend Title 18 of the United States Code to allow our nation's clinical social workers to provide their mental health expertise to the federal judiciary.

I feel that the time has come to allow our nation's judicial system to have access to a wide range of behavioral science and mental health expertise. I am confident that the enactment of this legislation would be very much in our nation's best interest.

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

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

S. 164

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

SECTION 1. EXAMINATIONS BY CLINICAL SOCIAL WORKERS.

Section 4247(b) of title 18, United States Code, is amended in the first sentence by—

(1) striking out ''or'' after ''certified psychiatrist'' and inserting a comma; and

(2) inserting after ''psychologist,'' the following: ''or clinical social worker,''.

By Mr. INOUYE:

S. 165. A bill for the relief of Donald C. Pence; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. INOUYE. 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. 165

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

SECTION 1. RELIEF OF DONALD C. PENCE.

(a) RELIEF.—The Secretary of the Treasury shall pay, out of any moneys in the Treasury not otherwise appropriated, to Donald C. Pence, of Sanford, North Carolina, the sum of $31,128 in compensation for the failure of the Department of Veterans Affairs to pay dependency and indemnity compensation to Kathryn E. Box, the now-deceased mother of Donald C. Pence, for the period beginning on July 1, 1990, and ending on March 31, 1993.

(b) LIMITATION ON FEES.—Not more than a total of 10 percent of the payment authorized by subsection (a) shall be paid to or received by agents or attorneys for services rendered in connection with obtaining such payment, any contract to the contrary notwithstanding. Any person who violates this subsection shall be fined not more than $1,000.

By Mr. INOUYE:

S. 166. A bill to amend section 1086 of title 10, United States Code, to provide for payment under CHAMPUS of certain health care expenses incurred by certain members and former members of the uniformed services and their dependents to the extent that such expenses are not payable under Medicare, and for other purposes; to the Committee on Armed Services.

THE CHAMPUS AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, I feel that it is very important that our nation continue its firm commitment to those individuals and their families who have served in the Armed Forces and made us the great nation that we are today. As this population becomes older, they are unfortunately finding that they need a wider range of health services, some of which are simply not available under Medicare. These individuals made a commitment to their nation, trusting that when they needed help the nation would honor that commitment. The bill that I am recommending today would ensure the highest possible quality of care for these dedicated citizens and their families, who gave so much for us.

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

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

S. 166

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

SECTION 1. EXPANSION OF MEDICARE EXCEPTION TO THE PROHIBITION OF CHAMPUS COVERAGE FOR CARE COVERED BY ANOTHER HEALTH CARE PLAN.

(a) AMENDMENT AND REORGANIZATION OF EXCEPTIONS.—Subsection (d) of section 1086 of title 10, United States Code, is amended to read as follows:

''(d)(1) Section 1079(j) of this title shall apply to a plan contracted for under this section except as follows:

''(A) Subject to paragraph (2), a benefit may be paid under such plan in the case of a person referred to in subsection (c) for items and services for which payment is made under title XVIII of the Social Security Act.

''(B) No person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs.

''(2) If a person described in paragraph (1)(A) receives medical or dental care for which payment may be made under both title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and a plan contracted for under subsection (a), the amount payable for that care under the plan may not exceed the difference between—

''(A) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under that title; and

''(B) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under the plan.

''(3) A plan contracted for under this section shall not be considered a group health plan for the purposes of paragraph (2) or (3) of section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)).

''(4) A person who, by reason of the application of paragraph (1), receives a benefit for items or services under a plan contracted for under this section shall provide the Secretary of Defense with any information relating to amounts charged and paid for the items and services that, after consulting with the other administering Secretaries, the Secretary requires. A certification of such person regarding such amounts may be accepted for the purposes of determining the benefit payable under this section.''.

(b) REPEAL OF SUPERSEDED PROVISION.—Such section is further amended—

(1) by striking out subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

SEC. 2. CONFORMING AMENDMENT.

Section 1713(d) of title 38, United States Code, is amended by striking out ''section 1086(d)(1) of title 10 or''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to health care items or services provided on and after the date of enactment of this Act.

By Mr. INOUYE:

S. 167. A bill for the relief of Alfredo Tolentino of Honolulu, Hawaii; to the Committee on Governmental Affairs.

PRIVATE RELIEF LEGISLATION

Mr. INOUYE. 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.167

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 8337(b) of title 5, United States Code, Alfredo Tolentino of Honolulu, Hawaii may file an application no later than 60 days after the date of the enactment of this Act with the Office of Personnel Management for a claim of disability retirement under the provisions of such section.

By Mr. DeWINE:

S. 168. A bill to reform criminal procedure, and for other purposes; to the Committee on the Judiciary.

THE TRIGGERLOCK ACT OF 1997

Mr. DEWINE. Mr. President, there are two truly fundamental issues we need to address in the area of crime. First, what is the proper role of the Federal Government in fighting crime in this country? Second, despite all the rhetoric, what really works in law enforcement?

What matters? What doesn't matter?

Today, I would like to discuss one issue that I believe really matters: How do we go about protecting America from armed career criminals?

I am talking about repeat violent criminals who use a gun while committing a crime.

In this area, too, we need to be asking: What works? And what level of Government should do it?

In the area of gun crimes, we have a pretty good answer.

We all know that there is some controversy over whether general restrictions on gun ownership would help to reduce crime. But there is no controversy over whether taking guns away from felons would reduce crime.

There is legitimate disagreement over whether the Brady bill would reduce crime. Similarly, reasonable people can disagree on the question of whether a ban on assault weapons would reduce crime. I happen to support both those measures—but I recognize that some people think they are not effective.

But what I am talking about today is something on which there is absolutely no controversy. There's simply no question that taking the guns away from armed career criminals will reduce crime.

No question, Mr. President. When it comes to felons, unilateral disarmament of the thugs is the best policy. Let's disarm the people who hurt people.

We have actually tried it—and we know it works. One of the most successful crime-fighting initiatives of recent years was known as Project Triggerlock. This project was wildly successful precisely because it addresses a problem squarely—and places the resources where they are most needed.

Let me tell you a little about project Triggerlock. The U.S. Justice Department began Project Triggerlock in May 1991. The program targeted for prosecution—in Federal court—armed and violent repeat offenders.

Under Triggerlock, U.S. Attorneys throughout the country said to State and local prosecutors: If you catch a felon with a gun, and if you want us to, we—the Federal prosecutors—will take over the prosecution.

We will prosecute him. We will convict him. We will hit him with a stiff Federal mandatory sentence. And we will lock him up in a Federal prison at no cost to the State or local community.

That's what Triggerlock did. Triggerlock was an assault on the very worst criminals in America. And it worked.

This program took 15,000 criminals off the streets in an 18-month period.

Incredibly, the Clinton Justice Department abandoned Project Triggerlock. It was the most effective Federal program in recent history for targeting and removing armed career criminals. But the Justice Department stopped Triggerlock dead in its tracks.

What I am proposing in this bill is that we resurrect Project Triggerlock.

My bill requires the U.S. attorneys in every jurisdiction in this country to make a montly report to the Attorney General in Washington on the number of arrests, prosecutions, and convictions they have gotten on gun-related offenses. The Attorney General should then report, semi-annually, to the Congress on the work of these prosecutors.

Like all prosecutors, U.S. attorneys have limited resources. So—like all prosecutors—U.S. attorneys have to exercise discretion about whom to prosecute. We all recognize the Congress can't dictate to prosecutors whom they should prosecute—but it's clear that we should go on record with the following proposition: There's nothing more important than getting armed career criminals off the streets.

Mr. President, I think Project Triggerlock is a very important way to keep the focus on the prosecution of gun crimes. Getting gun criminals off the streets is a major national priority—and we ought to behave accordingly.

MANDATORY MINIMUMS

Mr. President, the second thing we need to do is change the law. We need to toughen the law against those who use a gun to commit a crime. My bill would say to career criminals—if you possess a gun after being convicted for gun crimes, you will get a mandatory 15-year sentence.

Under current law, a first-time felon gets a 5-year mandatory minimum sentence. A third-time felon gets a mandatory minimum of 15 years. But there is a gap—there's no mandatory minimum for a second-time felon.

My legislation would fix that. It would provide a mandatory minimum of 10 years for a second-time felon.

That would make it a lot easier for police to get gun criminals off our streets.

BAIL REFORM

A third thing we have to do is reform the bail system.

Under current law—the Bail Reform Act—certain dangerous accused criminals can be denied bail detention if they have been charged with crimes of violence. But it's unclear under current law whether possession of firearms should be considered a crime of violence.

Mr. President, let us do a reality check on this. If someone who is a known convicted felon is walking around with a gun, what's the likelihood that person is carrying the gun for law-abiding purposes?

I think it is perfectly reasonable to consider that person prima facie dangerous. We should deny bail—and keep that convicted felon off the streets while awaiting trial on the new charge.

My legislation would eliminate the ambiguity in current law. May bill would define a ''crime of violence'' specifically to include possession of a firearm by a convicted felon.

If you are a convicted felon, and you're walking around with a gun—you're dangerous. You need to be kept off the streets. We need to give prosecutors the legal right to protect the community from these people while they are awaiting trial.

CRACK DOWN ON ILLEGAL GUN SUPPLIERS

A fourth way we can crack down on gun crimes is to go after those who knowingly provide the guns to felons. Under current law, you can be prosecuted for providing a gun only if you know for certain that it will be used in a crime.

The revision I propose would make it illegal to provide a firearm if you have reasonable cause to believe that it's going to be used in a crime.

The is the best way to go after the illegal gun trade—those who provide guns to the predators on society. We will no longer allow these gun providers to pretend ignorance. They are helping felons—and they need to be stopped.

All of these proposals are motivated by a single purpose: I—along with the police officers of this country—believe that we have to get the guns away from the gun criminals.

Project Triggerlock is one major initiative we can pursue at the Federal

level to help make this happen. Imposing stiff mandatory minimums and cracking down on illegal gun providers are also important measures.

All of the gun proposals contained in my crime legislation have the same goal. They are designed to assure American families who are living in crime-threatened communities that we're going to do what it takes to get guns off your streets.

We are going to go after the armed career criminals. We're going to prosecute them. We're going to convict them. We are going to keep them off the streets.

This is why we have a government in the first place—to protect the innocent, to keep ordinary citizens safe from violent, predatory criminals.

I think Government needs to do a much better job at this fundamental task—and that's why targeting the armed career criminals is such a major component of this bill.

By Mr. CRAIG:

S. 169. A bill to amend the Immigration and Nationality Act with respect to the admission of temporary H–2A workers; to the Committee on the Judiciary.

THE AGRICULTURAL WORK FORCE STABILITY AND PROTECTION ACT

Mr. CRAIG. Mr. President, I rise to introduce the Agricultural Work Force Stability and Protection Act. This bill would make needed reforms to the so-called ''H–2A Program,'' the program intended by Congress in the Immigration and Nationality Act to allow for a reliable supply of legal, temporary, immigrant workers in the agricultural sector, under terms that also provide reasonable worker protections, when there is a shortage of domestic labor in this sector.

Last year, Senator Alan Simpson, then the Chairman of the Judiciary Committee's Subcommittee on Immigration, and then this body as a whole, acknowledged the importance of this issue by agreeing to including in the Illegal Immigration Reform conference report some compromise language regarding the Sense of the Congress on the H–2A Program and requiring the General Accounting Office to review the effectiveness of the program.

The language included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was essentially the same as language agreed to in the conference report on fiscal year 1997 Agriculture Appropriations. With these provisions, the Congress went on record twice on the importance of having a program that helps ensure an adequate workforce for agricultural producers.

This is an issue that is of the utmost importance to this country's farmers and ranchers, especially in light of the impact that immigration reform will have on the supply of agricultural labor. There is very real concern among Idaho farmers and throughout the country that these reforms will reduce the availability of agricultural workers.

Farmers need access to an adequate supply of workers and want to have certainty that they are hiring a legal work force. In 1995, the total agricultural work force was about 2.5 million people. That equals 6.7 percent of our labor force, which is directly involved in production agriculture and food processing.

Hired labor is one of the most important and costly inputs in farming. U.S. farmers spent more than $15 billion on hired labor expenses in 1992—one of every eight dollars of farm production expenses. For the labor-intensive fruit, vegetable and horticultural sector, labor accounts for 35 to 45 percent of production costs.

The competitiveness of U.S. agriculture, especially in the fruit, vegetable and horticultural specialty sectors, depends on the continued availability of hired labor at a reasonable cost. U.S. farmers, including producers of labor-intensive perishable commodities, compete directly with producers in other countries for market share in both U.S. and foreign commodity markets.

Wages of U.S. farmworkers will not be forced up by eliminating alien labor, because growers' production costs are capped by world market commodity prices. Instead, a reduction in the work force available to agriculture will force U.S. producers to reduce production to the level that can be sustained by a smaller work force.

Over time, wages for these farm workers have actually risen faster than non-farm worker wages. Between 1986–1994, there was a 34.6 percent increase in average hourly earnings for farm workers, while non-farm workers only saw a 27.1 percent increase.

Even with this increase in on-farm wages, this country has historically been unable to provide a sufficient number of domestic workers to complete the difficult manual labor required in the production of many agricultural commodities. In Idaho, this is especially true for producers of fruit, sugar beets, onions and other specialty crops.

The difficulty in obtaining sufficient domestic workers is primarily due to the fact that domestic workers prefer the security of full-time employment in year round positions. As a result the available domestic work force tends to prefer the long term positions, leaving the seasonal jobs unfilled. In addition, many of the seasonal jobs unfilled. In addition, many of the seasonal agricultural jobs are located in areas where it is necessary for workers to migrate into the area and live temporarily to do the work. Experience has shown that foreign workers are more likely to migrate than domestic workers. As a result of domestic short supply, farmers and ranchers have had to rely upon the assistance of foreign workers.

The only current mechanism available to admit foreign workers for agricultural employment is the H–2A program. The H–2A program is intended to serve as a safety valve for times when domestic labor is unavailable. Unfortunately, the H–2A program isn't working.

Despite efforts to streamline the temporary worker program in 1986, it now functions so poorly that few in agriculture use it without risking an inadequate work force, burdensome regulations and potential litigation expense. In fact, usage of the program has actually decreased from 25,000 workers in 1986 to only 17,000 in 1995.

The bill I am introducing would provide some much-needed reforms to the H–2A program. I urge my colleagues to consider the following reasonable modifications of the H–2A program.

First, the bill would reduce the advance filing deadline from 60 to 40 days before workers are needed. In many agricultural operations, 60 days is too far in advance to be able to predict labor needs with the precision required in H–2A applications. Furthermore, virtually all referrals of U.S. workers who actually report for work are made close to the date of need. The advance application period serves little purpose except to provide time for litigation.

Second, in lieu of the present certification letter, the Department of Labor [DOL] would issue the employer a domestic recruitment report indicating that the employer's job offer meets the statutory criteria and lists the number of U.S. workers referred. The employer would then file a petition with INS for admission of aliens, including a copy of DOL's domestic recruitment report and any countervailing evidence concerning the adequacy of the job offer and/or the availability of U.S. workers. The Attorney General would make the admission decision. The purpose is to restore the role of the Labor Department to that of giving advice to the Attorney General on labor availability, and return decision making to the Attorney General.

Third, the Department of Labor would be required to provide the employer with a domestic recruitment report not later than 20 days before the date of need. The report either states sufficient domestic workers are not available or gives the names and Social Security numbers of the able, willing and qualified workers who have been referred to the employer. The Department of Labor now denies certification not only on the basis of workers actually referred to the employer, but also on the basis of reports or suppositions that unspecified numbers of workers may become available. The proposed change would assure that only workers actually identified as available would be the basis for denying foreign workers.

Fourth, the Immigration and Naturalization Service [INS] would provide expedited processing of employers' petitions, and, if approved, notify the visa issuing consulate or port of entry within 15 calendar days. This would ensure timely admission decisions.

Fifth, INS would provide expedited procedures for amending petitions to increase the number of workers admitted on 5 days before the date of need. This is to reduce the paperwork and increase the timeliness of obtaining needed workers very close to or after the work has started.

Sixth, DOL would continue to recruit domestic workers and make referrals to employers until 5 days before the date of need. This method is needed to allow the employer at a date certain to complete his hiring, and to operate without having the operation disrupted by having to displace existing workers with new workers.

Seventh, the bill would enumerate the specific obligations of employers in occupations in which H–2A workers are employed. The proposed definition would define jobs that meet the following criteria as not adversely affecting U.S. workers:

1. The employer offers a competitive wage for the position.
2. The employer would provide approved housing, or a reasonable housing allowance, to workers whose permanent place of residence is beyond normal commuting distance.
3. The employer continues to provide current transportation reimbursement requirements.
4. A guarantee of employment is provided for at least three-quarters of the anticipated hours of work during the actual period of employment.
5. The employer would provide workers' compensation or equivalent coverage.
6. Employer must comply with all applicable Federal, State, and local labor laws with respect to both United States and alien workers.

This combination of employment requirements would eliminate the discretion of Department of Labor to specify terms and conditions of employment on a case-by-case basis. In addition, the scope for litigation would be reduced since employers (and the courts) would know with particularity the required terms and conditions of employment.

Eighth, the bill would provide that workers must exhaust administrative remedies before engaging their employers in litigation.

Ninth, certainty would be given to employers who comply with the terms of an approved job order. If at a later date the Department of Labor requires changes, the employer would be required to comply with the law only prospectively. This very important provision removes the possibility of retroactive liability if an approved order is changed.

As the Illegal Immigration Reform law is implemented, action on these H–2A reforms will be necessary in the coming months to avoid jeopardizing the labor supply for American agriculture.

Therefore, I am introducing this bill at this time and invite and urge my colleagues to sign on as cosponsors. It is time to begin in earnest to discuss these issues and examine these vitally-needed reforms. I hope and expect the Senate will pass constructive legislation along these lines this year.

Thank you, Mr. President. At this time, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMMARY OF THE AGRICULTURAL WORK FORCE STABILITY AND PROTECTION ACT

The following proposed changes to the H–2A program would improve its timeliness and utility for agricultural employers in addressing agricultural labor shortages, while providing wages and benefits that equal or exceed the median level of compensation in non-H–2A occupations, and reducing the vulnerability of the program to being hamstrung and delayed by litigation.

1. Reduce the advance filing deadline from 60 to 40 days before workers are needed.

Rationale. In many agricultural operations, 60 days is too far in advance to be able to predict labor needs with the precision required in H–2A applications. Furthermore, virtually all referrals of U.S. workers who actually report for work are made close to the date of need. The advance application period serves little purpose except to provide time for litigation.

2. In lieu of the present certification letter, DOL would issue the employer a domestic recruitment report indicating that the employer's job offer meets the statutory criteria (or the specific deficiencies in the order) and the number of U.S. workers referred, per #3 below. The employer would file a petition with INS for admission of aliens (or transfer of aliens already in the United States), including a copy of DOL's domestic recruitment report and any countervailing evidence concerning the adequacy of the job offer and/or the availability of U.S. workers. The Attorney General would make the admission decision.

Rationale. The purpose is to restore the role of the Labor Department to that of giving advice to the AG on labor availability, and return the true gatekeeper role to the AG. Presently the certification letter is, de facto, the admission decision.

3. DOL provides employer with a domestic recruitment report not later than 20 days before the date of need stating either that sufficient domestic workers are not available, or giving the names and Social Security Numbers of the able, willing and qualified workers who have been referred to the employer and who have agreed to be available at the time and place needed. DOL also provides a means for the employer to contact the referred worker to confirm availability close to the date of need. DOL would be empowered to issue a report that sufficient domestic workers are not available without waiting until 20 days before the date of need for workers if there are already unfilled orders for workers in the same or similar occupations in the same area of intended employment.

Rationale: DOL now denies certification not only on the basis of workers actually referred to the employer, but also on the basis of reports or suppositions that unspecified numbers of workers may become available. These suppositions almost never prove correct, forcing the employer into costly and time wasting redeterminations on or close to the date of need and delaying the arrival of workers. The proposed change would assure that only workers actually identified as available would be the basis for denying foreign workers. DOL also interprets the existing statutory language as precluding it from issuing each labor certification until 20 days before the date of need, even in situations where ongoing recruitment shows that sufficient workers are not available.

4. INS to provide expedited processing of employer's petitions, and, if approved, notify the visa issuing consulate or port of entry within 15 calendar days.

Rationale: To assure timely admission decisions.

5. INS to provide an expedited procedures for amending petitions to increase the number of workers admitted (or transferred) on or after 5 days before the date of need, to replace referred workers whose continued availability can not be confirmed, who fail to report on the date of need, or who abandon employment or are terminated for cause, without first obtaining a redetermination of need from DOL.

Rationale: To reduce the paperwork and increase the timeliness of obtaining needed workers very close to or after the work has started.

6. DOL would continue to recruit domestic workers and make referrals to employers until 5 days before the date of need. Employers would be required to give preference to able, willing and qualified workers who agree to be available at the time and place needed who are referred to the employer until 5 days before the date workers are needed. After that time, employers would be required to give preference to U.S. workers who are immediately available in filling job opportunities that become available, but would not be required to bump alien workers already employed.

Rationale: A method is needed to allow the employer at a date-certain close to the date of need to complete his hiring, and to operate without having the operation disrupted by having to displace existing workers with new workers.

7. Create a ''bounded definition'' of adverse effect by enumerating the specific obligations of employers in occupations in which H–2A aliens are employed. The proposed definition would define jobs that meet the following criteria as not adversely affecting U.S. workers:

7a. Offer at least the median rate of pay for the occupation in the area of intended employment.

7b. Provide approved housing or, if sufficient housing is available in the approximate area of employment, a reasonable housing allowance, to workers whose permanent place of residence is beyond normal commuting distance.

NOTE: Provision should also be made to allow temporary housing that does not meet the full set of Federal standards for a transitional period in areas where sufficient housing that meets standards is not presently available, and for such temporary housing on a permanent basis in occupations in which the term of employment is very short (e.g. cherry harvesting, which lasts about 15–20 days) if sufficient housing that meets the full standards is not available. Federal law should pre-empt state and local laws and codes with respect to the provision of such temporary housing.

7c. Current transportation reimbursement requirements (i.e. employer reimburses transportation of workers who complete 50 percent of the work contract and provides or pays for return transportation for workers who complete the entire work contract).

7d. A guarantee of employment for at least three-quarters of the anticipated hours of work during the actual period of employment.

7e. Employer-provided Workers' Compensation or equivalent.

7f. Employer must comply with all applicable federal, state and local labor laws with respect to both U.S. and alien workers.

Rationale: The objective is to eliminate the discretion of DOL to specify terms and conditions of employment on a case-by-case basis and reduce the scope for litigation of applications. Employers (and the courts) would know with particularity, up front, what the required terms and conditions of employment are. The definition also reduces the cost premium for participating in the program by relating the Adverse Effect Wage Rate to the minimum wage and limiting the

applicability of the three-quarters guarantee to the actual period of employment.

8. Provide that workers must exhaust administrative remedies before engaging their employers in litigation.

Rationale: To reduce litigation costs.

9. Provide that if an employer complies with the terms of an approved job order, and DOL or a court later orders a provision to be changed, the employer would be required to comply with the new provision only prospectively.

Rationale: To reduce the exposure of employers to litigation seeking to overturn DOL's approval of job orders, and to retroactive liability if an approved order is changed.

By Mr. DEWINE:

S. 170 A bill to provide for a process to authorize the use of clone pagers, and for other purposes; to the Committee on the Judiciary.

THE CLONE PAGER AUTHORIZATION ACT OF 1996

Mr. DEWINE. Mr. President, I believe that, to stop crime, we have to do more. That doesn't mean another rhetorical assault on crime—or even a flashy ten-point program. Rather, we have to do more of the little things that—when you put them all together—make a big difference.

The most important of these is giving law enforcement officials the tools they need to do their jobs. Today, I am introducing legislation that will help us do that.

The bill I am introducing today would simply rectify an imbalance in current Federal law which makes it more difficult for law enforcement officials to fight drug trafficking. Today, drug traffickers have taken advantage of technological advances to advance their own criminal interests.

Drug traffickers—on a regular basis—use digital display paging devices, better known as beepers—in transacting their business. They do this because it gives them the freedom to run their criminal enterprise out of any available phone booth, and to avoid police surveillance. If law enforcement officials knew from whom they were receiving the calls to their beepers it would certainly aid efforts in tracking down drug traffickers.

The technology now exists to allow law enforcement to receive the digital display message, without intercepting the content of any conversation or message. It is called a ''clone pager.'' This clone pager is programmed identically to the suspect's pager and allows law enforcement to receive the digital displays at the same time as the suspect.

This device functions identically to a pen register. Mr. President, as you may know, a pen register is a device which law enforcement attaches to a phone line to decode the numbers which have called a specific telephone. Like a clone pager, the pen register only intercepts phone numbers, not the content of any conversation or message.

Since both devices serve the same purpose, a reasonable person would conclude that both the system for receiving authorization to use these devices, and the procedures mandated by the courts once the authorization was granted would be the same. However, in both cases it is not.

Under current law, the requirements for obtaining authorization to use a clone pager are much more stringent than they are for using a pen register. I would like to briefly outline the differences.

In order to obtain authorization to use a pen register, a Federal prosecutor must certify to a district court judge the phone number to which the pen register will be attached, the phone company that delivers service to that number, and that the pen register serves a legitimate law enforcement purpose. In other words, the prosecutor must show only that the use of the pen register is based on an ongoing investigation. The district court judge may then grant the authorization on a mere finding that the prosecutor has made the required certification. The pen register can then be used for a period of 60 days—with no requirement that law enforcement report pen register activity to the court.

In contrast, the U.S. Attorney for a particular district must sign off on a request for clone pager authorization. Once this occurs, a prosecutor may then go before a district court judge where he must show that there is probable cause to suspect an individual has committed a crime—a much higher standard than what is required for a pen register authorization. He must also detail what other investigative techniques have been used, why they have not been successful, and why they will continue to be unsuccessful. Moreover, the prosecutor must disclose other available investigative techniques and why they are unlikely to be successful. Only after all of this is done can authorization to use a clone pager be granted.

But these are not the only differences in treatment. After the authorization is granted, it can only be used for 30 days. During that 30 days, the prosecutor must report activity from the clone pager to the issuing judge at least once every 2 weeks.

I do not believe that the authorization disparity in authorization for these two devices is warranted.

The legislation that I am introducing today would simply amend the Federal code to end this disparity. This bill would give law enforcement agents ready access, with warranted limitations, to the tools they need to do their jobs. This bill will bring Federal law enforcement into the 21st century. The drug traffickers are already there. It's time for law and order to catch up with them.

By Mr. DEWINE:

S. 171. A bill to amend title 18, United States Code, to insert a general provision for criminal attempt; to the Committee on the Judiciary.

THE ATTEMPT ACT OF 1997

Mr. DEWINE. Mr. President, I am introducing a bill today that will give law enforcement officers a tool they need to their jobs—protecting American families. It would establish, for the first time in the Federal Criminal Code, a general attempt provision. Thankfully, criminals to not succeed every time they set out to commit a crime. We need to take advantage of these failed crimes to get criminals off the streets.

Mr. President, under current Federal law, there is no general attempt provision applicable to all Federal offenses. This has forced Congress to enact separate legislation to cover specific circumstances. This approach to the law has led to a patchwork of attempt statutes—leaving gaps in coverage, and failing to adequately define exactly what constitutes an attempt in all circumstances.

Some statutes include attempt language within the substantive offense, but don't bother to define exactly what an attempt is. Others define, as a separate crime, conduct which is only a step toward commission of a more serious offense. Moreover, there is no offense of attempt for still other serious crimes, such as disclosing classified information to an unauthorized person.

This ad hoc approach to attempt statutes is causing problems for law enforcement officials. At what point is it OK for law enforcement officials to step in to prevent the completion of a crime? If someone is seriously dedicated to committing a crime, law enforcement must be able to intervene and prevent it—without having to worry whether doing so would cause a criminal to walk. In the absence of a statutory definition of an attempt, the courts have been called upon to decide whether specific actions fit within existing statutory language.

When a criminal is attempting to commit a crime where attempt is not an offense, then law enforcement must wait until the crime is completed, or find some other charge to fit the criminal's actions. Law enforcement should never be placed in either of these positions.

The bill that I am introducing today will solve these problems in the current law. As I mentioned earlier, this legislation will add a general attempt provision to the U.S. Criminal Code. It provides congressional direction in defining what constitutes an attempt in all circumstances. And, it will serve to fill in the irrational gaps in attempt coverage.

In my view, it's time for the American people—acting through the Congress—to clarify their intention when it comes to this area of the law.

Millions of Americans work hard every day to make ends meet and raise their families and provide a better life for their children.

But, there are some people who choose a different approach to life—a life of crime. We as Americans need to leave no doubt where we stand on that choice. If you even try to commit a crime, we're going to prosecute you

and convict you. This bill will make it easier for our law enforcement officers to protect our families and our communities.

By Mr. DEWINE:

S. 172. A bill to amend title 18, United States Code, to set forth the civil jurisdiction of the United States for crimes committed by persons accompanying the Armed Forces outside of the United States, and for other purposes; to the Committee on the Judiciary.

THE MILITARY AND CIVILIAN JUSTICE ACT

Mr. DEWINE. Mr. President, there are shortcomings in the Code of Military Law that have terrible repercussions in the streets of civilian America. These failures of the military judicial system too often result in military criminals being pushed out of the service and into our civilian streets—where these criminals continue to behave as lawless predators. This bill closes two such gaps in the Military Code and ensures that the enlisted criminal is not pushed out to prey on decent citizens. This bill protects civilians from military personnel who have committed crimes, just as the Military protects itself from those same people.

My bill addresses an important gap in the law. Under current law, many illegal acts committed abroad by U.S. soldiers or accompanying civilians go unpunished by the military courts. The prosecution of these crimes is left to the discretion of a military court, which either chooses to do no more than hand down a dishonorable discharge or lacks jurisdiction over the civilian defendant. This should not be the case.

This bill guarantees that a soldier or accompanying civilian abroad, committing an illegal act punishable under the United States Code by more than a year's imprisonment, will be handed over to civilian authorities for prosecution under the United States Code.

There is another aspect of this bill intended to protect civilian Americans from the actions of those who commit crimes while in the military. This bill also mandates that when an enlisted criminal is discharged from the service, the military Secretary will turn over to the FBI all the criminal records of that soldier for inclusion in the FBI criminal records system. Again, Mr. President, this is another way to protect the tax-paying, law-abiding American from dishonorably discharged criminals. Under current law, the criminal histories of these military personnel do not become part of the National Crime Information Center database. This bill will ensure that they do.

By Mr. DEWINE:

S. 173. A bill to expedite State reviews of criminal records of applicants for private security officer employment, and for other purposes; to the Committee on the Judiciary.

THE PRIVATE SECURITY OFFICERS QUALITY ASSURANCE ACT

Mr. DEWINE. Mr. President, I rise today to introduce the Private Security Officer Assurance Act of 1997. This bill establishes an expedited procedure for State regulators or private security officers to obtain criminal records background checks through the FBI prior to issuing state permits to security officers. Currently, it frequently takes between 6 to 18 months to complete such checks.

My bill would authorize the Attorney General to designate an association of employers of security officers to collect signature cards from applicants and forward them to the FBI for a comparison against the Federal criminal history records on file. The records would then be forwarded to the appropriate State regulators who would decide the qualification of the applicants for permits based on State laws. Under this bill, the applicant would pay fees to compensate for the cost of the background checks. No criminal history information would go to the employer.

I would note that Congress has established similar procedures for banks, the parimutuel industry and the financial securities industry. The process that I described takes about 3 weeks for these industries.

Mr. President, I believe this bill will help improve public safety by ensuring the integrity of those hired as security officers.

By Mr. DEWINE:

S. 174. A bill to establish the Fallen Timbers Battlefield, Fort Meigs, and Fort Miamis National Historical Site in the State of Ohio; to the Committee on Energy and Natural Resources.

THE FALLEN TIMBERS ACT

Mr. DEWINE. Mr. President, I rise today to introduce legislation that will designate the Fallen Timbers Battlefield, Fort Meigs, and Fort Miamis as National Historic Sites.

Mr. President, the people of northwest Ohio are committed to preserving the historic heritage of the United States and the State of Ohio, as well as that of their own community.

The truly national significance of the Battle of Fallen Timbers and Fort Meigs have been acknowledged already. In 1960, Fallen Timbers was designated as a National Historic Landmark. In 1969, Fort Meigs received this designation.

The Battle of Fallen Timbers is acknowledged by the National Park Service as a culminating event in the history of the struggle for dominance in the old Northwest Territory.

Fort Meigs is recognized by the National Park Service as ''the zenith of the British advance in the west as well as the maximum effort by Native forces under the Shawnee, Tecumseh, during the War of 1812.''

Fort Miamis, which was attacked twice without success by British troops, led by General Henry Proctor, in the spring of 1813, is listed on the National Register of Historic Places.

Recently, the National Park Service completed a special resource study examining the proposed National Historic Site designation and the suitability of these sites for inclusion in the National Park System.

The Park Service concluded that these sites were suitable for inclusion in the National Park System—with non-Federal management and National Park Service assistance. The bill I am introducing today would act on that recommendation.

My legislation will accomplish the following:

Recognize and preserve the 185-acre Fallen Timbers Battlefield site;

Formalize the linkage between the Fallen Timbers Battlefield and Monument to Fort Meigs and Fort Miamis;

Preserve and interpret U.S. military history and Native American culture during the period from 1794 through 1813; and,

Provide technical assistance to the State of Ohio as well as interested community and historical groups in the development and implementation of programming and interpretation of the three sites.

However, my legislation will not require the Federal Government to provide direct funding to these three sites. That responsibility remains with—and is welcomed by—the many individuals, community groups, elected officials, and others who deserve recognition for their many hours of hard work dedicated to this issue.

Mr. President, we have entered an era where the responsibility and the drive behind the management, programming, and—in many cases—the funding for historic preservation is the responsibility of local community groups, local elected officials, and local business communities.

This legislation to designate the Fallen Timbers Battlefield, Fort Meigs, and Fort Miamis as National Historic Sites represents just such an effort. In my opinion, it is long overdue.

Mr. President, it is time to grant these truly historic areas the measure of respect and recognition they deserve. I agree with the National Park Service—and the people of Ohio—on this issue. That is why I am proposing this important legislation today.

By Mr. INOUYE:

S. 175. A bill to amend chapter 81 of title 5, United States Code, to authorize the use of clinical social workers to conduct evaluations to determine work-related emotional and mental illnesses; to the Committee on Governmental Affairs.

THE CLINICAL SOCIAL WORKERS' RECOGNITION ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce the Clinical Social Workers' Recognition Act of 1997 to correct an outstanding problem in the Federal Employees Compensation Act. This bill will also provide clinical social workers the recognition they deserve as independent providers of quality mental health care services.

Clinical social workers are authorized to independently diagnose and treat mental illnesses through public and private health insurance plans across the Nation. However, title V, United States Code, does not permit the use of mental health evaluations conducted by clinical social workers for use as evidence in determining workers' compensation claims brought about by Federal employees. The bill I am introducing corrects this problem.

All 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands legally regulate social workers through licensure or certification. Thirty-one States and the District of Columbia have enacted laws that mandate reimbursement for clinical social workers by insurance plans that offer mental health care coverage. All Federal insurance programs that authorize the provision of mental health care services, including Medicare, the Federal Employee Health Benefits Program [FEHBP], and the Civilian Health and Medical Program of the Uniformed Services [CHAMPUS] recognize the ability of clinical social workers to provide mental health services.

It is a sad irony that Federal employees may select a clinical social worker through their health plans to provide mental health services but may not go to this professional for a workers' compensation evaluation. Studies show that as much as 65 percent of all mental health services are provided by clinical social workers and clinical social workers are often the only providers of mental health service in rural areas of the country. The failure to recognize the validity of evaluations provided by clinical social workers unnecessarily limits the choice of Federal employees in selecting a provider to conduct the mental health evaluation and may well impose an undue burden for Federal employees in certain areas where clinical social workers are the only available providers for mental health care. This legislation will correct such an inequity.

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

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

S. 175

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 ''Clinical Social Workers' Recognition Act of 1997''.

SEC. 2. EXAMINATIONS BY CLINICAL SOCIAL WORKERS FOR FEDERAL WORKER COMPENSATION CLAIMS.

Section 8101 of title 5, United States Code, is amended—

(1) in paragraph (2) by striking ''and osteopathic practitioners'' and inserting ''osteopathic practitioners, and clinical social workers''; and

(2) in paragraph (3) by striking ''and osteopathic practitioners'' and inserting ''osteopathic practitioners, and clinical social workers''.

By Mr. INOUYE:

S. 176. A bill for the relief of Susan Rebola Cardenas; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. INOUYE. 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. 176

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

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Susan Rebola Cardenas shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fee.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Susan Rebola Cardenas as provided in this Act, the Secretary of State shall instruct the proper officer to reduce by one number during the current fiscal year the total number of immigrant visas available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

By Mr. INOUYE:

S. 177. A bill to provide for a special application of section 1034 of the Internal Revenue Code of 1986; to the Committee on Finance.

SPECIAL APPLICATION LEGISLATION

Mr. INOUYE. 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. 177

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the case of Rita Bennington—

(1) who purchased her new principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986) in January 1992, and

(2) who was unable to meet the requirements of such section with respect to the sale of an old principal residence until May 1994, because of unexpected delays caused by Hurricane Iniki, the Secretary of the Treasury, in the administration of section 1034 of the Internal Revenue Code of 1986, shall apply subsection (a) of such section by substituting ''2.5 years'' for ''2 years'' each place it appears.

By Mr. DEWINE:

S. 178. A bill to amend the Social Security Act to clarify that the reasonable efforts requirement includes consideration of the health and safety of the child; to the Committee on Finance.

FOSTER CARE LEGISLATION

Mr. DEWINE. Mr. President, in 1980, Congress passed the Adoption Assistance and Child Welfare Act, known as CWA. The 1980 Act has done a great deal of good. It increased the resources available to struggling families. It increased the supervision of children in the foster care system. And it gave financial support to people to encourage them to adopt children with special needs.

But while the law has done a great deal of good, many experts are coming to believe that this law has actually had some bad unintended consequences.

Under the 1980 Act, for a state to be eligible for Federal matching funds for foster care expenditures, the state must have a plan for the provision of child welfare services approved by the Secretary of HHS and this State plan must provide, and I quote:

that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home.

In other words, Mr. President, no matter what the particular circumstances of a household may be the state must make reasonable efforts to keep it together, and to put it back together if it falls apart.

What constitutes reasonable efforts? How far does the State have to go?

This has not been defined by Congress. Nor has it been defined by HHS.

This failure to define what constitutes ''reasonable efforts'' has had a very important—and very damaging—practical result. There is strong evidence to suggest that in the absence of a definition, reasonable efforts have become in some cases extraordinary efforts. Efforts to keep families together at all costs.

Mr. President, during the past year, I have traveled throughout the state of Ohio, talking to social work professionals. In these discussions I have found that there is great disparity in how the law is being interpreted by judges and social workers.

Let me give you an example. I posed this hypothetical to representatives of children's services in both rural and urban counties.

Mary is a 28-year-old crack-addicted mother who has seven children. Steve, the 29-year-old father of the children, is an abusive alcoholic, and all seven of the children have been taken away—permanently—by the county.

Now, Mary gives birth to an eighth child, little Peggy. The newborn Peggy tests positive for crack. Therefore, it is obvious that her mother is still addicted to crack. Steve, the father, is still an alcoholic.

Pretend for a moment that you work for the county children's services department. Does the law allow you to get the new baby out of the household? And if you do, should you file for permanent custody so that the baby can be adopted?

The answer will surprise you. In fact, I was surprised at the response I got when I asked a number of Ohio social work professionals that very same question. The answer varied from county to county, but I heard too much

''no'' in the answers I got. Some officials said they could apply for emergency custody of the baby and take her away on a temporary basis, but they would have to make a continued effort to send the baby back to her mother!

Other social workers said that if they went to court to get custody of the baby, they probably wouldn't be able to get even temporary custody of her. In one county, I was told it would be two years before the baby could be made available for adoption. Another county said it would be five years.

One social worker—just one, out of all the ones I asked—told me that her department would move immediately for permanent custody of the baby. But she said that their success would still depend on the judge assigned to the case.

Should our Federal law really push the envelope, so that extraordinary efforts are made to keep that family together—efforts that any of us would not consider reasonable?

It is clear after 17 years of experience with this law that there is a great deal of confusion as to how the act applies.

My legislation would clarify, once and for all, the intent of Congress in the 1980 Act. My legislation would amend that language in the following way: ''In determining reasonable efforts, the best interests of the child, including the child's health and safety, shall be of primary concern.''

The 1980 Act was a good bill. There are some families that need a little help if they are going to stay together, and it's right for us to help them. That's what the Child Welfare Act did.

But by now it should be equally clear that the framers of the 1980 Act did not intend for extraordinary efforts to be made to reunite children with their abusers. As Peter Digre, the director of the Los Angeles County Department of Children and Family Services, testified at a hearing last year before the House Ways and Means Subcommittee on Human Resources: ''[W]e cannot ignore the fact that at least 22% of the time infants who are reunified with their families are subjected to new episodes of abuse, neglect, or endangerment.''

That was not the intention of Congress in the 1980 law. But too often, that law is being misinterpreted in a way that is trapping these children in abusive households.

I believe we should leave no doubt about the will of the American people on this issue affecting the lives of America's children. The legislation I am proposing today would put the children first.

By Mr. HATCH (for himself, Mr. LOTT, Mr. THURMOND, Mr. CRAIG, Mr. NICKLES, Mr. DOMENICI, Mr. STEVENS, Mr. ROTH, Mr. BRYAN, Mr. KOHL, Mr. GRASSLEY, Mr. GRAHAM, Mr. SPECTER, Mr. BAUCUS, Mr. THOMPSON, Mr. BREAUX, Mr. KYL, Ms. MOSELEY-BRAUN, Mr. DEWINE, Mr. ROBB, Mr. ABRAHAM, Mr. ASHCROFT, Mr. SESSIONS, Mr. D'AMATO, Mr. HELMS, Mr. LUGAR, Mr. CHAFEE, Mr. MCCAIN, Mr. JEFFORDS, Mr. WARNER, Mr. COVERDELL, Mr. COCHRAN, Mrs. HUTCHISON, Mr. MACK, Mr. GRAMM, Ms. SNOWE, Mr. ALLARD, Mr. BROWNBACK, Ms. COLLINS, Mr. ENZI, Mr. HAGEL, Mr. HUTCHINSON, Mr. ROBERTS, Mr. GORDON H. SMITH, Mr. BENNETT, Mr. BOND, Mr. BURNS, Mr. CAMPBELL, Mr. COATS, Mr. FAIRCLOTH, Mr. FRIST, Mr. GORTON, Mr. GRAMS, Mr. GREGG, Mr. INHOFE, Mr. KEMPTHORNE, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH, and Mr. THOMAS):

S.J. Res. 1. A joint resolution proposing an amendment to the Constitution of the United States to require a balanced budget; to the Committee on the Judiciary.

THE CONSTITUTIONAL BALANCED BUDGET ACT

Mr. HATCH. Mr. President, let me just say I compliment my colleagues for the excellent job they have done in coming up with the first 10 bills of this session. I think they are bills that the American people have to be very interested in. There is no question that each and every one is essential for the future of our country. I am very appreciative that so many colleagues are willing to cosponsor and to push these particular bills.

Having said that, the No. 1 issue on our agenda is, as it has always been for Republicans and I think some very courageous Democrats as well, S.J. Res. 1, the balanced budget constitutional amendment.

Mr. President, this is an amendment that literally could change the future of our country for the better. We are now approaching a $6 trillion deficit. It has been largely accumulated over the last 15 or 20 years. We have had a period of almost 60 years of unbalanced budgets, except on very rare occasions.

The Senate and the Hose seem to be institutionally incapable of reaching balanced budget appropriations and budget acts. And I might add, the President is incapable, as well. If you look at the last budgets that the President has submitted, even the one that he called the balanced budget, it was heavily loaded in the rear end of the budget, in the last 2 years, knowing that there is no way in the world that when we ultimately reach 2001 and 2002 that we can actually balance the budget.

It has been a phony game. It is time to end that game. It is time to literally strike out for the people of this country and for our children and grandchildren of future generations by getting our fiscal house in order. The only way that many of the now 62 cosponsors, and another 6 who have said to their constituents that they will vote for this amendment, it is the only way we can bring about a fiscal sanity that will reduce taxes, reduce the interest rates of our society, keep the stock market going, protect social security, Medicaid, Medicare, veterans pensions and other matters, by having a strong fiscal economy through the balanced budget amendment.

We are very concerned. This is a major, major battle this year. We have 62 cosponsors—all 55 Republicans and 7 courageous Democrats so far. We have another six Democrats who have promised their people at home that they would vote for the balanced budget amendment. Everybody knows this game. Everybody knows there will be some killer amendments trying to defeat this amendment. In the end, everybody knows what the amendment is. It is precisely the same as that found in the House and that which will be brought up in the House. If we are ever going to get this fiscal house in order, this is the way to do it. It is only the first step.

Even if both Houses of Congress do pass the balanced budget amendment by the requisite two-thirds vote, the amendment still has to be submitted to the States, and three-quarters of them, or 38 States, have to ratify the amendment. It is a very, very difficult process at best.

I just believe this is the year to do it. I hope that everybody will live up to the commitments they have made to their constituents at home. If they do, we will have set this country on a fiscal order path that will be very beneficial for all of our children and grandchildren and future generations.

Mr. President. I rise to speak on the Balanced Budget Amendment, which I have just introduced. Last Congress, when the Amendment fell a mere one vote short of passage here in the Senate, I vowed that we would be back to try to pass this amendment and put America back on the course of fiscal responsibility. We are back again and I have brought sixty-one other Senators with me. Every one of the 55 Republicans in the Senate are original cosponsors, and we are joined by seven strong Democrats. The Balanced Budget Amendment has sixty two original cosponsors. If only five other Senators join us we will have the votes America needs to see the Senate pass the Balanced Budget Amendment. If everyone votes as they said they would before the November election and keeps their promise to their constituents, the Senate will pass the balanced budget amendment.

The Balanced Budget Amendment will again be S.J. Res. 1. It is right that it should be, because it is the single most important piece of legislation that will be voted on this Congress. It is that important because if enacted it will change forever the way business is done in Washington.

The idea of a Balanced Budget Amendment is not new. Unfortunately, neither is the problem it is designed to solve. About thirty years ago, we got off track and ran a deficit. It was not the first deficit we had ever run, and it

was only a small one, nothing to get too worried about. But we never got back on track: we ran another deficit the next year, and again the next year after that, and never got back into balance. In fact, we have run a deficit every year since 1969. And that budget in 1969 was the only balanced budget since 1960.

Today, the national debt is estimated to be $5.311 trillion. Last Friday, when we began hearings on S.J. Res 1, the debt was at less than $5.310 trillion. In other words, the debt has already increased by more than $1 billion since the Senate began consideration of the measure last week. Portioned out equally, every man, woman, and child in America owes about $20,000. If the debt were piled into a single stack of pennies, that pile could reach past the Moon, past Mars, and all the way to Jupiter! It is enough money to buy every single automobile ever sold in the United States AND every plane ticket ever sold for travel in the United States.

And, Mr. President, the debt continues to grow. If you spent a dollar a second, it would take you over 150,000 years to spend as much as the national debt. But we have managed to accumulate our national debt much faster. This year, we will increase the debt by about $4,500 every second. At this rate it won't be long before we're all going to have to learn what comes after trillion. The reality is that the bridge we are building to the 21st century is awash in debt.

I read recently that this year the European Union will be deciding which nations quality to join the new single currency in the first tier. In order to join, nations must satisfy several criteria. One of those criteria is that the nation's total debt must be no greater than sixty percent of that nation's GDP. Well, Mr. President, our debt is about *seventy* percent of our GDP. Which means if we tried to join the European Union's new currency now, the United States would not qualify. By international standards, we are too far in debt to be trusted financially. This nation faces a future with higher taxes, lower wages, and dramatically reduced world influence if we do not get our spending habits under control. As well, failure to get our national debt under control could prove catastrophic to current and future older Americans.

Over the next few weeks, opponents of the balanced budget amendment are going to try to change the subject to a discussion of social security and Medicare. For example, Treasury Secretary Rubin testified before the Judiciary Committee on Friday in opposition to the balanced budget amendment and suggested—no less than eight times during a six page statement—that passage of the balanced budget amendment would result in social security or Medicare checks being stopped. Opponents of the balanced budget amendment want the public to believe that passing the balanced budget amendment and balancing our federal budget threatens the retirement security of older Americans. What they ignore is that Congress simply never will allow social security or Medicare checks to stop. It simply will not happen. Furthermore, they fail to appreciate—or fail to mention—the positive effect the balanced budget amendment would have on the long term stability of social security as well as the retirement investments for most every American.

To listen to opponents of the balanced budget amendment, one would think that Americans are counting exclusively on social security for their economic security during retirement when in fact, more and more Americans are relying on Wall Street. A recent PBS Frontline documentary, ''Betting on the Market,'' explains how Americans are increasingly entrusting their long-term retirement savings in Wall Street. There are 34 million households that have invested in the stock market in some form. As financial expert and the best-selling author of ''Smart Money,'' Jim Cramer, points out, if you have a pension, it's likely that it's invested in stocks. If you have a 401K plan, it's probably invested in stocks. *Worth* magazine's Ken Kurson points out that in 1996, 34 percent of households headed by someone under 25 had some sort of mutual fund. Stock mutual funds represent the biggest chunk of young investor's money. At the same time Americans carry record credit card debt. As financial historian Peter Bernstein points out, the money that people used to put in the stock market was money that they hoped to get rich on. Today, we are investing our blood money—our savings; our nest eggs. America's affection for the markets is demonstrated by Paine Webber's recent announcement that it achieved a fifty percent increase in earnings last quarter. This is all well and good while the Dow Jones Industrial keeps setting new highs—it closed yesterday at 6,843. NASDAQ also reached record levels benefiting from a boost in technology stocks.

With more and more Americans relying on mutual funds and stocks—whether they know it or not—for their retirement, what happens to our retirement security if we experience an economic downturn precipitated by our failure to address our nation's growing debt? What happens if Congress once again demonstrates an unwillingness to pass the balanced budget amendment and take this necessary step towards balancing the budget? With the fortunes of Wall Street effecting the quality of life for more and more future retirees, Congress needs to concern itself with how our growing debt and our willingness to make tough choices will affect Wall Street. Nothing the Congress can do would have a more positive effect on Wall Street and, in turn, the stability of our retirement savings than passing the balanced budget amendment and balancing the budget. More than 250 economists share this view. If my colleagues are concerned with the financial security of current and future older Americans, they will refrain from the wedge politics of Medicare and social security cuts and, instead, support the balanced budget.

The fact is that every political incentive in this town is to spend now and let the next guy worry about paying the bill. Fiscal accountability is the enemy of big government. There is only one way to break Washington's addiction to spending other people's money and borrowing from our children to do so: the pressure of a constitutional amendment for a balanced budget.

I look forward to the debate on this important measure, and I look forward to more fully explaining why I think that only a structural change in our basic charter can restore the fiscal responsibility we seem to have lost over the three or so decades.

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

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

S.J. RES.1

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission to the States for ratification:

''ARTICLE —

''SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

''SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

''SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

''SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the hole number of each House by a rollcall vote.

''SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be wived for any fiscal year in which the Untied States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

''SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

''SECTION 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

''SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.''.

Mr. HATCH. I am delighted to yield to my colleague and friend from Idaho who I think has played not only a singularly important role in the Senate, but long has played a very important role when he was in the House of Representatives, as well, and has been a great partner in fighting this battle. I yield to the distinguished Senator from Idaho.

Mr. CRAIG. Mr. President, let me thank the senior Senator from Utah for yielding but for a moment, to add to the comments that he has made as we have introduced S.J. Res. 1, or Senate Joint Resolution 1, the balanced budget constitutional amendment. The Senator from Utah has outlined, as chairman of the Judiciary Committee, what we bring to the floor and the very critical nature of this debate. For a moment, let me humanize it, if I can, as to what it means to you, to me, to our children, and to the future of this country.

Without a fiscally responsible Government that begins to rein in the growth of the Federal debt, already at 5.3 trillion dollars, and the ongoing year-after-year multibillion-dollar deficit that we have seen now for decades, the financial future of our country and its citizens is in doubt. There is no question today that the Congress and our President mouth the words of a balanced budget. We even work toward that by the very actions undertaken in writing the annual budgets.

To guarantee it, to assure that when it gets to the time of making the tough votes to truly create a balanced budget, can we do it? Will we have the will of the people behind us and the support to accomplish that? I think that, absent a balanced budget amendment, the strength will not be there. I say that having watched this institution for many decades, and recognize that in the end when it really comes to the business of sorting out Government, the decisions become very tough.

If we pass a balanced budget amendment to our Constitution this year, and if the States ratify it within the next 2 years, we will offer to the young people born today a unique opportunity. What is that opportunity? That they will pay in their lifetime $180,000 less in taxes, compared to what they would pay under the trends of the status quo, because of the rate at which our Government currently grows.

We will offer to the average American family an opportunity unprecedented, and that is a better standard of living and actually more take-home pay and more dollars to spend, on an annualized basis, of more than $1,500 a year, in addition to their current income. We will offer our senior citizens the economic security we have promised them, by protecting Social Security and Medicare from the ravages of a massive debt and interest payments that crowd out all our other priorities. Let us remember, the debt is the threat to Social Security and to our seniors.

When the Senator from Utah and the Senator from Idaho began to work to convince the Congress and the American people that a constitutional amendment to require a balanced budget was necessary in the early 1980's, if it had passed at that time, if it had become part of the Constitution, the Concord Coalition and others have estimated that the average income per American family today would be $15,000 more than it currently is. I think, from that kind of fact, you begin to recognize the power and the importance of what we offer up today. You begin to recognize the very critical nature of what a $5.3 trillion debt really is, and how it is growing by $800 million a day and more than $9,000 a second. If this Senate is to stand in the shadow of today's work a decade from now and say that we did for our country what we thought was necessary to assure the American dream to our children, to be able to say to Americans that you will have the same unique opportunity that your forebears had, then we must make sure that we have produced, and locked in the requirement of, a Government that is fiscally responsible.

What we offer today and what we will be debating in the coming weeks is a balanced budget amendment to our Constitution which assures that this body and the other, as well as the President and his budget office, must operate in a fiscally sound and responsible way. It is what the American people say is their No. 1 issue. It must be our No. 1 issue.

I am pleased today to join as a cosponsor in this critical amendment and look forward to the debate in the coming weeks as we say to the American people, ''We have heard your message and we will fight to be fiscally responsible in the building and the maintaining of a federally balanced budget.''

I yield back to the Senator from Utah.

Mr. HATCH. I thank my colleague from Idaho for his excellent remarks and for his ardent fight for this amendment through the years.

Mr. President, there are 13 Democrats who have promised to vote for this amendment. If we add all 55 Republicans and the 13 heroic Democrats who have agreed to vote for this amendment, that will give us 68 votes, 1 more than we need. We know the President is going to put on a full-court press. We also know that the minority leader and others will do the same. It is important that these people live up to the commitments they made to the constituents at home, and we are counting on them to do it. I believe they will.

Thus far, only seven have cosponsored, but I believe the others will be on board when the debate comes to the floor. I hope, with all my heart, they realize how important this is. I hope they also realize how very deeply I feel about their courageous stand on this issue.

Mr. ABRAHAM. Mr. President, 2 years ago, the Senate failed by one vote to support a constitutional amendment requiring a balanced budget. At the time, opponents told the Senate that balancing the budget didn't require amending the Constitution. All we needed, they told us, was to make the tough choices and cast the hard votes. Two budgets, hundreds of tough votes, and one Government shutdown later, the budget is still in deficit, and the case for a constitutional balanced budget amendment is stronger than ever.

That's not to say we haven't made progress in the past 2 years. We have. Since the 1994 elections, Congress has worked hard to hold the line on discretionary spending while just last fall we passed historic reforms to the 60-year-old welfare state. Perhaps just as importantly, we have witnessed a dramatic shift in the debate itself. Two years ago, President Clinton submitted a budget that never reached balance. Today all sides have agreed—at least in principle—to the goal of balancing the budget by the year 2002.

That's the good news.

The bad news is that while we have all seemingly agreed on the goal of balancing the budget, we are miles apart on the details. It's one thing to say you support a balanced budget—it's quite another to make the tough decisions necessary to make it happen.

Mr. President, that's where Senator Hatch's amendment to the Constitution comes in. As an original cosponsor of this amendment, I believe it will force the hand of an unwilling Congress to set its fiscal house in order. Where Congress has failed, I am confident the Constitution will succeed. How would it work?

Section 1 of the amendment requires that total outlays of the Government not exceed receipts unless three-fifths of the whole number of both Houses waives the requirement. Once this amendment is passed, a three-fifths vote of both the House and the Senate will be necessary in order to increase the deficit.

Section 2 prohibits Congress from raising the debt ceiling unless three-fifths of the whole number of both Houses of Congress waives the requirement.

And, finally, section 4 requires that there be no revenue increases unless approved by a majority of the whole number of each House in Congress. If this proposal becomes the 28th amendment to the Constitution, then in order to increase taxes, you would need first, a recorded vote and, second, the support of at least 51 U.S. Senators and 218 Members of the House.

Quite simply, Mr. President, the balanced budget amendment raises the procedural bar necessary for Congress to incur debt and raise taxes. Given Congress' historic predilection toward doing both, I believe this amendment is

possibly the most important measure we will consider in the 105th Congress.

Having focused on what the balanced budget amendment does, it is just as important to focus on what it doesn't do. The first thing it doesn't do is endanger the Social Security System. Social Security currently operates with a surplus, and some Members have argued that sound fiscal policy demands that we should exclude that surplus from the amendment and our deficit calculations.

I am of the opinion that this argument is more of a diversion than anything else. It has been raised to confuse the issue and provide some Members with a smokescreen to cover their opposition to a measure that is supported by an overwhelming majority of Americans. Balancing the budget will strengthen, not weaken, the Social Security System.

The second thing this amendment doesn't do is endanger the health of the national economy. Some—including the President—argue the balanced budget amendment will prevent Congress from responding to shifting economic recessions and booms.

Mr. President, the amendment being discussed today does not prohibit running a deficit or borrowing money. It requires a three-fifths vote in order to do those things. Under the circumstances generally described in support of an economic exception, I think it is incumbent upon the exceptions advocates to explain why they could not get the necessary votes. Furthermore, I am interested to hear why the higher standards established by the balanced budget amendment would be more restrictive than the prospect of continued annual deficits, higher debt and debt payments, and less real discretionary spending under Congress' control.

Finally, this amendment does not transfer undue power to the judiciary. One concern raised about the balanced budget amendment is the role the courts will play in enforcing its provisions. In the past, some have argued that the courts will involve themselves in the Federal budget process in order to enforce the balanced budget amendment. As someone with deep concerns about judicial activism, I have inspected this issue closely, and I am confident that adoption of this amendment will not authorize courts to insert themselves into the budget process.

As I mentioned previously, the balanced budget amendment establishes new procedures that encourage Congress to move toward and adopt a balanced budget. It does not, however, create a ''right'' to a balanced budget. It does not disturb the powers of Congress under Article I of the Constitution, it does not confer those powers on the courts, and it does not give to the courts authority to interfere in those powers.

Mr. President, in conclusion, let me say the greatest danger facing our economy, our senior citizens, and future generations is not an amendment to the Constitution restricting Congress' ability to borrow money or raise taxes, but rather the endless stream of deficits and huge mountains of debt that a previous, unrestricted Congresses have imposed upon this and future generations. It is unfair, irresponsible, and immoral to pass this burden on to our children, and I applaud you and the Republican leadership for making passage of Senate Joint Resolution 1 the No. 1 priority of the 105th Congress.

Mr. CAMPBELL. Mr. President, for many years I have spoken out in favor of a Balanced Budget Amendment to the Constitution, and have supported and voted for this measure each time I have had the opportunity to do so. Now, once again, I join many of my colleagues as an original cosponsor of the Balanced Budget Amendment which is being introduced today, and I applaud Senator ORRIN HATCH, Majority Leader TRENT LOTT, and the leadership for making this particular item a top priority for the 105th Congress.

It would be so easy to give up on the idea of passing the Balanced Budget Amendment. For a number of years, despite the hard work of many individuals, this measure has failed to pass through Congress and move on to the states for ratification where it belongs. However, I believe passage of this Amendment is in the best interest of the future of this country. It will force us to make the tough choices that need to be made to balance the budget and eventually eliminate the staggering debt.

There are those that believe there is no need for the Balanced Budget Amendment, that Congress can continually balance the budget without being mandated by the Constitution to do so. However, I have been a member of this institution for ten years now, and I have yet to see Congress and the administration bite the bullet, balance the budget, and tackle our enormous debt. If we do not address this important issue, the amount of the federal budget devoted toward paying off the interest on the debt and the entitlement programs will increase to the point that there will be barely any money left for those programs which deserve and require federal funding such as education, law enforcement, national security, or even our national parks and monuments. I think we owe more to the American people and to future generations.

For those of us who remain committed to this effort, this piece of legislation is a vital tool for tackling the difficult task of balancing the budget. I would like to see an increase not only in our standard of living and national savings rate but also in the amount of money the Federal Government devotes to worthwhile and beneficial programs—programs which could suffer due to our financial troubles.

Congress came within one vote last session of passing the Balanced Budget Amendment. I am optimistic that this year we can pass this legislation and send the measure on to the states for their deliberation. It is time to allow the American people and the State legislatures the opportunity to debate the merits of the Balanced Budget Amendment, and I hope that the Congress will see fit to entrust this measure to those who must ratify or reject it.

By Mr. HOLLINGS (for himself, Mr. SPECTER, Mr. DASCHLE, Mr. DORGAN, Mr. SHELBY, Mr. REID, Mr. FORD, and Mr. REED):

S.J. Res. 2. A joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections; to the Committee on the Judiciary.

THE CAMPAIGN FINANCE REFORM CONSTITUTIONAL AMENDMENT

Mr. HOLLINGS. Mr. President, I rise today, along with my collegue and cosponsor Senator SPECTER, to introduce for the sixth time a constitutional amendment to limit campaign spending. Although I commend the efforts of the Minority Leader and others seeking to statutorily reform our campaign finance laws, I am convinced the only way to solve the chronic problems surrounding campaign financing is to reverse the Supreme Court's flawed decision in Buckley versus Valeo by adopting a constitutional amendment granting Congress the right to limit campaign spending.

We all know the score—we're hamstrung by that decision and the ever increasing cost of a competitive campaign. With the total cost for congressional elections, just general elections, skyrocketing from $403 million in 1990 to over $626 million in 1996, the need for limits on campaign expenditures is more urgent than ever. For nearly a quarter of a century, Congress has tried to tackle runaway campaign spending with bills aimed at getting around the disjointed Buckley decision. Again and again, Congress has failed.

Let us resolve not to repeat the mistakes of past campaign finance reform efforts, which have become bogged down in partisanship as Democrats and Republicans each tried to gore the other's sacred cows. During the 103d Congress there was a sign that we could move beyond this partisan bickering, when the Senate in a bipartisan fashion expressed its support for a constitutional amendment to limit campaign expenditures. In May 1993, a nonbinding sense of the Senate resolution was agreed to which advocated the adoption of a constitutional amendment empowering Congress and States to limit campaign expenditures.

Now it is time to take the next step. We must strike the decisive blow against the anything-goes fundraising and spending tolerated by both political parties. Looking beyond the current headlines regarding the source of these funds, the massive amount of

money spent is astonishing and serves only to cement the commonly held belief that our elections are nothing more than auctions and that our politicians are up for sale. It is time to put a limit on the amount of money sloshing around campaign war chests. It is time to adopt a constitutional amendment to limit campaign spending—a simple, straightforward, nonpartisan solution.

As Prof. Gerald G. Ashdown has written in the New England Law Review, amending the Constitution to allow Congress to regulate campaign expenditures is ''the most theoretically attractive of the approaches-to-reform since, from a broad free speech perspective, the decision in Buckley is misguided and has worsened the campaign finance atmosphere.'' Adds Professor Ashdown: ''If Congress could constitutionally limit the campaign expenditures of individuals, candidates, and committees, along with contributions, most of the troubles * * * would be eliminated.''

Right to the point, back in 1974, Congress responded to the public's outrage over the Watergate scandals by passing, on a bipartisan basis, a comprehensive campaign finance law. The centerpiece of this reform was a limitation on campaign expenditures. Congress recognized that spending limits were the only rational alternative to a system that essentially awarded office to the highest bidder or wealthiest candidate.

Unfortunately, the Supreme Court overturned these spending limits in its infamous Buckley versus Valeo decision of 1976. The Court mistakenly equated a candidate's right to spend unlimited sums of money with his right to free speech. In the face of spirited dissents, the Court came to the conclusion that limits on campaign contributions but not spending furthered ''* * * the governmental interest in preventing corruption and the appearance of corruption'' and that this interest ''outweighs considerations of free speech.''

I have never been able to fathom why that same test—the governmental interest in preventing corruption and the appearance of corruption—does not overwhelmingly justify limits on campaign spending. The Court made a huge mistake. The fact is, spending limits in Federal campaigns would act to restore the free speech that has been eroded by the Buckley decision.

After all, as a practical reality, what Buckley says is: Yes, if you have a fundraising advantage or personal wealth, then you have access to television, radio, and other media and you have freedom of speech. But if you do not have a fundraising advantage or personal wealth, then you are denied access. Instead of freedom of speech, you have only the freedom to say nothing.

So let us be done with this phony charge that spending limits are somehow an attack on freedom of speech. As Justice Byron White points out, clear as a bell, in his dissent, both contribution limits and spending limits are neutral as to the content of speech and are not motivated by fear of the consequences of the political speech in general.

Mr. President, every Senator realizes that television advertising is the name of the game in modern American politics. In warfare, if you control the air, you control the battlefield. In politics, if you control the airwaves, you control the tenor and focus of a campaign.

Probably 80 percent of campaign communications take place through the medium of television. And most of that TV airtime comes at a dear price. In South Carolina, you're talking between $1,000 and $2,000 for 30 seconds of primetime advertising. In New York City, it's anywhere from $30,000 to $40,000 for the same 30 seconds.

The hard fact of life for a candidate is that if you're not on TV, you're not truly in the race. Wealthy challengers as well as incumbents flushed with money go directly to the TV studio. Those without a fundraising advantage or personal wealth are sidetracked to the time-consuming pursuit of cash.

The Buckley decision created a double bind. It upheld restrictions on campaign contributions, but struck down restrictions on how much candidates with deep pockets can spend. The Court ignored the practical reality that if my opponent has only $50,000 to spend in a race and I have $1 million, then I can effectively deprive him of his speech. By failing to respond to my advertising, my cash-poor opponent will appear unwilling to speak up in his own defense.

Justice Thurgood Marshall zeroed in on this disparity in his dissent to Buckley. By striking down the limit on what a candidate can spend, Justice Marshall said, ''It would appear to follow that the candidate with a substantial personal fortune at his disposal is off to a significant head start.''

Indeed, Justice Marshall went further: He argued that by upholding the limitations on contributions but striking down limits on overall spending, the Court put an additional premium on a candidate's personal wealth.

Justice Marshall was dead right and Ross Perot and Steve Forbes have proved it. Massive spending of their personal fortunes immediately made them contenders. Our urgent task is to right the injustice of Buckley versus Valeo by empowering Congress to place caps on Federal campaign spending. We are all painfully aware of the uncontrolled escalation of campaign spending. The average cost of a winning Senate race was $1.2 million in 1980, rising to $2.9 million in 1984, and skyrocketing to $3.1 million in 1986, $3.7 million in 1988, and up to $4.3 in 1996. To raise that kind of money, the average Senator must raise over $13,800 a week, every week of his or her 6-year term. Overall spending in congressional races increased from $446 million in 1990 to more than $724 million in 1994—almost a 70 percent increase in 4 short years. I predict that when the final FEC reports are compiled for 1996, that figure will go even higher.

This obsession with money distracts us from the people's business. It corrupts and degrades the entire political process. Fundraisers used to be arranged so they didn't conflict with the Senate schedule; nowadays, the Senate schedule is regularly shifted to accommodate fundraisers.

I have run for statewide office 16 times in South Carolina. You establish a certain campaign routine, say, shaking hands at a mill shift in Greer, visiting a big country store outside of Belton, and so on. Over the years, they look for you and expect you to come around. But in recent years, those mill visits and dropping by the country store have become a casualty of the system. There is very little time for them. We're out chasing dollars.

During my 1992 reelection campaign, I found myself raising money to get on TV to raise money to get on TV to raise money to get on TV. It's a vicious cycle.

I remember Senator Richard Russell saying: ''They give you a 6-year term in this U.S. Senate: 2 years to be a statesman, the next 2 years to be a politician, and the last 2 years to be a demagogue.'' Regrettably, we are no longer afforded even 2 years as statesmen. We proceed straight to politics and demagoguery right after the election because of the imperatives of raising money.

My proposed constitutional amendment would change all this. It would empower Congress to impose reasonable spending limits on Federal campaigns. For instance, we could impose a limit of, say, $800,000 per Senate candidate in a small State like South Carolina—a far cry from the millions spent by my opponent and me in 1992. And bear in mind that direct expenditures account for only a portion of total spending. For instance, my 1992 opponent's direct expenditures were supplemented by hundreds of thousands of dollars in expenditures by independent organizations and by the State and local Republican Party. When you total up spending from all sources, my challenger and I spent roughly the same amount in 1992.

And incidentally, Mr. President, let's be done with the canard that spending limits would be a boon to incumbents, who supposedly already have name recognition and standing with the public and therefore begin with a built-in advantage over challengers. Nonsense. I hardly need to remind my Senate colleagues of the high rate of mortality in upper chamber elections. And as to the alleged invulnerability of incumbents in the House, I would simply note that well over 50 percent of the House membership has been replaced since the 1990 elections and just 3 weeks ago we swore in 15 new Senators.

I can tell you from experience that any advantages of incumbency are

more than counterbalanced by the obvious disadvantages of incumbency, specifically the disadvantage of defending hundreds of controversial votes in Congress.

Moreover, Mr. President, I submit that once we have overall spending limits, it will matter little whether a candidate gets money from industry groups, or from PAC's, or from individuals. It is still a reasonable amount any way you cut it. Spending will be under control, and we will be able to account for every dollar going out.

On the issue of PAC's, Mr. President, let me say that I have never believed that PAC's per se are an evil in the current system. On the contrary, PAC's are a very healthy instrumentality of politics. PAC's have brought people into the political process: nurses, educators, small business people, senior citizens, unionists, you name it. They permit people of modest means and limited individual influence to band together with others of mutual interest so their message is heard and known.

For years we have encouraged these people to get involved, to participate. Yet now that they are participating, we turn around and say, ''Oh, no; your influence is corrupting, your money is tainted''. This is wrong. The evil to be corrected is not the abundance of participation but the superabundance of money. The culprit is runaway campaign spending.

To a distressing degree, elections are determined not in the political marketplace but in the financial marketplace. Our elections are supposed to be contests of ideas, but too often they degenerate into megadollar derbies, paper chases through the board rooms of corporations and special interests.

Mr. President, I repeat, campaign spending must be brought under control. The constitutional amendment Senator SPECTER and I have proposed would permit Congress to impose fair, responsible, workable limits on Federal campaign expenditures and allow States to do the same with regard to State and local elections.

Such a reform would have four important impacts. First, it would end the mindless pursuits of ever-fatter campaign war chests. Second, it would free candidates from their current obsession with fundraising and allow them to focus more on issues and ideas; once elected to office, we wouldn't have to spend 20 percent of our time raising money to keep our seats. Third, it would curb the influence of special interests. And fourth, it would create a more level playing field for our Federal campaigns—a competitive environment where personal wealth does not give candidates an insurmountable advantage.

Finally, Mr. President, a word about the advantages of the amend-the-Constitution approach that I propose. Recent history amply demonstrates the practicality and viability of this constitutional route. Certainly, it is not coincidence that five of the last seven amendments to the Constitution have dealt with Federal election issues. In elections, the process drives and shapes the end result. Election laws can skew election results, whether you're talking about a poll tax depriving minorities of their right to vote, or the absence of campaign spending limits giving an unfair advantage to wealthy candidates. These are profound issues which go to the heart of our democracy, and it is entirely appropriate that they be addressed through a constitutional amendment.

And let's not be distracted by the argument that the amend-the-Constitution approach will take too long. Take too long? We have been dithering on this campaign finance issue since the early 1970's, and we haven't advanced the ball a single yard. All-the-while the Supreme Court continues to strike down campaign limit after campaign limit. It has been a quarter of a century, and no legislative solution has done the job.

Except for the 27th amendment, the last five constitutional amendments took an average of 17 months to be adopted. There is no reason why we cannot pass this joint resolution, submit it to the States for a vote, and ratify the amendment in time for it to govern the 1998 election. Once passed by the Congress, the Joint Resolution goes directly to the States for ratification. Once ratified, it becomes the law of the land, and it is a Supreme Court challenge.

And, by the way, I reject the argument that if we were to pass and ratify this amendment, Democrats and Republicans would be unable to hammer out a mutually acceptable formula of campaign expenditure limits. A Democratic Congress and Republican President did exactly that in 1974, and we can certainly do it again.

Mr. President, this amendment will address the campaign finance mess directly, decisively, and with finality. The Supreme Court has chosen to ignore the overwhelming importance of media advertising in today's campaigns. In the Buckley decision, it prescribed a bogus if-you-have-the-money-you-can-talk version of free speech. In its place, I urge the Congress to move beyond these acrobatic attempts at legislating around the Buckley decision. As we have all seen, no matter how sincere, these plans are doomed to fail. The solution rests in fixing the Buckley decision. It is my hope that as the campaign financing debate unfolds, the Majority Leader will provide us with an opportunity to vote on this resolution—it is the only solution.

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

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

S.J. RES. 2

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within 7 years after the date of final passage of this joint resolution:

''ARTICLE—

''SECTION 1. Congress shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, Federal office.

''SECTION 2. A State shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, State or local office.

''SECTION 3. Congress shall have power to implement and enforce this article by appropriate legislation.''.

Mr. SPECTER. Mr. President, I have sought recognition today to join with Senator HOLLINGS in introducing a joint resolution providing for an amendment to the United States Constitution which would provide authority to the Congress to regulate Federal election spending and to the States to regulate spending in State and local elections.

This joint resolution is very similar to S.J. Res. 48, which I introduced in the 104th Congress on January 26, 1996, 3 days before the 20th anniversary of the Supreme Court's decision in Buckley versus Valeo. It is also very similar to constitutional amendments which Senator HOLLINGS and I have proposed since 1989.

Now, more than ever, the time has come for meaningful election law reform—reform which necessitates overturning the Buckley decision.

The unprecedented spending levels during 1996 Presidential and Congressional campaigns should serve as the impetus for approving this consitutional amendment. Presidential candidates spent a total of $237 million in the 1996 primary campaigns, of which $56 million represented publicly funded matching payments. Public financing of the general election added $153 million to the total. One primary candidate decided not to take Federal matching funds and used $37 million of his own resources to fund a campaign in which he was not restricted from the same state-by-state and overall limits as other candidates.

The 1996 Congressional campaign cycle was similarly grim for all but television station advertising managers and political consultants. There were record levels of spending including $220.8 million by Senate candidates and $405.6 million by House candidates. This spending, much of which went to negative television commercials, did little to restore the public's confidence in the electoral process, much less our institution.

The Supreme Court has made this proposed amendment even more urgent