tax on social security benefits; to the Committee on Finance.

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 245. A bill to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges for the judicial district of Maryland; to the Committee on the Judiciary.

By Mr. GREGG:

S. 246. A bill to amend title XVIII of the Social Security Act to provide greater flexibility and choice under the medicare program; to the Committee on Finance.

By Mr. WYDEN (for himself and Mr. SMITH):

S. 247. A bill for the relief of Rose-Marie Barbeau-Quinn; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself and Mr. REID):

S. 248. A bill to establish a Commission on Structural Alternatives for the Federal Courts of Appeals; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Ms. SNOWE, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. MOYNIHAN, Mr. DOMENICI, Mr. FAIRCLOTH, Ms. MOSELEY-BRAUN, Mr. BIDEN, Mr. INOUYE, Mr. MURKOWSKI, Mr. DODD, Mr. KERREY, Mr. HATCH, Mr. GREGG, Mr. SMITH, and Mr. FORD):

S. 249. A bill to require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer, coverage for reconstructive surgery following mastectomies, and coverage for secondary consultations; to the Committee on Finance.

By Mr. FORD:

S. 250. A bill to designate the United States courthouse located in Paducah, Kentucky, as the ''Edward Huggins Johnstone United States Courthouse''; to the Committee on Environment and Public Works.

By Mr. SHELBY (for himself, Mr. GRASSLEY, Mr. COCHRAN, Mr. ROBERTS, Mr. ABRAHAM, and Mr. HUTCHINSON):

S. 251. A bill to amend the Internal Revenue Code of 1986 to allow farmers to income average over 2 years; to the Committee on Finance.

By Mr. GREGG:

S. 252. A bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gains tax for assets held more than 2 years, to impose a surcharge on short-term capital gains, and for other purposes; to the Committee on Finance.

By Mr. LUGAR:

S. 253. A bill to establish the negotiating objectives and fast track procedures for future trade agreements; to the Committee on Finance.

By Mr. KOHL:

S. 254. A bill to amend part V of title 28, United States Code, to require that the Department of Justice and State Attorneys General are provided notice of a class action certification or settlement, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

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

S. Res. 36. A resolution relative to the retirements of Arthur Curran, Donn Larson, and Richard Gibbons; considered and agreed to.

By Mr. HELMS:

S. Res. 37. An original resolution authorizing expenditures by the Committee on Foreign Relations; from the Committee on Foreign Relations; to the Committee on Rules and Administration.

By Mr. THURMOND:

S. Res. 38. An original resolution authorizing expenditures by the Committee on Armed Services; from the Committee on Armed Services; to the Committee on Rules and Administration.

By Mr. THOMPSON:

S. Res. 39. An original resolution authorizing expenditures by the Committee on Governmental Affairs; from the Committee on Governmental Affairs; to the Committee on Rules and Administration.

By Mr. BOND:

S. Res. 40. An original resolution authorizing expenditures by the Committee on Small Business; from the Committee on Small Business; to the Committee on Rules and Administration.

By Mr. GRASSLEY:

S. Res. 41. An original resolution authorizing expenditures by the Special Committee on Aging; from the Special Committee on Aging; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. MOSELEY-BRAUN (for herself, Mr. ABRAHAM, Mr. D'AMATO, Mr. JEFFORDS, Mr. LIEBER- MAN, Mr. DASCHLE AND MRS. MURRAY):

S. 235. A bill to amend the Internal Revenue Code of 1986 to encourage economic development through the creation of additional empowerment zones and enterprise communities and to encourage the cleanup of contaminated brownfield sites; to the Committee on Finance.

THE COMMUNITY EMPOWERMENT ACT OF 1997

Ms. MOSELEY-BRAUN. Mr. President, it gives me great pleasure, together with my colleagues, Senators ABRAHAM, D'AMATO, JEFFORDS, LIEBERMAN, MURRAY, and DASCHLE to reintroduce the Community Empowerment Act of 1997. This legislation is designed to create new jobs and spur economic growth by encouraging the cleanup and reuse of contaminated industrial and commercial sites known as Brownfields. This bill also creates 20 new additional empowerment zones and 80 new enterprise communities all across the Nation.

I like to call them environmentally challenged sites. They are sites on which there has been some contamination but not to a level sufficient to reach Superfund status. But they are contaminated nonetheless. They are, on the one hand, excellent locations for industrial and commercial redevelopment because the transportation, more often than not, already exists. The infrastructure, the utilities, and the labor force already exists.

However, these properties are often unattractive to potential redevelopers because of the known, unknown, or perceived contamination that may exist on the property. This factor creates an incentive for companies to locate and develop in greenfields, which are undeveloped areas generally in the suburbs. This urban flight contributes to urban sprawl, taking jobs away from the city.

It also results in the paving off of many of the greenfield areas of our country.

The challenge for all of us is to stop this trend. And one way to do that is by encouraging businesses through the Tax Code to redevelop and to reuse the existing brownfield sites; to reclaim, if you will, sites that have been contaminated which have been used or used up.

At present, if an industrial property owner does environmental damage to their property and then cleans up the site, the owner is allowed to deduct the cost of that cleanup from a single year's earnings. However, in a strange twist of logic, someone who buys an environmentally damaged piece of property and cleans up that property is not allowed to expense these cleanup costs, but instead must capitalize the cost and depreciate the cleanup expense over many years.

The result of this? The result has been an urban landscape littered with vacant or abandoned properties, properties that attract crime and bring down property values in surrounding neighborhoods.

Confronting the brownfields issue can help to address many of the problems that face high unemployment in older communities, including job creation, economic renewal, environmental justice, and environmental improvement. The collective efforts of everyone, particularly the nonprofit community, the private sector, government at all levels, developers, and community groups, are essential to begin the process of returning brownfields property back to productive use and to bring economic growth back to disadvantaged cities and rural areas.

Under the provisions of this legislation, qualifying brownfields will be provided full first-year expensing of environmental cleanup costs under the Federal Tax Code. Full first-year expensing simply means that a tax deduction will be allowed for the cleanup costs in the year that those costs are incurred.

The Community Empowerment Act provides tax incentives that we hope will break through some of the current barriers preventing the private sector from investing in brownfields cleanup projects.

So it provides a carrot, if you will, to the private sector to begin to help not only with the environmental cleanup but also with urban redevelopment. So it becomes a win-win in both regards in that way.

In my own State of Illinois, the brownfields provisions will have a major impact on efforts to help restore neglected and abandoned industrial areas. It will facilitate the cleanup of some 300 to 500 sites in Illinois, each of

which has a remediation cost ranging from $250,000 to $500,000 per site.

The Treasury Department estimates that this act will provide $2 billion in tax incentives that will leverage an additional $10 billion in private investment, returning an estimated 30,000 brownfields across the country to productive use again. The $2 billion investment will be included in the President's balanced budget plan and so it will be paid for.

The Federal assistance that this proposal envisions will be concentrated in neighborhoods with the most severe problems and that are truly in need of such investment. The bill targets four areas.

First, the empowerment zones and enterprise communities across the country.

Second, areas with a poverty rate of 20 percent or more that are near industrial or former industrial sites.

Third, existing EPA brownfields pilot areas. The Environmental Protection Agency has already designated brownfields sites across the country.

Fourth, areas with a population of under 2,000 or more than 75 percent of which is zoned for industrial or commercial use.

So this is not just a big-city solution. This is something that will affect the cities, the suburbs, and the rural areas as well in providing an incentive to reclaim these environmentally challenged areas of our country.

In my hometown, in Chicago, Mayor Daley has taken the initiative to establish a brownfields pilot program which has made public investment leverage substantial private investment dollars. One of these projects is known as the Scott Peterson Meats Co., in Chicago. The site had been tax delinquent for several years when Scott Peterson Meats and the city began to work together. The city conducted an assessment of potential hazards that were identified and which included asbestos-containing materials, lead-based paints, and some 11 underground storage tanks, some of which were filled with tar. The city paid for environmental investigation, cleanup, and building demolition, which totaled some $250,000 in contractor costs. Due to the city's investment, however, the company, Scott Peterson Meats, then turned around and invested an additional $5.2 million in a new smokehouse on its existing property, and it has hired over 100 additional employees to date. So with the win-win of environmental cleanup and urban reclamation we also have job creation coming out of this legislative initiative.

Another example of a successful public-private partnership pulling people together to clean up a brownfields site is the Madison Equipment site located in Illinois. This abandoned industrial building was a neighborhood eyesore. Scavengers had stolen most of the wiring and plumbing, and illegal or what is called midnight dumping of trash and debris was rampant. Madison Equipment needed expansion space, but it feared the environmental liability. However, in 1993, the city of Chicago took the initiative to invest just a little over $3,000 in this project, in this environmental reclamation, this brownfields project, and 1 year later the company, Madison, put in $180,000 of its own to redevelop the building. The critical reason that lenders and investors look at this area now is because the city committed the public investment to spur private redevelopment and investment. When local government demonstrates the confidence to commit public funds, private financial institutions are more likely to follow suit. These types of examples show how a little investment can go a long way and how we can engage the partnership between the public and the private sector in nonbureaucratic ways in order to spur a result that truly is in the public interest.

Chicago's pilot project will successfully return all the pilot sites to productive use for a total of about $850,000 in public money. This pilot project is a perfect example of what this legislation can accomplish on a national level. But in order to make it happen, cooperation is the key. Effective strategies require strong partnerships among government, industry, organized labor, community groups, developers, environmentalists, and financiers, who all realize that when their efforts are aligned, when we work together, progress is made easier.

The second component of this legislation is the establishment of 20 more empowerment zones and 80 additional enterprise communities. They will receive a variety of tools for redevelopment from the Government.

First, they receive a package of tax incentives and flexible grants available over a 10-year period.

Second, they receive priority consideration for other Federal empowerment programs.

Third, they receive assistance in removing bureaucratic redtape and regulatory barriers that prevent innovative uses of the Federal assistance that they have received.

This approach recognizes that a top-down, big Government solution does not work in these times and what we have to do is enhance public-private partnerships and the involvement and engagement of all sectors in order to bring about again the public policy result that we are all desirous of seeing.

Economic empowerment can be achieved, but it is best done, I believe, through these public-private partnerships. Economic revitalization in this Nation's most distressed communities is essential to the growth of our entire country. With the concept of team effort, we can rebuild cities by stimulating investments and creating jobs. Environmental protection used in this way can and will be good business. It is also good policy. With this legislation, we will begin the effort to restore economic growth back into our country's industrial centers and rural communities all the while improving our environment.

Again, I wish to thank my colleagues, Senators ABRAHAM, D'AMATO, JEFFORDS, LIEBERMAN, MURRAY, and DASCHLE for their original cosponsorship of this legislation and for making this legislation a truly bipartisan effort. I urge all of my colleagues to join in supporting the quick passage of this legislation.

I ask unanimous consent that the full text of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 235

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

SECTION 1. AMENDMENT OF 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—ADDITIONAL EMPOWERMENT ZONES

SEC. 101. ADDITIONAL EMPOWERMENT ZONES.

(a) IN GENERAL.—Paragraph (2) of section 1391(b) (relating to designations of empowerment zones and enterprise communities) is amended—

(1) by striking ''9'' and inserting ''11'',

(2) by striking ''6'' and inserting ''8'', and

(3) by striking ''750,000'' and inserting ''1,000,000''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that designations of new empowerment zones made pursuant to such amendments shall be made during the 180-day period beginning on the date of the enactment of this Act.

TITLE II—NEW EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

SEC. 201. DESIGNATION OF ADDITIONAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.

(a) IN GENERAL.—Section 1391 (relating to designation procedure for empowerment zones and enterprise communities) is amended by adding at the end the following new subsection:

''(g) ADDITIONAL DESIGNATIONS PERMITTED.—

''(1) IN GENERAL.—In addition to the areas designated under subsection (a)—

''(A) ENTERPRISE COMMUNITIES.—The appropriate Secretaries may designate in the aggregate an additional 80 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 50 may be designated in urban areas and not more than 30 may be designated in rural areas.

''(B) EMPOWERMENT ZONES.—The appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

''(2) PERIOD DESIGNATIONS MAY BE MADE.—A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

''(3) MODIFICATIONS TO ELIGIBILITY CRITERIA, ETC.—

''(A) POVERTY RATE REQUIREMENT.—

''(i) IN GENERAL.—A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

''(ii) TREATMENT OF CENSUS TRACTS WITH SMALL POPULATIONS.—A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

''(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

''(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

''(iii) EXCEPTION FOR DEVELOPABLE SITES.—Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 1,000 acres (2,000 acres in the case of an empowerment zone).

''(iv) CERTAIN PROVISIONS NOT TO APPLY.—Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

''(v) SPECIAL RULE FOR RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.—The Secretary of Agriculture may designate not more than 1 empowerment zone, and not more than 5 enterprise communities, in rural areas without regard to clause (i) if such areas satisfy emigration criteria specified by the Secretary of Agriculture.

''(B) SIZE LIMITATION.—

''(i) IN GENERAL.—The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

''(ii) SPECIAL RULE FOR RURAL AREAS.—If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

''(C) AGGREGATE POPULATION LIMITATION.—The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1)(B).

''(D) PREVIOUSLY DESIGNATED ENTERPRISE COMMUNITIES MAY BE INCLUDED.—Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

''(E) INDIAN RESERVATIONS MAY BE NOMINATED.—

''(i) IN GENERAL.—Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

''(ii) SPECIAL RULE.—An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of Interior).''

(b) EMPLOYMENT CREDIT NOT TO APPLY TO NEW EMPOWERMENT ZONES.—Section 1396 (relating to empowerment zone employment credit) is amended by adding at the end the following new subsection:

''(e) CREDIT NOT TO APPLY TO EMPOWERMENT ZONES DESIGNATED UNDER SECTION 1391(g).—This section shall be applied without regard to any empowerment zone designated under section 1391(g).''

(c) INCREASED EXPENSING UNDER SECTION 179 NOT TO APPLY IN DEVELOPABLE SITES.—Section 1397A (relating to increase in expensing under section 179) is amended by adding at the end the following new subsection:

''(c) LIMITATION.—For purposes of this section, qualified zone property shall not include any property substantially all of the use of which is in any parcel described in section 1391(g)(3)(A)(iii).''

(d) CONFORMING AMENDMENTS.—

(1) Subsections (e) and (f) of section 1391 are each amended by striking ''subsection (a)'' and inserting ''this section''.

(2) Section 1391(c) is amended by striking ''this section'' and inserting ''subsection (a)''.

SEC. 202. VOLUME CAP NOT TO APPLY TO ENTERPRISE ZONE FACILITY BONDS WITH RESPECT TO NEW EMPOWERMENT ZONES.

(a) IN GENERAL.—Section 1394 (relating to tax-exempt enterprise zone facility bonds) is amended by adding at the end the following new subsection:

''(f) BONDS FOR EMPOWERMENT ZONES DESIGNATED UNDER SECTION 1391(g).—

''(1) IN GENERAL.—In the case of a new empowerment zone facility bond—

''(A) such bond shall not be treated as a private activity bond for purposes of section 146, and

''(B) subsection (c) of this section shall not apply.

''(2) LIMITATION ON AMOUNT OF BONDS.—

''(A) IN GENERAL.—Paragraph (1) shall apply to a new empowerment zone facility bond only if such bond is designated for purposes of this subsection by the local government which nominated the area to which such bond relates.

''(B) LIMITATION ON BONDS DESIGNATED.—The aggregate face amount of bonds which may be designated under subparagraph (A) with respect to any empowerment zone shall not exceed—

''(i) $60,000,000 if such zone is in a rural area,

''(ii) $130,000,000 if such zone is in an urban area and the zone has a population of less than 100,000, and

''(iii) $230,000,000 if such zone is in an urban area and the zone has a population of at least 100,000.

''(C) SPECIAL RULES.—

''(i) COORDINATION WITH LIMITATION IN SUBSECTION (c).—Bonds to which paragraph (1) applies shall not be taken into account in applying the limitation of subsection (c) to other bonds.

''(ii) CURRENT REFUNDING NOT TAKEN INTO ACCOUNT.—In the case of a refunding (or series of refundings) of a bond designated under this paragraph, the refunding obligation shall be treated as designated under this paragraph (and shall not be taken into account in applying subparagraph (B)) if—

''(I) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(II) the refunded bond is redeemed not later than 90 days after the date of issuance of the refunding bond.

''(3) NEW EMPOWERMENT ZONE FACILITY BOND.—For purposes of this subsection, the term 'new empowerment zone facility bond' means any bond which would be described in subsection (a) if only empowerment zones designated under section 1391(g) were taken into account under sections 1397B and 1397C.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 203. MODIFICATIONS TO ENTERPRISE ZONE FACILITY BOND RULES FOR ALL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.

(a) MODIFICATIONS RELATING TO ENTERPRISE ZONE BUSINESS.—Paragraph (3) of section 1394(b) (defining enterprise zone business) is amended to read as follows:

''(3) ENTERPRISE ZONE BUSINESS.—

''(A) IN GENERAL.—Except as modified in this paragraph, the term 'enterprise zone business' has the meaning given such term by section 1397B.

''(B) MODIFICATIONS.—In applying section 1397B for purposes of this section—

''(i) BUSINESSES IN ENTERPRISE COMMUNITIES ELIGIBLE.—References in section 1397B to empowerment zones shall be treated as including references to enterprise communities.

''(ii) WAIVER OF REQUIREMENTS DURING STARTUP PERIOD.—A business shall not fail to be treated as an enterprise zone business during the startup period if—

''(I) as of the beginning of the startup period, it is reasonably expected that such business will be an enterprise zone business (as defined in section 1397B as modified by this paragraph) at the end of such period, and

''(II) such business makes bona fide efforts to be such a business.

''(iii) REDUCED REQUIREMENTS AFTER TESTING PERIOD.—A business shall not fail to be treated as an enterprise zone business for any taxable year beginning after the testing period by reason of failing to meet any requirement of subsection (b) or (c) of section 1397B if at least 35 percent of the employees of such business for such year are residents of an empowerment zone or an enterprise community. The preceding sentence shall not apply to any business which is not a qualified business by reason of paragraph (1), (4), or (5) of section 1397B(d).

''(C) DEFINITIONS RELATING TO SUBPARAGRAPH (B).—For purposes of subparagraph (B)—

''(i) STARTUP PERIOD.—The term 'startup period' means, with respect to any property being provided for any business, the period before the first taxable year beginning more than 2 years after the later of—

''(I) the date of issuance of the issue providing such property, or

''(II) the date such property is first placed in service after such issuance (or, if earlier, the date which is 3 years after the date described in subclause (I)).

''(ii) TESTING PERIOD.—The term 'testing period' means the first 3 taxable years beginning after the startup period.

''(D) PORTIONS OF BUSINESS MAY BE ENTERPRISE ZONE BUSINESS.—The term 'enterprise zone business' includes any trades or businesses which would qualify as an enterprise zone business (determined after the modifications of subparagraph (B)) if such trades or businesses were separately incorporated.''

(b) MODIFICATIONS RELATING TO QUALIFIED ZONE PROPERTY.—Paragraph (2) of section 1394(b) (defining qualified zone property) is amended to read as follows:

''(2) QUALIFIED ZONE PROPERTY.—The term 'qualified zone property' has the meaning given such term by section 1397C; except that—

''(A) the references to empowerment zones shall be treated as including references to enterprise communities, and

''(B) section 1397C(a)(2) shall be applied by substituting 'an amount equal to 15 percent of the adjusted basis' for 'an amount equal to the adjusted basis'.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 204. MODIFICATIONS TO ENTERPRISE ZONE BUSINESS DEFINITION FOR ALL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.

(a) IN GENERAL.—Section 1397B (defining enterprise zone business) is amended—

(1) by striking ''80 percent'' in subsections (b)(2) and (c)(1) and inserting ''50 percent'',

(2) by striking ''substantially all'' each place it appears in subsections (b) and (c) and inserting ''a substantial portion'',

(3) by striking '', and exclusively related to,'' in subsections (b)(4) and (c)(3),

(4) by adding at the end of subsection (d)(2) the following new flush sentence:

''For purposes of subparagraph (B), the lessor of the property may rely on a lessee's certification that such lessee is an enterprise zone business.'',

(5) by striking ''substantially all'' in subsection (d)(3) and inserting ''at least 50 percent'', and

(6) by adding at the end the following new subsection:

''(f) TREATMENT OF BUSINESSES STRADDLING CENSUS TRACT LINES.—For purposes of this section, if—

''(1) a business entity or proprietorship uses real property located within an empowerment zone,

''(2) the business entity or proprietorship also uses real property located outside the empowerment zone,

''(3) the amount of real property described in paragraph (1) is substantial compared to the amount of real property described in paragraph (2), and

''(4) the real property described in paragraph (2) is contiguous to part or all of the real property described in paragraph (1),

then all the services performed by employees, all business activities, all tangible property, and all intangible property of the business entity or proprietorship that occur in or is located on the real property described in paragraphs (1) and (2) shall be treated as occurring or situated in an empowerment zone.''

(b) EFFECTIVE DATES.—

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

(2) SPECIAL RULE FOR ENTERPRISE ZONE FACILITY BONDS.—For purposes of section 1394(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

TITLE III—EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS

SEC. 301. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by adding at the end the following new section:

''SEC. 198. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

''(a) IN GENERAL.—A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

''(b) QUALIFIED ENVIRONMENTAL REMEDIATION EXPENDITURE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified environmental remediation expenditure' means any expenditure—

''(A) which is otherwise chargeable to capital account, and

''(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

''(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.—Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

''(c) QUALIFIED CONTAMINATED SITE.—For purposes of this section—

''(1) QUALIFIED CONTAMINATED SITE.—

''(A) IN GENERAL.—The term 'qualified contaminated site' means any area—

''(i) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(1) in the hands of the taxpayer,

''(ii) which is within a targeted area, and

''(iii) which contains (or potentially contains) any hazardous substance.

''(B) TAXPAYER MUST RECEIVE STATEMENT FROM STATE ENVIRONMENTAL AGENCY.—An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirements of clauses (ii) and (iii) of subparagraph (A).

''(C) APPROPRIATE STATE AGENCY.— For purposes of subparagraph (B), the appropriate agency of a State is the agency designated by the Administrator of the Environmental Protection Agency for purposes of this section. If no agency of a State is designated under the preceding sentence, the appropriate agency for such State shall be the Environmental Protection Agency.

''(2) TARGETED AREA.—

''(A) IN GENERAL.—The term 'targeted area' means—

''(i) any population census tract with a poverty rate of not less than 20 percent,

''(ii) a population census tract with a population of less than 2,000 if—

''(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

''(II) such tract is contiguous to 1 or more other population census tracts which meet the requirement of clause (i) without regard to this clause,

''(iii) any empowerment zone or enterprise community (and any supplemental zone designated on December 21, 1994), and

''(iv) any site announced before February 1, 1997, as being included as a brownfields pilot project of the Environmental Protection Agency.

''(B) NATIONAL PRIORITIES LISTED SITES NOT INCLUDED.—Such term shall not include any site which is on the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

''(C) CERTAIN RULES TO APPLY.—For purposes of this paragraph, the rules of sections 1392(b)(4) and 1393(a)(9) shall apply.

''(D) TREATMENT OF CERTAIN SITES.—For purposes of this paragraph, a single contaminated site shall be treated as within a targeted area if—

''(i) a substantial portion of the site is located within a targeted area described in subparagraph (A) (determined without regard to this subparagraph), and

''(ii) the remaining portions are contiguous to, but outside, such targeted area.

''(d) HAZARDOUS SUBSTANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'hazardous substance' means—

''(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

''(B) any substance which is designated as a hazardous substance under section 102 of such Act.

''(2) EXCEPTION.—Such term shall not include any substance with respect to which a removal or remedial action is not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

''(e) DEDUCTION RECAPTURED AS ORDINARY INCOME ON SALE, ETC.—Solely for purposes of section 1245, in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section—

''(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

''(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

''(f) COORDINATION WITH OTHER PROVISIONS.—Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''

(b) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 198. Expensing of environmental remediation costs.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

SECTION-BY-SECTION ANALYSIS

TITLE I—ADDITIONAL EMPOWERMENT ZONES

Section 101 would authorize the designation of an additional two urban empowerment zones under the 1994 first round.

TITLE II—NEW EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Section 201 authorizes a second round of designations, consisting of 80 enterprise communities and 20 empowerment zones. Of the 80 enterprise communities, 50 would be in urban areas and 30 would be in rural areas. Of the 20 empowerment zones, 15 would be in urban areas and 5 would be in rural areas. The designations would be made before January 1, 1999.

Certain of the eligibility criteria applicable in the first round would be modified for the second round of designations. First, the poverty criteria would be relaxed somewhat, so that unlike the first round there would be no requirement that at least 50 percent of the population census tracts have a poverty rate of 35 percent or more. In addition, the poverty criteria will not be applicable to areas specified in the application as developable for commercial or industrial purposes (1,000 acres in the case of an enterprise community, 2,000 acres in the case of an empowerment zone), and these areas will not be taken into account in applying the size limitations (e.g., 20 square miles for urban areas, 1,000 square miles for rural areas). The Secretary of Agriculture will be authorized to designate up to one rural empowerment zones and five rural enterprise communities

based on specified emigration criteria without regard to the minimum poverty rates set forth in the statute. Rural census tracts in excess of 1,000 square miles or including a substantial amount of governmentally owned land may exclude such excess mileage or governmentally owned land from the nominated area. Unlike the first round, Indian reservations will be eligible to be nominated (and the nomination may be submitted by the reservation governing body without the State government's participation). The empowerment zone employment credit will not be available to businesses in the new empowerment zones, and the increased expensing under section 179 will not be available in the developable acreage areas of empowerment zones.

Section 202 authorizes a new category of tax-exempt financing for businesses in the new empowerment zones. These bonds, rather than being subject to the current State volume caps, will be subject to zone-specific caps. For each rural empowerment zone, up to $60 million in such bonds may be issued. For an urban empowerment zone with a population under 100,000, $130 million of these bonds may be issued. For each urban empowerment zone with a population of 100,000 or more, $230 million of these bonds may be issued.

Section 203 liberalizes the current definition of an ''enterprise zone business'' for purposes of the tax-exempt financing available under both the first and second rounds. Businesses will be treated as satisfying the applicable requirements during a 2-year start-up period if it is reasonably expected that the business will satisfy those requirements by the end of the start-up period and the business makes bona fide efforts to that end. Following the start-up period a 3-year testing period will begin, after which certain enterprise zone business requirements will no longer be applicable (as long as more than 35 percent of the business' employees are residents of the empowerment zone or enterprise community). The rules under which substantially renovated property may be ''qualified zone property,'' and thereby be eligible to be financed with tax-exempt bonds, would also be liberalized slightly.

Section 204 liberalizes the definition of enterprise business for purposes of both the tax-exempt financing provisions and the additional section 179 expensing by reducing from 80 percent to 50 percent the amount of total gross income that must be derived within the empowerment zone or enterprise community, by reducing how much of the business' property and employees' services must be located in or provided within the zone or community, and by easing the restrictions governing when rental businesses will qualify as enterprise zone businesses. A special rule is also provided to clarify how a business that straddles the boundary of an empowerment zone or enterprise community (e.g., by straddling a population census tract boundary) is treated for purposes of the enterprise zone business definition.

TITLE III—EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS

Section 301 would provide a current deduction for certain remediation costs incurred with respect to qualified sites. Generally, these expenses would be limited to those paid or incurred in connection with the abatement or control of environmental contaminants. This deduction would apply for alternative minimum tax purposes as well as for regular tax purposes.

Qualified sites would be limited to those properties that satisfy use, geographic, and contamination requirements. The use requirement would be satisfied if the property is held by the taxpayer incurring the eligible expenses for use in a trade or business or for the production of income, or if the property is of a kind properly included in the inventory of the taxpayer. The geographic requirement would be satisfied if the property is located in (i) any census tract that has a poverty rate of 20 percent or more, (ii) any other census tract (a) that has a population under 2,000, (b) 75 percent or more of which is zoned for industrial or commercial use, and (c) that is contiguous to one or more census tracts with a poverty rate of 20 percent or more, (iii) an area designated as a federal EZ or EC or (iv) an area subject to one of the 40 EPA Brownfields Pilots announced prior to February 1997. Both urban and rural sites may qualify. Superfund National Priority listed sites would be excluded.

The contamination requirement would be satisfied if hazardous substances are present or potentially present on the property. Hazardous substances would be defined generally by reference to sections 101(14) and 102 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), subject to additional limitations applicable to asbestos and similar substances within buildings, certain naturally occurring substances such as radon, and certain other substances released into drinking water supplies due to deterioration through ordinary use.

To claim the deduction under this provisions, the taxpayer would be required to obtain a statement that the site satisfies the geographic and contamination requirements from a State environmental agency designated by the Environmental Protection Agency for such purposes or, if no such agency has been designated by the EPA, by the EPA itself.

This deduction would be subject to recapture under current-law section 1245. Thus, any gain realized on disposition generally would be treated as ordinary income, rather than capital gain, up to the amount of deductions taken with respect to the property.

● Mr. D'AMATO. Mr. President, I join my colleagues, Senators MOSELEY-BRAUN, ABRAHAM, JEFFORDS, DASCHLE, LIEBERMAN, and MURRAY, in introducing legislation that will provide a new tax incentive to encourage the private sector to clean up thousands of contaminated, abandoned sites known as brownfields. Brownfield sites are abandoned or vacant commercial and industrial properties suspected of being environmentally contaminated.

Under current law, the IRS has determined that costs incurred to clean up land and ground water are deductible as business expenses, as long as the costs are incurred by the same taxpayer that contaminated the land, and that taxpayer plans to use the land after the cleanup for the same purposes used prior to the cleanup. That means that new owners who wish to use land suspected of environmental contamination for a new purpose, would be precluded from deducting the costs of cleanup in the year incurred. They would only be allowed to capitalize the costs and depreciate them over time. Therefore, it is time for us to recognize the need for aggressive economic development policies for the future economic health of communities around the country, and to recognize the inequity of current tax law. My colleagues and I believe that our legislation is the type of initiative the Federal Government needs to encourage development of once abandoned, unproductive sites that will bring real economic benefits to urban distressed and rural areas across the United States. By encouraging redevelopment, jobs will be created, economic growth will continue, property values will increase as well as local tax revenues.

Mr. President, I am proud to say that in my State of New York, the city of Elmira has been selected as a fourth round finalist for the EPA's Brownfields Economic Redevelopment Initiative Demonstration Pilot Program. The city of Elmira has primed an unsightly and unsafe urban brownfield and is now in the final stages of turning it into a revenue- and jobs-producing venture. The city of Elmira initiated this important project with no guarantees of public or private funding and has done this at very minimal cost to taxpayers. Can you imagine what could and would be done if the public and private sector had the encouragement to also become involved?

Mr. President, I urge my colleagues on both sides of the aisle to join us in cosponsoring this important legislation.●

● Mr. JEFFORDS. Mr. President, I am pleased to join with Senators MOSELEY-BRAUN, D'AMATO, ABRAHAM, and LIEBERMAN in sponsoring the Community Empowerment Act of 1997, which will encourage the cleanup of abandoned industrial sites known as brownfields in Vermont and across the country.

The term ''brownfields'' refers to contaminated industrial sites. Most of these sites were abandoned during the 1970's and 1980's, as industrial development migrated away from urban areas to the greener landscape of the suburbs. One such site in Vermont is the Holden-Leonard Mill, a 20-building complex in Bennington, VT, that is poised to become a brownfields success story after 10 years of work.

Once employing one-quarter of Bennington's work force, the mill shut down in 1939 and then was owned by a patchwork of owners until the 1980's. After soil tests disclosed high levels of pollutants, the mill sat empty after 1986. Fortunately, a buyer of the site came forward in 1992 and with cooperation between the business, State agencies, and the EPA the mill has been refurbished and over 200 new employees have been hired. The process, however, of revitalizing this site began in 1986 and is still going on.

Our aim with this legislation is to provide tax incentives to businesses willing to clean up and redevelop brownfields sites so that more brownfield sites can be returned to productive use and so that the process doesn't have to take 10 years.

Last November, I sponsored a forum on brownfields redevelopment in Burlington, VT. There is only one unpolluted site in Burlington available for industrial development. Yet there are currently 17 brownfields sites in the city, all with great potential for

development. I toured several of these sites and saw this potential first hand. Burlington is both an EPA brownfields pilot city and an enterprise community. Under our legislation, businesses that acquire these sites would be able to claim tax deductions for their environmental cleanup costs. With tax incentives for brownfields redevelopment, I am hoping that we will see more of these abandoned sites returned to productive use.

We treasure our open spaces in Vermont, and we are looking at ways to give incentives to companies to invest in our downtowns. When a company builds a facility on a brownfield site it takes advantage of existing infrastructure. the revitalization of a brownfield site means one less farm or field is paved over or forest cut down for the sake of a new plant or facility.

I urge my colleagues to join us in supporting this bill.●

● Mr. LIEBERMAN. Mr. President, I am delighted to join this distinguished group of Senators in introducing legislation to provide tax incentives for the cleanup of brownfields. This legislation will provide a powerful incentive to clean-up these sites. And that clean up will be followed by more jobs and more economic growth in areas that very much need both of those things. I am encouraged by the broad, bipartisan support both here in the Congress and in the administration and in the environmental community and in the business community, to provide tax incentives to get these sites cleaned up.

Brownfield sites are abandoned commercial and industrial properties that are environmentally contaminated. Developers and lenders avoid these sites both for liability reasons and because the tax incentives for cleaning up these sites is so limited. The result is an urban landscape littered with vacant and abandoned properties—properties which invite crime, depress surrounding housing and commercial prices, and hinder economic growth in these areas. Additionally, by discouraging the clean-up of brownfields, we are encouraging the development of undeveloped areas known as greenfields.

This bill is simple: it allows taxpayers who purchase contaminated properties to deduct the costs of cleaning up brownfields in the year that cleanup expenses occur. This tax incentive would apply to existing and future empowerment zones and enterprise communities, in areas with a poverty rate of 20 percent or more and in adjacent industrial and commercial areas and in existing brownfields pilot areas as designated by the Environmental Protection Agency. Currently, a taxpayer who buys a contaminated property and cleans it up must spread the costs of that cleanup over time. We expect the cost of this bill to be about $2 billion over 7 years. The administration has estimated that this proposal may bring as many as 30,000 brownfield sites back to productive use.

In Connecticut, my home State, we know first hand about the problems these brownfield sites can pose for a community. In her soon to be released study of various brownfields sites, Edith M. Pepper of the Northeast-Midwest Institute included the Bryant Electric Plant in Bridgeport, CT, as one of her case studies. As she notes, the Bryant Electric Plant shut down in 1988 after 90 years of operating in Bridgeport's west end. It is no secret that Bridgeport is in difficult shape economically. Closing this 500,000 square foot facility did nothing to help that situation.

However, as Ms. Pepper notes in her case study of this brownfields site, it appears that hope is on the way. A nonprofit development group, the West End Community Development Corp. [CDC] is working to form a large business park on and around the Bryant site. Over $15 million has already been invested in the site, including a significant amount for cleanup. According to city officials, the developer plans to create 300–400 new jobs and invest $20–50 million in Bridgeport's west end.

The brownfields bill we are introducing today could help in Bridgeport. Undoubtedly it could help in places like New Haven and Hartford as well.

The bill we are introducing today expands upon a bill that Senator ABRAHAM and I introduced in the last Congress, S. 1542. That bill limited these cleanup incentives to the 104 empowerment zones and enterprise communities that exist in 42 States across the country. I am delighted by today's effort to expand on the number of regions and sites that will be covered in the brownfields legislation and I urge my colleagues to join us in cosponsoring this important legislation.●

● Mr. ABRAHAM. Mr. President, I join Senator MOSELEY-BRAUN, Senator JEFFORDS, Senator LIEBERMAN, Senator D'AMATO, and others in introducing the Community Empowerment Act of 1997. This legislation builds upon the legislation Senator LIEBERMAN and I introduced last Congress, as well as the similar legislation introduced by Senators MOSELEY-BRAUN, D'AMATO, and JEFFORDS.

Having now joined forces for the new Congress, the Moseley-Braun-Abraham legislation will provide tax incentives for the environmental cleanup of brownfields located in economically distressed areas. There are between 100,000 and 300,000 of these sites across the country, Mr. President, and they are a blight on both the landscape and the economy of our communities.

I am sponsoring this legislation because, in my view, too many of our troubled cities, towns, and rural areas have both environmental and economic problems. These problems conspire to produce an endless cycle of impoverishment. Contaminated sites are abandoned and new companies refuse to take over the property for fear of environmental lawsuits from government and/or private parties. As a result, contamination and joblessness continue and even get worse.

For example, a survey of Toledo, OH businesses found that environmental concerns were affecting 62 percent of the area's commercial and industrial real estate transactions. These effects are all but universally negative in terms of job creation and economic development.

Another example: Construction of a $3 million lumber treatment plant in Hammond, IN, was abandoned after low levels of contamination were found at the proposed site. The developer concluded that uncertain costs and potential liabilities outweighed the site's benefits.

The city of Hammond lost construction jobs, 75 full-time lumber plant jobs, and any reasonable prospect that a developer would assume the risk of developing property anywhere on the 20 acre site.

In Flint, the former site of Thrall Oil Co., now sits vacant. Economic development officials believe this property should attract future manufacturing development. Unfortunately, because the Michigan Department of Environmental Quality has labeled it ''contaminated,'' developers cannot be found.

For decades now, Mr. President, the Federal Government has tried, with little success, to revitalize economically distressed areas. The blight remains. Urban renewal and various welfare programs too often have only made things worse by spawning dependency on government help. Environmental laws have fared little better. Intended to force cleanup of contaminated sites, these laws instead have scared away potential investors with potentially unlimited liability, including liability for contamination the investors did not cause or even know about.

Environmental regulations and liability established under the Federal Superfund Program along with various other Federal and State environmental rules have helped create thousands of these brownfield properties in the United States. These are industrial or commercial sites suspected of being in some way environmentally contaminated. Although not serious threats to public health and safety, these properties have become unavailable for economic use, because legal rules make them too financially risky for investment and job creation.

Potential liability scares businesses and investors away from these sites, creating permanently abandoned blights on the urban and rural landscape. Investors are afraid of being dragged into multimillion-dollar litigation and cleanup over contamination they did not cause. Worse, investors willing to shoulder the liability of a potential environmental cleanup find that they cannot write off the cost of environmental remediation of brownfields. Instead these costs must be spread over a number of years. Thus, the Tax Code and environmental laws combine to scare away potential sources of investment and growth,

often from our most economically distressed areas.

To help both our economy and our environment, the Moseley-Braun-Abraham legislation would target tax benefits at brownfields in economically distressed areas to encourage cleanup and job creation. We would allow investors in brownfields to expense their cleanup costs immediately—without having to split these costs up over a number of years. This will have three positive effects.

First, these incentives will help our communities. By encouraging redevelopment of abandoned, unproductive sites, these tax incentives will reinvigorate economic growth in distressed communities across the country. They will provide economic opportunity rather than government dependence by encouraging investment and entrepreneurship where it is most needed.

Second, this legislation will help the environment. These tax incentives will significantly improve our ability to clean up environmentally contaminated sites. The legacy of existing cleanup laws is a remarkable lack of progress. With thousands of sites across the country categorized as brownfields, we need to start cleaning them now, and we need private investment to get the job done. Furthermore, encouraging brownfields cleanup will save undeveloped land from unnecessary development. For every brownfield that is cleaned up and reused there will be a green field that remains clean and unused. Third, this solution, unlike those attempted in the past, utilizes the private sector to reclaim contaminated land and reinvigorate distressed communities. By encouraging private investment, rather than attempting to purchase or force cooperation with government mandates, we can free up private capital and initiative to do its job of revitalizing these distressed areas.

By adopting this approach, the Senate will take a significant step toward revitalized, reinvigorated, and renewed urban and rural zones. With the incentives, included in this amendment, good jobs and a clean environment will go together, to everyone's benefit. I thank Senators MOSELEY-BRAUN, D'AMATO, LIEBERMAN, JEFFORDS, and our other cosponsors for joining me in this important effort, and I look forward to seeing meaningful brownfields reforms passed this Congress.●

By Mr. GRAMS (for himself, Mr. ABRAHAM, Mr. ASHCROFT, Mr. FAIRCLOTH, Mr. HUTCHINSON, Mr. KYL, Mr. MCCAIN, Mr. STEVENS and MR. HAGEL):

S. 236. A bill to abolish the Department of Energy, and for other purposes; to the Committee on Energy and Natural Resources.

THE DEPARTMENT OF ENERGY ABOLISHMENT ACT

Mr. GRAMS. Mr. President, I introduce legislation aimed at improving government as we know it. The Department of Energy Abolishment Act of 1997 comes after nearly two decades of debate. The basic question has always remained the same: Why should we expend taxpayer dollars on this Cabinet-level agency? And today, we ask the same question.

Following a year's worth of discussions on the blueprint I am putting forth, much progress has been made. When the 104th Congress began to tackle this issue, we looked at three main issues. First, we examined the fact that the Department of Energy no longer has a mission—which is clearly reflected by the fact that nearly 85 percent of its budget is expended upon nonenergy programs. Next, we studied those programs charged to the DOE and reviewed its ability to meet the related job requirements. And finally, we looked at the DOE's bloated budget in light of the first two criterion—determining whether the taxpayers should be forced to expend over $16 billion annually on this hodge-podge collection.

Nearly a year later, this Nation continues to grow increasingly dependent upon foreign oil—in total contrast to the DOE's core mission. Even in light of this administration's focus on alternative energy, the DOE expends less than one-fifth of its budget on energy-related programs. And after examining key DOE mission programs, such as the Civilian Nuclear Waste program, it is clear that the goals of those missions are not being met.

So we are challenged to either accept the status quo or move to change it. I must admit that the status quo may be easier in the short-term. But in the context of the proverbial big picture, we cannot afford to turn our backs. Besides the fact that it is the role of Congress to oversee taxpayer expenditures and ensure a fair rate of return on their investments, this Nation is faced with a national debt in excess of $5.3 trillion.

However, gaining consensus on the need for change is easier than effecting such change. So, last year I worked with the Senate Task Force on Government Agency Elimination to develop a blueprint. Under the direction of the former Senate Majority Leader, Senator Dole, I worked with Senators FAIRCLOTH, ABRAHAM, and STEVENS to study proposals on the DOE.

After months of discussions with experts in the fields of energy and defense, we introduced legislation—legislation which is the core of the bill I am introducing today.

Let me be the first to state that the ideas contained within this bill are not all of my own. Just as the idea to eliminate the Department of Energy is not a new one—since its creation in 1978, experts have been clamoring to abolish this agency in search of a mission. This bill represents the comments and input of many who have worked in these fields for decades, but like all things—I consider it a work in progress.

As many of our colleagues will recall, the Senate Energy and Natural Resources Committee held a hearing on this very bill last September. During the hearing, we received testimony from such distinguished witnesses as the Former Assistant Energy Secretary Shelby Brewer and the Former Defense Secretary Caspar Weinberger in support of the proposal. Having either directly run these programs, or relied upon them, they provided strong firsthand evidence as to the detriment of leaving things as they are.

The committee also received testimony from the current Acting Secretary and then-Assistant Energy Secretary, Charlie Curtis, who testified in support of improving the delivery of the Department's missions, at lower cost, for the benefit of the American people. His testimony focused upon how the DOE was working to improve its efforts to fulfill various missions, and how changing horses midstream would derail the DOE's efforts. In his remarks, Mr. Curtis dismissed the DOE Abolishment Act because the DOE did not believe it appropriate to entertain matters of this moment and complexity in the context of a bill which has as its proposed objective changing the organizational structure and fate of the Department of Energy.

What the DOE fails to recognize is that the conclusions—to abolish the DOE—arise from an analysis of the Department's activities, rather than from any antigovernment ideology or mere desire to reduce government spending, as pointed out by Dr. Irwin Stelzer of the American Enterprise Institute. Supporters of the DOE Abolishment Act have always agreed that there are core functions performed by the DOE which must continue to be done, but the DOE has yet to provide a compelling argument as to why the DOE itself must continue to exist or successfully respond to our reasons for its elimination.

But Mr. Curtis' objections are understandable when placed in the context of remarks by Nobel-prize economist, Dr. Milton Friedman: ''The Department of Energy offers an excellent example of a major difference between private and government projects. If a private project is a failure, it will be closed down; if a government project is a failure, it will be expanded. * * * It is in the self-interest of the Government officials in charge to keep the project alive; and they always have the ready excuse that the reason for failure was the lack of sufficient funds.''

So today, I am joined by my colleagues, Senator ABRAHAM of Michigan, Senator ASHCROFT of Missouri, Senator FAIRCLOTH of North Carolina, Senator HUTCHINSON of Arkansas, Senators KYL and MCCAIN of Arizona and Senator STEVENS of Alaska, in reaffirming congressional intent to change the Department of Energy as we know it.

Under the Department of Energy Abolishment Act of 1997, we dismantle the patchwork quilt of government initiatives—reassembling them into agencies better equipped to accomplish

their basic goals; we refocus and increase Federal funding toward basic research by eliminating corporate welfare; and, we abolish the bloated, duplicative upper management bureaucracy.

First, we begin by eliminating Energy's Cabinet-level status and establish a 3-year Resolution Agency to oversee the transition. This is critical to ensuring progress continues to be made on the core programs.

Under title I, the Federal Energy Regulatory Commission [FERC] is spun off to become an independent agency, like it was prior to the creation of the DOE. The division which oversees hearings and appeals is eliminated, with all pending cases transferred to the Department of Justice for resolution within 1 year. The functions of the Energy Information Administration are transferred to the Department of the Interior with the instruction to privatize as many as possible. And with the exception of research being conducted by the DOE labs, basic science and energy research functions are transferred to Interior for determination on which are basic research, and which can be privatized. Those deemed as core research will be transferred to the National Science Foundation and reviewed by an independent commission. Those that are more commercial in nature will be subject to disposition recommendations by the Secretary of the Interior.

The main reasoning behind this is to ensure the original mission of the DOE—to develop this Nation's energy independence—is carried out. With scarce taxpayer dollars currently competing against defense and cleanup programs within the DOE, it's no surprise that little progress has been made. However, by refocusing dollars into competitive alternative energy research—we will maximize the potential for areas such as solar, wind, biomass, and so forth. For States like Minnesota, where the desire for renewable energy technologies is high, growth in these areas could help fend off our growing dependence upon foreign oil while protecting our environment.

Under Title II, the laboratory structure within the DOE is revamped. First, the three defense labs are transferred to the Defense Department. They include Sandia, Los Alamos and Lawrence Livermore. The remaining labs are studied by a nondefense energy laboratory commission. This independent commission operates much like the Base Closure Commission and can recommend restructuring, privatization, or a transfer to the DOD as alternatives to closure. Congress is granted fast-track authority to adopt the Commission's recommendations.

Title III attempts to assess an inventory of the Power Marketing Administration's assets, liabilities, and so forth. This inventory is aimed at ensuring fair treatment of current customers and a fair return to the taxpayers. All issues, including payments by current customers must be included in the General Accounting Office's [GAO] audit.

Petroleum reserves are the focus of title IV. The Naval Petroleum Reserve is targeted for immediate sale. Any of the reserves that are unable to be disposed of within the 3-year window will be sold transitionally from the Interior Department. With the Strategic Petroleum Reserve, it is transferred to the Defense Department and an audit on value and maintenance costs is conducted by the GAO. Then, the DOD is charged with determining how much oil to maintain for national security purposes after reviewing the GAO report.

Under titles V and VI, all of the national security and environmental restoration-management activities to the Department of Defense. Therefore, all defense-related activities are transferred back to Defense, but are placed in a new civilian controlled agency—Defense Nuclear Programs Agency—to ensure budget firewalls and civilian control over sensitive activities such as arms control and nonproliferation activities.

And the program which has received much criticism as of late, the Civilian Nuclear Waste Program, is transferred to the Corps of Engineers. This section dovetails legislation adopted by the Senate last Congress. A key element is that the interim storage site is designated at Nevada's test site area 25. Building upon legislation I introduced last Congress, the GAO is directed to recommend privatization options and provide cost saving estimates for the overall program.

For 35 States, including my home State of Minnesota, timely resolution to the nuclear waste issue is essential. The continued impasse over the designation of interim and permanent waste sites implies additional slippages in the DOE's legal requirement to accept nuclear waste by 1998. Minnesota stands to lose nearly 30 percent of its energy resources shortly after the turn of the century, but 34 other States face similar crisis. Having paid over $250 million into the Nuclear Waste Trust Fund, Minnesota's ratepayers want resolution, not the continual foot-dragging we have seen from the DOE. And when we look at the $12 billion collected to date in contrast to the lack of progress over the past 15 years, it is clear that the status quo is not working. That is primarily the impetus behind today's announcement by the Nuclear Waste Strategy Coalition that they are petitioning the Courts for approval to stop payments to the Nuclear Waste Trust Fund. Until the Court order in July, the DOE even denied accountability for the program. It is time for a change if we want results. This legislation provides that change.

Overall, outside models estimate savings between $19 and $23 billion in the first 5 years, and approximately $5 to $7 billion annually thereafter. This is in sharp contrast to the former Secretary's Strategic Alignment Initiative, which boasts unconfirmed savings of $14 billion but no savings in the outyears.

In introducing this bill, our goals are to build upon the issues raised during last year's hearing; to hold additional hearings in conjunction with those who have expressed concerns over the Department of Energy—including Senator BROWNBACK of Kansas, chairman of the Government Affairs Subcommittee on Government Management Oversight; and, to move forward on implementing a widely supported proposal. And, in the coming weeks, Representative TIAHRT of Kansas will be introducing companion legislation in the House of Representatives in the near future.

Contrary to proponents of the status quo, the momentum is far from being derailed. In fact, if we were to look at the Department of Energy's own Report on External Regulation issued in December 1996, even its own working group recommended transferring the regulation of its nuclear facilities to outside entities. The report concluded that by through external regulation, and adoption of the private sector's safety culture, program safety and public confidence would be greatly enhanced. We agree. And we would like to see such concepts applied across the board to DOE's programs—and the DOE ultimately eliminated. We welcome any input to that end from the administration.

And so looking back over the past year—examining how the debate has transformed from one of whether or not to maintain the status quo, to one of how to change it—I am encouraged over the progress we have made. Today, we mark the beginning of the debate on achieving our goal of streamlining government and improving the delivery of government services at lower costs to the American taxpayers. One year from now, it is my hope that we will be working toward the implementation of a restructuring plan on the Department of Energy.

By Mr. BUMPERS:

S. 237. A bill to provide for retail competition among electric energy suppliers for the benefit and protection of consumers, and for other purposes; to the Committee on Energy and Natural Resources.

THE ELECTRIC CONSUMERS PROTECTION ACT OF 1997

Mr. BUMPERS. Mr. President, I rise today to introduce the Electric Consumers Protection Act of 1997. This bill provides for the transition toward deregulation and competition in electricity generation.

While very few people, including myself, find a discussion of the electric utility industry and the many laws and regulations governing the industry exciting, the fact is that electricity is an extremely important commodity which affects everyone on a daily basis. Any event that increases or reduces electric rates can impact: First, the lives of the poor and those on fixed incomes that

depend on electricity to heat their homes in the winter and cool them in the summer; second, the price of goods we buy every day; as well as, third, the competitiveness of our factories. In addition, decisions made by electric generators often have a direct effect on our environment as well as our national security.

So, it is not at all inconsequential that the electric industry, which has remained relatively static for the last 60 years, is about to undergo a fundamental change. Instead of the traditional vertically integrated local utility, which generates power at its own plants, transmits that power over its own lines, and sells that power to all consumers in a particular area, consumers will soon be bombarded with all sorts of offers from companies competing to become their power supplier, and other entrepreneurs will be seeking to buy large blocks of power to serve certain kinds of consumers. Naturally, these changes are bound to create considerable apprehension among utilities, their shareholders, and consumers.

Mr. President, there are some who would prefer that we maintain the status quo. However, it is becoming increasingly certain that competition is inevitable. At least six States—California, New Hampshire, Rhode Island, Pennsylvania, Vermont, and Massachusetts—have already enacted legislation or promulgated regulations providing for competition. A number of other States have established proceedings to determine how to move toward competition. In all, more than 40 States have either ordered, or are examining the possibility of requiring, deregulation of the retail electric markets.

Theoretically, introducing competition among electric power providers should produce greater efficiencies and lower electric rates. Certainly large industrial consumers of electricity would see significant reductions in their energy bills, but I am more concerned about the potential impact on residential and small commercial consumers—the biscuit cookers as we call them in Arkansas. Generating companies may be less eager to compete to serve these customers, especially those located in rural areas. This reduced bargaining power could also end up causing residential and small commercial customers to pay for those costs arising from the transition to competition—that is, stranded costs—costs that industrial consumers can more easily avoid.

I believe it is the role of both Congress and the States to ensure that the biscuit cookers also benefit. It is not enough to simply proclaim that the days of the utilities' vertically integrated monopolies are over. We also have a solemn obligation to be fair to utility companies that have been operating in reliance on the ground rules we all created over the last 60 years. This will require a careful balancing of competing interests. Everyone will benefit by restructuring if it is done properly, and I consider this an absolutely essential result.

Mr. President, I am introducing this bill to begin the debate in the 105th Congress about how best to promote an orderly transition to a competitive retail electric market. This legislation is designed with the goals of allowing all consumers to enjoy the benefits of competition while not penalizing utilities for prudent decisions they made under the previous regulatory system.

There is significant debate over whether Congress should even pass legislation on this subject. The argument that the States should decide these issues certainly has some merit. After all, retail electric service has generally been the domain of the States, although requirements imposed at the Federal level by both FERC and Congress have had a direct impact on retail rates and service.

But I personally believe a State-by-State approach could produce a lot of unintended consequences which would limit the benefits associated with retail competition. Electric generation markets are becoming increasingly regional and even multiregional. What happens in one State can have direct and indirect impacts on consumers and utilities located in another State. Utilities operating in more than one State can be subjected to conflicting regulatory regimes which could impact the way they operate their systems and the electric rates paid by consumers.

This phenomenon is best illustrated by the multistate utility holding companies registered under the Public Utility Holding Company Act [PUHCA}. I have had a lot of experience with registered holding companies because two of them serve my home State of Arkansas. These holding companies generally plan for, and operate, generating facilities on a systemwide basis for the benefit of customers in the entire region served by the company. If restructuring proceeds on a State-by-State basis, these holding companies would find themselves subjected to different requirements which could negatively impact consumers.

For example, the Entergy System serves retail customers in parts of Louisiana, Texas, Mississippi, and Arkansas. If Louisiana and Texas were to order retail competition and Arkansas and Mississippi decided to delay competition, it would be difficult, if not impossible, for Entergy to operate a system of generating facilities designed to serve a particular load over a four-State area. It is quite possible that consumers in Arkansas and Mississippi would wind up paying more for their service. Entergy's captive customers in Arkansas and Mississippi could be further disadvantaged to the extent Entergy were to become financially imperiled as a result of the retail competition orders in Texas and Louisiana.

A State-by-State approach to retail competition also presents problems where utilities operate entirely within a single State. It would make no sense for a utility in a State that does not require retail competition, to be able to sell power at retail in an adjoining State that requires retail competition, while a utility subjected to retail competition is unable to mitigate its losses by competing for customers in the adjoining State. Such a result both increases stranded costs and distorts the generation marketplace.

My legislation requires that retail competition be implemented in each State by 2003. States will continue to have the option of choosing an earlier starting date. In addition, the States can individually oversee the transition to competition.

Moreover, if Congress is going to mandate retail competition then I believe we have an obligation to provide for utility recovery of its stranded investment in facilities that become uneconomic as a result of the transition to retail competition. That is not to say that a utility is automatically entitled to recover every penny of its investment. Rather, my bill limits utilities to recovery of their investments that: First, were prudent when incurred; second, are legitimate and verifiable; and third, cannot be mitigated by selling power to others in the competitive market.

My bill provides that if a utility seeks to recover stranded costs, a State commission would establish the level of such costs pursuant to an administrative determination or after the utility auctions off its assets to establish the market value of these facilities. Once the stranded costs are calculated, consumers would be assessed a wires charge to compensate the utility for its stranded costs.

It is vital that, as we proceed with electric restructuring, we act to ensure that the generation markets are truly competitive. It will do no good to remove Federal and State rate regulation if consumers do not have access to a sufficient number of potential power marketers. We have already seen this problem in other industries that have deregulated, where after an initial flurry of competitors entering a particular market, significant consolidation occurred.

Utilities obviously should not be allowed to use their advantageous positions with regard to transmission and distribution to gain a competitive advantage in the generation market. Utilities should not use funds from their transmission and distribution systems to subsidize their generation businesses. In addition, my bill requires the implementation of independent system operators [ISO's] to oversee the operation of transmission systems in each region.

We also must be mindful that power suppliers might not be falling all over themselves to serve certain consumers, especially those located in rural areas. My bill contains a universal service requirement to ensure that everyone who wants electric service has the opportunity to buy it at reasonable rates.

The bill also authorizes States to collect fees from all consumers to help pay for the universal service obligation.

Mr. President, there are currently a number of utility-based programs which provide societal benefits. For instance, the Public Utility Regulatory Policies Act [PURPA] provides for utility purchases of energy generated at certain plants which use renewable resources or cogeneration. In addition, many States have programs requiring utilities to contribute to energy conservation and to help low-income people pay their energy bills. The costs of these programs are passed through to ratepayers. It will be more difficult for utilities to continue to implement these programs in a competitive retail environment. My bill authorizes States to collect wire charges to help pay for these kinds of programs.

Congressman DAN SCHAEFER has developed a proposal designed to promote the use of renewable generation. His portfolio approach would require each company selling power at retail to generate a portion of its power using renewable resources or to purchase credits from those companies that do generate in excess of the minimum requirements. I think it is very important that we do everything possible to promote the use of renewable energy and my bill contains a similar proposal.

Mr. President, over the last 25 years we have made substantial progress in cleaning our air and rivers, lakes and streams. It has come at a fairly big cost, but I doubt anyone would turn the clock back on our successes.

There are understandable conflicting positions about what will happen with the introduction of competition. Some argue that competition will increase the use of natural gas, which is more friendly to the environment than coal. Others argue that existing coal generating plants that were grandfathered in under the provisions of the Clean Air Act will be utilized more frequently. It is difficult to know who is right. But I think it is fair to say that we all have an obligation to protect our air quality and we shouldn't take this issue lightly. My bill requires EPA to submit a study to Congress within 2 years analyzing the issue and suggesting any changes to our laws that may need to be made to protect the environment.

Mr. President, the issues addressed by the Electric Consumers Protection Act of 1997 are very complex and far reaching. It is going to take Congress some time in order to sort them out and develop a consensus for a comprehensive approach to electric generation deregulation. I am introducing this bill today to begin the debate and propose one roadmap as to how we may get there. I look forward to working with my colleagues and all interested parties as we proceed to examine this very important issue over the next 2 years.

Mr. President, I ask unanimous consent that a copy of the bill and a summary of the bill be placed in the RECORD.

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

S. 237

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Electric Consumers Protection Act of 1997''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

SEC. 2. FINDINGS.

The Congress finds that:

(a) Congress has the authority to enact laws, under the Commerce Clause of the United States Constitution, regarding the wholesale and retail generation, transmission, distribution, and sale of electric energy in interstate commerce.

(b) It is in the public interest that consumers receive reliable and inexpensive electric service and competition among electric suppliers can produce these benefits.

(c) Electric utility companies that prudently incurred costs pursuant to a regulatory structure that required them to provide electricity to consumers should not be penalized during the transition to competition.

(d) Consumers will not benefit from the introduction of competition among electric suppliers if certain suppliers have undue market power.

(e) It is important to encourage conservation and the use of renewable resources to reduce reliance on fossil fuels and to promote domestic energy security.

(f) The transition to electric competition should not degrade reliability nor cause consumers to lose electric service.

SEC. 3. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

TITLE I—RETAIL COMPETITION

SEC. 101. DEFINITIONS.

For purposes of this title:

(1) The term ''affiliate'' shall have the same meaning given the term in section 202(10) of this Act.

(2) The term ''aggregator'' means any person that purchases or acquires retail electric energy on behalf of two or more consumers.

(3) The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) The term ''consumer'' means a person who purchases retail electric energy.

(5) The term ''corporation'' means any corporation, joint-stock company, partnership, association, cooperative, municipal utility, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing.

(6) The term ''large hydroelectric facility'' means a facility which has a power production capacity, which together with any other facilities located at the same site is greater than 80 megawatts.

(7) The terms ''local distribution facilities'' and ''retail transmission facilities'' mean facilities used to provide retail electric energy to consumers.

(8) The term ''mitigation'' means any widely accepted business practice used by a retail electric energy provider to dispose of or reduce uneconomic assets or costs.

(9) The term ''person'' means an individual or corporation.

(10) The term ''public utility holding company'' shall have the same meaning given the term in section 202(6) of this Act.

(11) The term ''renewable energy'' means electricity generated from solar, wind, waste, except for municipal solid waste, biomass, hydroelectric or geothermal resources.

(12) The term ''Renewable Energy Credit'' means a tradable certificate of proof that one unit (as determined by the Commission) of renewable energy was generated by any person.

(13) The term ''retail electric competition'' means the ability of each consumer in a particular State to purchase retail electric energy from any person seeking to sell electric energy to such consumer.

(14) The term ''retail electric energy'' means electric energy and ancillary services sold for ultimate consumption.

(15) The term ''retail electric energy provider'' means any person who distributes retail electric energy to consumers regardless of whether the consumers purchase such energy from the provider or another supplier.

(16) The term ''retail electric energy supplier'' means any person which sells retail electric energy to consumers.

(17) The term ''State'' means any State or the District of Columbia.

(18) The term ''State regulatory authority'' means any State agency, including a municipality, which has ratemaking authority with respect to the rates of any retail electric energy provider and the Tennessee Valley Authority.

(19) The term ''transmission system'' means all facilities, including federally-owned facilities, transmitting electricity in interstate commerce in a particular region, including those located in the State of Texas and those providing international interconnections, but does not include local distribution and retail transmission facilities as defined by the Commission.

(20) The term ''wholesale electric energy'' means electric energy and related services sold for resale.

(21) The term ''wholesale electric energy supplier'' means any person which sells wholesale electric energy.

SEC. 102. MANDATORY RETAIL ACCESS.

(a) CUSTOMER CHOICE.—Beginning on December 15, 2003 each consumer shall have the right to purchase retail electric energy from any person, subject to any limitations imposed pursuant to section 105(a) of this Act, offering to sell retail electric energy to such consumer.

(b) LOCAL DISTRIBUTION AND RETAIL TRANSMISSION FACILITIES.—Beginning on December 15, 2003 all persons seeking to sell retail electric energy shall have reasonable and nondiscriminatory access, on an unbundled basis, to the local distribution and retail transmission facilities of all retail electric energy providers and all related services.

SEC. 103. AGGREGATION.

Subject to any limitations imposed pursuant to section 105(a) of this Act, a group of consumers or any person acting on behalf of such group may purchase or acquire retail electric energy for the members of the group if they are located in a State or States where there is retail electric competition.

SEC. 104. PRIOR IMPLEMENTATION.

(a) STATE ACTION.—A State or State regulatory authority, if authorized under State law, may require retail electric energy providers selling retail electric energy to consumers in such State to provide reasonable and nondiscriminatory access, on an unbundled basis, to its local distribution and retail transmission facilities and all related services to competing retail electric energy suppliers prior to December 15, 2003.

(b) NONREGULATED PROVIDERS.—A retail electric energy provider not subject to the jurisdiction of a State regulatory authority may elect to provide reasonable and nondiscriminatory access, on an unbundled basis, to its local distribution and retail transmission facilities and all related services to competing retail electric energy suppliers prior to December 15, 2003.

(c) GRANDFATHER.—Legislation enacted by a State or a regulation issued by a State regulatory authority prior to January 30, 1997 which has the effect of requiring retail electric competition on or before December 15, 2003, shall be deemed to be in compliance with the requirements of sections 102, 106 and 107 of this Act, for so long as such retail electric competition exists.

SEC. 105. STATE REGULATION.

(a) STATE REQUIREMENTS.—Nothing in this Act shall prohibit a State or a State regulatory authority from imposing requirements on persons seeking to sell retail electric energy to consumers in that State which are intended to promote the public interest, including requirements related to reliability and the provision of information to consumers and other retail electric suppliers. Any such requirements must be applied on a nondiscriminatory basis and may not be used to exclude any class of potential suppliers, such as retail electric energy providers, from the opportunity to sell retail electric energy providers, from the opportunity to sell retail electric energy.

(b) MAINTENANCE OF STATE AUTHORITY.—Nothing in this Act is intended to prohibit a State from enacting laws or imposing regulations related to retail electric energy service that are consistent with the requirements of this Act.

(c) CONTINUED STATE AUTHORITY OVER DISTRIBUTION.—A State or State regulatory authority may continue to regulate local distribution and retail transmission service currently subject to State regulation in any manner consistent with this Act.

SEC. 106. STRANDED COST RECOVERY.

(a) APPLICATION FOR RECOVERY.—A retail electric energy provider that was subject to the jurisdiction of a State regulatory authority prior to the date of enactment of this Act may submit an application to the State regulatory authority seeking calculation of its total stranded costs in that State if—

(1) subsequent to January 30, 1997, the State regulatory authority has issued a regulation or the State has enacted legislation requiring retail electric competition which does not provide for the full recovery of stranded costs; of

(2) the retail electric energy provider's customers have access to retail competition as a result of the requirements of Section 102 of this Act.

(b) CALCULATION OF STRANDED COSTS.—

(1) If a State regulatory authority calculates the applicant's stranded costs pursuant to subsection (a), the authority shall choose, within six months after the receipt of the application, between the calculation methodologies described in subsection (f) of this section.

(2) If a State regulatory authority does not calculate the retail electric energy provider's total stranded costs, the Commission shall calculate the provider's stranded costs using the methodology described in subsection (f)(2) of this section.

(c) NONREGULATED UTILITIES.—A retail electric energy provider that is not subject to regulation by a State regulatory authority prior to the date of enactment of this Act may calculate the amount of its total stranded costs pursuant to either methodology described in subsection (f) of this section.

(d) RIGHT OF RECOVERY.—A retail electric energy provider shall be entitled to full recovery of its stranded costs, over a reasonable period of time, through a nonbypassable Stranded Cost Recovery Charge imposed on its distribution and retail transmission customers.

(e) PROHIBITION ON COST-SHIFTING.—No class of consumers in a State shall be assessed a Stranded Cost Recovery Charge that a State regulatory authority or the Commission, whichever is applicable, determines is in excess of the class' proportional responsibility for the retail electric energy provider's costs that existed prior to the implementation of retail electric competition in such State.

(f) CALCULATION OF STRANDED COSTS.—For purposes of this section and section 107 of this Act, the term ''stranded costs'' means either (1) all legitimate, prudently incurred and verifiable investments made by a retail electric energy provider in generation assets, including binding power purchase contracts, and related regulatory assets which would have been recoverable but for the implementation of retail electric competition following the date of enactment of this Act, and which cannot be reasonably mitigated or (2) if a retail electric energy provider sells all of its generating facilities, the difference between the book value of such facilities less the amount received from their sale. Nothing in this title is intended to permit a reassessment of prudence with regard to the incurrence of costs related to a particular generating facility or contract in the event a State Regulatory Authority or the Commission has already made a legally binding determination.

SEC. 107. MULTISTATE UTILITY COMPANY STRANDED COSTS.

(a) LIMITATION ON OBLIGATION.—Customers of a retail electric energy provider that serves customers in more than one State or that is affiliated with another retail electric energy provider shall only be responsible for stranded costs associated with retail electric competition in the State or area in which such customers are located.

(b) REGIONAL GENERATING FACILITIES.—

(1) The consent of Congress is given for the creation of a regional board if—

(A) each State regulatory authority regulating an affiliate of a public utility holding company with affiliate retail electric energy providers serving customers in more than one state elects to join such a board;

(B) an affiliate of the public utility holding company owns and/or operates a generating facility and sells power from that facility to two or more affiliates of the same holding company and did not sell retail electric energy prior to January 30, 1997 (hereinafter referred to as the ''wholesale generating company''); and

(C) the public utility holding company notifies each State regulatory authority which regulates a retail electric energy provider affiliated with the holding company that it intends to seek recovery of the stranded costs associated with the generating facility or facilities (described in subsection (b)(1)(B)) owned by the wholesale generating company affiliated with such holding company.

(2) The regional board shall be formed if each State regulatory authority elects to create the board within six months after receiving the notification described in subsection (b)(1)(C). If such elections are not made within the requisite time period, the Commission shall assume the responsibilities of the board as described in this section.

(3) The regional board shall have one year after the date it is formed to calculate, on a unanimous basis, the stranded costs associated with the generating facility which is the subject of the proceeding in accordance with the definition contained in section 106(f) of the Act and to allocate such costs among the retail electric energy provider affiliates of the public utility holding company on a just and reasonable and nondiscriminatory basis.

(4) If the regional board fails to make either or both determinations, as described in subsection (b)(3) in the requisite time period, the Commission shall make the determination or determinations that have yet to be made.

(5) After its level of stranded costs is determined pursuant to this subsection, the wholesale generating company affiliate of the holding company shall be entitled to fully recover its stranded costs, over a reasonable period of time, from the retail electric energy provider affiliates to which it sells electric energy pursuant to the procedures established by this subsection.

(6) A retail electric energy provider's stranded cost payment obligations pursuant to this subsection shall be deemed stranded costs for the purposes of sections 106 and 107 of this Act.

SEC. 108. UNIVERSAL SERVICE.

(a) SERVICE OBLIGATION.—After December 15, 2003, each retail electric energy provider shall be obligated to sell retail electric energy to, or purchase retail electric energy on behalf of, any consumer in a particular State served by such retail electric energy provider if the State regulatory authority located in such State has determined that such consumer does not have reasonable access to

competing retail electric energy suppliers and the consumer has not chosen an alternative supplier.

(b) COMPENSATION.—

(1) If the retail electric energy provider performing the service described in subsection (a) is subject to State regulatory authority regulation of its distribution services, such provider shall be compensated at a just and reasonable rate established by such regulatory authority.

(2) If the retail electric energy provider performing the service described in subsection (a) is not subject to distribution service regulation by a State regulatory authority, such provider shall establish the appropriate level of compensation.

(3) A State or a State regulatory authority, if authorized by the State, may impose a nonbypassable Universal Service Charge imposed on the distribution and retail transmission customers of all retail electric energy providers in such State to fund all or part of the compensation provided in subsections (b)(1) and (b)(2).

(4) A State regulatory authority or the retail electric energy provider, if it establishes its own level of compensation pursuant to subsection (b)(2), may require the consumer receiving retail electric energy pursuant to subsection (a) to pay for all or part of the compensation provided in subsections (b)(1) and (b)(2).

SEC. 109. PUBLIC BENEFITS.

Nothing in this Act shall prohibit a State or State regulatory authority from assessing charges on consumers to fund public benefit programs such as those designed to aid low-income energy consumers, promote energy research and development or achieve energy efficiency and conservation.

SEC. 110. RENEWABLE ENERGY.

(a) MINIMUM RENEWABLE REQUIREMENT.—Beginning on January 1, 2004 and each year thereafter, every retail electric energy supplier shall submit to the Commission Renewable Energy Credits in an amount equal to the required annual percentage of the total retail electric energy sold by such supplier in the preceding calendar year.

(b) STATE RENEWABLE ENERGY PROGRAMS.—Nothing in this section shall be construed to prohibit any State or any State regulatory authority from requiring additional renewable energy generation in that State under any program adopted by the State.

(c) REQUIRED ANNUAL PERCENTAGE.—Beginning in calendar year 2003, the required annual percentage for each retail electric energy supplier shall be 5 percent. Thereafter, the required annual percentage for each such supplier shall be 9 percent beginning in calendar year 2008 and 12 percent beginning in calendar year 2013.

(d) SUBMISSION OF CREDITS.—A retail electric energy supplier may satisfy the requirements of subsection (a) through the submission of—

(1) Renewable Energy Credits issued by the Commission under this section for renewable energy sold by such supplier in such calendar year.

(2) Renewable Energy Credits issued by the Commission under this section to any other retail electric energy supplier for renewable energy sold in such calendar year by such other supplier and acquired by such retail electric energy supplier.

(3) Any combination of the foregoing.

A Renewable Energy Credit that is submitted to the Commission for any year may not be used for any other purposes thereafter.

(e) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

(1) The Commission shall establish by rule after notice and opportunity for hearing but not later than one year after the date of enactment of this Act, a National Renewable Energy Trading Program to issue Renewable Energy Credits to retail electric suppliers. Renewable Energy Credits shall be identified by type of generation and the State in which the facility is located. Under such program, the Commission shall issue—

(A) one-half of one Renewable Energy Credit to any retail electric energy supplier who sells one unit of renewable energy generated at a large hydroelectric facility;

(B) one Renewable Energy Credit to any retail electric energy supplier who sells one unit of renewable energy generated at a facility, other than a large hydroelectric facility, built prior to the date of enactment of this Act; and

(C) two Renewable Energy Credits to any retail electric supplier who sells one unit of renewable energy generated at a facility, other than a large hydroelectric facility, built on or after the date of enactment of this Act.

(2) The Commission shall impose and collect a fee on recipients of Renewable Energy Credits in an amount equal to the administrative costs of issuing, recording, monitoring the sale or exchange, and tracking such Credits.

(f) SALE OR EXCHANGE.—Renewable Energy Credits may be sold or exchanged by the person issued or the person who acquires the Credit. A Renewable Energy Credit for any year that is not used to satisfy the minimum renewable sales requirement of this section for that year may not be carried forward for use in another year. The Commission shall promulgate regulations to provide for the issuance, recording, monitoring the sale or exchange, and tracking of such Credits. The Commission shall maintain records of all sales and exchanges of Credits. No such sale or exchange shall be valid unless recorded by the Commission.

(g) RULES AND REGULATIONS.—The Commission shall promulgate such rules and regulations as may be necessary to carry out this section, including such rules and regulations requiring the submission of such information as may be necessary to verify the annual electric generation and renewable energy generation of any person applying for Renewable Energy Credits under this section or to verify and audit the validity of Renewable Energy Credits submitted by any person to the Commission.

(h) ANNUAL REPORTS.—The Commission shall gather available data and measure compliance with the requirements of this section and the success of the National Renewable Energy Trading Program established under this section. On an annual basis not later than May 31 of each year, the Commission shall publish a report for the previous year that includes compliance data, National Renewable Energy Trading Program results, and steps taken to improve the Program results.

(i) SUNSET.—The requirements of this section shall cease to apply on December 31, 2019.

SEC. 111. TRANSMISSION.

(a) TRANSMISSION REGIONS.—Within two years after the date of enactment of this Act, the Commission shall establish the broadest feasible transmission regions and designate an Independent System Operator to manage and operate the transmission system in each region beginning on December 15, 2003. In establishing transmission regions and designating Independent System Operators the Commission shall give deference to Independent System Operators approved by the Commission prior to the date of enactment of this Act, if it would be consistent with the requirements of this section.

(b) INDEPENDENT SYSTEM OPERATORS.—A person designated as an Independent System Operator shall not be subject to the control of—

(1) any person owning any transmission facilities located in the region in which the Independent System Operator will operate; or

(2) any retail electric energy supplier selling retail electric energy to consumers in the region in which the Independent System Operator will operate.

(c) REGIONAL TRANSMISSION OVERSIGHT BOARD.—After the Commission has designated an Independent System Operator for a particular transmission system, each State that is part of the transmission region established by the Commission may elect to join a Regional Transmission Oversight Board. If all States within the transmission region so elect within 180 days after the Commission designates an Independent System Operator for the transmission region, the Board shall be formed.

(d) BOARD MEMBERSHIP.—The Regional Transmission Oversight Board shall be composed of an equal number of members from each State which is a member of the Board. The Board shall prescribe its own rules for organization, practice and procedure for carrying out the functions assigned by this section.

(e) TRANSMISSION REGULATION.—

(1) If a Regional Transmission Oversight Board is formed, it shall have the same authority as the Commission has pursuant to sections 205, 206, 211, and 212 of the Federal Power Act (16 U.S.C. 824d, 824e, 824j, and 824k), as amended by this Act, with respect to the transmission of electric energy in interstate commerce by the Independent System Operator within the transmission region designated by the Commission. Any actions taken by such Board pursuant to this subsection shall be consistent with Commission precedent.

(2) If a Regional Transmission Oversight Board is not formed for a particular region, the Commission shall continue to have authority over the transmission of electric energy in interstate commerce by the Independent System Operator within the transmission region designated by the Commission.

(3) The Commission shall have authority over the transmission of electric energy in interstate commerce between two or more transmission regions designated by the Commission.

(4) Section 212(f) of the Federal Power Act (16 U.S.C. 824k(f) shall be repealed on the date the Tennessee Valley Authority becomes a retail electric energy supplier.

(5) Section 212(g) of the Federal Power Act (16 U.S.C. 824k(g) is amended by adding ''prior to December 15, 2003'' immediately following ''utilities''.

(6) The prohibition outlined by section 212(h) of the Federal Power Act (16 U.S.C. 824k(h)) shall be inapplicable either:

(A) in any situation where a retail electric energy supplier is seeking access to a transmission facility for the purpose of selling retail electric energy to a consumer located in a State that has authorized retail electric competition prior to December 15, 2003; or

(B) in all cases beginning on December 15, 2003.

(f) RULES.—On or before January 1, 2002, the Commission shall issue binding rules for it and the various Regional Transmission Boards, governing oversight of the Independent System Operators, designed to promote transmission reliability and efficiency and competition among retail and wholesale electric energy suppliers, including rules related to transmission rates that inhibit competition and efficiency.

SEC. 112. CROSS-SUBSIDIZATION.

Nothing in this Act is intended to permit retail electric energy providers from recovering in its distribution and retail transmission rates any costs associated with unregulated activities.

SEC. 113. COMPETITIVE GENERATION MARKETS.

(a) MERGERS.—

(1) Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) is amended by adding ''including the promotion of competitive wholesale and retail electric generation markets,'' immediately following ''public interest''.

(2) Add the following new subsections at the end of section 203 of the Federal Power Act (16 U.S.C. 824b):

''(c) ACQUISITION OF NATURAL GAS UTILITY COMPANY.—No public utility shall acquire the facilities or securities of a natural gas utility company unless the Commission finds that such acquisition is in the public interest.

''(d) DEFINITION.—For purposes of this section, the term ''natural gas utility company'' means any company that owns or operates facilities used for the transmission at wholesale, or the distribution at retail (other than the distribution only in enclosed portable containers) of natural or manufactured gas for heat, light, or power.

(b) MARKET POWER.—The Commission shall take such actions as it determines are necessary to prohibit any retail electric energy supplier or retail electric energy provider or any affiliate thereof, from using its ownership or control of resources to maintain a situation inconsistent with effective competition among retail and wholesale electric suppliers.

SEC. 114. NUCLEAR DECOMMISSIONING COSTS.

To ensure safety with regard to the public health and safe decommissioning of nuclear generating units, retail and wholesale electric energy suppliers and retail electric energy providers owning nuclear generating units prior to the date of enactment of this Act shall be entitled and obligated to recover, from their customers, all reasonable costs associated with Federal and State requirements for the decommissioning of such nuclear generating units.

SEC. 115. TENNESSEE VALLEY AUTHORITY.

(a) COMPETITION IN SERVICE TERRITORY.—Notwithstanding any other provision of law, all retail and wholesale electric energy suppliers shall have the right to sell retail and wholesale electric energy to consumers that currently purchase retail or wholesale electric energy either directly from the Tennessee Valley Authority or persons purchasing electric energy from the Tennessee Valley Authority, beginning on December 15, 2003 or, if the Tennessee Valley Authority, in its capacity as a State regulatory authority, chooses an earlier date, such earlier date.

(b) ABILITY TO SELL ELECTRIC ENERGY.—Notwithstanding any other provision of law, the Tennessee Valley Authority shall be able to sell retail electric energy and wholesale electric energy to any person, subject to any State restrictions imposed pursuant to section 105 of this Act, beginning on the date retail electric competition in the Authority's service territory, as described in subsection (a), become effective.

(c) PROTECTION OF U.S. TREASURY.—This section shall be inapplicable if the Secretary of Energy, in consultation with the Office of Management and Budget, determines that the application of this section is contrary to the financial interest of the United States.

SEC. 116. ENFORCEMENT.

(a) VIOLATION OF THE ACT.—If any individual or corporation or any other retail electric energy supplier or provider fails to comply with the requirements of this Act, any aggrieved person may bring an action against such entity to enforce the requirements of this Act in the appropriate Federal district court.

(b) STATE OR COMMISSION ACTION.—Notwithstanding any other provision of law, any person seeking redress from an action taken by a State Regulatory Authority, the Commission or a regulatory board pursuant to this Act shall bring such action in the appropriate circuit of the United States Court of Appeals.

TITLE II—PUBLIC UTILITY HOLDING COMPANIES

SEC. 201. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. 79 et seq., is hereby repealed, effective one year from the date of enactment of this Act.

SEC. 202. DEFINITIONS.

For purposes of this title:

(1) The term ''person'' means an individual or company.

(2) The term ''company'' means a corporation, joint stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing.

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

(4) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers) of natural or manufactured gas for heat, light or power.

(5) The term ''public utility company'' means an electric utility company or gas utility company but does not mean a qualifying facility as defined in the Public Utility Regulatory Policies Act of 1992, or an exempt wholesale generator or a foreign utility company defined by the Energy Policy Act of 1992.

(6) The term ''public utility holding company'' means (A) any company that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and (B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility or holding company as to make it necessary or appropriate for the protection of consumers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

(7) The term ''subsidiary company'' of a holding company means (A) any company 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and (B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the protection of consumers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

(8) The term ''holding company system'' means a holding company together with its subsidiary companies.

(9) The term ''associate company'' of a company means any company in the same holding company system with such company.

(10) The term ''affiliate'' of a company means any company 5 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by a company.

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

(12) The term ''Commission'' means the Federal Energy Regulatory Commission.

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

SEC. 203. EXEMPTIONS.

(A) FEDERAL AND STATE AGENCIES.—No provision of this title shall apply to: (1) the United States, (2) a State or any political subdivision of a State, (3) any foreign governmental authority not operating in the United States, (4) any agency, authority, or instrumentality of any of the foregoing, or (5) any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty.

(b) UNNECESSARY PROVISIONS.—The Commission, by rule or order, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if the Commission finds that regulation of such person or transaction is not relevant to the rates of a public utility company. The Commission shall not grant such an exemption, except with regard to section 204 of this Act, unless all affected State commissions consent.

(c) RETAIL COMPETITION.—The provisions of this title shall not apply to a holding company and every associate company of such holding company if the Commission certifies that the retail customers of every public utility subsidiary of such holding company have access to alternative sources of electricity in a manner that no longer requires regulation of the holding company for the protection of consumers.

SEC. 204. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) PROVISION OF BOOKS AND RECORDS.—Every holding company and associate company thereof shall maintain, and make available to the Commission, such books, records, accounts, and other documents as the Commission deems relevant to costs incurred by a public utility company that is an associate company of such holding company and necessary or appropriate for the protection of consumers with respect to rates.

(b) EXAMINATION OF BOOKS AND RECORDS.—The Commission may examine the books and records of any company in a holding company system, or any affiliate thereof, as the Commission deems relevant to costs incurred by a public utility company within such holding company system and necessary or appropriate for the protection of consumers with respect to rates.

(c) PROTECTED INFORMATION.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his knowledge during the course of examination of books, accounts, or other information as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

SEC. 205. STATE ACCESS TO BOOKS AND RECORDS.

(a) PROVISION OF BOOKS AND RECORDS.—Every holding company and associate company thereof, shall maintain, and make

available to each State Commission regulating the rates of any public utility subsidiary of such holding company, such books, records, accounts, and other documents as the State Commission deems relevant to costs incurred by a public utility company that is an associate company of such holding company and necessary or appropriate for the protection of consumers with respect to rates.

(b) PROTECTED INFORMATION.—No member, officer, or employee of a State Commission shall divulge any fact or information that may come to his knowledge during the course of examination of books, accounts, or other information as hereinbefore provided, except insofar as he may be directed by the State Commission or a court.

SEC. 206. AFFILIATE TRANSACTIONS.

(a) INTERAFFILIATE TRANSACTIONS.—Both the Commission, with regard to wholesale rates, and State Commissions, with regard to retail rates, shall have the authority to determine whether a public utility company may recover in rates any costs of goods and services acquired by such public utility company from an associate company after July 1, 1994, regardless of when the contract for the acquisition of such goods and services was entered into.

(b) ASSOCIATE COMPANIES.—Both the Commission, with regard to wholesale rates, and State Commissions, with regard to retail rates, shall have the authority to determine whether a public utility company may recover in rates any costs associated with an activity performed by an associate company.

(c) INTERAFFILIATE POWER TRANSACTIONS.—

(1) Each State Commission shall have the authority to examine the prudence of a wholesale electric power purchase made by a public utility, which is not an associate company of a public utility holding company, providing retail electric service subject to regulation by the State Commission.

(2) Each State Commission shall have the authority to examine the prudence of a wholesale electric power purchase made by a public utility, which is an associate company of a public utility holding company, providing retail electric service subject to regulation by the State Commission, provided that the costs related to such purchase have not been allocated among two or more associated companies of such public utility holding company, by the Commission prior to the date of enactment and there is no subsequent reallocation after the date of enactment.

SEC. 207. CLARIFICATION OF REGULATORY AUTHORITY.

No public utility which is an associate company of a holding company may recover in rates from wholesale or retail customers any costs not associated with the provision of electric service to such customers, including those direct and indirect costs related to investments not associated with the provision of electric service to those customers, unless the Commission, with regard to wholesale rates, or a State Commission, with regard to retail rates, explicitly consents.

SEC. 208. EFFECT ON OTHER REGULATION.

Nothing in this Act shall preclude a State Commission from exercising its jurisdiction under otherwise application law to protect utility consumers.

SEC. 209. ENFORCEMENT.

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

SEC. 210. SAVINGS PROVISION.

Nothing in this title prohibits a person from engaging in activities in which it is legally engaged or authorized to engage on the date of enactment of this title provided that it continues to comply with the terms of any authorization, whether by rule or by order.

SEC. 211. IMPLEMENTATION.

The Commission shall promulgate regulations necessary or appropriate to implement this title not later than six months after the date of enactment of this title.

SEC. 212. RESOURCES.

All books and records that relate primarily to the function hereby vested in the Commission shall be transferred from the Securities and Exchange Commission to the Commission.

TITLE III—PUBLIC UTILITY REGULATORY POLICIES ACT

SEC. 301. DEFINITION.

For purposes of this title, the term ''facility'' means a facility for the generation of electric energy or an addition to or expansion of the generating capacity of such a facility.

SEC. 302. FACILITIES.

Section 210 of the Public utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) shall not apply to any facility which begins commercial operation after the effective date of this title, except a facility for which a power purchase contract entered into under such section was in effect on such effective date.

SEC. 303. CONTRACTS.

After the effective date of this title or after the date on which retail electric competition, as defined in title I of this Act, is implemented in all of its service territories, whichever is earlier, no public utility shall be required to enter into a new contract or obligation to purchase or sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978.

SEC. 304. SAVINGS CLAUSE.

Notwithstanding sections 302 and 303, nothing in this title shall be construed:

(a) as granting authority to the Commission, a State regulatory authority, electric utility, or electric consumer, to reopen, force, the renegotiation of, or interfere with the enforcement of power purchase contracts or arrangements in effect on the effective date of this Act between a qualifying small power producer and any electric utility or electric consumer, or any qualifying cogenerator and any electric utility or electric consumer.

(b) To affect the rights and remedies of any party with respect to such a power purchase contract or arrangement, or any requirement in effect on the effective date of this Act to purchase or to sell electric energy from or to a qualifying small power production facility or qualifying cogeneration facility.

SEC. 305. EFFECTIVE DATE.

This title shall take effect on December 15, 2003.

TITLE IV—ENVIRONMENTAL PROTECTION

SEC. 401. STUDY.

The Environmental Protection Agency, in consultation with other relevant Federal agencies, shall prepare and submit a report to Congress by January 1, 2000, which examines the implications of differences in applicable air pollution emissions standards for wholesale and retail electric generation competition and for public health and the environment. The report shall recommend changes to Federal law, if any are necessary, to protect public health and the environment.

ELECTRIC CONSUMERS PROTECTION ACT OF 1997—SECTION-BY-SECTION ANALYSIS

TITLE I—RETAIL COMPETITION

Section 101—Definitions

Section 102—Mandatory Retail Access

All consumers (including current customers of investor-owned, municipal and rural cooperative electric utilities) have the right to purchase retail electric energy beginning on December 15, 2003.

All retail electric energy suppliers (entities selling retail electric energy) have access to local distribution and retail transmission facilities beginning on December 15, 2003.

Section 103—Aggregation

A group of consumers or any entity acting on behalf of such group is authorized to aggregate to purchase retail electric energy for the members of the group if they live in a State where retail electric competition exists.

Section 104—Prior Implementation

States may require retail electric competition prior to January 1, 2003.

Municipal electric utilities and rural electric cooperative utilities (not regulated by State regulatory authorities) may provide for retail electric competition in their service territories prior to December 15, 2003.

If a State enacted legislation or imposed a regulation prior to January 30, 1997, which requires retail electric competition prior to December 15, 2003, the legislation or regulation is deemed consistent with the mandatory retail access and stranded costs sections of the Act.

Section 105—State Regulation

States may impose requirements on retail electric energy suppliers to protect the public interest.

No class of potential retail electric energy suppliers can be excluded from selling retail electric energy.

States may continue to regulate local distribution and retail transmission service provided by retail electric energy providers (local distribution companies).

Section 106—Stranded Cost Recovery

A utility providing retail electric service subject to State regulation prior to the date of enactment, which is seeking recovery of its stranded costs, must request the State regulatory authority to calculate the amount of its stranded costs associated with the implementation of retail competition.

If the State regulatory authority agrees to calculate the utility's stranded costs it has two options: A. Determine the level of the utility's legitimate, prudently incurred and verifiable investments in generating assets and related regulatory assets that can't be mitigated; or B. require the utility to sell all of its generating facilities and then subtract the revenue received from the book value of the assets sold.

If the State does not calculate the stranded costs, FERC must require the utility to sell its generating facilities in order to calculate stranded costs.

A municipal electric utility or a rural electric cooperative not subject to regulation by a State regulatory authority may calculate its own stranded costs through either method authorized for State regulatory authorities calculating regulated utility stranded costs.

Once a utility has had its stranded costs calculated, it is entitled to recover such costs from its retail customers taking distribution or retail transmission service pursuant to a nonbypassable Stranded Cost Recovery Charge.

No class of customers (such as a utility's residential customers) can be required to pay a Stranded Cost Recovery Charge in excess of its proportional responsibility for utility costs prior to the implementation of retail electric competition.

Section 107—Multistate Utility Company Stranded Costs

Customers served by utility companies operating in more than one state either directly or through an affiliate are only responsible for stranded costs arising from retail electric competition in the State they reside.

All of the states regulating utility subsidiaries of a multistate utility holding company may form a regional board to calculate the stranded costs of a wholesale electric supplier subsidiary of the holding company that does not sell any retail electric energy and to allocate such costs among the utility subsidiaries of the holding company.

If the regional board is not formed or if the members of the regional board fail to produce a consensus on either determination required of the board, FERC shall perform the board's responsibilities.

Once the wholesale subsidiary's stranded costs have been determined, the subsidiary is entitled to recover such costs from its affiliated utility companies in the manner allocated by the board or FERC and the utility companies are entitled to recover such costs from its customers.

Section 108—Universal Service

If, after December 15, 2003, a State regulatory authority determines that a consumer does not have sufficient access to competing retail electric energy suppliers, the retail electric energy provider is obligated to sell power to or purchase power on behalf of the consumer.

The retail electric energy provider is entitled to just and reasonable compensation for the service performed.

States may impose a nonbypassable Universal Service Charge on distribution and retail transmission consumers to help pay for the retail electric energy provider's compensation.

Section 109—Public Benefits

States are not prohibited by the Act from imposing charges on retail electric energy consumers to fund public benefit programs (i.e. low-income and energy efficiency).

Section 110—Renewable Energy

Beginning in 2003, all retail electric energy suppliers are required to either (1) sell at least a minimum amount of renewable energy as part of the total amount of energy it sells or (2) purchase credits from retail electric energy suppliers that sell renewable energy in excess of the minimum requirements.

One-half of one Renewable Energy Credit will be provided to retail electric energy suppliers selling power generated from a large hydroelectric facility (more than 80 MW). One Renewable Energy Credit will be provided to retail electric energy suppliers selling power generated at all other renewable electric facilities built prior to the date of enactment. Two Renewable Energy Credits will be provided to retail electric energy suppliers selling power generated at all other renewable electric facilities built subsequent to the date of enactment.

Retail electric energy suppliers are required to have Credits worth 5% of its generation beginning in 2003, 9% of its generation beginning in 2008 and 12% of its generation beginning in 2013.

The requirements of this section expire on December 31, 2019.

Section 111—Transmission

Within two years of the date of enactment FERC must establish transmission regions and designate an Independent System Operator (ISO) to manage and operate all of the transmission facilities in each region beginning on December 15, 2003.

The ISO can't be affiliated with any person owning transmission facilities in the region or any retail electric energy supplier selling retail energy in the region.

The States making up a particular transmission region can form a Regional Transmission Oversight Board to oversee the ISO. If the Board is formed, it shall have the same authority FERC currently has over transmission pursuant to the Federal Power Act. If the Board is not formed; FERC shall retain authority.

FERC is required to issue rules by January 1, 2002 applicable to its and the Board's oversight of the ISOs to promote transmission reliability and efficiency and competition among retail and wholesale electric energy suppliers.

The Federal Power Act prohibition on FERC requiring transmission access for the purposes of retail wheeling is repealed on January 1, 2003 or at an earlier date for a particular retail wheeling request in a State that has retail electric competition prior to December 15, 2003.

Section 112—Cross-Subsidization

Retail electric energy providers are not authorized by this Act to recover costs related to unregulated activities in the rates it charges for retail transmission and distribution services.

Section 113—Competitive Generation Markets

FERC's authority over utility mergers pursuant to the Federal Power Act is extended to electric utility mergers with natural gas utility companies.

FERC review of mergers must take into account the impact of a merger on competitive wholesale and retail electric generation markets.

FERC has authority to take actions necessary to prohibit retail electric energy suppliers and providers from using their control of resources to inhibit retail and wholesale electric competition.

Section 114—Nuclear Decommissioning Costs

Utilities owning nuclear power plants prior to the date of enactment are entitled to recover costs to fund decommissioning of the plants from their customers.

Section 115—Tennessee Valley Authority

Beginning on December 15, 2003 (or an earlier date if it so decides) the Tennessee Valley Authority (TVA) can sell retail and wholesale electric energy outside of its service territory and its retail and wholesale customers can buy energy from other sellers.

If the Secretary of Energy, in consultation with OMB, determines that this section would be contrary to the financial interest of the U.S., the section shall not be applicable.

Section 116—Enforcement

All aggrieved persons may bring actions in U.S. District Court to enforce a provision of the Act against individuals, corporations and other retail electric energy providers and suppliers.

An appeal of a decision made by FERC or a State regulatory authority shall be filed in a U.S. Circuit Court of Appeals.

TITLE II—PUBLIC UTILITY HOLDING COMPANIES

Section 201—Repeal of PUHCA

PUHCA is repealed one year from the date of enactment of the Act.

Section 202—Definitions

Section 203—Exemptions

The title does not apply to federal or state agencies or foreign governmental authorities not operating in the U.S.

FERC may exempt anyone from any of the requirements of the title if the Commission finds the particular regulation not relevant to public utility company rates and the affected States consent.

The provisions of the title don't apply to a particular holding company when retail electric competition exists in the service territory of each utility subsidiary of the holding company.

Section 204—Federal Access to Books and Records

Each holding company and associate company of the holding company must make its books and records available to FERC.

Section 205—State Access to Books and Records

Each holding company and associate company of the holding company must make its books and records available to each State regulatory authority regulating a utility subsidiary of the holding company.

Section 206—Affiliate Transactions

FERC, with regard to wholesale rates and States, with regard to retail rates, have the authority to determine whether a public utility affiliate of a holding company may recover its costs associated with a non-power transaction with an affiliated company if such costs arose after July 1, 1994.

State regulatory authorities have the authority to review the prudence of a utility's wholesale power purchases from non-affiliated sellers.

State regulatory authorities have the authority to review the prudence of a utility's wholesale power purchase from an affiliated seller in the same holding company system unless FERC has allocated the costs of the purchase among two or more utility subsidiaries of the holding company prior to the date of enactment and there is no subsequent reallocation.

Section 207—Clarification of Regulatory Authority

FERC, with regard to wholesale rates, and State regulatory authorities, with regard to retail rates, must explicitly consent, before a utility affiliate of a utility holding company can recover costs in rates that are not directly related to the provision of electric service to its customers.

Section 208—Effect on Other Regulation

State regulatory authorities can exercise their jurisdiction under otherwise applicable law to protect utility consumers.

Section 209—Enforcement

FERC has the same enforcement authority under this title as it does under the Federal Power Act.

Section 210—Savings Provision

A person engaging in an activity it was legally entitled to engage in on the date of enactment may continue to be entitled to engage in the activity.

Section 211—Implementation

FERC must promulgate regulations to implement the title within 6 months of the date of enactment.

Section 212—Resources

The SEC must transfer its books and records related to holding company regulation to the FERC.

TITLE III—PUBLIC UTILITY REGULATORY POLICIES ACT

Section 301—Definition

Section 302—Facilities

Section 210 of PURPA doesn't apply to facilities beginning commercial operation after the effective date of the title unless the power purchase contract related to the facility was in effect on the effective date.

Section 303—Contracts

Public utilities are no longer required to enter into new purchase contracts under Section 210 of PURPA once their is retail electric competition in their service territories.

Section 304—Savings Clause

This title does not affect existing power purchase contracts under PURPA.

Section 305—Effective Date

The effective date of the title is December 15, 2003.

TITLE IV—ENVIRONMENTAL PROTECTION

Section 401—Study

EPA must submit a study to Congress by January 1, 2000 which examines the implications of wholesale and retail electric competition on the emission of pollutants and recommends and changes to law, if any are necessary, to protect public health and the environment.

By Mr. GRAMS (for himself and Mr. GRAHAM):

S. 238. A bill to amend title XVIII of the Social Security Act to ensure Medicare reimbursement for certain ambulance services, and to improve the efficiency of the emergency medical system, and for other purposes; to the Committee on Finance.

THE EMERGENCY MEDICAL SERVICES EFFICIENCY ACT

Mr. GRAMS. Mr. President, I have come to the floor today, with the support of my colleague from Florida, Senator GRAHAM, to introduce an important health care proposal that is designed to improve our emergency medical system and to ultimately benefit our constituents who depend on these services. The area is one I believe has not received the attention that it deserves.

In a nation where some 268,000 Americans turn to the 911 emergency response system for help every single day, our population relies on the readiness, efficiency and the quick response of our emergency medical system. It is something on which the American people have come to depend, a service we nearly take for granted. We don't know when we need it, but we want it to work well when we do. The men and women who risk their lives in delivering emergency care are true heroes, yet their desire to improve the services they provide is rarely recognized by Congress.

The nightly news is filled with the stories of local emergency response problems. You may recall the tragedy in Philadelphia in 1994 when a young boy died on the steps of his church after being beaten. It took police 40 minutes to respond after the first 911 call was received.

Here in the District of Columbia, some residents have waited for more than 25 minutes before an ambulance responded to their 911 medical emergency. Far too often, Congress fails to respond until there is a national crisis, but we can't afford to wait for a crisis to occur before we respond to the needs of our emergency medical system. Patients' lives are at risk if Congress doesn't begin to help the system become more efficient.

Currently, emergency medical service providers are not consulted when Washington is formulating national policy which affects their ability to respond in a timely and in an efficient manner, and there is no coordinated Government focus on EMS, no collection of national data and statistics which I believe would help Congress and the administration develop more effective policies to help improve EMS.

Furthermore, there is no lead EMS agency to provide guidance and direction to Congress and the States when implementing Federal policies concerning Medicare reimbursement issues, emergency management planning, or the effect of Federal regulations on EMS providers. This lack of coordination often negatively impacts providers of EMS and our constituents who rely upon them.

Later this year, Congress will be reauthorizing the Intermodal Surface Transportation Efficiency Act, for which its supporters will be asking for $26 billion in transportation spending, and yet the emergency medical services communities will likely not have a voice in improving our transportation system. That is the very system they depend upon to ensure that when they are dispatched to a patient in need of emergency medical services, the highway design or newest technologies will allow them to respond quickly and efficiently. EMS providers need a seat at the table.

I find it ironic that we expect so much from our EMS system and yet, when they seek assistance, we continue to ignore their 911 call for help.

That is why I am today introducing the Emergency Medical Services Efficiency Act of 1997. My legislation sets out a blueprint for responding to the needs of our emergency medical system and begins to address just a few of their concerns Washington has long ignored.

First, the Grams-Graham bill will require Medicare to reimburse for ambulance services provided for emergency medical care based on the original diagnosis by a prudent layperson, instead of the ultimate diagnosis determined by health professionals in the emergency room.

Mr. President, the division of emergency medical services for the city of St. Paul, MN, prepared a list for me of just some of their 1996 emergency ambulance transports that began as a 911 call for help, but were eventually denied payment by Medicare.

Among the cases where payment was denied include a 79-year-old female, on several prescription medications, who had fallen in the night and was suffering from vertigo; a 72-year-old male, on numerous prescription medications, who had fallen on the sidewalk, had lacerations on his arm, a cut over his right eye, and was confused; and also a 95-year-old female who awoke confused and weak, possibly suffering from a stroke.

In each of these incidents, emergency services personnel responded to what they believed to be medical emergencies. Even though the cases were ultimately ruled nonemergencies, the EMS providers should have been reimbursed by Medicare for the emergency transport service that they provided.

As Joseph A. Grafft, EMS Manager for the FIRE/EMS Center at Metropolitan State University in St. Paul noted in a letter to me, ''Ambulance providers are not physicians and do not diagnose patients. They deal with presenting symptoms and give care based on these symptoms. The physicians diagnose and make the final determination. Ambulance providers should not be penalized for doing their job.''

Our bill ensures that Medicare reimbursements are based on the original diagnoses of the 911 callers. At the same time, we do not seek reimbursements for medical conditions that are clearly not life-threatening.

Second, our bill establishes two separate advisory councils comprised of emergency service providers and others. The first will advise the Health Care Financing Administration on issues pertaining to Medicare reimbursement. The second advisory council will make recommendations to the administration and Congress in regard to improving the efficiency and coordination of our emergency medical system.

Third, our bill will designate a lead-EMS agency, to be established at the direction of the Secretary of Transportation in consultation with the Secretary of Health and Human Services. The Secretary will make recommendations to Congress as to which functions should be transferred to the Transportation Department in order to streamline and coordinate the EMS system.

Finally, our bill directs the Secretary of Transportation to establish a national database for the collection of statistics relating to the delivery of emergency medical services within our national transportation system and national emergency response system.

The Secretary will set forth the appropriate criteria for national data collection in consultation with State EMS agencies to ensure the least burdensome data collection reporting procedures. We would hope this database could be tied to an existing data collection system.

I believe these four provisions will begin to address a few of the needs that the EMS community has brought to my attention. This bill will allow Congress, the President, as well as State and local officials to have the resources and also the facts they need to make necessary improvements in emergency medical care to patients.

Dr. Daniel Hankins, president of the Minnesota Chapter of the American College of Emergency Physicians, made that point eloquently in a recent letter to me. He said, ''For too long EMS has been forgotten when health care legislation has been proposed.''

He went on to say, ''EMS is a small, but crucial part of the overall health care system. It is in most rural areas the only lifeline for access into emergency care. It is a fragile safety net . . . that is only held together by the dedication of the many volunteers that comprise the EMS system.''

Mr. President, I am pleased that I am joined today by the senior Senator

from the State of Florida in the introduction of this legislation. We are proud to have a large number of organizations—organizations dedicated to improving emergency medical care—supporting our legislation.

I ask unanimous consent that a complete list of these organizations be printed in the RECORD.

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

LIST OF ORGANIZATIONS SUPPORTING THE EMERGENCY MEDICAL SERVICES EFFICIENCY ACT

(1) Minnesota Ambulance Association.
(2) Minnesota Air Medical Council.
(3) Healthspan Transportation.
(4) Lifelink III.
(5) Minnesota Emergency Medical Services Association.
(6) South Central Minnesota Emergency Medical Services Program.
(7) Minnesota Chapter, College of Emergency Physicians.
(8) Gold Cross Ambulance Service.
(9) North Memorial Health Care.
(10) Minnesota Hospital and Healthcare Partnership.
(11) West Central Minnesota Emergency Medical Services Program.

Mr. GRAMS. Thank you, Mr. President. The Emergency Medical Services Efficiency Act is not the answer to all of the problems. But it is the first step in addressing the concerns of a very important segment of both our health care and transportation systems. This bill is a blueprint for further improvements in emergency medical services to help all Americans.

By introducing today's legislation early in the session, it is my hope that we will call attention to the needs of EMS providers and move forward to a more comprehensive bill, one that addresses additional concerns that are equally important to the EMS community as those we have addressed here today.

Over the next few weeks, I will be working with EMS providers in Minnesota and throughout the country to look at improving four key areas: regulatory oversight, technology improvements in medicine and transportation, insurance reimbursement issues, and the EMS functions which should be transferred and streamlined under the Department of Transportation.

Senator GRAHAM has worked tirelessly to ensure that the definition of ''prudent layperson'' apply not only to ambulance service but also to care provided at emergency departments. In our second bill, it is our intent to include Senator GRAHAM's new language to ensure that patients are not denied reimbursement for emergency care because they failed to obtain proper certification or authorization from their insurance provider. I look forward to working with the American Association of Health Plans, which today announced new policies to clarify how health plans should cover emergency care, in developing an appropriate legislative solution.

The legislation we introduce today and our subsequent work will be part of an ongoing effort we hope to include in the newly drafted Rural Health Improvement Act. This important overall effort, in which I have also been involved, will help ensure that rural areas are not overlooked in our desire to improve health care delivery.

So finally, Mr. President, I look forward to working with Senator GRAHAM, Senator THOMAS, and others in the months and weeks ahead to improve emergency medical services for patients and providers and ensure the most efficient use of scarce tax dollars. The American people expect—and of course deserve—nothing less.

Thank you very much, Mr. President.

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. 238

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 ''Emergency Medical Services Efficiency Act of 1997''.

TITLE I—MEDICARE COVERAGE OF CERTAIN AMBULANCE SERVICES

SEC. 101. MEDICARE COVERAGE OF CERTAIN AMBULANCE SERVICES.

(a) COVERAGE.—Section 1861(s)(7) of the Social Security Act (42 U.S.C. 1395x(s)(7)) is amended by striking ''regulations;'' and inserting ''regulations, except that such regulations shall not fail to treat ambulance services as medical and other health services solely because the ultimate diagnosis of the individual receiving the ambulance services results in the conclusion that ambulance services were not necessary, as long as the request for ambulance services is made after the sudden onset of a medical condition that is manifested by symptoms of such sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect to result, without immediate medical attention, in—

''(A) placing the individual's health in serious jeopardy;

''(B) serious impairment to the individual's bodily functions; or

''(C) serious dysfunction of any bodily organ or part of the individual;''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items and services provided on or after the date of enactment of this Act.

TITLE II—AMBULANCE SERVICES ADVISORY GROUP FOR THE HEALTH CARE FINANCING ADMINISTRATION

SEC. 201. ESTABLISHMENT OF ADVISORY GROUP.

(a) ESTABLISHMENT.—There is established an advisory group to be known as the Health Care Financing Administration Advisory Group for Ambulance Services (in this title referred to as the ''Advisory Group'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Advisory Group shall be composed of 17 members of whom—

(A) 1 shall be appointed by the Director of each of the 10 operating districts within the National Highway and Traffic Safety Administration;

(B) 1 shall be appointed by the President;

(C) 2 shall be appointed by the Administrator of the Health Care Financing Administration;

(D) 1 shall be appointed by the Majority Leader of the Senate;

(E) 1 shall be appointed by the Minority Leader of the Senate;

(F) 1 shall be appointed by the Speaker of the House of Representatives; and

(G) 1 shall be appointed by the Minority Leader of the House of Representatives.

(2) INCLUSION OF CERTAIN DISCIPLINES ON ADVISORY GROUP.—In making appointments of members under paragraph (1), the appointing officials described in each subparagraph of that paragraph shall consult and collaborate with each other in order to ensure that the following groups are represented on the Advisory Group:

(A) Physicians who provide emergency medical services.

(B) Individuals who provide emergency ground and air transport services.

(C) Volunteer, private, and public emergency medical service providers.

(D) Trauma care providers.

(E) Patient's rights advocates.

(3) BACKGROUND.—Except in the case of a member of the Advisory Group described in paragraph (2)(E), any member of the Advisory Group appointed under paragraph (1) should have significant experience with the provision of ambulance services under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) DATE.—The appointments of the members of the Advisory Group shall be made not later than January 1, 1998.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for a term of 4 years. Any vacancy in the Advisory Group shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Advisory Group have been appointed, the Advisory Group shall hold its first meeting.

(e) MEETINGS.—The Advisory Group shall meet at the call of the Chairperson.

(f) QUORUM.—A majority of the members of the Advisory Group shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRPERSON AND VICE CHAIRPERSON.—The Advisory Group shall select a Chairperson and Vice Chairperson from among its members.

SEC. 202. DUTIES OF THE ADVISORY GROUP.

(a) STUDY.—The Advisory Group shall conduct a thorough study of all matters relating to the provision of ambulance services under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), which shall include matters relating to the reimbursement of such services under the medicare program.

(b) RECOMMENDATIONS.—The Advisory Group shall develop recommendations regarding the improvement of all matters relating to the provision of ambulance services under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(c) REPORT.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Advisory Group shall submit a report to the Administrator of the Health Care Financing Administration which shall contain a detailed statement of the results of the matters studied by the Advisory Group pursuant to subsection (a), together with the Advisory Group's recommendations formulated pursuant to subsection (b).

SEC. 203. POWERS OF THE ADVISORY GROUP.

(a) HEARINGS.—The Advisory Group may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Advisory Group considers necessary to carry out the purposes of this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Advisory Group may secure directly from any Federal department or agency such information as the Advisory Group considers necessary to carry out the provisions of this title. Upon request of the Chairperson of the Advisory Group, the head of such department or agency shall furnish such information to the Advisory Group.

(c) POSTAL SERVICES.—The Advisory Group 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 Advisory Group may accept, use, and dispose of gifts or donations of services or property.

SEC. 204. ADVISORY GROUP PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Members of the Advisory Group shall receive no additional pay, allowances, or benefits by reason of their service on the Advisory Group.

(b) TRAVEL EXPENSES.—The members of the Advisory Group 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 Advisory Group.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Advisory Group may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Advisory Group to perform its duties. The employment of an executive director shall be subject to confirmation by the Advisory Group.

(2) COMPENSATION.—The Chairperson of the Advisory Group may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Advisory Group without compensation in addition to that received for service as an employee of the United States, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Advisory Group 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. 205. FUNDING.

The Secretary of Health and Human Services shall provide to the Advisory Group, out of funds otherwise available to such Secretary, such sums as are necessary to carry out the purposes of the Advisory Group under this title.

SEC. 206. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Group.

TITLE III—FEDERAL ADVISORY COUNCIL FOR EMERGENCY AMBULANCE SERVICES

SEC. 301. DEFINITION.

As used in this title, the term ''emergency ambulance services''—

(1) means resources used by a qualified public, private, or nonprofit entity to deliver medical care under emergency conditions—

(A) that occur as a result of the condition of a patient; or

(B) that occur as a result of a natural disaster or similar situation; and

(2) includes services delivered by an emergency ambulance employee that is licensed or certified by a State as an emergency medical technician, a paramedic, a registered nurse, a physician assistant, or a physician.

SEC. 302. ESTABLISHMENT OF ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is established an advisory council to be known as the Federal Advisory Council for Emergency Ambulance Services (in this title referred to as the ''Advisory Council'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Advisory Council shall be composed of 23 members, of whom—

(A) 1 shall be a member of the International Fire Chief's Association, appointed by the President from nominations submitted by the Executive Director of the International Fire Chief's Association;

(B) 1 shall be a member of the International Association of Firefighters, appointed by the President from nominations submitted by the general president of the International Association of Firefighters;

(C) 1 shall be a member of the American Ambulance Association, appointed by the President from nominations submitted by the executive vice president of the American Ambulance Association;

(D) 1 shall be a member of the National Association of Emergency Medical Services Physicians, appointed by the President from nominations submitted by the executive director of the National Association of Emergency Medical Services Physicians;

(E) 4 shall be appointed by the President, of whom—

(i) 1 shall be a representative of a volunteer ambulance service;

(ii) 1 shall be a representative of a hospital-based ambulance service;

(iii) 1 shall be a representative of a private ambulance service; and

(iv) 1 shall be a representative of an air ambulance service;

(F) 1 shall be an individual who is appointed by the Majority Leader of the Senate;

(G) 1 shall be an individual who is appointed by the Minority Leader of the Senate;

(H) 1 shall be an individual who is appointed by the Speaker of the House of Representatives;

(I) 1 shall be an individual who is appointed by the Minority Leader of the House of Representatives;

(J) 2 shall be employees of the Occupational Safety and Health Administration, appointed by the Secretary of Labor;

(K) 1 shall be an employee of the United States Coast Guard, appointed by the Secretary of Transportation;

(L) 2 shall be employees of the National Transportation Safety Board, appointed by the chairman of the National Transportation Safety Board;

(M) 2 shall be employees of the National Highway Traffic Safety Administration of the Department of Transportation, appointed by the Secretary of Transportation;

(N) 2 shall be employees of the Federal Emergency Management Agency, appointed by the Director of the Federal Emergency Management Agency; and

(O) 2 shall each be a member of a governing body of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(2) ADDITIONAL REQUIREMENTS.—

(A) GEOGRAPHICAL REPRESENTATION AND URBAN AND RURAL REPRESENTATION.—In making appointments of members under paragraph (1), the appointing officials described in such paragraph shall, through consultation and collaboration with each other, select—

(i) members who are geographically representative of the United States; and

(ii) members who are representative of rural areas and urban areas.

(B) SPECIAL RULE.—The appointing officials described in subparagraph (A) shall ensure that, of the members appointed—

(i) 11 shall be representative of rural areas;

(ii) 11 shall be representative of urban areas; and

(iii) 1 shall be representative of a rural area or an urban area, as provided for in subparagraph (C).

(C) ALTERNATE REPRESENTATION.—The appointing officials described in subparagraph (A) shall appoint members under subparagraph (B)(iii) by alternating between a member representing a rural area and a member representing an urban area.

(3) DATE.—The appointments of the members of the Advisory Council shall be made not later than January 1, 1998.

(c) PERIOD OF APPOINTMENT; VACANCIES.—

(1) PERIOD OF APPOINTMENT.—Members shall be appointed for a term of 4 years.

(2) VACANCY.—

(A) IN GENERAL.—Any vacancy in the Advisory Council shall not affect the powers of the Advisory Council, but shall be filled in the same manner as the original appointment.

(B) FILLING UNEXPIRED TERMS.—An individual chosen to fill a vacancy under this paragraph shall be appointed for the unexpired term of the member replaced.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Advisory Council have been appointed, the Advisory Council shall hold its first meeting.

(e) MEETINGS.—The Advisory Council shall meet at the call of the Chairperson.

(f) QUORUM.—A majority of the members of the Advisory Council shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRPERSON AND VICE CHAIRPERSON.—The Advisory Council shall select a Chairperson and Vice Chairperson from among the members of the Advisory Council.

SEC. 303. DUTIES OF THE ADVISORY COUNCIL.

(a) STUDY.—

(1) IN GENERAL.—The Advisory Council shall conduct a study of—

(A) the workplace conditions and safety requirements with regard to employees who provide emergency ambulance services, including a review of the emergency ambulance services regulations and standards promulgated by the Secretary of Labor through the Occupational Safety and Health Administration;

(B) the emergency management planning functions of the Federal Emergency Management Agency; and

(C) the transportation-related functions of the Department of Transportation related to the provision of emergency ambulance services, including—

(i) the functions carried out under the Intelligent Vehicle-Highway Systems Act of 1991 (part B of title VI of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240); and

(ii) any other issue related to the provision of emergency ambulance services that the Secretary of Transportation recommends for study by the Advisory Council.

(2) INTERPRETATION OF DATA.—As part of the study conducted under this subsection, the Advisory Council shall use and interpret the data collected by the Office of Emergency Medical Services Data Collection of

the Department of Transportation established under section 402.

(b) RECOMMENDATIONS.—The Advisory Council shall develop recommendations with regard to—

(1) the improvement of workplace conditions of employees who provide emergency ambulance services;

(2) the appropriate application by the Occupational Safety and Health Administration of occupational safety and health standards and regulations to employees who are employed to provide emergency ambulance services; and

(3) addressing the issues, and improving the functions, referred to in subparagraphs (B) and (C) of subsection (a)(1).

(c) REPORT.

(1) SUBMISSION OF REPORT TO AGENCY OFFICIALS.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Advisory Council shall prepare and submit to the Secretary of Labor, the Secretary of Commerce, and the Director of the Federal Emergency Management Administration a report that includes—

(A) a detailed statement of the results of the matters studied by the Advisory Council under subsection (a); and

(B) the recommendations of the Advisory Council developed under subsection (b).

(2) SUBMISSION OF REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Advisory Council shall prepare and submit to the appropriate committees of Congress the report described in paragraph (2).

SEC. 304. POWERS OF THE ADVISORY COUNCIL.

(a) HEARINGS.—The Advisory Council may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Advisory Council considers necessary to carry out the purposes of this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Advisory Council may secure directly from any Federal department or agency such information as the Advisory Council considers necessary to carry out the provisions of this title. Upon request of the Chairperson of the Advisory Council, the head of such department or agency shall furnish such information to the Advisory Council.

(c) POSTAL SERVICES.—The Advisory Council 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 Advisory Council may accept, use, and dispose of gifts or donations of services or property.

SEC. 305. ADVISORY COUNCIL PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Members of the Advisory Council shall receive no additional pay, allowances, or benefits by reason of the service of the members on the Advisory Council.

(b) TRAVEL EXPENSES.—The members of the Advisory Council 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 the homes or regular places of business of the members in the performance of services for the Advisory Council.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Advisory Council may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Advisory Council to perform the duties of the Advisory Council. The employment of an executive director shall be subject to confirmation by the Advisory Council.

(2) COMPENSATION.—The Chairperson of the Advisory Council may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Advisory Council without compensation in addition to that received for service as an employee of the United States, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Advisory Council 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. 306. FUNDING.

The Secretary of Labor, the Secretary of Commerce, and the Director of the Federal Emergency Management Agency shall provide to the Advisory Council, out of funds otherwise available to such agency heads, such sums as are necessary to carry out the purposes of the Advisory Council under this title.

SEC. 307. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Council.

TITLE IV—DATA COLLECTION AND ADMINISTRATION BY DEPARTMENT OF COMMERCE

SEC. 401. PROPOSAL FOR TRANSFER OF CERTAIN EMERGENCY MEDICAL SERVICES FUNCTIONS.

(a) PROPOSAL.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Health and Human Services and the Chairman of the National Transportation Safety Board, shall develop a proposal for transferring to the National Highway Traffic Safety Administration of the Department of Transportation any transportation-related functions of any other Federal agency concerning emergency medical services, other than the functions referred to in paragraph (2).

(2) EXCEPTIONS.—The proposal prepared under paragraph (1) shall not provide for the transfer of any function—

(A) of the Department of Defense; or

(B) related to a Federal health care program (including the medicare program under title 18 of the Social Security Act (42 U.S.C. 1395 et seq.) and the medicaid program under title 19 of the Social Security Act (42 U.S.C. 1396 et seq.)).

(b) REPORT.—Upon completion of the proposal under subsection (a), the Secretary of Transportation shall submit to Congress a report that contains the proposal, together with any legislative recommendations that the Secretary determines to be appropriate for carrying out the proposal.

SEC. 402. ESTABLISHMENT OF THE OFFICE OF EMERGENCY MEDICAL SERVICES DATA COLLECTION.

(a) ESTABLISHMENT.—There is established in the Department of Transportation an office to be known as the ''Office of Emergency Medical Services Data Collection'' (referred to in this section as the ''Office''). The Office shall serve as a clearinghouse for data collected in accordance with the regulations promulgated under subsection (c).

(b) DIRECTOR.—The Secretary of Transportation shall appoint an individual to serve as the Director of the Office (referred to in this section as the ''Director'').

(c) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Transportation, acting through the Director, and in consultation with the Secretary of Health and Human Services, the Chairman of the National Transportation Safety Board, and appropriate representatives of the agencies of States that have primary responsibility for regulating emergency medical services, shall promulgate regulations to establish a uniform data collection requirement concerning the collection, on a nationwide basis, of data relating to the provision of emergency medical services.

(2) USE OF EXISTING INFORMATION SERVICES.—In promulgating the regulations under this subsection, the Secretary of Transportation shall, to the maximum extent practicable, provide for the use of information services that are in existence at the time that the regulations are promulgated, including State data collection services.

(d) STATE DEFINED.—As used in this section, the term ''State'' means each of the several States of the United States, the District of Columbia, and the territories and possessions of the United States.

By Mr. DASCHLE (for himself, Mr. JOHNSON, Mr. CONRAD, Mr. DORGAN, Mr. BAUCUS, Mr. HARKIN and Mr. KERREY):

S. 239. A bill to amend the Internal Revenue Code of 1986 relating to the treatment of livestock sold on account of weather related conditions; to the Committee on Finance.

INVOLUNTARY CONVERSION OF LIVESTOCK LEGISLATION

Mr. DASCHLE. Mr. President, today I am reintroducing legislation to provide equitable treatment under the tax law for farmers and ranchers who are forced to sell their livestock prematurely due to extreme weather conditions. I am joined in this effort by Senators JOHNSON, CONRAD, DORGAN, BAUCUS, and HARKIN.

The last few weeks have seen the most extreme winter weather of the century in the upper Midwest. Prolonged sub-zero temperatures and back-to-back blizzards continue to devastate herds of cattle and other livestock. An estimated 50,000 cattle have died since the beginning of the year, and countless thousands of other head of livestock are under extreme stress. The President declared the region a national disaster area on January 10.

A few summers ago, Midwestern States suffered severe floods, which devastated lives and property along these States' rivers and shorelines. President Clinton responded quickly by providing disaster assistance, $2.5 billion, including $1 billion for agriculture, in emergency aid to flooded areas in the Midwest.

In addition to receiving disaster payments, many farmers were able to take advantage of provisions in the Internal Revenue Code designed primarily to spread out the impact of taxes on farmers in these situations. Ironically, however, while farmers who lose their

crops due to floods are covered under these provisions, farmers who must involuntarily sell livestock due to flood and other extreme weather conditions, are not.

Normally, a taxpayer who uses the cash method of accounting, as most farmers do, must report income in the year in which he or she actually receives the income. The Tax Code, however, outlines certain exceptions to this rule where disaster conditions generate income to the farmer that otherwise would not have been received at that time. For example, one exception allows farmers who receive insurance proceeds or disaster payments when crops are destroyed or damaged due to drought, flood, or any other natural disaster to include those proceeds in income in the year following the disaster, if that is when the income from the crops otherwise would have been received.

Two other provisions deal with involuntary conversion of livestock. The first provision enables livestock producers who are forced to sell herds due to drought conditions to defer tax on any gain from these sales by reinvesting the proceeds in similar property within a 2-year period. The second provision allows livestock producers who choose not to reinvest in similar property to elect to include proceeds from the sale of the livestock in taxable income in the year following the sale.

For no apparent reason, the two provisions dealing with livestock do not mention the situation where livestock is involuntarily sold due to flooding, blizzards, or other extreme conditions. Thus, these weather emergencies do not trigger the benefits of those provisions. Yet, many livestock producers are currently being compelled to sell livestock because they are under stress, just as they were forced to by the floods the other year to sell their animals because the crops necessary to feed the livestock and the fences for containing them had been washed out.

Our proposal would expand the availability of the existing livestock tax provisions to include involuntary conversions of livestock due to flooding and other extreme, weather related conditions. This would conform the treatment of crops and livestock in this respect.

Last Congress, I introduced this bill in the Senate as S. 109, and my colleague, Senator JOHNSON, introduced a companion measure in the House—H.R. 1588—when he was a Member of that body. Similar legislation was passed by Congress as part of the Revenue Act of 1992. Unfortunately, that legislation was subsequently vetoed for unrelated reasons. The Department of the Treasury testified in support of the change in the last Congress. In 1995, the Joint Committee on Taxation estimated the revenue loss from my bill to be $17 million over 6 years.

Let me emphasize that the tax provisions we are dealing with here affect the timing of tax payments, not forgiveness of tax liability. The distinguished Governor of South Dakota, William Janklow, called me a few days ago and emphasized how important it would be for Congress to make this change as soon as possible. I hope my colleagues will agree that we should not shut out some farmers—livestock producers—from the disaster related provisions of the Tax Code simply because the natural disaster involved was severe winter conditions or a flood instead of a drought. That just doesn't make sense.

The American Farm Bureau Federation and the National Farmers Union have endorsed the bill. I urge my colleagues to give it favorable and early consideration.

Mr. President, I ask 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. 239

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

SECTION 1. TREATMENT OF LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) DEFERRAL OF INCOME INCLUSION.—Subsection (e) of section 451 of the Internal Revenue Code of 1986 (relating to special rules of proceeds from livestock sold on account of drought) is amended—

(1) by striking ''drought conditions, and that these drought conditions'' in paragraph (1) and inserting ''drought, flood, or other weather-related conditions, and that such conditions''; and

(2) by inserting '', FLOOD, OR OTHER WEATHER-RELATED CONDITIONS'' after ''DROUGHT'' in the subsection heading.

(b) INVOLUNTARY CONVERSIONS.—Subsection (e) of section 1033 of such Code (relating to livestock sold on account of drought) is amended—

(1) by inserting '', flood, or other weather-related conditions'' before the period at the end thereof; and

(2) by inserting '', FLOOD, OR OTHER WEATHER-RELATED CONDITIONS'' after ''DROUGHT'' in the subsection heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges after December 31, 1996.

Mr. DORGAN. Mr. President, I'm pleased to join Senator DASCHLE and others in reintroducing legislation to bring much-needed tax relief to family farmers and ranchers whose businesses have suffered from unduly harsh weather conditions in the Upper Midwest this winter.

Livestock producers in North Dakota and other States in the Northern Plains have been facing unusually extreme conditions during this winter. North Dakota has experienced at least a half-dozen blizzards, winds of up to 50 miles per hour, and wind chills of near 80 below zero.

Our livestock producers have had great difficulty in moving snow and keeping paths open to both feed and livestock. Our interstate highways have been closed seven times this winter so it is easy to imagine the difficulties that our rural people have had in keeping township roads open and usable.

Some are beginning to compare this winter to the infamous winter of 1886 which nearly wiped out the cattle industry on the Northern Plains. That was the year in which Teddy Roosevelt lost his cattle herd on his ranch in the North Dakota badlands.

When this winter is over, we will be able to make some judgments as to whether this winter will be another of those history-making times which will haunt the memories of another generation of farmers and ranchers in the Dakotas.

But right now, we need to do everything possible to ease the burdens that our livestock producers are facing. The U.S. Department of Agriculture has been working very hard to get workable programs to help producers get to their livestock and feed. They have also been working on the longer range problem of helping ranchers and farmers with the extra feed supplies that are needed to get these cattle through the winter.

While USDA has had some problems in getting those programs on the ground, we certainly appreciate the Department's efforts especially when we consider the limited tools that are currently available to them. It should be noted that the Emergency Livestock Feed Assistance program that would normally have been available for such a situation was suspended by the 1996 farm law. This has put USDA in a position of having very limited resources and authorities for this emergency.

Compounding the problems of our livestock producers have been the very low cattle prices that have come from a combination of being at the bottom of a cattle pricing cycle together with record levels of concentration in the marketplace.

Our producers have had a hard time maintaining their herds even without this winter emergency. That is why it is extremely important that we help them through this time period.

Some of our producers are making the choice to either sell their cattle altogether or reduce the size of their herd, rather than to continue to maintain them at high costs and high risk.

Unfortunately our current tax laws hinder such sales in the case of most weather-related disasters except for drought. If a farmer or rancher is forced to sell cattle or other livestock prematurely this winter, they will be burdened with a large tax bill. There is no provision at present for tax deferral of gains on involuntary conversions of livestock for severe winter conditions. The Tax Code allows for such deferrals only for drought conditions.

In the last session of Congress, I cosponsored legislation with Senator DASCHLE that would have expanded this tax provision to respond to a variety of severe weather conditions.

Our legislation would allow a farmer or rancher to defer paying taxes on the proceeds of an involuntary sale of livestock due to severe weather-related emergencies if he reinvests the proceeds in similar property down the

road. A farmer or rancher who decides not to reinvest the proceeds under these circumstances may elect to report the proceeds from the sale on the next year's tax return. This legislation, which is supported by the Administration, builds upon similar provisions in the Tax Code which is provided in the case of forced livestock sales due to drought.

Initial estimates following the January 10th blizzard across our State indicated that about 2,000 livestock producers were selling nearly 35,000 additional cattle as a result of that storm. The weekly reports from the North Dakota Agricultural Statistics Service indicate that cattle sales continue to be more than 20 percent above normal in the State.

This legislation will give these producers an additional tool in managing their operations so that these involuntary conversions do not impose additional financial hardships upon them.

Again I am pleased to once again cosponsor this legislation with Senator DASCHLE to help our producers meet the unusual conditions of this winter. I urge my colleagues to join us in this effort.

By Mr. McCAIN:

S. 240. A bill to provide for the protection of books and materials of the Library of Congress, and for other purposes; to the Committee on Rules and Administration.

THE LIBRARY OF CONGRESS BOOK PROTECTION ACT

• Mr. McCAIN. Mr. President, today I am introducing legislation to help protect the valuable resources of the Library of Congress. The Library of Congress Protection Act will help the Library of Congress stop abuses of its free book loan program by authorizing the Library to impose fines for books that are long overdue.

I am introducing this legislation to empower Library of Congress officials to crack down on individuals who seriously abuse their Library privileges, by keeping books too long or failing to return them. Library of Congress officials should not have to tolerate the fact that many individuals are apparently unconcerned about returning the books that taxpayers provide for them. Congress should not prevent the Library from instituting strengthened policies to hold severely delinquent borrowers responsible for their tardiness.

This legislation will enable the Library of Congress to implement a reasonable overdue book charge policy similar to those of most public libraries across America. By doing so, the many Members of Congress, congressional staffers, and executive branch employees who benefit from this magnificent institution will have an added incentive to comply with the generous loan policies of the Library of Congress.

This proposal is very basic, but it will afford Library officials the leverage and flexibility they need to address this problem. This bill will help Library of Congress officials keep better track of their resources, and will spur many delinquent borrowers to return the books that taxpayers provide for them completely free of charge.

The Library of Congress Book Protection Act would direct the Library to implement an overdue book charge policy for books improperly held over 70 days. These individuals or offices will have their privileges suspended until their fines are paid in full. Library of Congress officials will, however, be able to waive such penalties when appropriate. The Library would also be authorized to retain the funds received from late book fines, as well. Finally, the offices of severely delinquent borrowers and the fines they owe will be published in the annual report submitted by the Library to its oversight committees.

While figures for the 104th Congress have not been published yet, preliminary data shows that as of December 28, 1996, over 2,200 books were over 30 days overdue. Figures published by the Library during the 103d Congress showed that out of the 20,000 books that were out on loan, over one-third were listed as overdue. One half of the 4,200 books on loan to congressional staff and the media were listed as overdue, and 1 in 5 books out on loan to Members, committees, and congressional support agencies had been overdue for more than 2 months. Library of Congress officials state that over 300,000 books are missing from their collections dating back to 1978, and the estimated cost of these thefts is $12 million.

I am concerned about the fact that it is all too easy for individuals to disregard their responsibility to return books to the Library of Congress in a timely manner. This negligence is not only unfair to the other users of the Library, but it also drains the Library's resources in chasing down overdue or missing books.

In addition to Members of Congress and congressional staff, the Library of Congress also makes loans to executive branch departments and agencies, the judiciary and diplomatic corps, the press, and other institutions. As I have mentioned, Mr. President, the Library of Congress is barred from charging late fees for overdue books in contrast to virtually every other publicly funded library in America. Furthermore, the Library cannot retain any funds that might be collected due to the loss or damage of loaned books. It's clearly time to change these unwise restrictions and strengthen the Library's ability to protect its resources, and I hope Members of the Senate will support this legislation to do so.

Surely, it's not asking too much of the individuals and offices fortunate enough to use the Library of Congress to do so in a responsible manner. Even under the new borrowing guidelines that would be instituted by this legislation, there really is no reason for any well-intentioned borrower ever to have to pay late fines or have their privileges suspended. I'm optimistic that the mere specter of having to pay overdue book fines will coax delinquent borrowers into responsibility renewing their book loans or returning the books.

I hope that the Senate will adopt this legislation to implement prudent new guidelines in the book loan policies of the Library of Congress.•

By Mr. McCAIN:

S. 241. A bill to amend the Internal Revenue Code of 1986 to allow a family-owned business exclusion from the gross estate subject to estate tax, and for other purposes; to the Committee on Finance.

THE AMERICAN FAMILY-OWNED BUSINESS ACT

• Mr. McCAIN. Mr. President, I rise today to introduce the American Family-Owned Business Act—a bill that will preserve the American family businesses and save jobs across the country. This bill cuts estate tax rates in half and also creates a new exclusion that completely eliminates the estate tax for small businesses. Under the new exclusion, family-owned businesses can exempt up to $1.5 million of family business assets from their estate. If a family business is valued at more than $1.5 million, the excess is taxed at one-half of the current rates—thus providing a maximum tax rate of 27.5 percent.

This legislation was introduced in the last Congress by my good friend, the former majority leader, Bob Dole. Although this legislation was included in S. 2, The Family Tax Relief Act, I feel so strongly about the need for estate tax relief for family-owned businesses and farmers that I felt it was necessary to introduce this legislation on its own.

The current Federal estate tax is just too burdensome on the American family. Time and time again, farmers and other business owners across the country have told me that estate tax rates are just too high. They rise quickly from 18 to 55 percent, effectively making the Government a 50–50 partner in a family business.

Even the most sophisticated estate tax planning and the purchase of life insurance cannot sufficiently mitigate the effects of these high rates, leaving families no recourse but to sell their businesses to pay the estate tax. This bill will stop these forced sales from happening again.

I agree with many who say that estate tax rates should be reduced across the board, or repealed entirely. I applaud my colleague, Senator KYL, who is leading the effort to repeal the estate tax. And I hope that we do that some day. But given our current budget crisis, we will likely have to take an incremental approach on the estate tax. This legislation takes an important step in that direction.

This legislation will protect and preserve family enterprises. We know too

well the adverse impact of an estate tax-forced sale. The family loses its livelihood, the family business employees lose their jobs, and the community suffers.

We must do all that we can to help family-owned businesses not only survive, but also prosper. They are the job creators in this country. In the 1980's alone, family businesses accounted for an increase of more than 20 million private-sector jobs.

By relieving families of the burden of the estate tax and letting them keep their businesses, they can continue to prosper. And when families continue to operate their businesses, we all benefit—the business' employees keep their jobs, the government receives income taxes on business profits, and the families retain their livelihood.

The bill requires heirs to participate in the family business. These participation rules are deliberately flexible and recognize that different family businesses need differing levels of participation by heirs.

The estate tax is not a Democratic or a Republican problem, or one that affects only rural or urban families. There are farmers, ranchers, or other family businesses in each State that would benefit from this legislation.

This bill provides the critical relief needed for American families' businesses. I urge my colleagues to support this effort, and I hope that Congress will act expeditiously on this important legislation.●

By Mr. MCCAIN:

S. 242. A bill to require a 60-vote supermajority in the Senate to pass any bill increasing taxes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

TAX FAIRNESS AND ACCOUNTABILITY ACT OF 1996

● Mr. MCCAIN. Mr. President I introduce legislation entitled the ''Tax Fairness and Accountability Act of 1997.'' This legislation requires a supermajority vote in the Senate in order to raise taxes and eliminates the 60-vote Congressional Budget Act point of order against reducing taxes. A supermajority vote requirement is the strongest possible defense for this body's spending excesses. By requiring 60 votes in the Senate to approve a tax increase rather than a simple majority, we will ensure that Congress does not balance the budget on the backs of taxpayers.

Although our national debt currently stands at over $5.3 trillion, Congress' insatiable appetite for spending has not diminished. Our inability to reach a balanced budget for the past 28 years is not due to undertaxation but rather over spending. It is time that we place limits on the ability of government to casually dip into the pockets of an already overtaxed citizenry.

According to the Tax Foundation, Americans spend more on their tax bill than food, shelter and clothing combined. This is simply outrageous. The American people cannot afford to be taxed anymore. Arizonans, for example, had to work until almost the beginning of May to pay their tax bill. Today nearly 40 percent of the American family's paycheck goes toward some kind of tax.

There have been numerous studies that show when Congress increases taxes it increases spending by a greater amount. One study by the Joint Economic Committee, showed that for every dollar that was raised in taxes, Congress spent $1.16. Thus, the deficit reduction claimed by those who support raising taxes is lost. The 1990 budget debacle is the best example of Congress' chronic disease called tax and spend. Under the 1990 budget deal Congress was supposed to cut spending but of course it never did. The tough spending caps that were put in place under this agreement, were raised by Congress in order to satisfy their insatiable appetite for spending. We must do everything in our power to find a remedy for this disease. The supermajority vote requirement is the first dose of the medicine.

This legislation is so important because politicians have forgotten whose money they are spending in Washington. Americans work very hard for the money they earn and send to Washington. Again and again studies show that people are working harder for less and are spending more time at work. In many families one or both parents must work two and three jobs just to make ends meet, leaving less and less time for family. Congress needs to take heed of these facts and recognize that families all across America are being forced to tighten their belts as the tax man continues to take an evergrowing portion of their money. Balancing the budget should require Congress to tighten their belt by reducing spending, not by asking Americans to pay more. I hope the Senate will act quickly on this important legislation.●

By Mr. MCCAIN (for himself, Mr. HOLLINGS, Mr. FORD, and Mr. GORTON):

S. 243. A bill to provide for a short term reinstatement of expired Airport and airway trust fund taxes, and for other purposes; to the Committee on Finance.

REINSTATEMENT OF THE AVIATION EXCISE TAXES

Mr. MCCAIN. Mr. President, I rise today to introduce a bill, cosponsored by Senators HOLLINGS and FORD, to reinstate the aviation excise taxes until September 29, 1997.

On December 31, 1996, the aviation excise taxes expired. The aviation excise taxes include a 10-percent passenger ticket tax, a 6.25-percent freight waybill tax, a $6 per person international departure tax, and fuel taxes imposed upon general aviation aircraft. These taxes were the principal source of revenues for the airport and airway trust fund, which funds most of the budget of the Federal Aviation Administration [FAA] and all of the FAA capital programs.

Recent estimates by the General Accounting Office [GAO] and the FAA indicate that, unless the excise taxes are reinstated, the trust fund will be out of available moneys by March or April of this year. The FAA will have to terminate spending on its capital programs—the safety and security enhancements that we have worked so hard to institute.

It is unconscionable to allow the FAA to go without money that is absolutely essential to fund the safety and security programs of the national air transportation system.

The current estimates of when the trust fund will be out of available money—which I just learned today—are much more dire than originally anticipated. There are several reasons for the unexpected worsening of the FAA's fiscal situation.

The Treasury Department may have mistakenly credited the trust fund with $1.5 billion. Under normal circumstances, there is a gap in the time between the collection of taxes on airline tickets and the payment of those taxes into the Treasury by the airlines. In addition, those taxes are first paid into the general fund before being credited to the trust fund. When the aviation excise tax expired, so did the authority to transfer the revenues from the general fund to the trust fund.

The result of this process is that billions in tax revenues from 1996 are not paid to Treasury until 1997. Because those revenues cannot be transferred out of the general fund, the trust fund may have far less money than originally estimated. The trust fund could be out of available money by March, with curtailment of spending beginning even before that time because of the stringent provisions of the Anti-Deficiency Act.

On one particular point, I want to be very clear—the taxes should not be extended for more than a few months. We have a process in place to explore alternative long-term funding mechanisms to ensure the fiscal viability of the FAA and its important safety and security missions. Until the results of those studies are available and alternative mechanisms are in place, we must ensure that adequate funding is provided for these programs.

These taxes were allowed to expire at the end of last December so that reinstatement of the taxes would count for new revenues which can be used to offset tax cuts or spending in other parts of the Federal budget. Playing budget games with these excise taxes is simply deplorable. The excise taxes paid by the users of the national air transportation system must be dedicated to that system.

Mr. President, if the situation was dangerous before, it has now reached a very critical point. We must not delay any longer. Therefore, I am introducing this bill to take immediate action

to begin the process of reinstating the aviation excise taxes until September 29, 1997. I will work closely with Senators LOTT and DASCHLE to ensure early Senate action on this vitally important measure, so that the safety of our airline transportation system is not adversely affected.

Mr. HOLLINGS. Mr. President, I rise today in support of extending the aviation ticket tax through the end of fiscal year 1997. This tax is very important to the day-to-day operation of our Nation's aviation system. Money to improve, maintain, and run our airports is 100 percent supported by fees paid by the users of the air transportation system. It is not paid for by the taxes we all pay on April 15. Every time they fly, people have been paying the user fees in the form of a ticket tax. That money has been going into the airport and airway trust fund, and the money is then disbursed through the appropriations process. We tell people to pay these fees, and we tell them we will then spend it on airports.

However, there is one small problem. The ticket tax expired at the end of 1996. Due to budget games, the money that we thought would be in the trust fund is not there. Originally we were advised that the trust fund would be broke in July, but now it appears that it will be depleted as early as March. If this situation is not corrected, millions of dollars in airport modernization projects, aviation safety enhancements, and airport security efforts will have to be delayed or terminated. The obvious answer to this untenable situation is to reinstate the aviation ticket tax, and that is why I am cosponsoring Senator MCCAIN's bill. I urge my fellow colleagues to quit playing budget games and start fulfilling Government's primary function—preserving the safety of the American people.

Mr. FORD. Mr. President, today I join my colleagues in cosponsoring a bill to reinstate the aviation ticket tax through September 29, 1997. This tax goes directly into the aviation trust fund. The tax has already expired and we cannot allow the trust fund to go broke. If that occurs, then it will be very difficult for us to continue to maintain the safety and security initiatives that are needed in order to secure and ensure the safety of our aviation system.

I do not need to remind my colleagues of the importance of aviation safety. Over the past year, we have seen too many headlines which have underscored the need for a safe and secure aviation system. I urge my colleagues to act expeditiously on this very important matter.

Mr. GORTON. Mr. President, on January 1, 1997, the aviation system in the United States received a serious blow when the aviation excise taxes lapsed. Together, these taxes—the 10-percent passenger ticket tax; the 6.25-percent cargo waybill tax; the $6.00 per person international departure tax; and certain general aviation fuel taxes—account for more than 90 percent of the revenues in the airport and airway trust fund, which funds the Federal Aviation Administration and its programs.

Without the collection of these revenues, the uncommitted balance of the airport and airway trust fund is quickly being depleted. In fact, it is running dry at a rate of $175 per second —more than $15 million every day. Yesterday, officials at the Department of the Treasury announced that if no action is taken to reimpose these taxes, the trust fund could be insolvent as early as March.

For this reason, I am pleased to join my colleagues, Senators MCCAIN, HOLLINGS, and FORD, in sponsoring the Airport and Airway Trust Fund Taxes Short Term Reinstatement Act. This legislation will extend the existing system of aviation excise taxes through September 29, 1997, and give Internal Revenue Service authority to transfer previously collected aviation excise taxes into the airport and airway trust fund.

The numerous aviation tragedies in 1996 have, I believe, lowered the public's confidence in the safety of the U.S. aviation system. While our system continues to be the safest aviation system in the world, Congress owes it to the American people to consider this legislation as quickly as possible to ensure aviation safety, security, and capital investment are not jeopardized in any manner.

By Mr. MCCAIN:

S. 244. A bill to amend the Internal Revenue Code of 1986 to repeal the increase in the tax on Social Security benefits; to the Committee on Finance.

THE SENIOR CITIZENS' EQUITY ACT

Mr. MCCAIN. Mr. President, I introduce legislation that repeals the increase in tax on Social Security benefits. The Omnibus Budget Reconciliation Act of 1993 increased the taxable proportion of Social Security benefits from 50 to 85 percent for Social Security recipients whose threshold incomes exceed $34,000—(single)—and $44,000—(couples). The legislation I am introducing today simply phases out this increase gradually over a 4-year period. In 1997, the applicable percentage would be 75 percent; in 1998, 65 percent; in 1999, 60 percent; in 2000, 55 percent; and finally in 2001, the taxable percentage would return to 50 percent.

I believe the increase in the taxable portion of Social Security benefits was blatantly unfair because it changed the rules in the middle of the game. Responsible senior citizens who had carefully planned for their retirement were penalized and saw their income fall while their marginal tax rate skyrocketed. Nearly 9,000 seniors representing 23.4 percent of recipients are affected by this provision. These Seniors relied on, and based their decisions on, the old law, and they have no recourse to go back in time to change their decisions based on the new law.

Clearly, we should be encouraging all Americans to save and invest for the future. We can no longer expect that Social Security benefits will take care of all our retirement needs. If Congress continues to change the rules after plans and investment decisions have been made, we will diminish the incentive for Americans to prepare for the future and plan accordingly.

I am consistently amazed by the perverse disincentives Congress enacts. Aside from being patently unfair, taxing 85 percent of Social Security benefits above the current income levels creates a tremendous disincentive for affected seniors to work. It simply doesn't make sense to work if every dollar you earn over the threshold drastically reduces your Social Security benefits.

I am pleased that this legislation is supported by the National Committee to Preserve Social Security and Medicare and the Seniors Coalition. I ask unanimous consent to submit their letters of endorsement into the RECORD.

The problems with this additional tax on Social Security benefits are strikingly similar to the Social Security earnings limit. I am pleased that Congress finally enacted an increase in the earnings limit last year and I hope that we will act expeditiously on this legislation.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE SENIORS COALITION,
Fairfax, VA, January 27, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the 2.4 million members of The Seniors Coalition, I would like to express our strong support for your legislation repealing the 1993 increase in taxes on Social Security benefits. While this legislation is desirable, total repeal would be preferable.

The arguments you made at the time of introduction are certainly persuasive. However, they apply as much to a tax on 50 percent of benefits as they do to a tax on 85 percent of benefits. We understand the arguments in favor of taxes on some portion of benefits, and recognize the supposed adverse revenue impacts from total repeal. Accordingly, while The Seniors Coalition would prefer to see total repeal of all taxes on Social Security benefits, we do recommend immediate passage of your bill at least rolling back the 1993 increase. We will be happy to make this case in public hearings, and you certainly have permission to use our support to promote passage of the bill.

Please let us know if there are further steps we can take to move this legislation to passage.

Sincerely,

THAIR PHILLIPS,
Chief Executive Officer.

NATIONAL COMMITTEE TO PRESERVE
SOCIAL SECURITY AND MEDICARE,
Washington, DC, January 28, 1997.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: The National Committee to Preserve Social Security and Medicare welcomes as a major step in the right direction your legislation to repeal the inequitable tax increase on Social Security benefits enacted as part of the 1993 budget reconciliation bill.

The Omnibus Budget Reconciliation Act of 1993 increased the amount of Social Security benefits subject to tax from 50 percent to 85 percent for individual beneficiaries with income above $34,000 or for couples with income above $44,000. The ''Senior Citizens' Equity Act'' would gradually phase out this increase and return the taxable percentage to 50 percent by the year 2001.

The 1993 tax increase affects not only wealthy seniors but also middle income seniors. It unfairly penalizes responsible senior citizens who planned for their retirement through employment, saving, and investment. Many National Committee Members need or want to work, but they also deserve to receive their retirement benefits. Whether the senior works out of the need for income or the pleasure of working, taxing 85 percent of social security benefits over the current income thresholds exacts a high price. The increased tax rate only discourages work and retirement savings.

Moreover, a Price-Waterhouse analysis demonstrated that the 1993 bill targeted seniors by increasing their tax burden more than non-seniors in every income category—on average twice as great for senior families as non-senior families. Middle income seniors experienced a disproportionately large tax increase under the 1993 bill. For your information, we are enclosing a summary of the Price-Waterhouse data.

On behalf of older Americans, we thank you for your work to enact this important legislation.

Sincerely,

MARTHA A. MCSTEEN,
President.

Enclosure.

BUDGET RECONCILIATION CONFERENCE AGREEMENT UNFAIRLY TARGETS AMERICA'S SENIORS

The table below, compiled by Price-Waterhouse, demonstrates that the budget reconciliation conference agreement targets seniors by increasing their tax burden more than non-seniors in every income category—on average twice as great for senior families as non-senior families.

Families in the lowest income category will receive a tax cut of 28.1% while elderly families in the same category will see a tax increase of 4.6%. Senior families in the second lowest income category will see a tax increase of 3.8% while all families in the same category will see a reduction of 1.1%. While seniors in these groups are unaffected by the increased tax on Social Security benefits, they are affected by the energy tax and receive little or no assistance from the earned income tax credit.

Middle income seniors also will see a disproportionately large tax increase. Seniors with income between $24,000 and $72,000 will have tax increases that are 2.5 to 6 times higher than non-senior families without children in comparable income classes.

Under the conference bill, seniors will face an average increased tax burden of 7.5%, more than double the 3.5% increase for non-seniors without children.

PERCENTAGE CHANGE IN FEDERAL TAXES [1] FROM RECONCILIATION CONFERENCE BILL BY 2-PERSON FAMILY INCOME CLASSES [2] BY FAMILY TYPE

[1994 income levels for 1998 proposed tax law]

Adjusted family income for 2 persons	Senior families	Non-senior families w/o children	All families
0–$12,900	4.6	−4.3	−28.1
$12,901–$23,600	3.8	0.8	−1.1
$23,601–$35,300	2.8	1.0	1.0
$35,301–$53,300	2.3	0.9	1.0
$53.301–$72,000	6.4	1.0	1.4
$$72,000 or more	9.8	6.5	8.4

PERCENTAGE CHANGE IN FEDERAL TAXES [1] FROM RECONCILIATION CONFERENCE BILL BY 2-PERSON FAMILY INCOME CLASSES [2] BY FAMILY TYPE—Continued

[1994 income levels for 1998 proposed tax law]

Adjusted family income for 2 persons	Senior families	Non-senior families w/o children	All families
All	7.5	3.5	3.8

[1] Includes all permanent tax changes in conference agreement and includes the outlay portion of the earned income tax credit.

[2] Percentage change in taxes is for all families by family size adjusted income quintiles. For example, first quindle is for families with incomes below 145% of the poverty threshold (e.g., a 2 person family income of less than $12,900).

Source: Congressional Budget Office data complied by Price Waterhouse. CBO distribution table dated August 2, 1993.

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 245. A bill to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges for the judicial district of Maryland; to the Committee on the Judiciary.

JUDGESHIP LEGISLATION

Mr. SARBANES. Mr. President, I rise for myself and my distinguished colleague from Maryland, Senator MIKULSKI, to introduce a bill crucial to the administration of justice and the economy in our State. This bill provides for two additional bankruptcy judgeships in the Federal Judicial District of Maryland. A look at the conditions currently facing Maryland's bankruptcy judges reveals the critical need for these new judgeships.

Recent years have witnessed a sharp rise in bankruptcy filings nationwide. Last year, for the first time in our history, filings during a 12-month period—June 1995–June 1996—exceeded 1 million, a 21.4-percent rise from the prior 12-month period. This trend has many causes, including greater access to credit, a lagging economy in some regions, and public and private downsizing. Such sharp increases in filings strain the ability of bankruptcy judges to administer justice promptly and effectively, and jeopardize the stabilization of creditor-debtor relations that is, after all, the goal of bankruptcy law.

No State has been more affected by these trends than Maryland. Bankruptcies there have quadrupled in the past decade. As filings rise nationwide, Maryland rates of increase have significantly exceeded Federal rates. No end appears to be in sight. Maryland filings during January-November 1996 exceeded State filings during the same period in 1995 by 36 percent; in the July-November 1996 period, State filings exceeded by 45 percent filings during the same period in 1995.

In 1991, the U.S. Judicial Conference, using a 1990 Federal Judicial Center time-management study, adopted a case-weighting system for bankruptcy judges, under which different types of cases were assigned different degrees of difficulty and overall weighted case-hour goals were established for the judges. Under this system, the average U.S. bankruptcy judge has a weighted case-hour load of about 1,250 hours per year. The Judicial Conference generally does not consider a request for new bankruptcy judgeships by a Federal judicial district unless the average case-hour total for the district's judges exceeds 1,500.

Given these yardsticks, the burdens facing the district of Maryland's bankruptcy judges are truly astounding.

In 1993, the national weighted case-hour average was 1,362 hours; by contrast, the Maryland average for that year was 59 percent greater—2,168 hours.

In 1994, the national average was 1,227 hours; the 1994 Maryland average was 75 percent greater—2,143 hours.

In 1995, the national average was 1,149 hours; the 1995 Maryland average was 72 percent greater—1,982 hours.

In 1996, the national average was 1,272 hours; the Maryland total for that year was 75 percent greater—2,230 hours.

So for each of the last 4 years, the average weighted case-hours for Maryland's bankruptcy judges have exceeded by a wide margin not only the national average, but also the 1,500-hour yardstick used by the Judicial Conference to rate requests for additional judges.

Other States have faced temporary overloads, but only Maryland can claim the dubious distinction of having one of the Nation's most overworked bankruptcy courts for each of the last 4 years. In fact, only the District of Maryland has ranked in the top 3 among the 91 Federal judicial districts during each of the 8 biannual evaluations of bankruptcy judges' case-hours since September 1992.

This situation cries out for remedial action. Recognizing as much, the Judicial Conference recommended to the 104th Congress that Maryland receive an additional bankruptcy judgeship. Unfortunately, this proposal was not enacted into law and, as a result, the problem has worsened considerably.

I have cited data on increased bankruptcy filings in Maryland during late 1996. If Maryland received one additional bankruptcy judge tomorrow, the case-hours per judge in the district would still be 1,784, 141 percent of the national average and well in excess of the 1,500-hour mark used to rate a district's need for new judges.

In fact, even if Maryland received two new bankruptcy judges, its per judge caseload would still exceed the national average by 18 percent. To place Maryland at the national average, three additional bankruptcy judges would be required. Yet this bill adds only two judgeships, the minimum response according to those most familiar with the problem. This is the number recommended to the Judicial Conference by the Fourth Circuit Judicial Council, and I fully expect the Judicial Conference to include two new Maryland judgeships in its spring recommendations to Congress.

New judgeships are essential not only for effective judicial administration,

but also for Maryland's economy. Bankruptcy laws are crafted to foster orderly, constructive relationships between debtors and creditors during times of economic difficulty. This in turn results in businesses being reorganized, jobs—provided by creditors and debtors—preserved, and debts managed fairly. Overworked bankruptcy courts have a destabilizing effect on this system.

Consider an example. Bankruptcy law provides debtors temporary relief from the claims of creditors, allowing the debtor to adopt a reorganization plan, thereby improving its chances of recovery, and keeping creditors from cutting in line in front of other creditors who have priority claims on debtor assets. But the law also allows a court to grant creditors relief from a stay where the creditor shows that its claim will not receive adequate protection under normal procedures. Under this procedure, a court must hold a hearing 30 days after an application for relief from the stay, or automatically grant relief.

Because of the importance of these hearings, Maryland's bankruptcy judges routinely set aside 1 day per week to conduct them. One such judge, on December 6, 1996, had on his calendar 125 motions for relief from stay, a caseload that obviously precludes these cases from being fully heard. Thus, creditors seeking to cut in line, to the detriment of the debtor, other creditors, and the orderly administration of the bankrupt estate, may file for relief from stay, knowing that the case will not likely be heard and that the creditor will receive automatic relief under the law. Failure to hold a timely hearing may result in the inability of a debtor to reorganize, or in the cheating of other worthy creditors.

Similarly, the extreme caseloads faced by Maryland's bankruptcy judges allow dishonest debtors to dissipate assets, again at the expense of worthy creditors.

In short, the inevitable delays occasioned by the lack of judges harm both creditors and debtors, thereby imperiling businesses and the people employed by them. Is it any wonder that private bankruptcy practitioners and business groups also support additional bankruptcy judges for the District of Maryland? To quote Susan Souder, president of the Maryland Federal Bar Association, ''Maryland citizens, businesses, and lenders should be entitled to the same protection of the courts as their counterparts in other States.'' Currently they do not receive such protection. Two new bankruptcy judges in the District of Maryland are imperative if we are to address this critical problem.

In closing, let me commend the dedicated efforts of Maryland's four sitting bankruptcy judges—Chief Judge Paul Mannes and Judges Duncan Kier, James Schneider, and Steve Derby. Their dedication to the administration of justice is especially impressive given the extraordinary burdens placed upon them.

Ms. MIKULSKI. Mr. President, I am pleased to join with my colleague, Senator PAUL S. SARBANES, in sponsoring this important legislation. This bill would authorize the appointment of additional bankruptcy judges for the state of Maryland.

Bankruptcy filings nationwide have dramatically increased. In my State of Maryland, over 20,000 individuals and businesses filed bankruptcy last year. Unfortunately, bankruptcy filings have hit a peak nationwide with both individuals and businesses seeking relief from financial debt. While the economic climate in Maryland is much better than in many parts of the country, the recent recession has had an impact on consumers in my State.

This bill will give relief to bankruptcy judges, who hear cases in Maryland. These judges have had a growing caseload to process. This is good news for consumers, who are seeking a reorganization of their debts and creditors seeking to protect their rights. It is critical that consumers are able to have their bankruptcy petitions processed in a timely manner. For the debtor seeking to protect his home under a chapter 13 filing, this bill will help expedite the process and allow the bankruptcy judge to give full consideration to the petition.

Maryland's bankruptcy judges have had to struggle to keep up with the growing docket. Because of the current heavy caseload, judges cannot schedule hearings in a timely manner. This adversely affects the debtor's reorganization and delays distributions to creditors.

The District of Maryland currently has four bankruptcy judges. The Judicial Conference recommended the authorization of an additional judge. Their findings were based on the weighted caseload per judge, which is a good indicator of a judge's workload.

Maryland's judges are working strenuously in the best interests of both debtors and creditors. But, their caseload requires additional assistance. Maryland needs at a minimum one more bankruptcy judge, but would prefer two more judges.

Judges from other districts have helped Maryland's bankruptcy judges. However, these judges have had to struggle with their own increasing caseloads.

The Judicial Conference found that Maryland's judges have a caseload per judge that is 70 percent above the national average. Clearly, the bankruptcy judges in Maryland's district are overwhelmed by the caseload. Even with the addition of another bankruptcy judge, Maryland's judges would still have a caseload that is above the national average. So, I hope we will be able to provide two additional slots.

I hope my colleagues will support this legislation. It is important for consumers and creditors to process their claims. It is also important to provide equity in handling the caseload in Maryland's bankruptcy courts.

By Mr. GREGG:

S. 246. A bill to amend title XVIII of the Social Security Act to provide greater flexibility and choice under the Medicare Program; to the Committee on Finance.

MEDICARE LEGISLATION

Mr. GREGG. Mr. President, this piece of legislation which I have just sent to the desk is an update of the legislation which I introduced last year to address what is obviously one of the most critical issues which we face as a Congress, and that is the question of the solvency of the Medicare trust funds and the proper way to deliver health care to our senior citizens.

Last year the bill that I am introducing was basically used as the core concept for the structural reform which was included in the balance budget bill which was passed by this Senate and by the Congress and sent to the President, which he unfortunately decided to veto.

The bill that I have just introduced is an attempt to once again bring forward what I consider to be a number of very constructive and important initiatives in the area of making Medicare a more effective system of health care for our senior citizens.

We have all heard the facts, the facts being that the Medicare system is broken, that it is not only broken but that it is headed aggressively toward bankruptcy, that this year it lost $9.2 billion or spent $9.2 billion more in the part A trust fund than it had taken in, that the losses are increasing and will be more than $40 billion annually by the year 2000, and that, as I mentioned, the part A trust fund in Medicare will be broke, will be insolvent as of the year 2001, the early part of 2001, actually January.

I think the actuaries may have fudged a little bit there so they would not have to say 2000. I think we are going to find quickly that the insolvency of the trust fund is going to occur in the year 2000, which is not very far away from us.

What happens when the part A trust fund goes insolvent? Basically, the senior citizens do not have a health care system and do not have an insurance system. There is no provision in the law today that allows us to supply health care if there are no funds to pay for it in the part A trust fund. So the system will literally not exist, and senior citizens will be without a health insurance system.

We should have addressed this last year, of course. And there was an attempt to address it last year. But because of the politics of the season, because we were in an election year—both for this Congress and for the Presidency—it was not addressed, even though sincere attempts were made from this side of the aisle.

Those sincere attempts included, in significant part, the bill which I have

just reintroduced. But they were confronted by an opposition which demagoged the issue and said that the proposals to try to bring about solvency in the Medicare part A trust fund were actually going to undermine that system when in fact what is undermining the system is the pending insolvency of the trust fund.

President Clinton, this year, to his credit, has decided to step up to the issue of Medicare or at least said he is going to publicly, and suggested that he will propose $138 billion in savings in the Medicare accounts.

Of course, last year when Republicans proposed savings in the Medicare accounts, they were accused of cutting Medicare. I will not use that term because I believe that we need to pursue an effort of constructive dialog here. But it is ironic that this year the President would be calling his proposal to save $138 billion as a constructive attempt to address Medicare when last year it was characterized as a savaging and extreme act, both by members of the President's party and by the Vice President, when we proposed savings not much higher than what are being proposed by the President today.

Unfortunately, in proposing his $138 billion in savings, the President has used a lot of old ideas and what you might call attempts to address the Medicare system at the margin. Unfortunately, also, although not accounted for allegedly in the $138 billion of savings, he has also used a massive bookkeeping gimmick of moving home health care out of the part A trust fund allegedly into the part B trust fund, so actually it is under the taxpayers of America and into the general fund. It is an incredible act of flim-flam and one which hopefully will not be accepted by this Congress.

Independent of that, the real problem of the $138 billion is not that it is inappropriate; it is that it does not address the underlying structural problem of Medicare. It addresses lower payments to providers, mostly. But the problem of Medicare is not the extra dollar we are paying to this provider or the extra 5 percent we are paying to that provider, it is the fact that it is presently structurally not supportable, the fact that the costs of Medicare are simply going up much faster than the cost of the Government generally and the rate of inflation. Not only generally, but also the rate of inflation in the health care industry.

The system is designed as a 1960's automobile. It was created in the 1960's. In the 1960's it was not a Cadillac system. Everybody knows that. It was probably an Oldsmobile. But it is the exact same Oldsmobile designed in the 1960's that is now on the road in the 1990's. It has been patched and repaired and fixed up here and there, but we are still driving down the road in the 1990's in a 1960's car. It is not working. It is not working because it does not acknowledge the fact that the health care delivery system in this country has changed fundamentally since the 1960's.

In the 1950's and 1960's most people had a doctor by name, an individual. Most people pursued what was known as fee-for-service medicine where they hired their doctor. Their doctor referred them to another doctor if they had a problem. They hired that doctor, and they went around hiring individual doctors. Today, health care is not provided that way in the private sector, or, for that matter, in the public sector, if you are a member of the Federal Government. Today, the way it is provided, usually you have a prepaid plan where you pay an amount upfront and you participate in a plan that provides you a variety of options with a variety of different physicians to go to. It may be in the form of an HMO or PPO or PSO, or it may be in the form of some hybrid, but there are usually a variety of different ways you get health care. Only rarely today in the private sector and in the Federal employee sector is that health care provided in the manner of going out and hiring an individual physician and then moving forward on a fee-for-service basis through the system.

Yet, we still have Medicare delivering the vast amount of its care, the vast amount of its service, under the fee-for-service system, which has created an inflation factor in the Medicare system in the cost of delivery of that system which is basically making it unaffordable and leading to the bankruptcy of the part A trust fund. Because there is no competition today in the senior citizens' health dollars, because the system remains a closed system where fee-for-service really is only the viable way—there are a few HMO's, but they are very limited in their applicability—then, as a result, we have not brought the market force into the system, we have not brought efficiencies into the system, and we have not seen occur in Medicare what has occurred in the general health care delivery system in this country.

Over the last 3 years, the rate of inflation of health care costs in this country, the inflationary rate of growth of health care costs in this country, were less than the general rate of inflation. The general rate of inflation was about 3 percent. The rate of growth of health care costs was below that number in the last 3 years in the private sector. Yet, in the Medicare system, the rate of growth of health care has remained about 10 percent.

What my legislation does essentially is give seniors more options. That is why it is called choice care. It says to senior citizens, you can go out in the marketplace and participate in the system you presently have if you want to, in the fee-for-service system. There is no reason you cannot stay in the system you are presently in, or, alternatively, you can go into one of the other delivery systems—HMO, PPO, or PSO—whatever you want to pursue. It gives the senior citizen, if you want to simplify it, it gives the senior citizen the same options, essentially, that a person who works for the Federal Government has who is under the Federal employee health benefits program. I, as a Member of Congress, have an option to choose a number of different health care plans. Why should not the senior citizens have that same option?

Basically, we asked that question, and we say they should. They should. Not only would it be more advantageous for a senior citizen to be able to go out and pick any number of health care programs, but it would be more advantageous for us, the Federal Government, and for the taxpayers to have those options, because we would bring competition into the system and hopefully, as a result, bring market forces into the system and, as a result, help to reduce the rate of growth of health care costs to something closer to what we are seeing in the private sector.

We never expect that a program designed for seniors will have the same rate of growth of health care costs as the private sector because seniors, regrettably, have more health problems. We know we can do better than a 10-percent annual rate of growth. In fact, to make the trust fund solvent, we do not have to get to the private sector rate of growth. We do not have to get to a 3 percent or less rate of growth. We can make the trust fund solvent with rate of growth somewhere between 6 or 7 percent annually.

We are only talking about reducing the rate of growth of the Medicare trust fund by 3 percent; we are talking about continuing to allow it to grow by 6 to 7 percent. This is a huge increase, a huge amount of new dollars flowing into the health care system every year. It is a result of the fact we are able to still balance the trust fund and make it solvent with that type of rate of growth that we create a huge marketplace incentive for people to compete for senior dollars in health care. It is that desire for competition, that use of competition which will lead us to a more competitive system, a more efficient system, and for a system which will actually deliver better health care to seniors.

We put some protections in here, also, to make it clear that seniors are not giving up anything by participating in choice care. First off, as I mentioned, they have the right to stay with fee-for-service, their present plan, if they want to. Second, any plan that wants to compete for a senior citizen dollar must provide the core services which are presently provided under the Medicare system. You may say, if that is the case, why are they ever going to be able to charge less if they have to provide the same amount as the senior presently gets? It is called the marketplace. There are ways to provide the same services and pay less for them and have them cost less by having more efficiencies in the provider. The

marketplace will produce that sort of efficiency and you will have less costs.

Also, we give seniors the right to opt out if they choose another type of health care delivery service. If they are uncomfortable with it, they can disenroll from that service.

Furthermore, and most importantly, we do not allow people who are competing for the seniors' dollars to discriminate. In other words, if you are a provider and you are going to make yourself available to supply senior citizens with health care, you have to take all comers. There cannot be any attempt to screen out people because they have preexisting conditions. So it will not have adverse risk selection.

The practical implications of this are that a senior will annually receive a booklet or proposal, much like we receive as Federal employees, which will outline the various health care systems which are available to that senior. What I see happening is that there are going to be a lot of health care providers who will say, ''Hey, we can provide that senior with the same health care they are getting today,'' because of the 6 to 7 percent annual increase. ''We can provide that senior with that same health care and throw some other benefits in, too. We can offer prescription care, we can offer eyeglasses, we can offer a variety of things that are not presently available under Medicare because we know that we can more efficiently deliver the service than the senior is presently getting on fee-for-service.''

What I expect will happen and what I am pretty confident will happen and what people who have looked at this in depth say will happen is that the marketplace will bring forward a variety of different options from which seniors will have a choice. At the same time, we will give seniors an incentive to go out and look at those choices because what we will say to seniors is, ''Listen, today, we pay about $4,800 a year for your health care per senior. You, senior citizen, to the extent you choose a health care delivery service,'' which, again, has to have the core delivery services that you presently get so they cannot reduce their price because they are not delivering you what you need,'' to the extent you choose a delivery service which costs less than $4,800, we will let you, the senior, keep 75 percent of the savings.''

So if the annual premium of an HMO supplying seniors with the same service is say $4,500 and the senior chooses to go with that HMO because the senior maybe has a family member—a son or daughter who is working and a member of that HMO—and the son or daughter say, ''They can give us pretty good service,'' that senior will get to keep the difference between $4,800 and $4,500, or $300. That senior will get to keep 25 percent of that difference, and 75 percent will be returned to the trust fund.

So what we have created here is a market event where a senior citizen can get a savings by shopping thoughtfully and efficiently for their health care, and where the health care providers have an incentive to come in and compete for that health care dollar. What does that cause? That causes efficiency. It causes the marketplace to create efficiency. We have learned that the Federal Government can't produce efficiency. We have learned that by having a nationalized system, which is what Medicare is, you do not have an efficient system; that you have an inefficient system. What we know from experience is the way you create efficiency and lower costs is by having competition and having a playing field where the consumer is protected, which is exactly what this does.

So this proposal would give the seniors an incentive to be thoughtful purchasers, and would give the marketplace an incentive to come in and be thoughtful competitors, or strong competitors for the senior citizen dollars.

Another issue that is raised and is legitimate is the question of reimbursement and how we are going to reimburse these provider groups. The President has proposed that we cut the rate of reimbursement for HMO's from 95 to 90 percent arbitrarily across the board. I am not going to criticize the President for trying to address the cost of growth. I think that is important. But there is a better way to do this. The fact is that the reimbursement system as it is presently structured is out of kilter. For health care services which are identical—and in some cases they are better in the lower-cost States than the higher-cost States—the reimbursements are not identical. They are totally out of whack.

For example, there is a beneficiary reimbursement in South Dakota of about $200 per person. But on Staten Island it cost about $767 per person. Studies by Dr. Weinberg at Dartmouth, and a number of other professionals, have concluded that the service isn't any better but that it is simply an issue of regional disparity. And in fact in New Hampshire, which happens to be one of the lowest-cost health care States in the country—a little more than South Dakota but not much more—we are rated the No. 1 State in the country for health care delivery systems. Yet, our delivery systems are done at a cost which is one-third the price of what it cost on Staten Island.

So this regional disparity has basically penalized States and areas that are trying to be efficient and effective in delivering their health care.

Take Hawaii, for example. Hawaii has one of the highest costs of living in the country because of the fact that it is an island, and everything has to be shipped in, I guess. But at the same time Hawaiian medical care is one of the most efficient cost delivery systems in the country. So they are penalized. Those health care systems are penalized by a lower reimbursement rate.

What we suggest—and this is a complicated issue—we are suggesting that as we go forward with this Choice Care proposal that we begin to level out the playing field on reimbursement so that we no longer are rewarding the inefficient, and so that the efficient receive the proper payment. We do this by not cutting anybody because we are increasing funding for Medicare throughout this period by 6 to 7 percent. We do not have to cut anything. What we are going to do is slow the rate of increase to those areas that have a much higher reimbursement and accelerate the rate of increase to those with lower reimbursement areas.

As a result, we will at some point—there is a timeframe in our bill that allows for this—about 5 to 7 years from now get to a period where we have everybody in a much narrower band of reimbursement which leads to a much more efficient market.

So the underlying theme here is simple. Under the Choice Care plan, which as I mentioned was adopted in significant proportions, or the concepts were adopted in significant proportions in the last budget, seniors should be given essentially the same choices that members of the Federal Government have and that the average working American has—the ability to go out in the marketplace and choose from a variety of different health care providers. And in making that choice they should be given an incentive to be efficient.

So we are going to reward them by giving them a return on the amount that they save, and at the same time we are going to say to the marketplace we are no longer going to disproportionately reward inefficient areas at the expense of efficient areas, and at the same time we are going to say to the seniors, ''You have a variety of options to choose from. But, if you want to stay where you are, and you are happy where you are, you can do that.''

So how does this help the Federal Government in the end? How does this get Medicare costs under control? It basically amounts to a major structural reform of the system. It is not playing at the edges the way the President proposes. It is a major structural reform. In the end we will have brought the marketplace into the system, we will have created an atmosphere where seniors will be looking at a variety of choices for health care, and where efficiency will be something that will have to be undertaken by the provider groups. They are going to be able to get the seniors' participation, and those seniors today who are in their fee-for-service probably are not going to opt into this overly aggressively because they were raised in the 1950's and 1960's with fee-for-service. We understand that. But what we also understand is that the coming generation of seniors has been in a workplace environment where the variety of health care service delivery system has been available to them. They are comfortable with a variety of health care delivery systems. And as such they are not going to shy away from taking advantage of the marketplace.

So, as we go down the road we will get the type of savings we need. We will see that rate of growth reduced from 10 percent back to 6 or 7 percent. That is still a substantial rate of growth. Then we will have put in place something that can give us a long-term lasting hope for restructure of reform, or reform in the Medicare trust fund in order to avoid the bankruptcy. If we do not do this, the trust fund part A goes bankrupt. It is that simple. That is not acceptable.

If we do not undertake structural reform, if we simply undertake the reform at the margins, like the President has proposed, we put off that bankruptcy maybe for 2, 3, or 4 years. But it still occurs. Our obligation as policymakers is to make the more fundamental broader changes that are needed for a long-term solution to this problem. And this is one major step in that direction.

Mr. President, I appreciate your time and yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President I really enjoyed the remarks of my distinguished colleague from New Hampshire. He makes a lot of very telling and important points in the field of health care. I think he deserves to be listened to, as certainly the distinguished doctor sitting in the chair, the Presiding Officer. As everybody knows, he has great interest in health care matters.

And I just want to say that I appreciate the work of both of these Senators, the Senator from New Hampshire and the Senator from Tennessee, in this area.

By Mr. WYDEN (for himself and Mr. GORDON H. SMITH):

S. 247. A bill for the relief of Rose-Marie Barbeau-Quinn; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

● Mr. WYDEN. Mr. President, I introduce private relief legislation for Ms. Rose-Marie Barbeau-Quinn. Senator Hatfield championed Ms. Barbeau-Quinn's cause in the 104th Congress, and at his request and the request of many in the Portland area, I and Senator SMITH are now picking up the legislation to make Ms. Barbeau-Quinn a citizen of this country.

Ms. Barbeau-Quinn, a native of Canada, is a long time member of the Portland community and resident of Oregon. She lived in Portland with her now deceased husband, Mr. Michael Quinn since 1976, and together they ran the Vat and Tonsure Tavern, a unique and respected restaurant in the Portland area. While Ms. Barbeau-Quinn and her husband lived together for over 16 years, they did not actually marry until shortly before Michael Quinn's death in 1991.

Since Oregon does not recognize common law marriage, and Ms. Barbeau-Quinn was not married the 2 years required by immigration law, she has not been able to file for permanent residency in this country. While I do not intend to introduce many private relief bills, because of Senator Hatfield's involvement in this matter and Ms. Barbeau-Quinn's compelling case, I think it is appropriate that the Senate pass legislation to ensure that Ms. Barbeau-Quinn remains a member of the Portland community for many years to come.●

By Mrs. FEINSTEIN (for herself and Mr. REID):

S. 248. A bill to establish a Commission on Structural Alternatives for the Federal Courts of Appeals; to the Committee on the Judiciary.

THE STRUCTURAL ALTERNATIVES FOR THE FEDERAL COURTS OF APPEALS COMMISSION ESTABLISHMENT ACT OF 1997

Mrs. FEINSTEIN. Mr. President, today, with my distinguished colleague, HARRY REID, I am introducing S. 248, a bill to establish a Commission on Structural Alternatives for the Federal Courts of Appeals.

The Commission proposal emerged last year during a debate over a controversial bill to divide the Ninth Circuit Court of Appeals. As a result of that discussion, it became clear to me and the majority of my colleagues that there was no consensus on how best to resolve the problem of caseload growth in the U.S. courts. The idea of a study commission gained broad support and has independent merit.

Legislation to form a study commission was approved twice by the Senate in the 104th Congress: in March 1996 as a stand-alone bill, and later in the session as part of the Senate amendments to H.R. 3610, the Omnibus Consolidated Appropriations Act of 1997. Although the Senate amendment was not included in the final version of H.R. 3610 signed by the President on September 23, 1996, the initial funding for the Commission was appropriated therein. The authorizing legislation deserves a speedy enactment by the 105th Congress.

The Commission legislation we are offering today is evenhanded, fair, and genuinely bipartisan. It will consist of two members appointed by the Chief Justice of the United States, two members appointed by the President, two members appointed by the majority leader of the Senate, two members appointed by the minority leader of the Senate, two members appointed by the Speaker of the House of Representatives, and two members appointed by the minority leader of the House of Representatives.

The object is to have a balanced group of individuals who will examine the issues fairly and give full consideration of all relevant perspectives. With a balanced membership, we can be confident that the Commission's recommendations will be given due weight by all three branches of the National Government.

BROAD SUPPORT FOR A STUDY COMMISSION

The proposal for a study commission on Federal appellate structure has won enthusiastic support from prominent judges and scholars.

To underscore the need for this legislation, as well as its importance, I can do no better than quote from Judge Diarmuid F. O'Scannlain, who has served with distinction on the Ninth Circuit since his appointment by President Reagan in 1986. In a recent symposium in the Montana Law Review, Judge O'Scannlain wrote in favor of the study commission bill offered last year:

> As one member of the Court of Appeals most affected, I view [a study commission] as a far superior alternative to [a bill that] would have immediatedly divided the Ninth Circuit. The [study commission] bill also provides an historic opportunity to develop a comprehensive blueprint for the structure of the federal courts of appeals generally, and the Ninth Circuit in particular, for the 21st Century. No comprehensive review of the structure of the federal courts has been undertaken since the study chaired by . . . Senator Roman Hruska of Nebraska in the 1970s (the ''Hruska Commission''), and in my view such a review is most timely.

Chief Judge Proctor Hug., Jr. of the Ninth Circuit, also writing in the Montana Law Review symposium, observed:

> Based upon its prior experience with the academic community and the benefits obtained from their insightful recommendations, the Ninth Circuit strongly supported Senator Dianne Feinstein's proposed legislation to establish a study commission . . . to take a full and fair look at the entire federal appellate system and to make recommendations to the Congress for how and where to make reforms.

Another participant in the symposium was Prof. Arthur D. Hellman of the University of Pittsburgh School of Law, a leading national authority on the Federal appellate courts. Professor Hellman wrote:

> . . . Congress should proceed systematically by creating a new, focused commission to examine the problems of the entire appellate system and make recommendations that will serve the country for the long run.

In a similar vein, Prof. Carl Tobias of the University of Montana Law School, a respected scholar of Federal procedure, has written in the National Law Journal:

> A preferable route would be to appoint a national commission to seek solutions to the problems of the appellate system as it is currently constituted, and ways of handling its increasing dockets with efficiency. Careful study should provide sufficient information to make a fully informed decision . . . The time is now ripe for Congress to authorize such a study, rather than engage in piecemeal reform.

THE COMMISSION

Our bill directs the Commission to study ''the present division of the United States into the several judicial circuits.'' Next, the statute calls for a study of ''the structure and alignment of the Federal Court of Appeals system, with particular reference to the Ninth Circuit.'' Finally, the Commission must ''report to the President and the Congress its recommendations for such

changes in circuit boundaries or structure as may be appropriate for the expeditious and effective disposition of the caseload of the Federal Courts of Appeal, consistent with fundamental concepts of fairness and due process.''

The language of the statute leaves no doubt that one task of the Commission would be to undertake a careful, objective analysis of the arguments raised by proposals to divide the ninth circuit. However, it is equally clear that the Commission's mandate is not limited to the ninth circuit or to the delineation of circuit boundaries generally. This reflects the fact that circuit alignment is one of a set of interrelated structural arrangements that govern the operation of the courts of appeal.

To ensure expeditious consideration of the issues at all levels, S. 248, contains three important deadlines. Section 2(b) requires that appointment of members be made within 60 days of enactment. Section 6 requires the Commission to submit its report within 2 years of the date on which its seventh member is appointed. Section 7 requires that the Senate Judiciary Committee act on the report no later than 60 days after submission.

There are three reasons why the Commission should be given 2 years in which to carry out its work. First, before the Commission can formulate its recommendations, it will have to secure informed, objective answers to specific and difficult questions. These questions cannot be answered merely through contemplation, or even by consultation with experts. They will require research, and research takes time.

Second, an important part of Commission process is obtaining public input. In particular, at an appropriate stage in its deliberations, the Commission should issue a draft report for public comment. Responses from constituencies should be taken into account in formulating the final recommendations.

Third, the 2-year timespan is supported by the experience of other commissions, such as the Hruska Commission of 1973 and Bankruptcy Commission of 1994. It may be argued that if, as with the Hruska Commission, the initial deadline proves unworkable, Congress can always extend it. But that is the wrong lesson to be drawn from the experience of the Hruska Commission. It is far more efficient to provide initially for the 2-year lifespan than to put everyone to the time and effort of seeking an extension later.

Our proposed Commission will be fair, and it will have sufficient time to conduct a credible study. The Commission will help determine the proper course for the future of our national judiciary, and therefore I urge my distinguished colleagues to support S. 248.

Mr. REID. Mr. President, the issue of whether to divide the Ninth Circuit Court of Appeals is one in which I have been very involved with since the initial proposal. I made clear my opposition to the proposed split last year, and I am still convinced that such an unnecessary and costly venture is unwarranted. However, I have agreed to the establishment of a commission to study the judicial circuits, the structure and alignment of the Federal court of appeals system, and to report to the President and the Congress its recommendations for such changes in the circuit boundaries or structure as may be appropriate for the expeditious and effective disposition of the caseload of the Federal courts of appeal.

Today, Senator FEINSTEIN and I are introducing a bill to create this commission. The commission makeup is fair, evenhanded, and bipartisan. It will consist of two members appointed by the President, two members appointed by the Chief Justice of the United States, two members appointed by the majority leader of the Senate, two members appointed by the minority leader of the Senate, two members appointed by the Speaker of the House of Representatives, and two members appointed by the minority leader of the House of Representatives. I think this is the most fair and equitable way to study this issue.

In today's environment of fiscal belt tightening, it is crucial that we carefully scrutinize proposals such as splitting a judicial circuit. It is necessary that we curtail the development of costly Federal proposals and engage in studied cost-benefit analysis before we create new programs. There are many unanswered questions in splitting the Ninth Circuit Court of Appeals. What are the costs associated with such a division? Will this require the construction of new courthouses and hiring of additional judges? If so, how many and how much? And what are the benefits of a division? The commission we propose will answer all of these questions before we even consider any possible division. Further, the commission will examine the structure and function of all the Federal courts of appeal.

This is a reasonable proposal for the establishment of a vital commission. I urge my colleagues to support this bill.

By Mr. D'AMATO (for himself, Ms. SNOWE, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. MOYNIHAN, Mr. DOMENICI, Mr. FAIRCLOTH, Ms. MOSELEY-BRAUN, Mr. BIDEN, Mr. INOUYE, Mr. MURKOWSKI, Mr. DODD, Mr. KERREY, Mr. HATCH, Mr. GREGG, Mr. SMITH, and Mr. FORD):

S. 249. A bill to require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer, coverage for reconstructive surgery following mastectomies, and coverage for secondary consultations; to the Committee on Finance.

THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1997

Mr. D'AMATO. Mr. President, I come here today and rise to introduce a bill that I think is unfortunately necessary, unfortunately because HMO's and insurance carriers—and I don't mean this for all, but we are seeing a growing tendency—are doing the kinds of things nobody would have imagined, and they are doing it and interfering with good, sound medical care, because they are more interested in the bottom line.

Indeed, there are some who are already beginning to drumbeat against health maintenance organizations per se, and we would be losers, because there are important innovations and savings that can be made, but those savings and innovations should not be made at the expense of the traditional and important and sacred—sacred—right that a patient should have with their physician.

Maybe it takes the specter of cancer and breast cancer, in particular, because people are concerned and it is a fright, to get people to focus on what is taking place, and that is insurance carriers placing arbitrary limits on patients as it relates to the length of stay or time that they can use a medical facility, a hospital.

It is interesting and, indeed, ironic that as I make these remarks, the presiding officer who sits in the chair and presides over the Senate today is a distinguished Senator and a distinguished citizen who spent so much of his life in the area of healing and of practicing medicine and who knows better than I. I am so pleased to be able to have his counsel and to share these thoughts with him today personally.

While I introduce this legislation on behalf of 16 colleagues in the Senate of the United States and 20-plus Representatives in the House, Democrats and Republicans—totally bipartisan—I do not suggest that this is the cure-all for what we see taking place. Indeed, we have specifically limited this legislative initiative.

There were calls and outcries that HMO's and insurance carriers be required to provide at least a minimum of time as it relates to mastectomies. Many in the medical profession came forward and said, ''We think that is the worst kind of legislation. We would rather see no time, nor do we think that the health providers should be setting times.''

That is a larger debate for a larger area, but I subscribe to that, and I think that we should say very clearly here in the U.S. Senate and Congress, By gosh, insurance carriers should not be saying, ''If there is a particular disease, we are only going to insure you up to X hours.''

What happens if there is a complication? It may be that a procedure, whether it be a mastectomy or whether it be prostate cancer or whether it be some other disease, that ordinarily, under normal circumstances, there is an average length of time. It might be 1 day, 2 days, 3 days. But who is to say, if there is a complication and it takes 6 days or 2 weeks, are we then going to

say something that ordinarily would be covered in insurance policies, that somehow because someone has adopted a rule—and why they have adopted that rule; I don't know how they can practice that, they are not practitioners—that we are going to exclude you if you go over that period of time?

This is wrong. This should not be the way in which we attempt to manage health care costs, and it is, I believe, taken by many people to mean the greed of the industry.

The fact that there are now today many in the HMO business, some almost startup companies overnight, making millions and millions of dollars—I am not against profits, but if you are going to make profits by denying adequate basic medical treatment, then that is wrong, that is immoral and we in the Congress of the United States have a business to do something about it.

I know there are going to be those who say let the marketplace work, let free competition work. Well, that is naive. To simply say that by insisting on a minimum standard, that minimums be observed, that no one interferes with the patient and that very special relationship with the doctor—we are now seeing that taking place, because there are those carriers who are punishing doctors, punishing them by denying them adequate compensation or penalizing them by denying them moneys they otherwise would have because they recommend treatments that may cost that insurance carrier more but which they feel are necessary for the safety, health, and protection of their patients.

How dare we permit and countenance that kind of thing today? We know it is going on, and to the health maintenance organizations and to the insurance carriers who say it is not going on and this legislation is not necessary, well, if it is not necessary, don't oppose it. It is that simple. If you are not penalizing doctors or rewarding them because they hold back on treatments that might cost more and which are necessary, then why should you be opposed to it? If you are not arbitrarily limiting the time that a patient may have or necessary treatments, then why would you be opposed to it?

This legislation basically says you cannot do that, you cannot prescribe 48 hours as it relates to mastectomies. You cannot deny that doctor-patient relationship by penalizing a doctor. We say you are not permitted to do that, or rewarding a doctor on the basis of cost-effectiveness.

In a third provision, we say that when it comes to the devastating disease and the specter of cancer, not only breast cancer, but prostate cancer—all cancers—that people are entitled to a second opinion. There is not anyone I know who, if they faced a diagnosis and were given a particular course of treatment that would be suggested, that they would not look for a second opinion. That is fact.

If the doctor and the attending physician recommended a second opinion, our legislation says the company must pay for that. If that physician feels that there is a need to get some specialist outside of the organization, outside of that HMO, the company must pay for that. What do we say to the average worker who has no independent resources who can't pay $500 or $1,000, or whatever it might be for that specialist, for that second opinion? You cannot have it?

So, Mr. President, we provide that with respect to this particular disease. I believe we should go further, and I think in the fullness of the discussions and the legislative actions that this Congress will undertake that we will examine this, and your committee, the Health Committee, in particular will be looking at it.

But I think certainly at this time we should begin to say, Listen, as it relates to this particular disease of cancer, where the treating and attending physician recommends a second opinion, that patient should have the ability and the right to be covered and have that second opinion.

I am going to relate two specific examples, because we have spent some time in shaping and putting together this legislation and it is by no ways written in stone or steel. It is in the sand, it is something to be looked at, something to be worked with. I look forward to the help and recommendations of the distinguished Senator from Tennessee, who presides today, on how we can improve and make this legislative effort a better one.

Last, but not least, in the area of breast cancer in particular, one of the very shattering thoughts and a fear that women live with today is the fact that they may be one of the eight who is diagnosed with breast cancer, and that is a national average. They are concerned about the treatment that might permanently disfigure them and, therefore, it becomes absolutely imperative that, as a nation, we indicate to people that there are courses of treatment that cannot only save a life but, indeed, do not have to be disfiguring, and in this way, as it relates to breast cancer in particular, have more women coming in for early diagnosis and treatment and avoid, No. 1, death, and, No. 2, disfigurement, because we provide that breast cancer reconstruction and that reconstructive surgery not be considered cosmetic.

If someone loses an ear, that surgery is not considered cosmetic. However, incredibly, we find insurance carriers denying reconstruction on the basis that it is cosmetic. So we create a double tragedy by denying women who have that disease and who don't have the ability to pay for reconstruction the ability to have that. And, second, and probably just as important, there are many who will not go for early diagnosis, and, therefore, the treatment is not available to them until it is too late. That has to be avoided.

So we provide that HMO's and insurance carriers must make this available. It is not an option that they can just simply turn away.

The title of our bill is called the ''Women's Health and Cancer Rights Act of 1997.''

Mr. President, I rise today to introduce the Women's Health and Cancer Rights Act of 1997. This important reform legislation will significantly change the way insurance companies provide coverage for women diagnosed with breast cancer. The problem of the so-called drive-through mastectomies must be eliminated from our society. Physicians must not be forced to have their best medical judgment questioned by insurance companies who put their bottom line before a woman's health. The women of New York and America deserve better.

Today, there are 2.6 million women living with breast cancer. In 1997 alone, more than 184,000 women will be diagnosed with breast cancer and, tragically, 44,000 women will die of this dreaded disease. Breast cancer is still the most common form of cancer in women; every 3 minutes another woman is diagnosed and every 11 minutes another woman dies of breast cancer. The D'Amato-Feinstein-Snowe legislation makes critically important changes in how breast cancer patients receive medical care.

Specifically, the bill requires health insurance companies to cover an unlimited stay in the hospital following mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer when the attending physician decides a longer stay is necessary. Every physician would have the freedom to prescribe longer stays when necessary, and the confidence that insurers will not punish them for practicing sound medical treatment. My bill would make it illegal to penalize a doctor for following good medical judgment. The time for a hospital stay will no longer be an arbitrary determination made on the basis of saving money.

Another important provision of the D'Amato-Feinstein-Snowe bill ensures that mastectomy patients will have access to reconstructive surgery. Scores of women have been denied reconstructive surgery following mastectomies because insurers have deemed the procedure cosmetic and not medically necessary. It is absolutely unacceptable and wrong that many insurers deem this essential surgery as cosmetic, and it is a practice that must be changed.

The Women's Health and Cancer Rights Act also includes a unique provision for coverage of second opinions by specialists. The bill would require health care providers to pay for secondary consultations when cancer tests come back either negative or positive. This important provision will help identify false negatives as well as false positives. Additionally, if the attending physician recommends consultation by a specialist not covered by the

health plan, the bill would allow the doctor to make such a referral at no additional cost to the patient.

This legislation is particularly important for the women of Long Island. Our families have been ravaged by this horrible disease. Our grandmothers, mothers and daughters, sisters and wives, children and friends have been afflicted at rates that are unexplained and far too high.

We must continue to work together to find a cure for breast cancer. But until a cure is found, we must ensure that women receive the treatment they deserve. This legislation protects women and anyone ever diagnosed with cancer. It is the most comprehensive bill introduced in the Senate and I am proud to offer it today.

I want to thank Senator FEINSTEIN and Senator SNOWE for the contributions that they have made as it relates to helping prepare this legislation. The Women's Health and Cancer Rights Act is important. It is important again that we preserve adequate, decent, affordable medical care and not tamper with that sacred relationship that should be preserved between a doctor and his patient.

I would like, if I might, to share with the Senate the remarks of a great surgeon, Dr. Larry Norton, Chief of Breast Cancer Medicine at Sloan Kettering, one of the great cancer hospitals in this Nation. He is reflecting about a patient. I will not read all of it. He tells why, I think, this legislation is so necessary. He said:

There was a patient that I saw on a second opinion not too long ago who paid herself for a second opinion because her HMO . . . wouldn't [do that]. I saw her and told her about a therapy that was very scientifically based that we thought was superior here, in fact clinical trials have demonstrated to be superior, and it has become a standard now, throughout the United States. . . . we offered her that particular treatment.

Speaking to the person on the other end of the phone at her managed care plan, and I managed to work my way up to the physician level through several clerical levels. . . .

Here is the chief of surgery at Sloan Kettering Memorial calling an HMO to suggest this course of treatment. I want to describe what is going on. He had to call clerk after clerk after clerk, and he finally got someone who was a physician. By the way, most people cannot do that and they cannot work through that. And he was told that they would not pay for the care.

He went on to say—and this is the person on the other end:

. . . Dr. Norton, we are not saying . . .

Imagine, this is an HMO, a doctor on the other side of the HMO. He is saying:

. . . Dr. Norton, we are not saying that [it] is not the right treatment, we are just saying that we are not going to pay for it.

By the way, what I am reading to you is testimony he gave publicly about 10 days ago in New York at Sloan Memorial. He went on to say:

I put the phone down, shaking, and called her [that is, his patient] to discuss this with her, and her 10-year-old son answered the phone. I said who I was and he said, calling to his mother, ''Mommy, your doctor is on the phone.'' I knew at that moment that the discussion that she could not get the care that was appropriate was not what I was going to say. Through enormous efforts, and through the support of my terrific institution, [we] were able to provide her that care and things turned out very well for her, as we could have anticipated.

The doctor goes on to say:

The point is that there is a holy alliance between the doctor and the patient, and the entire structure of medicine is because of that holy alliance. It is a religious experience [a religious experience] to take care of a patient well and, if you feel any less motivation, you are not [going to be] doing your job as a physician. We feel that kind of motivation here. We are living in an era where a lot of steps are coming between the doctors and the patients. Their motivations are not necessarily the same motivations that have driven us to this point of advance.

What we see before us today . . .

He talks about legislation and the fact that it was a bipartisan effort to protect that relationship, that special relationship that I know that the President understands well.

Again, we are going to hear cries of intrusion, or about the marketplace. Well, since when do you tell me we do not have a right to set basic minimums? We do that in many areas. We do that as it relates to quality of food. We do that as it relates to protecting our drinking water. We certainly have a right to say you cannot interfere with that special relationship by punishing a doctor because he is giving what he feels is the proper medical advice and withholding from him and having him think that he may be penalized. That is wrong. That is wrong.

Mr. President, I want to share another experience. When we initially talked about introducing this bill, we did not talk about breast cancer reconstruction. And I got a call from the executive director of the American College of Obstetricians and Gynecologists of New York, a remarkable woman by the name of Mary McCarthy. She said, ''Senator, we've been making studies.'' She was a person who brought to our attention, Senator FEINSTEIN and Senator SNOWE, and others, the fact that there was this great problem of insurance carriers not providing for reconstructive surgery when it came to the breast and considering it as cosmetic.

Let me just read to you her words which communicate the problem. Not only is she the executive director of the American College of Obstetricians and Gynecologists of New York, she goes on to say:

I am a breast cancer patient myself. I would like to share [with you] my experiences on the three major subjects within the bill, the mastectomy surgery, the reconstructive surgery and the second opinion.

She says:

I thought I was very well informed on health care and I thought I had excellent health care coverage. Yet my own reconstructive surgery and my second opinion were both denied by my health care plan. My reconstruction was denied last April as not medically necessary.

She went on to say she was able to eventually get this surgery. She said:

I am concerned that other women do not have these kinds of resources. I would like to touch, although personal, on the importance of reconstructive surgery for women who opt to have reconstruction surgery. My mastectomy was clinically curative surgery, but my reconstruction was emotionally healing. There is no longer a reminder every day of my cancer. When I get dressed in the morning, in an intimate moment with my husband, if I have my nightgown on at home with my kids, I look normal and I feel normal. If you lose an ear or a testicle, or part of your face to cancer, there is no question that reconstruction is covered. Yet denials for breast [cancer] reconstruction are serious and they are rising.

For a disease with the magnitude of cancer, it is very important to have access to second opinions and to be able to [go] outside your HMO, if necessary, for the kind of expertise you need. To my surprise, and to the surprise of my physicians within my plan, my plan adamantly refused to authorize my second opinion. I paid for my second opinion myself, not all women have these resources . . . No family should be forced to assume this kind of responsibility.

Then she goes on to say something.

When I was in the hospital after my surgery . . . [the nurses] actually cringed [the people responsible for taking care of me] and looked upset when they changed my dressing. I spoke candidly to my husband, who is loving and caring and goes with me to most of my medical appointments, and he felt that he could not have handled the emotional or the clinical responsibility of helping with drains and bandages. The appropriate length of stay is critically needed and the language in the bill to ensure that the appropriate stay for each individual is met is vital.

What she is saying is that if she had been discharged, her husband could not have taken care of her. And you just simply cannot set a time limit.

Mr. President, I want to offer that bill. I send it to the desk with the cosponsors. I commend all of my colleagues to join in this legislative effort. It is one that we will be serious and purposeful for. I hope we can have hearings sooner rather than later.

Again, as I said, this is totally bipartisan in nature. Cancer does not look to see the politics of its victims. In particular, we address some of the major concerns as they relate to cancer. But I think problems that we have go well beyond this. This is something that this Congress should become involved in, the vital interest of the health of all of our citizens.

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. 249

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 ''Women's Health and Cancer Rights Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the offering and operation of health plans affect commerce among the States;

(2) health care providers located in a State serve patients who reside in the State and patients who reside in other States; and

(3) in order to provide for uniform treatment of health care providers and patients among the States, it is necessary to cover health plans operating in 1 State as well as health plans operating among the several States.

SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as added by section 603(a) of the Newborns' and Mothers' Health Protection Act of 1996 and amended by section 702(a) of the Mental Health Parity Act of 1996) is amended by adding at the end the following new section:

"SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER, COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES, AND COVERAGE FOR SECONDARY CONSULTATIONS.

''(a) INPATIENT CARE.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the treatment of breast cancer is provided for a period of time as is determined by the attending physician, in consultation with the patient, to be medically appropriate following—

''(A) a mastectomy;

''(B) a lumpectomy; or

''(C) a lymph node dissection for the treatment of breast cancer.

''(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

''(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

''(1) all stages of reconstruction of the breast on which the mastectomy has been performed; and

''(2) surgery and reconstruction of the other breast to produce a symmetrical appearance;

in the manner determined by the attending physician and the patient to be appropriate, and consistent with any fee schedule contained in the plan.

''(c) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of this section, a group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not modify the terms and conditions of coverage based on the determination by a participant or beneficiary to request less than the minimum coverage required under subsection (a) or (b).

''(d) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

''(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

''(2) as part of any yearly informational packet sent to the participant or beneficiary; or

''(3) not later than January 1, 1998;

whichever is earlier.

''(e) SECONDARY CONSULTATIONS.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides coverage with respect to medical and surgical services provided in relation to the diagnosis and treatment of cancer shall ensure that full coverage is provided for secondary consultations by specialists in the appropriate medical fields (including pathology, radiology, and oncology) to confirm or refute such diagnosis. Such plan or issuer shall ensure that full coverage is provided for such secondary consultation whether such consultation is based on a positive or negative initial diagnosis. In any case in which the attending physician certifies in writing that services necessary for such a secondary consultation are not sufficiently available from specialists operating under the plan with respect to whose services coverage is otherwise provided under such plan or by such issuer, such plan or issuer shall ensure that coverage is provided with respect to the services necessary for the secondary consultation with any other specialist selected by the attending physician for such purpose at no additional cost to the individual beyond that which the individual would have paid if the specialist was participating in the network of the plan.

''(2) EXCEPTION.—Nothing in paragraph (1) shall be construed as requiring the provision of secondary consultations where the patient determines not to seek such a consultation.

''(f) PROHIBITION ON PENALTIES OR INCENTIVES.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) penalize or otherwise reduce or limit the reimbursement of a provider or specialist because the provider or specialist provided care to a participant or beneficiary in accordance with this section;

''(2) provide financial or other incentives to a physician or specialist to induce the physician or specialist to keep the length of inpatient stays of patients following a mastectomy, lumpectomy, or a lymph node dissection for the treatment of breast cancer below certain limits or to limit referrals for secondary consultations; or

''(3) provide financial or other incentives to a physician or specialist to induce the physician or specialist to refrain from referring a participant or beneficiary for a secondary consultation that would otherwise be covered by the plan or coverage involved under subsection (e).''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act, as amended by section 603 of the Newborns' and Mothers' Health Protection Act of 1996 and section 702 of the Mental Health Parity Act of 1996, is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer, coverage for reconstructive surgery following mastectomies, and coverage for secondary consultations.''.

(c) EFFECTIVE DATES.—

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

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) January 1, 1998.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE GROUP MARKET.

(a) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (as added by section 604(a) of the Newborns' and Mothers' Health Protection Act of 1996 and amended by section 703(a) of the Mental Health Parity Act of 1996) is amended by adding at the end the following new section:

"SEC. 2706. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER, COVERAGE FOR RECONSTRUCTION SURGERY FOLLOWING MASTECTOMIES, AND COVERAGE FOR SECONDARY CONSULTATIONS.

''(a) INPATIENT CARE.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the treatment of breast cancer is provided for a period of time as is determined by the attending physician, in consultation with the patient, to be medically appropriate following—

''(A) a mastectomy;

''(B) a lumpectomy; or

''(C) a lymph node dissection for the treatment of breast cancer.

''(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

''(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

''(1) all stages of reconstruction of the breast on which the mastectomy has been performed; and

''(2) surgery and reconstruction of the other breast to produce a symmetrical appearance;

in the manner determined by the attending physician and the patient to be appropriate, and consistent with any fee schedule contained in the plan.

''(c) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of

this section, a group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not modify the terms and conditions of coverage based on the determination by a participant or beneficiary to request less than the minimum coverage required under subsection (a) or (b).

''(d) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

''(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

''(2) as part of any yearly informational packet sent to the participant or beneficiary; or

''(3) not later than January 1, 1998;

whichever is earlier.

''(e) SECONDARY CONSULTATIONS.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan that provides coverage with respect to medical and surgical services provided in relation to the diagnosis and treatment of cancer shall ensure that full coverage is provided for secondary consultations by specialists in the appropriate medical fields (including pathology, radiology, and oncology) to confirm or refute such diagnosis. Such plan or issuer shall ensure that full coverage is provided for such secondary consultation whether such consultation is based on a positive or negative initial diagnosis. In any case in which the attending physician certifies in writing that services necessary for such a secondary consultation are not sufficiently available from specialists operating under the plan with respect to whose services coverage is otherwise provided under such plan or by such issuer, such plan or issuer shall ensure that coverage is provided with respect to the services necessary for the secondary consultation with any other specialist selected by the attending physician for such purpose at no additional cost to the individual beyond that which the individual would have paid if the specialist was participating in the network of the plan.

''(2) EXCEPTION.—Nothing in paragraph (1) shall be construed as requiring the provision of secondary consultations where the patient determines not to seek such a consultation.

''(f) PROHIBITION ON PENALTIES OR INCENTIVES.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

''(1) penalize or otherwise reduce or limit the reimbursement of a provider or specialist because the provider or specialist provided care to a participant or beneficiary in accordance with this section;

''(2) provide financial or other incentives to a physician or specialist to induce the physician or specialist to keep the length of inpatient stays of patients following a mastectomy, lumpectomy, or a lymph node dissection for the treatment of breast cancer below certain limits or to limit referrals for secondary consultations; or

''(3) provide financial or other incentives to a physician or specialist to induce the physician or specialist to refrain from referring a participant or beneficiary for a secondary consultation that would otherwise be covered by the plan or coverage involved under subsection (e).''.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to group health plans for plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) January 1, 1998.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE INDIVIDUAL MARKET.

(a) IN GENERAL.—Subpart 3 of part B of title XXVII of the Public Health Service Act (as added by section 605(a) of the Newborn's and Mother's Health Protection Act of 1996) is amended by adding at the end the following new section:

''SEC. 2752. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND SECONDARY CONSULTATIONS.

''The provisions of section 2706 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply 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) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the date of enactment of this Act.

SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) IN GENERAL.—Chapter 100 of the Internal Revenue Code of 1986 (relating to group health plan portability, access, and renewability requirements) is amended by redesignating sections 9804, 9805, and 9806 as sections 9805, 9806, and 9807, respectively, and by inserting after section 9803 the following new section:

''SEC. 9804. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER, COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES, AND COVERAGE FOR SECONDARY CONSULTATIONS.

''(a) INPATIENT CARE.—

''(1) IN GENERAL.—A group health plan that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the treatment of breast cancer is provided for a period of time as is determined by the attending physician, in consultation with the patient, to be medically appropriate following—

''(A) a mastectomy;

''(B) a lumpectomy; or

''(C) a lymph node dissection for the treatment of breast cancer.

''(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

''(b) RECONSTRUCTIVE SURGERY.—A group health plan that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

''(1) all stages of reconstruction of the breast on which the mastectomy has been performed; and

''(2) surgery and reconstruction of the other breast to produce a symmetrical appearance;

in the manner determined by the attending physician and the patient to be appropriate, and consistent with any fee schedule contained in the plan.

''(c) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of this section, a group health plan may not modify the terms and conditions of coverage based on the determination by a participant or beneficiary to request less than the minimum coverage required under subsection (a) or (b).

''(d) NOTICE.—A group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan and shall be transmitted—

''(1) in the next mailing made by the plan to the participant or beneficiary;

''(2) as part of any yearly informational packet sent to the participant or beneficiary; or

''(3) not later than January 1, 1998;

whichever is earlier.

''(e) SECONDARY CONSULTATIONS.—

''(1) IN GENERAL.—A group health plan that provides coverage with respect to medical and surgical services provided in relation to the diagnosis and treatment of cancer shall ensure that full coverage is provided for secondary consultations by specialists in the appropriate medical fields (including pathology, radiology, and oncology) to confirm or refute such diagnosis. Such plan or issuer shall ensure that full coverage is provided for such secondary consultation whether such consultation is based on a positive or negative initial diagnosis. In any case in which the attending physician certifies in writing that services necessary for such a secondary consultation are not sufficiently available from specialists operating under the plan with respect to whose services coverage is otherwise provided under such plan or by such issuer, such plan or issuer shall ensure that coverage is provided with respect to the services necessary for the secondary consultation with any other specialist selected by the attending physician for such purpose at no additional cost to the individual beyond that which the individual would have paid if the specialist was participating in the network of the plan.

''(2) EXCEPTION.—Nothing in paragraph (1) shall be construed as requiring the provision of secondary consultations where the patient determines not to seek such a consultation.

''(f) PROHIBITION ON PENALTIES.—A group health plan may not—

''(1) penalize or otherwise reduce or limit the reimbursement of a provider or specialist because the provider or specialist provided care to a participant or beneficiary in accordance with this section;

''(2) provide financial or other incentives to a physician or specialist to induce the

physician or specialist to keep the length of inpatient stays of patients following a mastectomy, lumpectomy, or a lymph node dissection for the treatment of breast cancer below certain limits or to limit referrals for secondary consultations; or

''(3) provide financial or other incentives to a physician or specialist to induce the physician or specialist to refrain from referring a participant or beneficiary for a secondary consultation that would otherwise be covered by the plan involved under subsection (e).''.

(b) CONFORMING AMENDMENTS.—

(1) Sections 9801(c)(1), 9805(b) (as redesignated by subsection (a)), 9805(c) (as so redesignated), 4980D(c)(3)(B)(i)(I), 4980D(d)(3), and 4980D(f)(1) of such Code are each amended by striking ''9805'' each place it appears and inserting ''9806''.

(2) The heading for subtitle K of such Code is amended to read as follows:

''Subtitle K—Group Health Plan Portability, Access, Renewability, and Other Requirements''.

(3) The heading for chapter 100 of such Code is amended to read as follows:

''CHAPTER 100—GROUP HEALTH PLAN PORTABILITY, ACCESS, RENEWABILITY, AND OTHER REQUIREMENTS''.

(4) Section 4980D(a) of such Code is amended by striking ''and renewability'' and inserting ''renewability, and other''.

(c) CLERICAL AMENDMENTS.—

(1) The table of contents for chapter 100 of such Code is amended by redesignating the items relating to sections 9804, 9805, and 9806 as items relating to sections 9805, 9806, and 9807, and by inserting after the item relating to section 9803 the following new item:

''Sec. 9804. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer, coverage for reconstructive surgery following mastectomies, and coverage for secondary consultations.''.

(2) The item relating to subtitle K in the table of subtitles for such Code is amended by striking ''and renewability'' and inserting ''renewability, and other''.

(3) The item relating to chapter 100 in the table of chapters for subtitle K of such Code is amended by striking ''and renewability'' and inserting ''renewability, and other''.

(d) EFFECTIVE DATES.—

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

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) January 1, 1998.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

Mrs. FEINSTEIN. Madam President, as cochair of the Senate Cancer Coalition, I am pleased today to join with Senator D'AMATO in introducing S. 249, the Women's Health and Cancer Rights Act of 1997.

THE BILL

This bill does four things:

For treatment of breast cancer, it requires insurance plans to allow physicians to determine the length of a patient's hospital stay according to medical necessity; and it requires health insurance plans to cover breast reconstruction following a mastectomy.

For treatment of all cancers, it requires health insurance plans to cover second opinions by specialists whether the initial diagnosis is positive or negative; and it prohibits insurance plans from financially penalizing or rewarding a physician for providing medically necessary care or for referring a patient for a second opinion

TWO CALIFORNIA CASES

I have received two letters from constituents describing firsthand their treatment by insurance companies in having a mastectomy.

Nancy Couchot, age 60, of Newark, CA, wrote me that she had a modified radical mastectomy on November 4, 1996, at 11:30 a.m. and was released by 4:30 p.m. She could not walk and the hospital staff did not help her ''even walk to the bathroom.'' She says, ''Any woman, under these circumstances, should be able to opt for an overnight stay to receive professional help and strong pain relief.''

Victoria Berck, of Los Angeles, wrote that she had a mastectomy and lymph node removal at 7:30 a.m. on November 13, 1996, and was released from the hospital 7 hours later, at 2:30 p.m. Ms. Berck was given instructions on how to empty two drains attached to her body and sent home. She concludes, ''No civilized country in the world has mastectomy as an outpatient procedure.''

These are but two examples of what, unfortunately, is becoming a national nightmare—insurance plans interfering with professional medical judgment and refusing to cover hospital stays of mastectomy patients.

NEED FOR THE BILL

Increasingly, insurance companies are dropping and reducing inpatient hospital coverage of mastectomies. This is beyond the pale. It is unconscionable.

The Wall Street Journal on November 6 reported that ''some health maintenance organizations are creating an uproar by ordering that mastectomies be performed on an outpatient basis. At a growing number of HMOs, surgeons must document ''medical necessity'' to justify even a one-night hospital admission.''

In 1997, over 184,000 women—or 1 in every 8 American women—will be diagnosed with invasive breast cancer and 44,300 women will die from breast cancer; 2.6 million American women are living with breast cancer today. In my State, 20,000 women will be diagnosed with breast cancer and 5,000 will die or one every 27 minutes. San Francisco has among the highest incidence rates of breast cancer in the world.

After a mastectomy, patients must cope with pain from the surgery, with psychological loss—the trauma of an amputation—and with drainage tubes. These patients need medical care from trained professionals, medical care that they cannot provide themselves at home.

In the last 10 years, the length of overnight hospital stays for mastectomies has declined from 4 to 6 days to 2 to 3 days to, in some cases, no days. With the average cost of one day in the hospital at $930, if insurance plans refuse to cover a hospital stay, patients are forced to go home.

BREAST RECONSTRUCTION

Insurance plans also refuse to cover breast reconstruction. Our bill requires coverage. Breast reconstruction is an important followup part of breast cancer treatment and recovery. One study found that 84 percent of patients were denied insurance coverage for reconstruction of the removed breast. Commendably, my State has passed a law requiring coverage of breast reconstruction after a mastectomy. However, we need a national standard, covering all insurance policies.

SECOND OPINIONS COVERED

Another important feature of our bill is insurance coverage of second opinions for all cancers. The news of possible cancer is traumatic. It is a dreaded fear that we all live with daily. For this life-threatening disease for which there is no cure, more information is better than less. Expert advice is needed to make all-important decisions. I believe it is reasonable to encourage people to have a second consultation with a specialist, by requiring insurance plans to cover second opinions.

Patients often need specialty care. A December 1996 study reported in the New England Journal of Medicine found that specialty care improves the outcome of heart attack patients. This should come as no surprise. Specialists are knowledgeable about their field. A California doctor pointed out that nonspecialists may order a ''battery of unnecessary and sometimes invasive and risky examinations'' for patients. Thus, incentives that discourage the use of specialists or referrals to specialists, can end up costing the insurance plan more—instead of saving money.

NO FINANCIAL INCENTIVES

Finally, our bill prohibits insurance plans from including financial or other incentives to influence the care a doctor provides, similar to a law passed by the California legislature last year. Many physicians have complained that insurance plans include financial bonuses or other incentives for cutting patient visits or for not referring patients to specialists. Our bill bans financial incentives linked to how a doctor provides care. Our intent is to restore medical decisionmaking to health care.

For example, a California physician wrote me, ''Financial incentives under managed care plans often remove access to pediatric specialty care.'' A June 1995 report in the Journal of the National Cancer Institute cited the suit filed by the husband of a 34-year-old California woman who died from colon cancer, claiming that HMO incentives encouraged her physicians not to order additional tests that could have saved her life.

Our bill tries to restore professional medical decisionmaking to medical providers, those whom we trust to take care of us. It should not take an act of Congress to guarantee good health care, but unfortunately that is where we are today.

I hope my colleagues will join us in enacting this bill, an important protection for millions of Americans who face the fear and the reality of cancer every day.

By Mr. FORD:

S. 250. A bill to designate the U.S. courthouse located in Paducah, Kentucky, as the ''Edward Huggins Johnstone United States Courthouse''; to the Committee on Environment and Public Works.

THE EDWARD HUGGINS JOHNSTONE U.S. COURTHOUSE DESIGNATION ACT OF 1997

Mr. FORD. Mr. President, I rise today to offer legislation to designate the United States Courthouse in Paducah, KY as the Edward Huggins Johnstone United States Courthouse. There is much that I want to say about Edward Johnstone, a man known as ''Big Ed'' to his friends, and why this outstanding Kentuckian so richly deserves this accolade.

Edward Johnstone is a man who has spent his entire life in service to his country and the people of western Kentucky. Edward Johnstone is a veteran who fought for his country at the Battle of the Bulge, but finds nothing remarkable in his decorations of honor—to him they are reminders of his duty to country and fellow countrymen who never returned home. Edward Johnstone is a distinguished legal scholar who earned his law degree from the University of Kentucky and put his skills to work as a country lawyer in his hometown of Princeton, KY. Edward Johnstone is a judge who has served 21 years on the bench doling out words of wisdom and sentences of justice to those who come before him. Edward Johnstone is a tough, fair, hard-working Federal judge who puts in a full day's work even though he is a senior judge. Edward Johnstone is a man who gives me faith in the judicial process and those chosen to uphold our laws.

I am very proud to introduce legislation on behalf of myself and all of the western Kentuckians whose lives have been touched by this extraordinary individual.

Let me end my remarks, Mr. President, by remembering something that George Washington once said, ''The administration of justice is the firmest pillar of government.'' As an administrator of justice, Edward Johnstone is our own marble column in the Western Kentucky community.

Mr. President, I send to the desk a bill designating the courthouse in Paducah, KY, as the Edward Huggins Johnstone United States Courthouse, and I ask that it be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. 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. 250

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

SECTION 1. DESIGNATION.

The United States courthouse located in Paducah, Kentucky, shall be known and designated as the ''Edward Huggins Johnstone United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the Edward Huggins Johnstone United States Courthouse.

By Mr. SHELBY (for himself, Mr. GRASSLEY, Mr. COCHRAN, Mr. ROBERTS, Mr. ABRAHAM, and Mr. HUTCHINSON):

S. 251. A bill to amend the Internal Revenue Code of 1986 to allow farmers to income average over 2 years; to the Committee on Finance.

FARMER'S INCOME AVERAGING LEGISLATION

● Mr. SHELBY. Mr. President, today I am introducing legislation—along with Senators GRASSLEY, COCHRAN, ROBERTS, ABRAHAM, and HUTCHINSON—which will restore to American farmers an important tool in meeting their Federal income tax obligations.

Mr. President, America would not be what it is today without the dedication, sacrifice, and hard work of the American farmer. The American farmer is the most efficient farmer in the world. Each farmer in America provides food and fiber for 94 people in our country and an additional 35 people abroad. As a result, Americans enjoy the most affordable, healthy, and stable food supply of any country in the world.

Yet, despite the successes of the American farmer, they are faced with unique and difficult barriers, they must overcome, including unpredictable weather, natural disasters, plauges of insects and diseases, and excessive Government regulations. All of these result in substantial income fluctuations for the average farmer.

Wide swings in farmers' income from year to year, result in a tax burden much higher than individuals with a stable source of income because surges in income are taxed at a higher rate than is a steady flow of income. This problem is compounded when a farmers income is exaggerated by the sale of land or other assets.

Prior to 1986, farmers were allowed to average their income over a 2-year period in order to give them some sense of regularity and predictability in their payment of Federal taxes. This provision was repealed as part of the 1986 Tax Act, which reduced the number of tax brackets and lowered the top rate of 28 percent. However, since 1986, Congress has added two new tax brackets, and increased the top rate to 39.6 percent.

This change, along with the move to a more market-oriented farm program, makes it imperative that Congress restores to farmers the ability to average their income, and the legislation I am introducing today will do just that. The Joint Committee on Taxation estimated last year that this bill would cost about $90 million over 5 years.

Representative NICK SMITH has sponsored an identical bill in the House, and it has the broad support of the farming community. Groups endorsing this proposal include: Alabama Farmers Federation, American Farm Bureau Federation, National Association of Wheat Growers, National Cattlemen's Beef Association, National Farmers Union, National Grain Sorghum Producers, National Grange, National Pork Producers Council, and Women in Farm Economics.

Mr. President, the success of our Nation depends in large part on the success of the American farmer. Until we can enact broad-based tax reform, we should provide farmers with some sense of regularity and predictability in meeting their Federal tax obligation. This legislation will do that, and I hope my colleagues will support it.●

By Mr. GREGG:

S. 252. A bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gains tax for assets held more than 2 years, to impose a surcharge on short-term capital gains, and for other purposes; to the Committee on Finance.

CAPITAL GAINS LEGISLATION

Mr. GREGG. Mr. President, I introduce a bill that will have a significant impact on the promotion of long-term investment through a reduction in the capital gains tax. I believe the Congress has a responsibility to enact laws promoting long-term capital investment and savings by all Americans. Part of fulfilling this obligation must include implementing a plan that would reduce the current capital gains tax rate on long-term investments.

We must also, however, balance this important economic goal against the moral issue of adding increasing debt onto our children's shoulders. This becomes an unavoidable issue in the capital gains debate because the Joint Committee on Taxation scores capital gains a big revenue loser. This scoring issue is an unfortunate fact that we in Congress cannot ignore.

Accordingly, I have developed legislation that would encourage long-term investment by amending the current capital gains tax using a sliding scale plan. My bill encourages an individual to hold an asset over a number of years, thus, allowing a greater tax reduction on investments, with the maximum benefit being reached after 4 years. It would reward individuals who look toward contributing to a savings plan over a number of years, while at the same time making quick-fix investments less attractive. This sliding scale plan would encourage investments that benefit long-term savings, such as a child's education, an individual's retirement, or other non-speculative holdings.

The theory behind the sliding scale reduction on capital gains hinges upon an agreed goal: the promotion of savings and long-term investment through a capital gains cut, while recognizing our current fiscal realities. The Joint Committee on Taxation estimates this plan would lose just $7.4 billion in revenue over the 1995–2000 period.

Finally, Mr. President, I ask unanimous consent that a Washington Post op-ed by Louis Lowenstein, professor of finance at Columbia University, be included in the RECORD. Professor Lowenstein's piece outlines the current fiscal problem this legislation attempts to address.

Mr. President, I ask unanimous consent that the text 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. 252

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 ''Long-Term Investment Incentive Act of 1997''.

(b) AMENDMENT OF 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.

SEC. 2. REDUCTION OF TAX ON LONG-TERM CAPITAL GAINS ON ASSETS HELD MORE THAN 2 YEARS.

(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 new section:

''SEC. 1202. CAPITAL GAINS DEDUCTION FOR ASSETS HELD BY NONCORPORATE TAXPAYERS MORE THAN 2 YEARS.

''(a) GENERAL RULE.—If a taxpayer other than a corporation has a net capital gain for any taxable year, there shall be allowed as a deduction an amount equal to the sum of—

''(1) 20 percent of the qualified 4-year capital gain,

''(2) 10 percent of the qualified 3-year capital gain, plus

''(3) 5 percent of the qualified 2-year capital gain.

''(b) DEFINITIONS.—For purposes of this title—

''(1) QUALIFIED 4-YEAR CAPITAL GAIN.—The term 'qualified 4-year capital gain' means the lesser of—

''(A) the amount of long-term capital gain which would be computed for the taxable year if only gain from the sale or exchange of property held by the taxpayer for more than 4 years were taken into account, or

''(B) the net capital gain.

''(2) QUALIFIED 3-YEAR CAPITAL GAIN.—The term 'qualified 3-year capital gain' means the lesser of—

''(A) the amount of long-term capital gain which would be computed for the taxable year if only gain from the sale or exchange of property held by the taxpayer for more than 3 years but not more than 4 years were taken into account, or

''(B) the net capital gain, reduced by the qualified 4-year capital gain.

''(3) QUALIFIED 2-YEAR CAPITAL GAIN.—The term 'qualified 2-year capital gain' means the lesser of—

''(A) the amount of long-term capital gain which would be computed for the taxable year if only gain from the sale or exchange of property held by the taxpayer for more than 2 years but not more than 3 years were taken into account, or

''(B) the net capital gain, reduced by the qualified 4-year capital gain and qualified 3-year capital gain.

''(c) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under subsection (a) 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.

''(d) 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).

''(e) TREATMENT OF COLLECTIBLES.—

''(1) IN GENERAL.—Solely for purposes of this section, any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

''(2) TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.—For purposes of paragraph (1), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

''(3) COLLECTIBLE.—For purposes of this subsection, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof).

''(f) TRANSITIONAL RULE.—

''(1) IN GENERAL.—Gain may be taken into account under subsection (b)(1)(A), (b)(2)(A), or (b)(3)(A) only if such gain is properly taken into account on or after February 1, 1997.

''(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.—Subsection (a) of section 62 is amended by inserting after paragraph (16) the following new paragraph:

''(17) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202.''

(c) MAXIMUM CAPITAL GAINS RATE.—Clause (i) of section 1(h)(1)(A), as amended by section 3(a), is amended by striking ''the net capital gain'' and inserting ''the excess of the net capital gain over the deduction allowed under section 1202''.

(d) TREATMENT OF CERTAIN PASS-THRU ENTITIES.—

(1) CAPITAL GAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

(A) Subparagraph (B) of section 852(b)(3) is amended to read as follows:

''(B) TREATMENT OF CAPITAL GAIN DIVIDENDS BY SHAREHOLDERS.—A capital gain dividend shall be treated by the shareholders as gain from the sale or exchange of a capital asset held for more than 1 year but not more than 2 years; except that—

''(i) the portion of any such dividend designated by the company as allocable to qualified 4-year capital gain of the company shall be treated as gain from the sale or exchange of a capital asset held for more than 4 years,

''(ii) the portion of any such dividend designated by the company as allocable to qualified 3-year capital gain of the company shall be treated as gain from the sale or exchange of a capital asset held for more than 3 years but not more than 4 years, and

''(iii) the portion of any such dividend designated by the company as allocable to qualified 2-year capital gain of the company shall be treated as gain from the sale or exchange of a capital asset held for more than 2 years but not more than 3 years.

Rules similar to the rules of subparagraph (C) shall apply to any designation under clause (i), (ii), or (iii).''

(B) Clause (i) of section 852(b)(3)(D) is amended by adding at the end the following new sentence: ''Rules similar to the rules of subparagraph (B) shall apply in determining character of the amount to be so included by any such shareholder.''

(2) CAPITAL GAIN DIVIDENDS OF REAL ESTATE INVESTMENT TRUSTS.—Subparagraph (B) of section 857(b)(3) is amended to read as follows:

''(B) TREATMENT OF CAPITAL GAIN DIVIDENDS BY SHAREHOLDERS.—A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as gain from the sale or exchange of a capital asset held for more than 1 year but not more than 2 years; except that—

''(i) the portion of any such dividend designated by the real estate investment trust as allocable to qualified 4-year capital gain of the trust shall be treated as gain from the sale or exchange of a capital asset held for more than 4 years,

''(ii) the portion of any such dividend designated by the trust as allocable to qualified 3-year capital gain of the trust shall be treated as gain from the sale or exchange of a capital asset held for more than 3 years but not more than 4 years, and

''(iii) the portion of any such dividend designated by the trust as allocable to qualified

2-year capital gain of the trust shall be treated as gain from the sale or exchange of a capital asset held for more than 2 years but not more than 3 years.

Rules similar to the rules of subparagraph (C) shall apply to any designation under clause (i) or (ii).''

(3) COMMON TRUST FUNDS.—Subsection (c) of section 584 is amended—

(A) by inserting ''and not more than 2 years'' after ''1 year'' each place it appears in paragraph (2),

(B) by striking ''and'' at the end of paragraph (2), and

(C) by redesignating paragraph (3) as paragraph (6) and inserting after paragraph (2) the following new paragraphs:

''(3) as part of its gains from sales or exchanges of capital assets held for more than 2 years but less than 3 years, its proportionate share of the gains of the common trust fund from sales or exchanges of capital assets held for more than 2 years but not more than 3 years,

''(4) as part of its gains from sales or exchanges of capital assets held for more than 3 years but less than 4 years, its proportionate share of the gains of the common trust fund from sales or exchanges of capital assets held for more than 3 years but less than 4 years,

''(5) as part of its gains from sales or exchanges of capital assets held more than 4 years, its proportionate share of the gains of the common trust fund from sales or exchanges of capital assets held for more than 4 years, and''.

(e) TECHNICAL AND CONFORMING CHANGES.—

(1) Subparagraph (B) of section 170(e)(1) is amended by inserting ''(or, in the case of a taxpayer other than a corporation, the percentage of such gain equal to 100 percent minus the percentage applicable to such gain under section 1202(a))'' after ''the amount of gain''.

(2) Subparagraph (B) of section 172(d)(2) is amended to read as follows:

''(B) the deduction under section 1202 and the exclusion under section 1203 shall not be allowed.''

(3)(A) Section 221 (relating to cross reference) is amended to read as follows:

''SEC. 221. CROSS REFERENCES.

''(1) For deduction for net capital gains in the case of a taxpayer other than a corporation, see section 1202.

''(2) For deductions in respect of a decedent, see section 691.''

(B) The table of sections for part VII of subchapter B of chapter 1 is amended by striking ''reference'' in the item relating to section 221 and inserting ''references''.

(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 1(h) or 1201 or the deduction under section 1202 (whichever is appropriate) shall be taken into account.''

(5) Paragraph (4) of section 642(c) 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, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 or any exclusion allowable to the estate or trust under section 1203(a). 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 paragraph (3) of section 643(a) is amended to read as follows: ''The deduction under section 1202 and the exclusion under section 1203 shall not be taken into account.''

(7) Subparagraph (C) of section 643(a)(6) 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) shall not be taken into account''.

(8) Paragraph (4) of section 691(c) is amended by striking ''sections 1(h), 1201, and 1211'' and inserting ''sections 1(h), 1201, 1202, and 1211''.

(9) The second sentence of section 871(a)(2) is amended by inserting ''or 1203'' after ''1202''.

(10) Subsection (d) of section 1044 is amended by striking ''1202'' and inserting ''1203''.

(11) Paragraph (1) of section 1402(i) is amended by inserting '', and the deduction provided by section 1202 shall not apply'' before the period at the end thereof.

(f) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by inserting after the item relating to section 1201 the following new item:

''Sec. 1202. Capital gains deduction for assets held by noncorporate taxpayers more than 2 years.''

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after January 31, 1997.

(2) CONTRIBUTIONS.—The amendment made by subsection (e)(1) shall apply to contributions on or after February 1, 1997.

SEC. 3. SURCHARGE ON CAPITAL GAINS ON ASSETS HELD 1 YEAR OR LESS.

(a) IN GENERAL.—Subsection (h) of section 1 (relating to maximum capital gains rate) is amended to read as follows:

''(h) MAXIMUM CAPITAL GAINS TAXES.—

''(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

''(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

''(i) taxable income reduced by the amount of net capital gain, or

''(ii) the amount of taxable income taxed at a rate below 28 percent, plus

''(B) a tax of 28 percent of the amount of taxable income in excess of the amount determined under subparagraph (A).

For purposes of the preceding sentence, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer elects to take into account as investment income for the taxable year under section 163(d)(4)(B)(iii).

''(2) SURCHARGE ON NET SHORT-TERM CAPITAL GAIN.—

''(A) IN GENERAL.—If a taxpayer has a net short-term capital gain for any taxable year, the tax imposed by this section (without regard to this paragraph) shall be increased by an amount equal to the sum of—

''(i) 5.6 percent of the taxpayer's 6-month short-term capital gain, plus

''(ii) 2.8 percent of the taxpayer's 12-month short-term capital gain.

''(B) MAXIMUM RATE.—

''(i) IN GENERAL.—Subparagraph (A) shall not be applied to the extent it would result in—

''(I) 6-month short-term capital gain being taxed at a rate greater than 33.6 percent, or

''(II) 12-month short-term capital gain being taxed at a rate greater than 30.8 percent.

''(ii) ORDERING RULE.—For purposes of clause (i), the rate or rates at which 6-month or 12-month short-term capital gain is being taxed shall be determined as if—

''(I) such gain were taxed after all other taxable income, and

''(II) 12-month short-term capital gain were taxed after 6-month short-term capital gain.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) 6-MONTH SHORT-TERM CAPITAL GAIN.—The term '6-month short-term capital gain' means the lesser of—

''(I) the amount of short-term capital gain which would be computed for the taxable year if only gain from the sale or exchange of property held by the taxpayer for 6 months or less were taken into account, or

''(II) net short-term capital gain.

''(ii) 12-MONTH SHORT-TERM CAPITAL GAIN.—The term '12-month short-term capital gain' means the lesser of—

''(I) the amount of short-term capital gain which would be computed for the taxable year if only gain from the sale or exchange of property held by the taxpayer for more than 6 months but not more than 12 months were taken into account, or

''(II) net short-term capital gain, reduced by 6-month short-term capital gain.

For purposes of clause (i)(I) or (ii)(I), gain may be taken into account only if such gain is properly taken into account on or after February 1, 1997.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after January 31, 1997.

[From the Washington Post, Apr. 30, 1995]

A TAX CUT THAT WON'T SELL US SHORT

BY REWARDING ONLY LONG-TERM INVESTORS, WE ALL STAND TO GAIN

(By Louis Lowenstein)

The House has passed the Contract With America Tax Relief Bill of 1995 calling for not one, but two cuts in the capital gains tax. The first would cut the maximum rate in half, to just under 20 percent; the second would index the gain to eliminate the effects of inflation. With the Treasury Department estimating the 10-year cost at $92 billion, it is no wonder that critics label this a give-away to the rich.

Speaker Newt Gingrich and his allies are right about one thing—there is something wrong with the current capital gains tax structure. But their remedy doesn't fix the real problem, which is the refusal of today's investors to focus, as they once did, more on long-term business concerns than on the next twitch in interest rates, unemployment data or market prices. Their solution is not only misguided but a missed opportunity to correct some real wrongs in the tax system.

There is a better way: Cut the capital gains tax rate for people who hold stocks for long periods, and maintain or even raise the rates for short-term investors. This would reward productive investment, discourage speculators and avoid a costly increase in the deficit.

Such a policy has been endorsed in one form or another over the last half-century by such varied folk as Sen. Nancy Kassebaum, investment banker Felix Rohatyn, financier Warren Buffett and economist John Maynard Keynes—as well as by a 1992 Twentieth Century Fund task force on market speculation and corporate governance, of which I was a member. The proposal, so remarkably simple, calls for capital gains rates that would decline dramatically, but only as the holding period lengthens.

In other words, the capital gains tax benefit would be restricted to people who meet the traditional notion of investor. The dictionary defines an investor as ''an individual or organization who commits capital to become a partner of a business enterprise.'' As recently as the beginning of the 1960's, investors still though in terms of owning a share

of America, as the New York Stock Exchange used to say. They knew their companies and they held their stocks, on the average, for seven years. For these investors, the rate could be cut drastically—even to zero—after, say, 10 or 15 years. That would help return stock markets to their most useful function, one in which participation should be encouraged.

Stock markets enable corporations to raise long-term capital even while investors enjoy a high degree of liquidity. But those markets are not an end in themselves. Trading in stocks once they are issued can devolve into a game of ''musical shares''; the players change places but at the end of the year nothing much else happened.

And, indeed, the concept of owning a share of American business has given way to short-term speculation, particularly by institutional investors. The turnover of shares of New York Stock Exchange companies, which had been 14 percent, a year in the early '60s, soared to 95 percent by the late 1980s. In 1987, the total cost of all that activity—commissions and other trading costs—was about $25 billion, or more than one-sixth of all corporate earnings.

That's a very different kind of market than the market, say, for wheat, which moves grain from farmers to elevator operators to millers to bakers to consumers. When institutions trade the same shares over and over, nothing is created except profits for the brokers. There is only duplication and waste, not gain.

While there is good reason to let the capital gains tax drop as the holding period lengthens, there is absolutely no reason to subsidize an already wasteful, frenetic trading game. At present, to qualify for capital gains treatment one need hold an investment position for just one year. That is why the tax on restless holders should, at the very least, not go down. Remember, it is mutual fund managers and other so-called professionals who are the problem. They spend other peoples commission dollars on their asset allocation and other market-timing strategies.

True, speculation fills gaps in trading in the market, dampening price changes between trades and allowing investors to accumulate or liquidate positions rapidly. But its social value is limited. And while most economists rarely see a market they do not admire, there is no economic reason for the tax system within which the stock market must operate to reinforce its worst tendencies. Even economists increasingly recognize that once the market wheels have been lubricated, added grease helps only the merchants of grease—the brokers.

Worse yet, a market focused on short-term trading values is far less likely to serve its fundamental goals—to allocate capital to its best uses and to encourage shareholders to monitor the corporate managers' performance. As one fund manager said, ''It is not our job to be a good citizen at General Motors.'' But if not him, who?

The more immediate advantages of a steeply graduated capital gains tax are obvious. It can be formulated to be revenue-neutral, or nearly so, thus easing the budgetary pressure. It would obviate the need for inflation-indexing, for the simple reason that tax would fade rapidly as the holding period lengthened. And for those who, like this author and perhaps Gingrich too, dislike the old tax-shelter programs that enriched parasites at the expense of the public, a tax along the lines suggested here would discharge such games. All in all, it is difficult to think of any tax proposal that would accomplish so much at so little cost. The same cannot be said of an across-the-board capital gains cut for the rich to be paid for by the rest of us.

By Mr. LUGAR:

S. 253. A bill to establish the negotiating objectives and fast-track procedures for future trade agreements; to the Committee on Finance.

THE TRADE AGREEMENT IMPLEMENTATION REFORM ACT

● Mr. LUGAR. Mr. President, development of overseas markets and customers is vital to the future of U.S. agriculture. Demand for food and feed is growing rapidly. U.S. agriculture is efficient and competitive, however, tariff and nontariff barriers remain high in many countries.

As incomes rise in developing countries, their demands for our products will continue to expand. In 1996, agricultural exports reached a record $59.8 billion. Continued growth is vital. World commodity markets are often distorted by import barriers, export subsidies and State trading enterprises. These distortions put American farmers and agribusiness operators at a disadvantage. We must reduce trade barriers and allow our industry to supply the world's markets.

Today I will introduce the Trade Agreement Implementation Reform Act. This bill will grant the President the fast-track authority he needs to negotiate future trade agreements. It is in the national interest for the President to have this authority, but is has lapsed due in part to the way past implementing legislation was handled.

Earlier fast-track authority allowed side-deals, special-interest accommodations and provisions of questionable merit. As a result, public confidence in our trade policies eroded. Reforming the fast-track process and prohibiting these special-interest provisions is one step in gaining support for future trade agreements.

My bill contains two major changes from previous practice. First, legislation submitted under the fast-track authority will contain only provisions absolutely necessary to implement an agreement. Prior law allowed provisions necessary and appropriate and encouraged deals with special interests in exchange for support.

Second, although fast-track legislation is not amendable, we should make one exception. Senators should be able to amend or delete provisions that merely offset revenue losses from tariff changes. Such provisions in the Uruguay round legislation included the controversial Pioneer Preference and pension reform titles. Congress should have the ability to debate and amend items like these, but be subject to overall time limits.

The United States must continue to move forward in its effort to find new markets for our goods and services. We should take advantage of a favorable trade climate in South America by pursuing an agreement with Chile. Chile has advanced bilateral trade agreements with Canada and Mexico and has become an associate member of the Southern Cone Mercosur trading bloc. Before the United States can move forward, the administration must have fast-track authority. The President must now make a case to Congress and the American people that this is a priority of his administration.

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:

S. 253

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 ''Trade Agreement Implementation Reform Act''.

SEC. 2. TRADE NEGOTIATING OBJECTIVES.

The overall trade negotiating objectives of the United States for agreements subject to the provisions of section 3 are—

(1) to obtain more open, equitable, and reciprocal market access,

(2) to obtain the reduction or elimination of barriers and other trade-distorting policies and practices,

(3) to further strengthen the system of international trading disciplines and procedures, and

(4) to foster economic growth and full employment in the United States and the global economy.

SEC. 3. TRADE AGREEMENT NEGOTIATING AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

(1) IN GENERAL.—Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, and objectives of this Act will be promoted thereby, the President—

(A) on or before June 1, 2003, may enter into trade agreements with foreign countries, and

(B) may, subject to paragraphs (2) through (5), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties,

as the President determines to be required or appropriate to carry out any such trade agreement.

(2) LIMITATIONS.—No proclamation may be made under paragraph (1)(B) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of enactment of this Act) to a rate of duty which is less than 50 percent of the rate of such duty that applies on such date of enactment,

(B) reduces the rate of duty on an article over a period greater than 10 years after the first reduction that is proclaimed to carry out a trade agreement with respect to such article, or

(C) increases any rate of duty above the rate that applied on the date of enactment of this Act.

(3) AGGREGATE REDUCTION; EXEMPTION FROM STAGING.—

(A) AGGREGATE REDUCTION.—Except as provided in subparagraph (B), the aggregate amount that the rate of duty on any article may be reduced under paragraph (2) in any year shall not exceed an amount that is equal to the greater of 3 percent ad valorem or 10 percent of the total reduction in the rate of duty for such article required pursuant to a trade agreement entered into under paragraph (1).

(B) EXEMPTION FROM STAGING.—No staging is required under subparagraph (A) with respect to a duty reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) ROUNDING.—If the President determines that such action will simplify the computation of reductions under paragraph (2) (A) or (B) or paragraph (3), the President may round an annual reduction by an amount equal to the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(5) ADDITIONAL LIMITATION.—A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) or (3) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 4 of this Act and that bill is enacted into law.

(b) AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) IN GENERAL.—Whenever the President determines that any duty or other import restriction imposed by any foreign country or the United States or any other barrier to, or other distortion of, international trade—

(A) unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy,

(B) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, or

(C) the reduction or elimination of such barrier or distortion is likely to result in economic growth or expanded trade opportunities for the United States,

and that the purposes, policies, and objectives of this Act will be promoted thereby, the President may, on or before June 1, 2003, enter into a regional, bilateral, or multilateral trade agreement described in paragraph (2).

(2) DESCRIPTION OF TRADE AGREEMENT.—A trade agreement is described in this paragraph if it is a regional, bilateral, or multilateral trade agreement entered into by the President with a foreign country providing for—

(A) the reduction or elimination of such duty, restriction, barrier, or other distortion, or

(B) the prohibition of, or limitation on the imposition of, such barrier or other distortion.

(3) CONDITIONS.—A trade agreement may be entered into under this subsection only if such agreement makes substantial progress in meeting the applicable negotiating objectives described in section 2 and the President satisfies the conditions set forth in subsections (c) and (d).

(4) COMPLIANCE WITH URUGUAY ROUND AGREEMENTS AND OTHER OBLIGATIONS.—In determining whether to enter into negotiations with a particular country under this subsection, the President shall take into account whether that country has implemented its obligations under the Uruguay Round Agreements and any other trade agreement with respect to which the United States and such other country are parties.

(5) LIMITATION.—Notwithstanding any other provision of law, no trade benefit shall be extended to any country solely by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country.

(c) NOTICE AND CONSULTATION BEFORE NEGOTIATION.—

(1) GENERAL RULE.—The President, at least 60 calendar days before initiating negotiations on any agreement that is subject to the provisions of subsection (b), shall—

(A) provide written notice to Congress of the President's intent to enter into the negotiations and set forth therein the date the President intends to initiate such negotiations and the specific United States objectives for the negotiations,

(B) before submitting the notice, seek the advice of and consult with the relevant private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), regarding the negotiations and the negotiating objectives the President proposes to establish for the negotiations, and

(C) before and after submission of the notice, consult with Congress regarding the negotiations and the negotiating objectives.

(2) EXCEPTION.—Notwithstanding subsection (b)(3) and section 4(c), the provisions of this subsection shall not apply to an agreement which results from negotiations that were commenced before the date of enactment of this Act and the provisions of this Act regarding implementation shall apply to such agreement, if with respect to such agreement, the President provides notice, seeks advice, and consults in accordance with subparagraphs (A), (B), and (C) of paragraph (1) as soon as practicable after the date of enactment of this Act.

(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) CONSULTATION.—Before entering into any trade agreement under subsection (b), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and

(B) each other committee of the House and the Senate, and each joint committee of Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement,

(B) how and to what extent the agreement will achieve the applicable negotiating objectives, and

(C) all matters relating to the implementation of the agreement under section 4.

SEC. 4. IMPLEMENTATION OF TRADE AGREEMENTS.

(a) IN GENERAL.—

(1) NOTIFICATION AND SUBMISSION.—Any agreement entered into under section 3(b) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 120 calendar days before the day on which the President enters into the trade agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) after entering into the agreement, the President submits a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill,

(ii) a statement of any administrative action proposed to implement the trade agreement, and

(iii) the supporting information described in paragraph (3); and

(C) the implementing bill is enacted into law.

(2) RESTRICTIONS ON IMPLEMENTING BILL.—

(A) IN GENERAL.—An implementing bill referred to in paragraph (1) shall contain only necessary provisions.

(B) NECESSARY PROVISION.—For purposes of this Act, the term ''necessary provision'' means a provision in an implementing bill that—

(i)(I) makes progress in meeting the negotiating objectives contained in section 2 for the trade agreement with respect to which the implementing bill is submitted, and

(II) is required to put into effect, or sets forth a procedure to carry out, a substantive provision of the trade agreement with respect to which the implementing bill is submitted, or

(ii) is a revenue provision.

(3) SUPPORTING INFORMATION.—The supporting information required under paragraph (1)(B)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable negotiating objectives contained in section 2, and

(ii) setting forth the reasons of the President regarding, among other things—

(I) how and to what extent the agreement makes progress in achieving the applicable negotiating objectives referred to in clause (i), and why and to what extent the agreement does not achieve other negotiating objectives,

(II) how the agreement serves the interests of United States commerce,

(III) why the implementing bill and proposed administrative action is necessary to carry out the agreement,

(IV) how the provisions of the implementing bill are necessary to comply with the applicable negotiating objectives, and

(V) how any revenue provision in the implementing bill is necessary to comply with the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) OTHER CONSIDERATIONS.—To ensure that a foreign country that receives benefits under a trade agreement entered into under section 3(b) is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(b) APPLICATION OF CONGRESSIONAL ''FAST TRACK'' PROCEDURES TO IMPLEMENTING BILLS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (c), the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) (hereafter in this Act referred to as ''fast track procedures'') apply to implementing bills submitted with respect to trade agreements entered into under section 3(b) on or before June 1, 2003 (or if extended under section 5, June 1, 2005).

(2) CERTAIN POINTS OF ORDER AND AMENDMENTS IN ORDER.—

(A) IN GENERAL.—

(i) POINTS OF ORDER.—A point of order may be made by any Senator against a provision in an implementing bill that is not a necessary provision (as defined in subsection (a)(2)(B)). If such point of order is sustained by a majority of the Members of the Senate duly chosen and sworn, the provision shall be stricken.

(ii) AMENDMENTS IN ORDER.—The provisions of section 151(d) of the Trade Act of 1974 shall not apply to a provision in an implementing bill that is a revenue provision and an amendment to a revenue provision shall be

in order if the amendment meets the requirements of paragraph (4).

(B) TIME LIMIT.—Sections 151(f)(2) and 151(g)(2) of such Act shall be applied by substituting ''25 hours'' for ''20 hours'' each place such term appears and such time limits shall include all amendments to and points of order made with respect to an implementing bill.

(C) RULES FOR DEBATE IN THE SENATE.—Debate in the Senate on any amendment to or point of order made with respect to an implementing bill under this paragraph shall be limited to not more than 1 hour, to be equally divided between, and controlled by the mover and the manager of the implementing bill, except that in the event the manager of the implementing bill is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or the minority leader's designee. The majority and minority leader may, from the time under their control on the passage of an implementing bill, allot additional time to any Senator during the consideration of any amendment. A motion in the Senate to further limit debate on an amendment to any implementing bill is not debatable.

(3) REVENUE PROVISION.—For purposes of this Act, the term ''revenue provision'' means a provision in an implementing bill that—

(A) is not required to put into effect, or does not set forth a procedure to carry out, a substantive provision of the trade agreement with respect to which the implementing bill is submitted,

(B) is not inconsistent with the obligations of the United States under the trade agreement with respect to which the implementing bill is submitted, and

(C) either decreases specific budget outlays for the fiscal years covered by the implementing bill or increases revenues for such fiscal years in order to comply with the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) REQUIREMENTS FOR AMENDMENT.—It shall not be in order in the House of Representatives or the Senate to consider any amendment to a revenue provision in an implementing bill that would have the effect of increasing any specific budget outlays above the level of such outlays provided in the implementing bill for the fiscal years covered by the implementing bill or would have the effect of reducing any specific revenues below the level of such revenues provided in the implementing bill for such fiscal years, unless such amendment makes at least an equivalent reduction in other specific budget outlays, an equivalent increase in other specific Federal revenues, or an equivalent combination thereof for such fiscal years. For purposes of this paragraph, the levels of budget outlays and Federal revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate or of the House of Representatives, as the case may be.

(5) DIFFERENCE BETWEEN THE 2 HOUSES.—If the text of implementing bills described in subsection (b)(1) concerning any matter is not identical—

(A) the Senate shall vote passage on the implementing bill introduced in the Senate, and

(B) the text of the implementing bill passed by the Senate shall, immediately upon its passage (or, if later, upon receipt of the implementing bill passed by the House), be substituted for the text of the implementing bill passed by the House of Representatives, and such implementing bill, as amended shall be returned with a request for a conference between the 2 Houses.

(6) AMENDMENT BETWEEN HOUSES.—Except as provided in paragraph (7)—

(A) overall debate on all motions necessary to resolve amendments between the Houses on an implementing bill under this subsection shall be limited to 2 hours at any stage of the proceedings; and

(B) debate on any motion, appeal, or point of order under this subsection which is submitted shall be limited to 30 minutes, and such time shall be equally divided and controlled by, the majority leader and the minority leader or their designees.

(7) PROCEDURES RELATING TO CONFERENCE REPORTS.—

(A) APPOINTMENT OF CONFEREES.—A request for a conference shall be accepted and conferees shall be appointed—

(i) in the case of the Senate, by the President pro tempore, and

(ii) in the case of the House of Representatives, by the Speaker of the House,

not later than 3 calendar days after such request is made.

(B) GENERAL RULES FOR CONSIDERATION OF CONFERENCE REPORT.—Consideration in a House of Congress of the conference report on an implementing bill described in paragraph (5), including consideration of all amendments in disagreement (and all amendments thereto), and consideration of all debatable motions and appeals in connection therewith, shall be limited to 4 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(C) FAILURE OF CONFERENCE TO ACT.—If the committee on conference on an implementing bill considered under this section fails to submit a conference report within 10 calendar days after the conferees have been appointed by each House, any Member of either House may introduce an implementing bill containing only the text of the draft implementing bill of the President on the next day of session thereafter and the implementing bill shall be treated as a conference report and considered as provided in subparagraph (B).

(c) ADDITIONAL LIMITATIONS ON ''FAST TRACK'' PROCEDURES.—

(1) PRENEGOTIATION REQUIREMENTS.—

(A) IN GENERAL.—The fast track procedures shall not apply to any implementing bill that contains a provision approving any trade agreement which is entered into under section 3(b) with any foreign country if—

(i) the requirements of section 3(c) are not met with respect to the negotiation of such agreement; or

(ii) both Houses of Congress agree to a resolution disapproving the negotiation of such agreement before the later of—

(I) the close of the 60-calendar day period beginning on the date notice is provided under section 3(c); or

(II) the close of the 15-day period beginning on the date such notice is provided, computed without regard to the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of Congress sine die, and any Saturday or Sunday, not otherwise excluded under this subclause, when either House of Congress is not in session.

(B) RESOLUTION DISAPPROVING NEGOTIATIONS.—A resolution referred to in subparagraph (A)(ii) is a resolution of either House of Congress with which the other House of Congress concurs, the sole matter after the resolving clause of which is as follows: ''That Congress disapproves the negotiation of the trade agreement notice of which was provided to Congress on ____ under section 3(c) of the Trade Agreement Implementation Reform Act.'', with the blank space being filled with the appropriate date.

(2) LACK OF CONSULTATIONS.—

(A) IN GENERAL.—The fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 3(b) if both Houses of Congress separately agree to procedural disapproval resolutions within any 60 calendar day period.

(B) PROCEDURAL DISAPPROVAL RESOLUTION.—For purposes of this paragraph, the term ''procedural disapproval resolution'' means a resolution of either House of Congress, the sole matter after the resolving clause of which is as follows: ''That the President has failed or refused to consult with Congress on trade negotiations and trade agreements in accordance with the provisions of the Trade Agreement Implementation Reform Act and, therefore, the provisions of section 151 of the Trade Act of 1974 shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 3(b) of the Trade Agreement Implementation Reform Act, if, during the 60 calendar day period beginning on the date on which this resolution is agreed to by ____, the ____ agrees to a procedural disapproval resolution (within the meaning of section 4(c)(2)(B) of the Trade Agreement Implementation Reform Act).'', with the first blank space being filled with the name of the resolving House of Congress and the second blank space being filled with the name of the other House of Congress.

(3) PROCEDURES FOR CONSIDERING RESOLUTIONS.—

(A) IN GENERAL.—Resolutions under paragraph (1) and procedural disapproval resolutions under paragraph (2)—

(i) in the House of Representatives—

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules,

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules, and

(III) may not be amended by either Committee; and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(B) APPLICATION OF SECTION 152.—The provisions of section 152 (d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to resolutions under paragraph (1) and to procedural disapproval resolutions under paragraph (2).

(C) SPECIAL RULES RELATING TO HOUSE.—It is not in order for the House of Representatives to consider any resolution under paragraph (1) or any procedural disapproval resolution under paragraph (2) that is not reported by the Committee on Ways and Means and the Committee on Rules.

SEC. 5. EXTENSION OF TRADE AGREEMENTS AUTHORITY AND FAST TRACK PROCEDURES.

(a) EXTENSION OF FAST TRACK PROCEDURES TO IMPLEMENTING BILLS.—

(1) IN GENERAL.—The fast track procedures shall, as modified by this Act, be extended to implementing bills submitted with respect to trade agreements entered into under section 3(b) after May 31, 2003, and before June 1, 2005, if (and only if)—

(A) the President requests such extension under paragraph (2), and

(B) neither House of Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 2003.

(2) REPORT TO CONGRESS BY THE PRESIDENT.—If the President is of the opinion that

the fast track procedures should be extended to implementing bills described in paragraph (1), the President shall submit to Congress, not later than March 1, 2003, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 3(b) and the anticipated schedule for submitting such agreements to Congress for approval,

(B) a description of the progress that has been made in regional, bilateral, and multilateral negotiations to achieve the purposes, policies, and objectives of this Act, and a statement that such progress justifies the continuation of negotiations, and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) REPORT TO CONGRESS BY THE ADVISORY COMMITTEE.—The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of the President's decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to Congress as soon as practicable, but not later than March 1, 2003, a written report that contains—

(A) its views regarding the progress that has been made in regional, bilateral, and multilateral negotiations to achieve the purposes, policies, and objectives of this Act, and

(B) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(4) REPORTS MAY BE CLASSIFIED.—The reports submitted to Congress under paragraphs (2) and (3), or any portion of the reports, may be classified to the extent the President determines appropriate.

(5) EXTENSION DISAPPROVAL RESOLUTIONS.—

(A) IN GENERAL.—For purposes of this subsection, the term ''extension disapproval resolution'' means a resolution of either House of Congress, the sole matter after the resolving clause of which is as follows: ''That the ____ disapproves the request of the President for the extension, under section 5(a)(1) of the Trade Agreement Implementation Reform Act, of the provisions of section 151 of the Trade Act of 1974 (as modified by section 4(b) of the Trade Agreement Implementation Reform Act) to any implementing bill submitted with respect to any trade agreement entered into under section 3(b) of the Trade Agreement Implementation Reform Act after June 1, 2003, because sufficient tangible progress has not been made in trade negotiations.'', with the blank space being filled with the name of the resolving House of Congress.

(B) PROCEDURE.—Extension disapproval resolutions—

(i) may be introduced in either House of Congress by any Member of such House; and

(ii) shall be jointly referred, in the House of Representatives, to the Committee on Ways and Means and the Committee on Rules.

(C) APPLICATION OF SECTION 152.—The provisions of sections 152 (d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) OTHER REQUIREMENTS.—It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules; or

(iii) either House of Congress to consider an extension disapproval resolution that is reported to such House after May 15, 2003.

(b) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (a) of this section, and section 4 (b) and (c), are enacted by Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 6. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Title I of the Trade Act of 1974 (19 U.S.C. 2111 and following) is amended as follows:

(1) IMPLEMENTING BILL.—Section 151(b)(1) (19 U.S.C. 2191(b)(1)) is amended by inserting ''section 4 of the Trade Agreement Implementation Reform Act,'' after ''the Omnibus Trade and Competitiveness Act of 1988,''.

(2) ADVICE FROM INTERNATIONAL TRADE COMMISSION.—Section 131 (19 U.S.C. 2151) is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking ''section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988,'' and inserting ''section 123 of this Act, section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreement Implementation Reform Act'', and

(ii) in paragraph (2), by inserting ''or section 3 (a) or (b) of the Trade Agreement Implementation Reform Act'' after ''1988'',

(B) in subsection (b), by inserting ''of the Omnibus Trade and Competitiveness Act of 1988 or section 3(a)(3) of the Trade Agreement Implementation Reform Act'' before the end period, and

(C) in subsection (c), by striking ''of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988,'' and inserting ''of this Act, section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreement Implementation Reform Act''.

(3) HEARINGS AND ADVICE CONCERNING NEGOTIATIONS.—Sections 132, 133(a), and 134(a) (19 U.S.C. 2152, 2153(a), and 2154(a)) are each amended by striking ''or section 1102 of the Omnibus Trade and Competitiveness Act of 1988,'' each place it appears and inserting '', section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or section 3 of the Trade Agreement Implementation Reform Act,''.

(4) PREREQUISITES FOR OFFERS.—Section 134(b) (19 U.S.C. 2154(b)) is amended by inserting ''or section 3 of the Trade Agreement Implementation Reform Act'' after ''1988''.

(5) INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.—Section 135(a)(1)(A) (19 U.S.C. 2155(a)(1)(A)) is amended by inserting ''or section 3 of the Trade Agreement Implementation Reform Act'' after ''1988''.

(6) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS.—Section 135(e) (19 U.S.C. 2155(e)) is amended—

(A) in paragraph (1), by inserting ''or section 3 of the Trade Agreement Implementation Reform Act'' after ''1988'' the first two places it appears, and by inserting ''or section 4(a)(1)(A) of the Trade Agreement Implementation Reform Act'' after ''1988'' the third place it appears; and

(B) in paragraph (2), by inserting ''or section 2 of the Trade Agreement Implementation Reform Act'' after ''1988''.

(b) APPLICATION OF SECTIONS 125, 126, AND 127 OF THE TRADE ACT OF 1974.—For purposes of applying sections 125, 126, and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136, and 2137)—

(1) any trade agreement entered into under section 3 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 3 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974 (19 U.S.C. 2112).

SEC. 7. ADVISORY COMMITTEE REPORTS.

Section 135(e)(1) of the Trade Act of 1974 (19 U.S.C. 2155) is amended by striking ''the date on which'' and inserting ''45 days after''.

TRADE AGREEMENT IMPLEMENTATION REFORM ACT

Sec. 2. Negotiating objectives.—Overall negotiating objectives for all trade agreements are included in the act. These objectives do not provide authority to use trade negotiations to achieve environmental or labor policy goals. Specific negotiating objectives are to be the subject of consultations between the President and Congress prior to the initiation of negotiations. (See sec. 3(c))

Sec. 3(a). General tariff authority.—As in previous trade acts, authority is delegated to the President to negotiate and proclaim reciprocal tariff reductions without further Congressional action. This authority expires on June 1, 2003.

Sec. 3(b). Authority to negotiate tariff and non-tariff barriers.—The President is given authority to negotiate bilateral, regional, or multilateral trade agreements, including reduction or elimination of non-tariff barriers and subsidies.

Sec. 3(c)&(d). Notice and consultation before negotiation.—In addition to consulting with Congress before an agreement is entered into (as the 1988 act requires), this bill would require the President to notify Congress 60 days before initiating any trade negotiations and to consult with Congress and the private sector advisory committees concerning the specific negotiating objectives. Congress must also be notified of negotiations commenced before enactment of this act for the resulting agreement to receive fast track treatment.

Sec. 4(a). Notification.—In order for a trade agreement to be considered under fast track procedures, the President must notify Congress at least 120 days before the agreement is entered into. Once the agreement is entered into, the President submits a draft implementing bill and supporting documentation. Only necessary provisions are permitted in the implementing bill.

Sec. 4(b). Application of fast track procedures.—Fast track authority is available for agreements entered into by June 1, 2003, with the possibility of a two year extension for the deadline. In contrast to previous acts, the fast track authority provided for in this bill would permit amendments to provisions of the implementing bill that are revenue provisions related to pay/go. If there is no agreement in conference over the revenue amendments, the unamended implementing bill submitted by the President would be voted on.

Sec. 4(c). Disapproval resolution.—Congress may revoke fast track within the 60 day consultation period prior to initiation of negotiations. Fast track can also be revoked at any time during the negotiations for lack of consultations if disapproval resolutions are passed separately by both Houses within any 60 day period.

Sec. 5. Extension of fast track procedures.—Fast track procedures apply to any agreement entered into before June 1, 2003, with the possibility of a two year extension. The extension will be denied if either House passes a disapproval resolution.

Sec. 6. Conforming amendments.

Sec. 7. Advisory committee reports.—Private sector advisory committee reports have to be submitted not more than 45 days after the President notifies Congress of his intent to enter into an agreement.●

By Mr. KOHL:

S. 254. A bill to amend part V of title 28, United States Code, to require that the Department of Justice and State attorneys general are provided notice of a class action certification or settlement, and for other purposes; to the Committee on the Judiciary.

THE CLASS ACTION FAIRNESS ACT OF 1997

● Mr. KOHL. Mr. President, I introduce the Class Action Fairness Act of 1997. This legislation is necessary to address a troubling and growing problem in class action litigation—unfair and abusive settlements that ignore the best interests of injured plaintiffs while unscrupulous defendants and attorneys reap the rewards.

Let me give you an example of this situation. It involves a class action settlement that affected a constituent of mine, Martha Preston of Baraboo, WI. Ms. Preston was a member of a class action lawsuit filed in Alabama State Court against BancBoston Mortgage Corp. The suit alleged that the bank was holding an excess balance of Ms. Preston's money in her mortgage escrow account. As with many class members in this case—and in most class action lawsuits—Ms. Preston did not actually initiate the suit or even have knowledge that her mortgage company was being sued on her behalf. But a group of lawyers who claimed to represent her and all other people in a similar situation filed the suit on behalf of the class and negotiated a settlement of the suit, as they are allowed to under the law.

The settlement they negotiated provided that the bank would refund the excess money that it was holding and provide a small amount of compensation to the plaintiffs for lost interest. Pursuant to the settlement, Ms. Preston received a check for $4.38 to compensate her for the interest she would have earned had the excess money been invested. A few months later, a miscellaneous disbursement of $80.94 showed up on her escrow account. That $80 went to pay the class action attorneys their fee for getting her $4.38. So Ms. Preston ended up losing $75 as the result of a lawsuit filed without her knowledge and that purported to be to her advantage.

Unfortunately, Ms. Preston's losses did not end there. She was understandably upset at what happened to her. So she found an attorney who was willing to represent her pro bono. She sued the attorneys who had negotiated the agreement that cost her $75. No sooner had she sued them for what they had done, than these attorneys turned around and sued her and her pro bono attorneys in Alabama—a State she has never visited—for abuse of process and malicious prosecution and asked for $25 million in damages against her. Both of these lawsuits are ongoing; indeed the suit that Ms. Preston filed is now the subject of a petition for a writ of certiorari to the Supreme Court. Not only did Ms. Preston lose $75, but now as a result of trying to defend herself from being fleeced she is defending a $25 million lawsuit against her.

The Preston case is especially egregious. Unfortunately it is not uncommon. The system of class action law suits has created a climate where this kind of abuse is possible.

A class action is a lawsuit in which an attorney not only represents an individual plaintiff but, in addition, seeks relief for all those individuals who have suffered an injury similar to the plaintiff. For example, a suit brought against a pharmaceutical company by a person suffering from the side effects of a drug can, if the court approves it as a class action, be expanded to cover all individuals who used the drug.

Often, these suits are settled. The settlement agreements provide money and/or other forms of compensation. The attorneys who brought the class action suit also get paid for their work. All class members are usually notified of the terms of the settlement and frequently—but not always—given the chance to withdraw from the agreement if they do not want to be part of it. A court must ultimately approve a settlement agreement.

Many of these suits are brought and settled fairly and in good faith. Unfortunately, we also know that there are a few unscrupulous lawyers who file class actions in search of big attorney fees rather than to get compensation for victims. And the class action system does not adequately protect class members from such predatory acts. The primary problem is that the client in a class action is a diffuse group of thousands of individuals scattered across the country. The group is so diffuse that it is incapable of exercising meaningful control over the litigation. As a result, while in theory the class action lawyers must be responsive to their clients, in practice, the lawyers control all aspects of the litigation.

Moreover, when a class action is settled, the amount of the attorneys fee is negotiated between the plaintiffs' lawyers and the defendants. But in most cases the fee is paid by the class members—the only party that does not have a seat at the bargaining table.

In addition, class actions are now being used by defendants as a tool to limit their future liabilities. Class actions are being settled that cover all individuals exposed to a particular substance but whose injuries have not yet manifest themselves. As Prof. John Coffee of Columbia Law School has written, ''the class action is providing a means by which unsuspecting future claimants suffer the extinguishment of their claims even before they learn of their injury.''

In light of the incentives that are driving the parties, it is easy to see how the class members can be left out in the cold. Plaintiffs attorneys and corporate defendants can reach agreements that satisfy their respective interests—and even the interests of the name class plaintiffs—but that short sell the interests any class members who are not vigilantly monitoring the litigation.

Although members of class actions get notices of settlements, the settlements are often written in incomprehensible legalese. Let me give you an example of a recent notice:

''The Rebate payable to the eligible member [sic] of the Open Class and the Closed Class shall be an amount equal to (i) the Average Surplus, as determined by the above subparagraph, multiplied by (ii) 50% multiplied by (iii) 3% multiplied by (a) 1 if the loan was serviced for at least 1 year but less than . . . .''

Even well trained attorneys are hard pressed to understand these notices. But these long, finely printed and intricate letters are being sent to class members. And on the basis of these notices, people's legal rights are being eliminated and in cases like Ms. Preston's they are being injured.

We all know that class action suits can result in significant and important benefits for class members and for our society. Class actions have been used to desegregate racially divided schools, to obtain redress for victims of employment discrimination, and to compensate individuals exposed to toxic chemicals or defective products. Class actions increase access to our civil justice system because they enable people to pursue claims that collectively that would otherwise be too expensive to litigate.

The difficulty in any effort to improve a basically good system is in weeding out the abuses without causing undue damage. The legislation I propose attempts to do this. It does not limit anyone's ability to file a class action or to settle a class action. It seeks to address the problem in two ways. First, it requires that State attorneys general be notified about potential class action settlements that would affect residents of their states. With this systematic notification in place, the attorneys general can intervene in cases where they think the settlements are unfair. Second, the legislation requires that class members be notified of a potential settlement in clear, easily understood English—not legal jargon.

Let me emphasize the limited scope of this measure: we do not require that State attorney generals do anything with the notice that they receive. No obligations are imposed upon them at